

**ADDIS ABABA UNIVERSITY**  
**SCHOOL OF GRADUATE STUDIES**

**Public Procurement Reforms in Ethiopia: Policy and  
Institutional Challenges and Prospects**

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**A thesis submitted to the school of graduate studies of Addis  
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for the degree of master of art in public management and  
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**Addis Ababa**

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## D E C L A R A T I O N

I, Yirga Tesfahun, declares that this work entitled **“Public Procurement Reforms in Ethiopia: Policy and Institutional Challenges and Prospects”** is an outcome of my own efforts and study and that all sources of materials used for the study have been duly acknowledged. I have produced it independently except for the guidance and suggestion of the Research Advisor.

This study has not been submitted for any degree in this University or any other University. It is offered for the partial fulfillment of the requirements for the award of Degree of Masters in Public Management and Policy (MPMP).

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# Table of Contents

i. Acknowledgements .....	i
ii. Table of Contents .....	ii
iii. List of Tables and Figures .....	vi
iv. List of Acronyms .....	vii
v. Abstract .....	viii

## CHAPTER ONE

### INTRODUCTION

1.1 Background of the Study .....	1
1.2 Statement of the Problem.....	3
1.3 Research Questions .....	5
1.4 Research Objectives.....	6
1.4.1 General Objectives.....	6
1.4.2 Specific Objectives .....	6
1.5 Scope of the Research.....	7
1.6 Limitation of the Study .....	7
1.7 Significance of the Study .....	7
1.8 Research Methodology .....	8
1.8.1 Research Design .....	8
1.8.2 Sampling Design.....	8
1.8.3 Method of Data Collection .....	8
1.8.4 Method of Data Analysis .....	9
1.9 Organization of the Study .....	9

## CHAPTER TWO

### THEORETICAL FRAMEWORK OF THE STUDY

2.1 Introduction .....	10
2.2 Public Procurement Defined .....	11
2.3 Public Procurement: A Historic Genesis .....	12
2.4 Principles of Public Procurement .....	12
2.5 The Public Procurement System.....	13
2.5.1 Laws and Regulation.....	13
2.5.2 Public Procurement Organizations .....	14
2.5.3 Public Procurement Workforce .....	15
2.5.4 Public Procurement Processes and Methods.....	16
2.6 Challenges of Public Procurement.....	19
2.7 Public Procurement Reforms .....	22
2.8 Ethics in Public Procurement.....	26
2.8.1 What is Ethics .....	26
2.8.2 Integrity, Transparency and Accountability in Public Procurement .....	28
2.8.3 Corruption and Public Procurement.....	30
2.8.4 Bid Rigging.....	32
2.9 E-Procurement .....	33
2.10 Conclusion .....	33

## CHAPTER THREE

### PUBLIC PROCUREMENT IN ETHIOPIA: A CONCEPTUAL FRAMEWORK

3.1 Introduction .....	35
------------------------	----

3.2 The Historical Genesis of Public Procurement in Ethiopia .....	36
3.3 The Legal and Regulatory Frameworks Governing the Federal Government’s Public Procurement .....	38
3.3.1 The Ethiopian Federal Government Procurement and Property Administration Proclamation .....	38
3.3.2 The Proclamation’s Scope of Application .....	39
3.3.3 Public Procurement Support Documents .....	39
3.4 Institutional Framework of the Federal Government’s Public Procurement .....	40
3.5 Public Procurement Reforms in Ethiopia .....	44
3.6 Conclusions .....	44

## CHAPTER FOUR

### DATA ANALYSIS AND DISCUSSION

4.1 Introduction .....	46
4.2 The Legal and Regulatory Framework of the Ethiopian Public Procurement.....	47
4.2.1 Application of Procurement Rules on State Owned Enterprises .....	49
4.2.2 Application of Procurement Rules on Security and Defense Procurements ...	49
4.2.3 The Procurement Legislation on Product Specification .....	50
4.2.4 Procurement Thresholds .....	51
4.2.5 Methods of Procurement.....	51
4.2.6 Procurement Advertisement Rules .....	52
4.2.7 Complaints Review System .....	53
4.2.8 Public Procurement Support Documents .....	54
4.3 Institutional Framework of the Ethiopian Public Procurement .....	54
4.3.1 The Public Procurement Agency Workforce.....	55
4.3.2 Procurement Training .....	56
4.3.3 Procurement Decentralization.....	57
4.4 Procurement Operations and Practices .....	58
4.4.1 Supplier Registration and Licensing .....	59

4.4.2	E-Procurement .....	60
4.4.3	Private Sector Involvement.....	61
4.5	Integrity, Transparency and Accountability of the Procurement System.....	62
4.5.1	Procurement Audit System .....	63
4.5.2	Appeal Mechanisms and Complaint Review .....	64
4.5.3	Public Procurement Information Access .....	68
4.5.4	Anti-Corruption Measures .....	68
4.5.5	Civil Society and Media Involvement in Public Procurement.....	70

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

5.1	Introduction .....	72
5.2	Conclusions .....	72
5.3	Recommendations .....	73
6.	References .....	75
7.	Appendix	

## **List of Tables and Figures**

### **List of tables**

1. Table 1. Key Ingredients in Reforming Public Procurement .....	23
2. Table 2. The Federal Government Public Procurement Threshold .....	51
3. Table 3. The Number of the Federal Government’s Public Procurements by Method of Procurement .....	52
4. Table 4. The Federal Public Procurement and Property Administration Agency Workforce .....	56
5. Table 5. Training Given to Procurers and the Business Community (February 1996-September 2003 EC) .....	56
6. Table 6. An Assessment Showing Public Procurement Operations and Practices Challenges .....	59
7. Table 7. The Number Of Suppliers Registered by the PPA .....	60
8. Table 8. Complaints Submitted by Suppliers Against Procuring Entities (2004-2010) ...	66
9. Table 9. Complaints Submitted by Procuring Entities Against Suppliers (2004-2010) ...	66
10. Table 10. Corruption Allegations Entertained by the Ethiopian FEAC (July-December, 2010) .....	70

### **List of Figures**

11. Figure 1. Public Procurement Agency’s Organizational Chart .....	41
12. Figure 2. Public Procurement and Property Administration Agency’s Organizational Chart .....	42

## **List of Abbreviations and Acronyms**

ADB	African Development Bank
BPR	Business Process Reengineering
COMESA	Common Market for Eastern and Southern Africa
CRB	Complaints Review Board
CSO	Civil Society Organization
CSRP	Civil Service Reform Program
CTRC	Central Tendering Review Committee
ECCSA	Ethiopian Chamber of Commerce and Sector Associations
EFY	Ethiopian Fiscal Year
ETB	Ethiopian Birr
FDRE	Federal Democratic Republic of Ethiopia
FEAC	Federal Ethics and Anti-Corruption Commission
FG	Federal Government
FGE	Federal Government of Ethiopia
FPPD	Federal Public Procurement Directive
GDP	Gross Domestic Product
GPMPCD	Government Procurement and Materials Management Control Department
GTP	Growth and Transformation Plan
HRC	Human Rights Commission
MOFED	Ministry of Finance and Economic Development
NAPM	National Association of Purchasing Management
OECD	Organization for Economic Cooperation and Development
PPA	Public Procurement Agency
SBD	Standard Bidding Documents
SOE	State Owned Enterprises
UN	United Nations
UNCITRAL	United Nations Commission on International Trade law
UNDP	United Nations Development Program
USD	United States Dollar

## **Abstract**

This study assessed key public procurement challenges in the Federal Government's public sectors and presents recent empirical evidences. The thesis begins by elaborating the background of the Ethiopian public procurement with regard to its historical genesis in the past three regimes. In addition, the study raised important questions about the legal and institutional frameworks that govern the procurement system of the Federal Government. Also questions about the integrity and transparency of the procurement operations and practices have been raised.

The major objective of this study is to assess the FGE's public procurement system. In order to do so, the researcher has identified four thematic areas on which public procurement is assessed. These are legal and regulatory frameworks; institutional frameworks; public procurement operations and practices; and procurement integrity and transparency. These are the most widely recognized benchmarks against which public procurement is assessed by the World Bank and OECD.

Methodologically this study is designed as descriptive. Unstructured interviews have been conducted with different stakeholders. In addition different secondary data i.e. legislations, reports, website publications, and researches from the PPA and other concerned public organizations have been collected. Data have been analyzed thematically on the aforementioned benchmarks.

The results of this study show that a significant achievement has been made in reforming the Federal Government's procurement system. A new legal framework, which is based on universal standards, has been drafted. Also, secondary legislations have been issued. The institution responsible for the oversight of the public procurement system, however, has many setbacks in front of it. In addition, the research shows that insuring transparency and accountability is still at the middle of a road.

Recommendations in the study are suggested including strengthening the capacity of the Public Procurement Agency's workforce, making the legislation more comprehensive; work with different stakeholders like the civil society organizations and the media on insuring transparency and combating corruption.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

Public procurement is continuing to evolve both conceptually and organizationally. That evolution accelerated during the 1990s as governments at all levels came under increasing pressures to 'do more with less.' According to Thai (2009), all governmental entities of rich and poor countries are struggling in the face of unrelenting budget constraints; government downsizing; public demand for increased transparency in public procurement; and greater concerns about efficiency, fairness and equity. In addition policy makers have increasingly used public procurement as a tool to achieve socioeconomic goals.

According to Dobler and Burt (1998) procurement can be defined as "...the acquisition, whether under formal contract or otherwise, of goods, services and works from third parties by contracting authorities." In addition, Adotévi (2009) defined procurement as: "the activity of assessing, buying and receiving goods, works and services."

It is public whenever this process is performed by public organizations or whenever it is performed on their behalf or again funded by public organizations. The process of procuring starts with the definition of what is to be procured (goods, services and/or works, quality), then is followed by how it should be etc...), then proceeds to perform the act of procuring that is finalized by a contract or an order, followed by a delivery and the subsequent payments to the supplier. Performance is defined by how "well" this process is conducted and how "good" the outcome is.

Public procurement in Ethiopia dates back to 1940s. According to a report prepared by the Ethiopian Procurement and Property Administration Agency, public procurement was started in 1940 EC. Further, according to Admasu Mamo (2008), it was established to procure military equipments and supplies for soldiers. With the responsibility laid on the then Ministry of Finance; the procured materials were stored at the Ministry's warehouse.

According to the report, the improved procurement services were started in 1942 EC. In addition to military equipments, the Ministry of Finance was given the mandate to procure

stationeries and cars for organizations which are financed by the regular government budget.

According to Admasu, during the time, other public organizations didn't like to be subordinated to the Ministry and they felt dominated. In addition, the ministry didn't have skilled and qualified man power that it couldn't perform its function efficiently and effectively as expected. Therefore, due to these and other setbacks, an independent agency (Ministry of Public Property Organization and Distribution) were established in 1950. Under proclamation № 19/1950, this independent agency was responsible to procure and distribute materials such as military uniforms, equipments and supplies; public vehicles, capital equipments and stationeries; materials which are crucial for development and industrialization; air, water and inland transportation equipments and spare parts.

According to Brooks and Demissie (2009), during the Derg regime, the functions of public procurement were handled by the Ministry of Finance. Procurements were made centrally with the tendering committee having the responsibility to made decisions on procurements. The legislative framework governing the procurement system in the country was very poor that only a procurement manual was issued in 1981.

According to Admasu, following the downfall of the Derg regime, the country was regulated by the previous legislative and the Ministry of Finance and Economic Development took responsibility of regulating the procurement system. However, in the later years the country reformed the procurement system and a new legislatives and secondary legal frameworks drafted. Also, an independent institution responsible for controlling and oversighting the government's procurement activities has been established.

The current Ethiopian government, to ensure that public property, in which a significant amount of public money is invested, is utilized in such a manner as to enable the government device maximum benefit therefrom and modernize the administration thereof, has established the Public Procurement and Property Administration Agency under Proclamation № 649/2009. Further, a new public procurement directive and manual has been issued.

Public procurement is among the most untouched issues in Ethiopia as much as my effort to find background information is concerned. In this study, the researcher has tried to come up with ideas and create dialogue on the government's public procurement practices. It also tried to assess the procurement practices and the legal and regulatory frameworks as well as the institutional set up of the federal public procurement system. In addition this research aspires to be pioneer in triggering further researches on the issue.

## **1.2 Statement of the Problem**

Public procurement has been identified as the government activity most vulnerable to corruption. According to McDonald (2009), lack of accountability, transparency and integrity has long been associated with public procurement. As a major interface between the public and the private sectors, public procurement provides multiple opportunities for both public and private actors to divert public funds for private gain. For example, according to McDonald, bribery by international firms in different countries is more pervasive in public procurement than in utilities, taxation, judiciary and state capture, according to the 2005 Executive Opinion Survey of the World Economic Forum.

Public procurement is also a major economic activity of the government where corruption has a potential high impact on tax payers' money. According to an OECD (2005) report, in the European Union, public procurement equaled approximately EUR 1.5 trillion in 2002. In OECD countries, existing statistics suggest that public procurement accounts for 15 percent of Gross Domestic Product. In addition, in the Dominican Republic, 20 percent of government expenditure is spent on procuring goods and services; in Malawi and Vietnam it is 40 percent; and in Uganda it is as much as 70 percent.

According to Nebiyu<sup>1</sup>, out of the total public spending, more than 60 percent goes to procuring public goods and services according to the Ethiopian Procurement and Property Administration Agency (PPA) report. Efficiently and effectively handling this size of procurement outlay has been a policy and management concern as well as a challenge for governments.

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<sup>1</sup> Personal interview with Nebyu Kokeb, the Agency's Procurement Change Implementation and Capacity Building Directorate Director

The Ethiopian Public Procurement and Property Administration Agency has been established under proclamation № 649/2009 (very recent amendment). The Agency, which is directly responsible to the Ministry of Finance and Economic Development (MoFED) have the following duties and responsibilities.

- Advising the Federal Government on all public procurement and property administration policies, principles and implementation;
- Monitoring and reporting to the Minister the performance of the public procurement and property administration systems in the Federal Government;
- Prepare, update and issue authorized versions of the standard bidding documents, procedural forms and any other attendant documents pertaining to procurement and property administration;
- Review and decide on complaints submitted by public bodies on the conduct of bidders or suppliers, and send copies of such decision to the concerned organs;
- Conducting audit to ensure that procurement and property administration activities of public bodies are in accordance with the Proclamation... are few among the many others.

Though public procurement shares 60 percent of the total public spending, it hasn't been given due attention so far in the country. Until recent years, overseeing public procurement has been the responsibility of a smaller department under the Ministry of Finance and Economic Development. In recent years, however, it has been merged with the Property Administration Department and renamed as Public Procurement and Property Administration Agency (PPA).

In Ethiopia, the Auditor General, Human Rights Commission (HRC) Federal Ethics Anti-Corruption Commission (FEAC) and others are directly responsible to the House of People's Representatives. But huge responsibility on it and frequent allegations of corruption, discrimination and inefficiency, the Ethiopian public procurement has long been neglected and subordinated to the Ministry of Finance and Economic Development as if it is a very simple government function.

In addition, procurement by its very nature deals with issues of law, engineering, information technology, etc. However, the Agency has few employees which are not trained

in these fields. For example the Ethiopian Anti-Corruption Commission and Customs and Revenues Authority have their own lawyers for corruption cases. But in the Procurement Agency this is not practicable.

The Ethiopian Public Procurement and Property Administration Agency, further, has four main departments among which is the Complaints Review and Resolution Department. The Agency has a committee to receive complaints from candidates or bidders. According to CPAR report (2010), it is difficult for the committee to act independently as far as it is dependent on MoFED. First, members of the Committee are selected by government in such a way that the Ministry of Finance and Economic Development will be the chair and Public Procurement and Property Administration Agency, Public Enterprises, Public Bodies, the Ethiopian Chamber of Commerce and Sector Associations (ECCSA) all serving as members of the Committee.

In different countries, however, the committee is selected from independent outsiders like lawyers, judges, university professors, etc. For example in Canada, where the Ethiopian procurement system is modeled from, the complaint review committee members are all selected from outside of the procuring agency. In addition, the committee reviews compliant cases in a court like setting where the compliant and the defender are present with lots of other people attending the event.

### **1.3 Research Questions**

The study will try to give answers for the following researchable questions

- 1) What are the legal and regulatory frameworks governing the FG's public procurement?
- 2) What institutional set up is controlling and overseeing the public procurement activities? Are the procurement performance audit and complaints reviewing departments working properly?
- 3) Does the procurement oversight body have the appropriate skilled and trained workforce for performing its functions?
- 4) What are the policy and institutional challenges in the Federal government's current public procurement system in Ethiopia?

- 5) How can the Ethiopian Public Procurement and Property Administration Agency ensure transparency and accountability in public procurements?

## **1.4 Research Objectives**

### **1.4.1 General Objective**

The general objective of the research is giving a better insight about the challenges and prospects of the FG's public procurement system and assesses the nature and system of public procurement practices and the underlying factors that hinder public procurement activities in Ethiopia.

### **1.4.2 Specific Objectives**

Having the above mentioned general objectives, the study has the following specific objectives.

- To assess the legal and regulatory framework governing the Federal Government's public procurement activities.
- To examine the professional capacity of the procurement staff in the public procurement oversight organization.
- To assess the public procurement operations practices in different Ministries, Agencies and other institutions in general
- To assess the performances of the Public Procurement Audit Unit and Complaints Review Board.
- To examine the transparency and integrity of the procurement system in the Federal Government.
- To give insight for the responsible government body in general and to the Agency in particular about the challenges of the procurement system of the country.
- To produce possible policy recommendations that can help for relevant authorities both at national and regional level to diverse appropriate measures that can enhance efficient procurement practice

## **1.5 Scope of the Research**

Had not there been different setbacks of resources and limited experience of the researcher, this study would be engaged in investigating the issue from wider perspectives. This study is intended to examine the procurement policy at the Federal Government. The subjects of the study are only the federal public sector procurement practices. The study will not cover the regional public bodies' procurement activities. Procurements of a public body from another public body for the provision of goods, works, consultancy or other services are not examined in this study. In addition this research doesn't deal with procurements by state owned enterprises (SOE).

## **1.6 Limitations of the Study**

Lack of textbooks and previous researches in the area of public procurement was one of the major pitfalls in this research. In addition, lack of finance was the major limitation of this study which hinders the researcher from an in depth investigation of the issue. Further, busyness of the key informant groups has forced the researcher to cancel lots of appointments and it took longer than expected time for the completion of the research.

## **1.7 Significance of the Research**

The findings of the research are expected to contribute a lot for different stakeholders. The primary significance of this study will be giving insight to other fellow researchers for their extensive investigation of the field which is the most forgotten function by researchers in Ethiopia. It is also hoped that the research will benefit the Agency, the business community and the country at large when formulating and reforming public procurement policy in the country.

In addition, the issues which will be addressed in this research are expected to bring about immense contributions to efforts directed towards revising policies both at the national and regional level. Further, this research is expected to give a clue for the regulatory body to revise the policies and reconsidering improving public procurement practices as part of their strategic plan for the achievement of best value for public money.

## **1.8 Research Methodology**

### **1.8.1 The Research Design**

This study is designed as a descriptive research (i.e. description of the features the legal and regulatory feature of public procurement qualitatively). In addition, the description includes the transparency and integrity of the procurement system. Quantitatively, the research tried to measure some aspects of the procurement system. Therefore, since quantitative research aims at measuring a particular phenomenon, this study employed it in measuring the procurement operations and practices.

### **1.8.2 Sampling Design**

Purposive sampling was employed for this research. The Ethiopian Public Procurement and Property Administration Agency (PPA) top managers have been selected as key informants for interview. In addition, a procurement specialist at the World Bank was involved in the interview. The World Bank is an organization which is committing itself for reforming the Ethiopian public procurement. And it has [in the past ten years] released three very comprehensive reports on the Ethiopian public procurement which are a result of in depth assessment of the system. Further, a top official from the Ethiopian Chamber of Commerce and Sector Associations (ECCSA) has been interviewed for the research.

### **1.8.3 Method of Data Collection**

Both primary and secondary data have been collected for this study. The secondary data collected for this study include a review of key public procurement publications and literature on the subject i.e., academic articles, website publications, organizational reports, government documents, relevant legislation, administrative rules, policies and procedures. The primary data are predominantly collected through unstructured interviews. Rigorous interviews have been conducted with selected procurement specialists in and outside of the Public Procurement Agency (PPA).

#### **1.8.4 Method of Data Analysis**

Data have been analyzed qualitatively and quantitatively. After the relevant data are collected, appropriate data has been selected and the next step was checking and converting the data into formats that is appropriate for analysis and interpretation. Data collected from secondary sources were tabulated because tabulation makes the data orderly and easier for presentation. After tabulation the data was analyzed and interpreted with the help of percentages and against other internationally accepted procurement practices; national procurement proclamations and directives. Descriptive analysis was largely employed to analyze data presented in the form of tables.

The data gathered from interviews and other secondary sources were organized thematically. The relationship between variables has been analyzed. Finally, the data has been interpreted and summarized in order to draw conclusions and foreword recommendations.

#### **1.9 Organization of the study**

This research critically analyzes the challenges and prospects of public procurement at the Federal Government of Ethiopia. It is structured around five chapters. Each chapter has its own subunits. The first chapter outlines the introductory part including research design, strategy and methodology of the research. Also this chapter raises questions that would answered by the study.

The second and third chapters will cover the literature review and theoretical frameworks of public procurement with the later dealing about the features the Ethiopian public procurement. Further, the chapter discusses the Ethiopian experiences in public procurement.

Chapter four deals the data discussion and analysis. Finally, the fifth chapter deals with the summaries of key findings concluding remarks and recommendations suggested for solving the problem stated in the introduction part.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

Public procurement is a government function to purchase the goods and services needed to run the government and provide government services. Because all local, state and federal governments must obtain goods and services, procurement is an important function of government. A governmental entity can approach procurement and provision of service in two ways. It can buy the materials it needs from a vendor and then use its own personnel to provide the service; or can enter into a contract with a second party provider for the needed service. The second party might be another unit of government, a nonprofit organization, or a for profit firm that will provide both the materials and the service.

Public procurement systems are at the center of the way public money is spent since budgets get translated into services largely through the government's purchase of goods, works and services. In reality, public procurement masks the ability of government to transform taxes and other revenues into consumption by government institutions at federal, state and local levels, apparently for the public good.

As stated earlier, the purpose of this study is to assess the challenges of public procurement within a theoretical framework of institutional and policy challenges. Hence, the following theoretical review of public procurement concepts and discussions is provided to serve as a conceptual framework within which the problem is analyzed. In addition, this chapter outlines the criteria or indicators that will be used to assess the challenges of the public procurement policy in Ethiopia. In this connection, it is essential to provide both conceptual and operational definitions and features of public procurement. The indicators used to assess the challenges and features of public procurement can only be established after defining the concepts of efficient public procurement. This chapter, therefore, seeks to explain as much as possible, what public procurement, transparent and accountable public procurement, and ethical standards in public procurement mean.

## 2.2 Public Procurement Defined

Procurement scholars try to define public procurement from two different perspectives. These two broader perspectives are *positive definitions*: public procurement as a practice in organizations and *normative approaches*: from what public procurement should (or should not) be. According to Lloyd and McCue (2004), positive definitions relies on the following conceptual renderings.

- Public procurement is rule bound
- It is process- and transaction-based
- It is strategic

According to the new Public Procurement Proclamation (№ 649/2009), procurement means “obtaining goods, works, consultancy or other services through purchasing, hiring or obtaining by any other contractual means.”

Khi (2009), quoting the United Nations definition defined public procurement as an “overall process of acquiring goods, civil works and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration through the end of a services’ contract or the useful life of an asset.”

The term “government” on the other hand, implies the organizational structure and leadership within a country. In this framework, therefore, public procurement is one of many government functions, and the procurement system can determined through procurement laws and regulations and through policy and budget decisions by legislators and the executive branch. It is important that the public procurement system is mainstreamed and well integrated into the public sector governance system.

### A Note on Terminologies

Some people confuse purchasing and procurement. Others, on the other hand, use terms like acquisition, public contract and supply management equivalently to public procurement. According to Dobler and Burt, “purchasing comprises the essential activities associated with the acquisition of the materials, services and equipment used in the operation of an organization.” Public procurement on the other hand, “comprises a wider range of supply

activities than those included in the purchasing function. It typically includes a broadened view of the traditional buying role, with more buyer participation in related material services”.

### **2.3 Public Procurement: A Historic Genesis**

According to Dobler and Burt (1998), public purchasing possesses a strong historical base in the United States from 1792 when the federal government authorized the Departments of War and Treasury to contract on behalf of the nation. While the intent of Congress was likely to prevent corruption in the letting of government contracts, the authorization also served as an acknowledgement of the profession. Public sector purchasing, which progressed over the years, was viewed largely as a clerical function by many and a controlling gatekeeper by others. According to Dobler and Burt, it was not until the 1990s that the field took significant steps toward becoming a respectable profession. Much of this progress was due to the electronic technology boom, which prompted such efforts as e-procurement, e-business, and e-commerce.

### **2.4 Principles of Public Procurement**

According to Thai (2009), the principal hallmarks of proficient public procurement are:

**Economy:** Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

**Efficiency:** The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel.

**Fairness:** Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser’s options and opportunities.

**Transparency:** Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but it is seen to be fair.

**Accountability and Ethical Standards:** Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

## **2.5 The Public Procurement System**

According to Thai (2009), the public procurement system is built on four pillars: procurement laws and regulations, procurement workforce, procurement process and methods, and procurement organizational structure.

### **2.5.1 Laws and Regulations**

A sound public procurement system needs to have good procurement laws and regulations. In practice and theory, public procurement laws and regulations have been considered as one of the most important pillars of a sound procurement system. According to Thai, procurement laws and regulations lead to procurement efficiency or inefficiency. There are debates about procurement legal framework hinders or helps procurement discretion.

Ideally, procurement laws and regulations should be clear, consistent, comprehensive, and flexible.

- **Clarity**, which requires the primary sources be carefully drafted to ensure that basic principles are clear but do not prevent the use of more efficient procedures or new technology. All procedural details should be included in implementing regulations consistent with the primary sources. Delegation of regulatory responsibilities at the central government, political subdivision, or agency levels should be clearly defined, as appropriate.
- **Consistency**, which can be achieved when procurement provisions contained in different sources are well coordinated (i.e., there is no overlap or conflict, the hierarchy of the sources is clear, new provisions are promptly incorporated, and outdated provisions are repealed).

- **Comprehensiveness**, which entails that all relevant aspects of the procurement process are addressed (there are no gaps in the regulatory framework which allow “personal” or “distorting” interpretation of aspects of the process).
- **Flexibility**, which requires that primary sources set forth only principles, basic features of the system, an outline of the procurement methods, and conditions for the use. Depending on local conditions, there may be several layers of regulatory authority, including agency issued codes or rules regulating aspects which are particular to the agency. Lower level sources should provide practical guidance to practitioners in carrying out their work and should be easily updated.

Public procurement laws and regulations clearly cover the whole scope of public procurement, all stages of the procurement processes, methods and procurement, ethics, and transparency. In addition, procurement laws and regulations have to be easy to be accessed by the public.

### **2.5.2 Public Procurement Organization**

An essential element of the role of the public procurement department in a government entity is the placement of procurement authority. This is not to be confused with the location of procurement personnel. According to Dobler and Burt, centralization occurs when all of the rights, powers, duties, and authority relating to public procurement are vested in a central procurement officer. Central authority often delegates some of these powers to others, but the point remains that they stay with that central figure. Such delegations are normally carried out within a regulatory or policy framework by means of specific letters or memoranda to those receiving the delegated powers; they very precisely delineate the delegated contract approval authority in terms of dollar amounts and commodities as well as whether or not the assigned authority may be further delegated.

According to Dobler and Burt, decentralization on the other hand occurs when procurement personnel from other functional areas can decide unilaterally on sources of supply or negotiate with suppliers directly. Rarely is an agency fully centralized or fully decentralized; it is usually somewhere in between, often with very specific exceptions on a commodity basis such as contracting for specialized professional services (e.g., architectural and engineering, legal, medical services) arranged directly by the using departments

According to Dobler and Burt, when functioning properly, procurement centralization yields the following benefits:

- Minimizing duplication of procurements by central coordination
- Avoiding haphazard procurement practices and maximizing efficiency because procurement officials with professional training and expertise are more efficient than less skilled user departments' managers or operational managers whose procurement responsibility is secondary
- Saving operational managers' time so that they can focus on their core responsibilities
- Lowering overall transaction costs due to consolidation of orders
- Achieving volume discounts through the consolidation of procurements
- Reducing shipping and handling charges through the consolidation of shipments
- Receiving better prices and better services offered by suppliers because their sales, shipping, and invoicing expenses are reduced
- Facilitating procurement control and accountability

On the other hand, some potential disadvantages of centralized purchasing stem from any suboptimal relationships that may develop between the central procurement office and the clients it serves. Disadvantages might include:

- Lack of sensitivity to the unique priorities and operational realities of different user departments
- Insufficient engagement of the central procurement office in the operational planning process
- Overall increased processing time of requisitions
- Possible difficult procurement and project schedule coordination as the central procurement office has its own priorities and the project manager has his or her tight project completion time table

### **2.5.3 Public Procurement Workforce**

According to an OECD (2006) report, a sound procurement system has to have a competent professional workforce equipped with defined skills and knowledge for specified procurement jobs. The procurement workforce permeates virtually every effort within an organization, including successfully acquiring goods and services and executing and

monitoring contracts. Unfortunately, public procurement has been a neglected area of education. Thus, public procurement personnel are mostly on-the-job training or from law schools. Thus, it is a challenging task for organizations to choose the right staff in the right numbers applying skills where needed to accomplish the mission effectively. Creating a procurement workforce with the right skills and capabilities can be a challenge, given changes to procurement processes, the introduction or expansion of alternative contracting approaches, and increased reliance on services provided by the private sector.

Thus, governmental entities need to have a comprehensive training program, a comprehensive strategic workforce plan to profile the current staff, and projects staffing needs for the future, to hire, develop, and retain talent.

## **2.5.4 Public Procurement Processes and Methods**

### **i. The procurement Process**

The procurement area requires a wide range of standard operating procedures to deal with the normal daily tasks. The large number of items, the large birr volume involved the need for an audit trail, the sever consequence of unsatisfactory performance, and the potential contribution to effective organizational operations inherent in the function are five major reasons for developing a sound procurement system. The acquisition process is closely tied to almost all other functions included in an organization and also the external environment creating a need for complete information systems.

According to Leenders et al. (1989), the essential steps in the procurement procedure are;

#### **1. Recognition of need**

Any procurement originates with the recognition of a definite by someone in an organization. The person responsible for a particular activity should know what the individual requirements of the unit are: what, how much and when it is needed. This may result in a material requisition on the stores department.

The purchasing department is responsible for helping to anticipate the needs of using departments. The purchasing manager should urge not only that the requirements be as standard in character as possible and that a minimum of special or an usual orders be placed

but also that requirements be anticipated far enough in advance to prevent an excessive number of rush orders.

## **2. Accurate description and desired commodity**

No procurements can be expected to buy without knowing exactly what the using departments want. For this reason it is essential to have an accurate description of the need, the article the commodity, or the service which is requested.

The purchaser should question the specification if it appears that the organization might be served better through a modification. An obvious case is the one where market shortages exist in the commodity requested and a substitute is the only reasonable alternative. Since future market conditions play such a vital role, it makes sense to have a high degree of interaction between the purchasing and specifying groups in the early stage of need definition. At best an inaccurate description may result in some loss of time; at worst it may serious financial consequences and cause disruption of supply, hard feelings internally, and loss of supplier trust and respect.

## **3. Selection of possible source of supply**

Supplier selection constitutes an important part of the purchasing function and involves the location of qualified sources of supply and assessing the probability that a purchase agreement would result in on time delivery of satisfactory product and needed services before and after the sale.

## **4. Analysis of bids**

Analysis of the quotes and the selection of the vendor lead to the placing of an order. Since analysis of bids and the selection of the vendor are matters of judgment, it is necessary only to indicate here that they are logical steps in purchasing.

## **5. Preparation of the purchase order**

The placing of an order usually involves preparation of a purchases order form unless the vendor's sales agreement or a release against a blanket order is used instead. Failure to use the proper contract form may result in serious legal complications. Furthermore, the

transaction may not be properly recorded. Therefore, even where an order is placed by telephone, a written order should follow for purposes of confirmation.

#### **6. Follow-up and expediting**

After a purchase order has been issued to a vendor, the buyer may wish to follow-up and/or expedite the order. At the time the order is issued, an appropriate follow-up date is indicated. In some firms, purchasing has full time follow up expediting personnel.

Follow up is the routine tracking of an order to assure that the vendor will be able to meet delivery promises. Expediting on the other hand, is the application of pressure on vendors to get them either to meet the original delivery promises or to deliver ahead of schedule.

#### **7. Receipt and inspection of goods**

The proper receipt of materials and other items is of a vital importance. The greater majority of firms have, as a result of experience, centralized all receiving under one department, the chief exceptions being those large companies with multiple plants.

#### **8. Clearing the invoices and payment**

Invoices usually arrive before the goods, except on local deliveries, in which case they arrive almost simultaneously with them. Since the invoice constitutes a definite claim against the buyer, it needs to be handled with great care. Invoices are commonly requested in duplicate. In addition, it is not uncommon to find such statements as "invoices must show our order number and itemized price for each article invoiced."

#### **9. Maintenance of records**

After having gone through the steps described, all that remains for the disposal of any order is to complete the records of the purchasing department. This operation involves little more than assembling and filing the purchasing department's copies of the documents relating to the order and transferring to appropriate records the information the department may wish to keep. The former is largely a routine matter. The latter involves judgment as to what records are to be kept and also for how long.

## ii. Methods of Public Procurement

There are different procurement methods defined in the governments' procurement regulations and directives which are applicable depending on the item under consideration. According to Leenders and his associates, the following are common methods of procurement.

**Open Bidding:** This method is used where the items are unclassified, simple and straightforward to define. These items range from clothing, foodstuffs, stationery, work services, repairs, etc. In this case advertisements are placed in the daily papers, notice boards, televisions and the firms are invited to tender.

**Two stage Tendering:** Two stage tendering is a method of tendering which involves firstly through a competitive exercise based on outline pricing and quality the identification of a preferred contracting organization; the second stage includes negotiation and working with the preferred contractor in order to arrive at a final price for the scheme.

**Restricted Tendering:** This method is used where the goods or services are of a specialized nature or can only be supplied by a limited number of firms. Here the security implications of the procurement are taken into consideration. The firms are identified through a confidential due diligence research by a competent agency such as the user or systems branch.

**Request for Quotation:** A request for quotation is a document issued when an organization wants to buy something and chooses to make the specifications available to many other companies so they can submit competitive bids.

**Direct Procurement:** This is used where there is no competition due to technical and security reasons or one firm can only supply the goods or services. Direct procurement can also be used in the event of a national emergency or disaster.

## 2.6 Challenges of Public Procurement

Public purchasers, public procurement practitioners are constantly facing with different setbacks. According to Thai (2009), challenges of public procurement can be seen as internal and external (organizational and non-organizational).

### **i. Internal Challenges**

According to Thai, organizations ability to accomplish procurement objectives and policies is influenced very much by internal forces including:

- Interactions between various elements of the public procurement systems, various officials and organizations in the three branches of government, and various actors and sub-agencies within a department or executive agency and actors and organizations external to sub-agencies;
- Professionalism or quality of procurement workforce;
- Staffing levels (e.g., ratio of procurement practitioners to contract actions) and budget resources
- Procurement organizational structure such as the issue of centralization vs. decentralization;
- Procurement regulations, rules and guidance; and
- Internal controls and legislative oversight

### **ii. External Challenges**

According to Thai, public procurement practitioners have always faced challenges imposed upon by a variety of environment factors including market, legal environment, political environment, organizational environment, and socio-economic and technological factors.

#### **Market Environment**

According to Thai, market conditions have a great influence on public procurement practitioners' effort to maximize competition. Moreover, the market determines whether or not socio-economic objectives of procurement are accomplished, whether or not a governmental entity can fulfill its needs; the timeliness of fulfillment; and the quality and costs of purchased goods, services and capital assets. As there are different levels of economic growth among countries in the world, market conditions are very favorable in industrialized countries, while they may be unfavorable in developing countries.

#### **Legal Environment**

Apart from public procurement regulations and rules, the legal environment refers to a broad legal framework that governs all business activities including research and

development (regulations dealing with safety and health of new products), manufacturing (safety and health regulations at workplace and pollution control), finance (regulations dealing with disclosure of information), marketing (regulations dealing with deceptive advertising, disclosure of product characteristics), personnel (regulations dealing with equal opportunity for women and minorities), and contracts. Indeed, most aspects of contracts-- public or private-- such as contract requirements, disputes, and breach of contract are governed under the same contract law. In developing and particularly transitional countries, where legal systems are not comprehensive, government contracts may need detailed provisions.

### **Political Environment**

In a democracy many individuals, groups, and organizations in the private sector including trade associations, professional associations, and business firms or companies (commonly known as interest groups) are actively involved in all aspects of the public procurement system. Having various interests, objectives and beliefs, interest groups are involved in the public procurement system in several ways such as lobbying legislative bodies to pass or alter procurement statutes, influencing implementation of these statutes, and influencing budget authorization and appropriations processes. Normally, a government program that is eventually adopted is a compromise among different views of interest groups, policy makers and management. In this democratic environment, there are cases of a strong coalition of policy makers, bureaucrats and interest groups in their effort to get their programs adopted. This coalition has led to the concept of the 'iron triangle,' which is very popular in the area of defense.

### **Social, Economic, and Other Environment Forces**

While some countries impose social policies on their public procurement practices (such as a policy placing a fair proportion of government acquisitions with woman/minority-owned small business, or economically disadvantaged areas), most governmental entities --be it a developed or developing country or federal, state, and local governments-- use their large procurement outlays for economic stabilization or development purposes by preferring national or local firms over firms from other countries or other geographic locations. Public procurement practitioners may be in a favorable economic environment or market (with

many competing tenderers in their country or local areas) or an unfavorable economic environment (where competition hardly exists). This environment would have a great impact on their practices as they may face an imperfect competitive market.

## **2.7 Public Procurement Reforms**

According to Basheka (2009), public procurement and public administration, more generally, have been the focus of successive waves of management reform worldwide, stretching across the past 30 years. According to Basheka, these reforms have included managerialism, outsourcing, corporatization, centralization, and devolution, and have been driven by an imperative to improve the performance and cost-effectiveness of the public service. These reforms have frequently been confronted by apparent tensions between the basic qualities of public governance, such as accountability and transparency versus outcomes and performance.

To reform public procurement is to have a second look at the existing public procurement systems (in response to problems arising from internal and external pressures), with a view of making systems more responsive to changing circumstances and meeting desired goals.

According to Basheka, public procurement reforms can be defined as:

*...policy attempts at changing organizational, institutional, and legal structures that manage public procurement process (to improve the conduct of procurement), signaling a major shift from traditional systems and processes to new responsive systems and processes. The purpose of public procurement reform is to create responsive systems that encourage effective and efficient performance of the public sector. Such reform efforts would require all stakeholders to shift from traditional bureaucratic processes to more flexible processes that focus more on outputs and on realization of broad social and economic goals of government. Public procurement reform advocates for a procurement system that puts in place a management style of realization of government objectives through effective procurement governance. In this way, public procurement reform means inducing change and is a strategy for improving the performance of the public sector. This would essentially entail a strategy to “do more with less, concentrate on value for money procurement,*

*encourage competition, instill transparency and accountability, have responsive legal regimes, and involve a number of stakeholders in procurement governance.”*

Public procurement reforms, according to Basheka, can be considered as the “process of transforming government procurement from systems incapable of achieving government procurement objectives to those systems with a capacity to achieve the objectives of government procurement.” It may also be looked at as the process of attempting to make the process of government acquisition more accountable and transparent to a range of stakeholders. It involves strengthening systems, processes, procedures, and people involved in the process of acquiring goods, services, and works needed by government departments and units to perform functions of delivering efficient and effective services. Public procurement reform may equally be the process of attempting to “fix” problems that have engulfed public procurement systems.

According to Basheka, the following table could be taken a conceptual framework on how public procurement reforms in Africa can be effective ingredients in achieving good governance, thereby contributing to poverty reduction on the continent.

Table 1 Key Ingredients in Reforming Public Procurement

<b><i>Component</i></b>	<b><i>Description or Function</i></b>
Legal framework	Based on a procurement law that defines responsibility of procuring agencies and suppliers.
Policy	Consistent, national policies and standards to be followed by all procuring agencies, including arbitration procedures.
Institutional setup	Defined structures for conducting procurement that minimize subjective decisions and politicization (including approval mechanisms, authorities, and composition of bid and evaluation committees).
Professional civil Service	Procuring agencies staffed with procurement professionals, trained and recognized as such under civil service regulations.
Resources	Procurement agencies supported with adequate budget, standard documents, and operational manuals.
Fraud prevention	Clear laws applicable to procurement officials and suppliers that increase transparency and encourage inclusion of civil society.

*Source: Benon Basheka, Public Procurements in Africa a Tool for Effective Governance of the Public Sector and Poverty Alleviation, 2009*

## **Drivers of Public Procurement Reforms**

According to Kernaghan et al. (2000), there are two drivers of public procurement reforms. The first is endogenous (internal) drivers. Internally, the failure of public procurement systems to deliver expected social and economic objectives precipitated a reform of the systems. The internal drivers were a result of weaknesses in public procurement systems. The second on the other hand is the exogenous (external) drivers for public procurement reforms. Externally, the demands for accountability and transparency by development partners and the bandwagon effect combined with internal drivers to enable many developing countries embark on reforming their public procurement systems. Kernaghan and his associates argued that environmental forces stimulating reform in public organizations could be grouped into external and domestic forces. External forces like globalization, and the technological revolution, combine with domestic forces like financial constraint, public demand for quality service, the changing political culture, demographic change, and the legal of earlier reforms to compel public organizations reform their systems.

According to Kernaghan and his colleagues, the following forces are drivers of public procurement reforms particularly in Africa.

***Driver 1: To Improve the Governance of the Public Sector:*** In response to the call for governments to have effective governance structures, there was a desire to reform the public procurement systems. Governance was at the heart of expectations of many countries in the developing world and Africa was in a desperate situation because of the challenges it was facing. In an attempt to address the governance crisis that the African public sector was experiencing, public procurement reform had to be undertaken. This was in itself an outcome of both internal and external pressures. Internally, citizens were demanding effective and efficient services from public sectors, and externally the donor community was equally demanding accountability and transparency for their funds.

***Driver 2: To Respond to Global Forces and to Improve the Participation Rates of Private Sector in Public Procurement:*** The late 1980s and early 1990s saw a significant increase in the influence and the associated effects of globalization. During this period, there was a

general belief that public sector should open its operations to market forces if they were to benefit from the opportunities created by global dynamics and at the same time it was the only way of addressing the poor performance of the public sector. In essence, this meant that all public sector activities were to be subjected to forces of demand and supply thereby increasing participation by private sector. As an area that had a direct impact on the strategic and tactical operations of the private sector, and owing to the fact that the old procurement systems were not responsive to the market forces, African countries had to increase the participation rates of the private sector through procurement reform. Specific legal and institutional reforms were to be initiated if the situation was to be reversed.

***Driver 3: To Improve on Transparency Thereby Minimizing Corruption in Public Procurement Systems:*** The principle of transparency in the conduct of public affairs has been a long-cherished principle of effective management. Its absence has always contributed to weaknesses in government operations. Specific approaches and strategies therefore are demanded to introduce transparency in processes, systems, procedures, and operations of any government function. There is no area of public management that needs these more than the area of public procurement. Realizing that this cardinal principle was lacking in the old procurement systems, many African countries, with certainly a direct influence from the donors, had to embark on a public procurement reform strategy.

***Driver 4: To Improve Accountability of the Procurement Systems:*** The role of accountability (managerial, administrative, political, and financial) to the performance of the public sector and improved service delivery cannot be overemphasized. It is a cardinal principle of sound public sector performance. Managerial/administrative accountability is the way in which managerial decisions of the public sector exercise powers and authority entrusted to them. It is the accountability that offers an obligation for managers or administrators to answer for the performance of the roles and responsibilities assigned to them, taking into account the existing legal and institutional framework, and also the resources assigned to them. Unlike political accountability that is exercised by elected officials, managerial or administrative accountability is exercised by public servants who essentially do not go through an election but are allocated a full budget for the implementation of government program and thus must show how best they have utilized such resources.

***Driver 5: To Improve the Coordination of Public Procurement System:*** An effective public procurement system is one that has a strong and well-organized structure of relationships and distribution of roles. Such a structure is concerned with elements as the definition and allocation of specific tasks—for example, “who does what;” the grouping of related tasks into manageable functions, divisions, departments, sections, or other units; the creation of systems that facilitates the coordination between functions or other units; the distribution of formal authority across the organization and within the functions or units comprising the organization; and the allocation of responsibility within the organization and to constituent functional groups.

***Driver 6: To Improve Public Procurement Professionalism:*** Public procurement has been a major activity of many governments in both developed and developing countries. In Africa, the acquisition of public goods, services, and works for government operations has traditionally occupied a central position in government operations.

## **2.8 Ethics in Public Procurement**

### **2.8.1 What is Ethics?**

According to Dobler and Burt, ethics are guidelines or rules of conduct by which we aim to live. Organizations, like individuals, have ethical standards and, frequently ethics codes. The ethical standards of an organization are judged by its actions and the actions employees, not by pious statements of intent put out in its name. The character of an organization is a matter of importance to its employees and managers, to those who do business with it as customers and suppliers, and to those who are considering joining it in any of these companies.

We live and work in a highly competitive market economy with emphasis on results. There is pressure for sales, pressure for compromise, pressure to succeed in an environment of both internal and external competitions, and pressure resulting from government mandates. The pressure which the market place exerts on purchasing departments and on individual buyers make it essential that top management, purchasing managers, buyers and all other members of the procurement system recognize and understand both the professional and ethical standards required in the performance of their duties.

The National Association of Purchasing Management, the major professional association has addressed this issue since its inception. Its published NAPM standards of conduct have been updated on a continuing basis over the years. The current version of this document Principles and Standards of Purchasing Practice was developed by an NAPM standing committee in 1992 and addresses the matters of professional ethical behavior in the context of the current procurement environment.

#### Principles and standards of purchasing practices

- Loyalty to your organization
- Justice to those with whom you deal
- Faith in your profession

From these principles are derived the NAPM standards of purchasing practices

1. ***Ethical perceptions:*** Avoid the intent and appearance of unethical or compromising practice in relationships, actions and communications
2. ***Responsibilities to the employer:*** demonstrate loyalty to the employer by diligently following the lawful instructions of the employer, using reasonable care and only the authority granted.
3. ***Conflict of interest:*** refrain from any private business or professional activity that would create conflict between personal interests and the interest of the employer
4. ***Gratitude:*** refrain from soliciting or accepting money, loans, credits or prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence or appear to influence, purchasing decisions.
5. ***Confidential information:*** handle confidential or proprietary information belonging to employers or suppliers with due care and proper considerations of ethical and legal ramifications and governmental regulations
6. ***Treatment of suppliers:*** promote positive supplier relationships through courtesy and impartiality
7. ***Reciprocity:*** refrain from reciprocal agreements that restrain competition
8. ***Federal and state laws:*** know and obey the letter and spirit of laws governing function, and remain alert to the legal ramifications of purchasing decisions.

9. *Small, disadvantaged and minority owner businesses:* encourage all segments of society to participate by demonstrating support for small, disadvantaged and minority owned businesses
10. *Personal purchases for employees:* discourage purchasing involvement in employer sponsored programs of personal purchases that are not business related
11. *Responsibility to the profession:* enhance the proficiency and stature of the purchasing profession by acquiring and maintaining current technical knowledge and the highest standards of ethical behavior
12. *International purchasing:* conduct international purchasing in accordance with the laws, customs, and practices of foreign countries.

### 2.8.2 Integrity, Transparency and Accountability in Public Procurement

According to Sue Arrowsmith (1998), transparency means that the rules governing the public procurement procedures are clearly drafted and well defined, so that their implementation by procurement agents can be easily verified.

According to Arrowsmith, the concept of transparency in the context of public procurement refers to the general idea that procurement should be conducted in accordance with clear rules which are known to interested parties, and that some means of verification of those rules should be provided.

By ensuring procurement transparency, besides providing for economic efficiency, countries can enhance confidence and promote competition amongst suppliers

Effective and efficient procurement activities require the setting up of instruments of transparency. The instruments should build and maintain confidence and participation of both suppliers/contactors and the general public.

Transparency in public procurement transactions involves: transparency of procurement opportunities and that of contract evaluation and award procedures. Under the former, the public procurement regulations require that tender opportunities be adequately publicized Arrowsmith (1998). Such publicity requires the provision of all necessary information that would enable eligible suppliers/contactors to make informed decisions for the submission of

their bids. Among other things, procurement notices should present exact details regarding the procurement method being sought, specifications of the required goods, works or services, recommended time frame for bid submissions, a clear indication of the closing date and time for receiving bids and opening date and time of the same (which is supposed be the same), any fees required to be paid to receive tender documents (this is meant for administrative and production costs of bidding documents). For the benefit of both the procurers and the suppliers, the standard bidding documents provide a guide to such information.

Transparency in public procurement has many goals. According to Giraldo (2005), “it supports nondiscrimination; facilitate participation by suppliers unfamiliar with the system; to improve information for market access negotiations; to improve the decision making process; to widen the supply base; to expose governments decisions to public and social scrutiny; to generate predictability of procurement decisions.”

The Ethiopian public procurement proclamation contains provisions which prescribe that public procurement should be subjected to a new regime of openness, transparency and fairness. Section 5 of the Proclamation states that “when an organ of state contracts for goods and services, it must do so in a manner which is fair, equitable, transparent, competitive and cost effective.”

According to Volmink (2001), it is universally recognized that the criteria for an open and transparent public procurement system should at a minimum include the following.

- Public invitations to tender wherever possible;
- Readily accessible information on the laws, regulations and procedures pertaining to public procurement;
- providing sufficient time for the preparation and submission of bids;
- The use of objective and predetermined criteria for procurement decisions;
- Disseminating the evaluation criteria in advance to all bidders;
- Public scrutiny of tender decisions
- An effective system of domestic review of tender decisions;
- Publication of tender awards;

- Adequate regulation of staff involved in public procurement such as declarations of interest, training, screening etc.

According to Basheka, on the other hand, transparency in public procurement is characterized by the following:

- Well-defined regulations and procedures open to public and other stakeholders' scrutiny
- Effective processes for sharing information across divisions and projects
- Clear, standardized tender documents containing complete information
- Equal opportunity for qualified suppliers in the bidding process

According to Grant and Keohane (2005), "accountability, implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met." With this definition of accountability there are a number of assumptions. First, a single actor has the authority or power to hold other actors to account. An example would be the federal government holding state governments responsible for the expenditures of the funds. A second assumption is that an agreement on the standards for assessing whether the actor that is doing the accounting has properly discharged their responsibility. Finally, there should be enough transparency and information related to the process and results to determine if the standards have been fulfilled.

Further, according to Grant and Keohane, an accountable public procurement system is characterized by the following:

- Power of prior approval as this regulates the behavior of public servants by requiring them to go through a clear procedure intended to enable them to get clearance to conduct any public procurement expenditure. This is a strong mechanism, when followed by detection of public procurement fraud.
- Responsibility or accountability which essentially means a public servant's ability to provide answers for the public procurement decision taken at any stage of the public procurement process.

### 2.8.3 Corruption and Public Procurement

Public procurement is among government functions most prone to corruption. According to Søreide (2002), it was estimated that systemic corruption can add 20–25 percent to the costs of government procurement, or roughly \$200 billion per year.

Fair competition and equal treatment of bidders are fundamental concerns in the development of rules on public procurement. A critical threat to the attainment of these objectives, however, is the presence of corruption.

Bribery-induced violations of procurement procedures can be carried out in many different ways. The offences can be categorized in two groups:

- i) Hidden violations of procurement rules: It looks like as if the rules have been respected.
- ii) Legitimate deviations from procurement procedures: Rules of exception are too frequently exploited.

According to Søreide, corruption can be defined as “the misuse of public office for private gain.” The damage of this misuse lies in the influence on choices and the introduction of inefficiencies. In addition, according to Soreide:

*Public expenditures increase as prices are inflated and not the main concern of the tender procedure. Also quality may cede for a bribe, perhaps resulting in roads full of holes, buildings not proof to earthquakes, consultants unable to advise. Moreover, corruption affects the allocation of public resources. Projects more likely to produce opportunities to obtain bribes are preferred, large construction projects are typically given priority to health and education projects. In countries where corruption is endemic, rent-seeking becomes a serious issue affecting most aspects of public life and undermining the general confidence and respect for the bureaucracy, politicians, formal laws and regulations.*

Corruption takes the different forms of facilitation payments, inducements to get things done, and grand corruption, significant amounts offered to politicians or high-level officials capable of influencing large contracts. We draw a distinction between bureaucratic and political corruption, between active and passive bribery, and between public and private-private corruption.

Procurement procedures will often make it difficult for a private firm to offer a bribe and obtain the promise of a big contract. A more common motivation behind bribery is therefore to obtain just a higher probability of gaining the contract, for instance through secret information about the tender, the other bids or evaluation criteria. The “price” (bribe) is lower as the “customer” (the private firm in this setting) is not guaranteed the good. These inducements are often not large enough to be considered “real bribery”.

According to Søreide, the risk of corruption can be reduced, not removed, by procurement reform. The new rules are expected to increase competition and improve transparency. More competition reduces prices and improves welfare. However, firms exposed to competitive pressure are also more likely to apply unethical business practices.

#### **2.8.4 Bid Rigging**

According to Heimler (2007), “bid rigging is an agreement between competitors over which firm will win a tender-often from government agencies”. This agreement may be accomplished by one or more bidders agreeing to refrain from submitting bids, or by the bidders agreeing on a low bidder and then bidding above that firm's intended (and inflated) price. Even though, the tendering process is designed to promote fairness and ensure that the lowest possible prices are received, bid rigging subverts this competitive process.

##### **Forms of bid rigging**

According to Alberto Heimler, there are three forms of bid rigging. These are;

- ***Bid suppression:*** One or more competitors agree to refrain from tendering or to withdraw a previously submitted tender so that another company can win the tender.
- ***Complementary bidding:*** The competing companies agree among themselves who should win a tender, and then agree that the others will submit artificially high bids to create the appearance of vigorous competition.
- ***Bid rotation:*** The competitors take turns being the winning tender, with the others submitting high bids. The companies agreeing will generally try to equalize the tenders won by each over time. A strict pattern of rotation is often a clue that collusion is present.

## **2.9 E-procurement**

According to Croom and Brandon-Jones (2009), “e-procurement is the process of purchasing goods and services electronically.” The various stages of public procurement in which electronic procurement method can be applied include, identifying vendors or suppliers, placing orders and arrival of goods. E-procurement helps to improve the efficiency of the purchase process and decrease the cost involved in traditional purchasing. Most of the paper work is limited, thereby cutting the cost and time required reaping benefits often to the tune of millions of birrs.

According Croom and Brandon-Jones, E-procurement is most employed in purchasing small and less expensive items. The traditional approach is still preferred for more expensive products such as complex engineering machinery. However, companies are increasingly recognizing the benefits of online sourcing. Online goods procurement helps organizations to sketch out optimized plans for managing the supply chain. E-procurement not only saves money the simplification of the whole process. The optimized plans can be communicated quickly to the suppliers thereby reducing cost and wastages usually involved in the supply chain. The advantage of E-procurement include a reduction of overhead such as purchasing agents, effective control of inventories, and the overall improvement the business cycle.

## **2.10 Conclusion**

It is difficult to define the word procurement as it is most frequently confused with words like purchasing, acquisition and supplies management. Procurement is acquisition of goods, services and works for public use. Most scholars used the term purchasing and procurement interchangeably. We also used the two terms the same way.

Public procurement is not a onetime activity rather a series of activities ranging from need assessment to contract administration. An efficient public procurement therefore requires sound institutional and policy engagement at all levels of the procurement process.

Public sector reform dynamics is a recent phenomenon in many developing countries. Public procurement reforms are among the many public sectors undergoing reforms. With

many underlying reasons behind, most African countries have made in the last a decade or so.

Public sector is among the major government functions which are bound with ill transparency and inefficiency. Even though the presence of different policy instruments ethical standards there are misuses and wrongdoings in the sector.

## CHAPTER THREE

### PUBLIC PROCUREMENT IN ETHIOPIA: A CONCEPTUAL FRAMEWORK

#### 3.1 Introduction

Ethiopia is the second populous country in Africa with a growing economy. It is a democratic federation of nine states, governed by a bicameral legislature with 656 representatives combined a Prime Minister and a President. The country spends billions of Birrs for public procurement each year. In fact in recent years it has clearly recognized the importance of transparent, fair and effective public procurement in contributing to the social and economic programs funded by Ethiopia and its multi- and bilateral cooperating partners.

According to Brooks and Demelash (2009)<sup>2</sup>, determining the proportion of public expenditures held by public procurement in Ethiopia (and in other countries too) is difficult. However, in 2002, the OECD estimated that 10-15% of GDP is spent by non-OECD countries via procurement. For Ethiopia, this suggests an annual public procurement spend of more than ETB 52.76 – 79.17 billion (\$USD 3.1 – 4.6 billion<sup>3</sup>), based on the 2010 GDP of ETB 527.8 billion (\$USD 30.94 billion). Much of this is paid to Ethiopian suppliers, contractors and consultants.

In addition, according to a report by the Public Procurement and Property Administration Agency, the money spent on public procurement accounts up to 60% of the countries Budget. This means nearly Birr 50 billion of the total 77 billion budget in 2003 EFY will be spent in the acquisition of goods, services and works for public undertakings.

Ethiopia has been undertaking procurement reforms since 1998; and in 2002 the World Bank in collaboration with the Government and other development partners prepared a CPAR, which recommended various procurement reform actions. Since more than 60

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<sup>2</sup> A report prepared by John Brooks and Demelash Demissie on Public Procurement & Property Administration Capacity Development Program, funded by the Canadian International Development Agency, November 2009

<sup>3</sup> 1 Dollar=17.02Birrs, March 17, 2011 exchange rate

percent of the country's annual budget, that is currently over 5 billion USD, is spent through procurement, the government of Ethiopia believes that an effective functioning of public resource management system in the areas of procurement and financial management is important and central for the success of the GTP.

This chapter will give conceptual framework about the Ethiopian public procurement. As we stated earlier, it has been sixty years since public procurement introduced in Ethiopia. Since then, different legal and regulatory frameworks have been introduced during the three regimes. This chapter discusses about the features of government purchasing in Ethiopia. In addition, it will give background information about the legal, regulatory and institutional frameworks governing in Ethiopia during different timelines with a special emphasis on the recent ones.

### **3.2 The Historical Genesis of Public Procurement in Ethiopia**

Public procurement in Ethiopia is a recent phenomenon. According to a report prepared by The Ethiopian Procurement and Property Administration Agency, public procurement was started in 1940 EC. According to Admasu (2009), it was especially established to procure military equipments and supplies for soldiers. With the responsibility laid on the then Ministry of Finance the procured materials were stored at the Ministry's warehouse.

As we discussed earlier, according to the report, the improved procurement services were started in 1942 EC. In addition to military equipments, the Ministry of Finance was given the mandate to procure stationeries and cars for organizations which are financed by the regular government budget.

During the time, the organization was procuring public properties with one director and few auditors. In addition, the organization has faced some criticism as other public organizations didn't like to be under the management of the Ministry of Finance. Also, due to lack of skilled and qualified employees the organization couldn't perform as expected.

Due to these and other setbacks an independent agency (Ministry of Public Property Organization and Distribution) were established in 1950 under proclamation № 19/1950. This independent agency was responsible to procure and distribute the following materials.

- Military uniforms equipments and supplies
- Public vehicles
- Capital equipments and stationeries
- Materials which are crucial for development and industrialization
- Air water and inland transportation equipments and spare parts

The independent agency, however, didn't last long and dissolved in 1956 for the following reasons:

- The agency was established without any prior study
- There were shortage of capital
- Absence of qualified and skilled employees
- Absence of support and cooperation from other ministries
- Absence of warehouses for the storage of procured materials

Following the dissolution of the Agency, materials which cost Birr 10,000 and above were procured by a committee established by the Auditor General. Delivery, quality assurance and financial records were made by individual organizations. Procurements worth less than Birr 10,000 were made by the organization itself.

In 1981, the Provisional Military Government of Socialist Ethiopia issues a financial regulation under the Minister of Finance. The regulation which has eleven chapters mainly deals with the country's financial rules and regulations. However, the last two chapters (chapter ten and eleven) deal about government procurement & materials and procurement, disposal, utilization and control of government vehicles.

The regulation allows any government department to make procurements valued not more than Birr 250,000 by their own. However, procurements more than this amount should be approved by the established Central Tendering Review Committee (CTRC) under the Government Procurement and Materials Management Control Department (GPMCD). Members of the CTRC were five with all to be elected by the GPMCD. According to the Provisional Military Government of Socialist Ethiopia Financial Regulation, the CTRC were given the following duties and responsibilities among others.

1. Reviewing and approving decisions of the tender evaluation which is sent by the concerned government department.
2. Considering and approving proposals by any government department
3. Reviewing in detail the purchases made by any government department
4. Considering any other matters which the Government Procurement and Materials Management Control Department brings to it for consideration and decision.

### **3.3 The Legal and Regulatory Frameworks Governing the Ethiopian Public Procurement**

Following the downfall of the Derg regime, the country promulgated a new public procurement regulation. After the coming into effect of the new constitution in 1995, the Federal Government of Ethiopia (FGE) drafted a new public procurement laws and regulations; namely “The Federal Government of Ethiopia the Financial Administration Proclamation № 57/1996” and “the Council of Ministers Financial Regulations № 17/1997.” However, according to the World Bank sponsored Country Procurement Assessment Report (CPAR), which was released in August 1998, these rules and regulations were not made on the basis of internationally recognized public procurement legal documents such as the UNCITRAL Model Law on Procurement of Goods, Works and Services. In addition, according to the report, the federal procurement laws and regulations were very weak and not comprehensive. Further, the regulation doesn’t put clear distinction between procurement of goods, works and consulting services.

#### **3.3.1 The Ethiopian Federal Government Procurement and Property Administration Proclamation**

Having the objective to achieve better transparency, efficiency, fairness and impartiality in public procurement and to enable the utilization of the large sum of public money spent on procurement in a manner that ensures greater economy and efficiency, the Federal Democratic Republic of Ethiopian (FDRE) government established a public procurement proclamation under proclamation № 649/2009.

According to a draft World Bank’s CPAR (2010), significant public procurement policy reforms have been made in Ethiopia. “Previously public procurement was regulated with

Financial Proclamations, not recognizing public procurement as a separate legal area with separate legal needs. A specific procurement law, the Public Procurement Proclamation, was introduced and in its latest revision from 2009, it contains all the essential features of a modern procurement law.”

The fifteen chapter new public procurement proclamation has established an independent public procurement control and oversight organ i.e. the Ethiopian Public Procurement and Property Administration Agency (PPA). The regulation describes the basic procedures of public procurement. Also, the different methods of public procurement and international procurement are clearly featured. The proclamation in addition, has introduced for the first time electronic procurement and established a board which reviews complaints on public procurement.

### **3.3.2 The Proclamation’s Scope of Application**

Present procurement laws presently apply only to the Federal Government budget and do not cover procurement by parastatals and other public bodies, financed under separate budgets. Also, since Regions have the right to implement their own procurement rules covering the Regional, the Zonal and Woreda budgets the procurement proclamation doesn’t apply to them. In addition, according to the proclamation (article 3b) “the proclamation doesn’t apply to contracts a public body enters into with another public body for the provision of goods, works, consultancy or other services at cost.” Further, the Minister (the Ministry of Finance and Economic Development, MoFED) in consultation with the heads of the relevant public bodies may in the interest of national security or national defense decide to use a different procedure of procurement.

### **3.3.3 Public Procurement Supporting Documents**

The World Bank 2002 CPAR noted the absence of suitable SBD’s and manuals. However, since 2006 the new SBD’s were issued both in Amharic and English languages. The documents contain SBD’s for consultancy, goods & services, works, pharmaceuticals, and non consultancy government procurement undertakings. But, according to the report, these documents are now outdated as they do not reflect the latest revised PPP from 2009. The PPA are currently working on an update, to be issued soon.

A Federal Procurement Manual was issued in July 2010; an English version was not yet available. At the time of data gathering (January & February, 2011) the majorities of these supporting documents were being drafted or had been submitted for approval. So according to the report “it can seem as if the framework is slowly progressing, but until the documents are finalized and approved the situation is quite severe, with the bulk of the legal framework either missing or outdated leaving a potential legislative gap which could seriously affect practices and enforcement.”

The Federal Public Procurement Directive (FPPD) has been issued in June 2010. The directive which has thirteen chapters and 52 articles describes procurement ethics, procurement planning, procurement methods and their applications, procedures of international procurement, contract administration, complaints review and others in details.

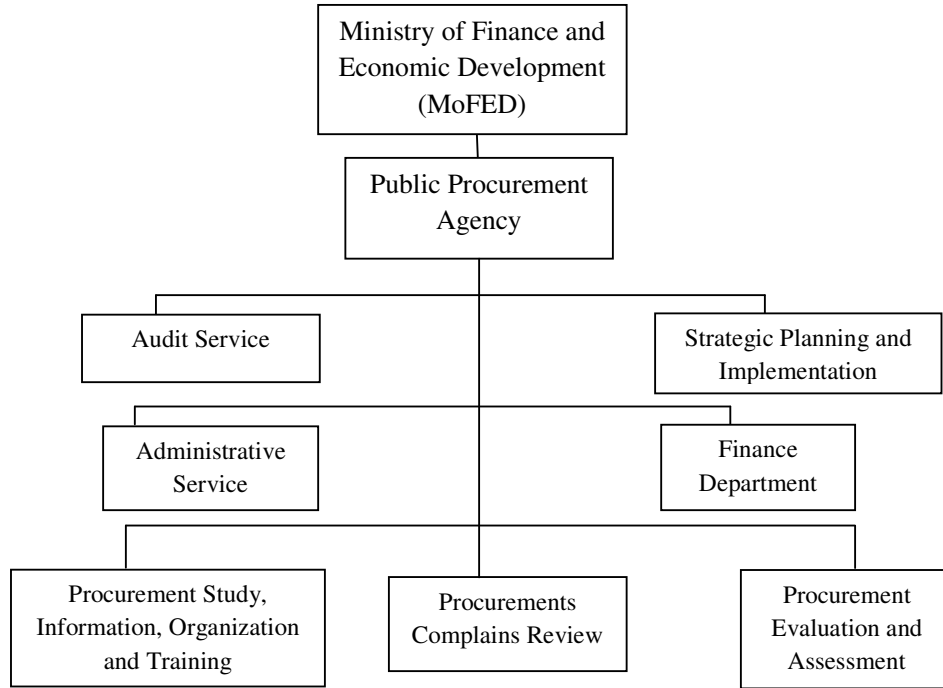
### **3.4 Institutional Framework of Public Procurement in Ethiopia**

Prior to September 2009, there were no clearly defined central procurement oversight and policy body with the functions of (i) devising procurement policy, (ii) preparing and disseminating standard bidding documents and contracts suitable for different types of procurement, (iii) monitoring compliance with procurement laws and regulations, (iv) addressing issues of integrity and transparency, and (v) providing an adequate complaint mechanism to address grievances from contractors and suppliers. In addition, there were no specialized institutions capable to assess the training needs of procurement staff and ensure continued capacity building. There were also a shortage of experienced management and procurement staff capable of handling international procurement.

Before the implementation of the Business Process Re-Engineering (BPR), Public Procurement and Property Administration were separate functions under the Minister of Finance and Economic Development.

The following figure shows the Agency’s organizational chart prior to the merger of the Procurement Agency and Property Administration both of which were departments under the Ministry of Finance and Economic Development.

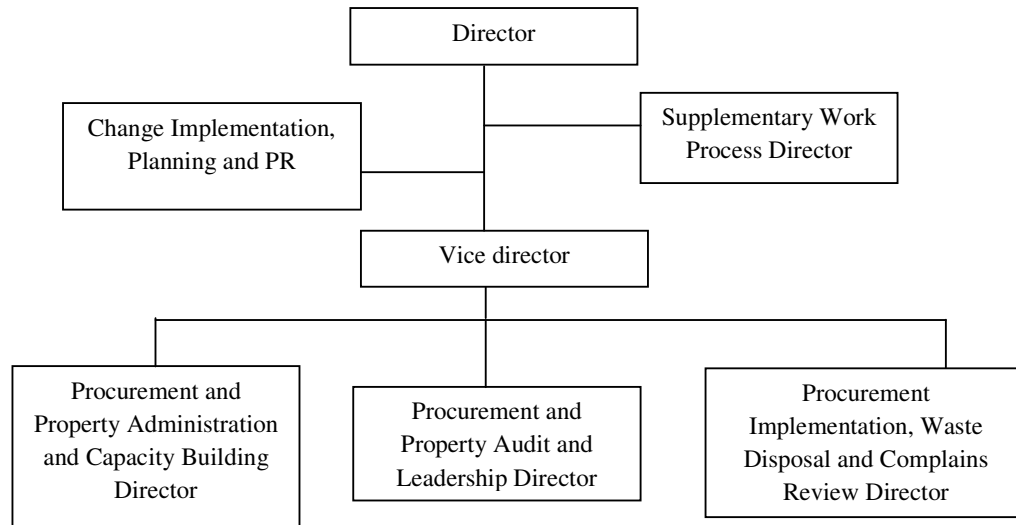
Figure 1 Public Procurement Agency’s organizational chart



Source MoFED, 2010

Following the promulgation of the new proclamation and the implementation of the Business Process Reengineering (BPR) study, however, the two departments merge in September 2009 under Proclamation № 649/2009 and form the Ethiopian Public Procurement and Property Administration Agency having the following organizational structure. PPA is now in place and functioning, although not yet adequately staffed, it is able to perform reasonably, and is starting to take its place as the key player in the formulation of public procurement policies and monitoring current practices.

Figure 2 Public Procurement and Property Administration Agency's organizational chart



Source MoFED, 2010

### Objectives of the Agency

The objectives of the Agency among others are:

1. Ensure the application of fair, competitive, transparent, non-discriminatory and value for money procurement and modern public property administration;
2. Follow up compliance of public bodies with the provisions of the Proclamation in conducting procurement and administrator property at their disposal;
3. Work for the prevalence of uniform and consistent system of public procurement and property administration at national level;
4. Endeavor to harmonize the system of public procurement and property administration with the internationally recognized standards.

### Functions of the Agency

The Functions of the Agency among others are to:

1. Advise the Federal Government on all public procurement and property administration policies, principles and implementation and provide technical assistance to the regional governments and city administrations;
2. Monitor and report to the Minister the performance of the public procurement and property administration systems in the Federal Government, initiate amendments on laws and implementation system improvements;

3. In collaboration with competent authorities ensure the setting of training standards, competence levels, certification requirements and professional development paths of public procurement and property administration;
4. Prepare, update and issue authorized versions of the standard bidding documents, procedural forms and any other attendant documents pertaining to procurement and property administration;
5. Consider and decide on request from public offices to deviate from the prescribed methods of procurement, the standard bidding documents, procedural forms and any other attendant documents in effecting procurement or use other systems or methods of disposing of public property than those authorized by law;
6. Review and decide on complaints submitted by public bodies on the conduct of bidders or suppliers, and send copies of such decision to the concerned organs;
7. Conduct audit to ensure that procurement and property administration activities of public bodies are in accordance with this Proclamation and other documents governing public procurement and property administration;
8. Set up, develop, maintain and update a data base that covers the entire spectrum of public procurement and property administration;
9. Develop policies and maintain an operational plan on capacity building both for institutional and human resource development;

### **Public procurement decentralization in Ethiopia**

The procurement function is decentralized in that the various Ministries, public bodies and parastatals do their own procurement planning, prepare bidding documents, issue invitation for bids, receive bids and evaluate the bids and make recommendation for award of contracts. According to the CPAR report (1998), during the Derg regime, however procuring entities have to obtain the approval of the Ministry of Finance in regard to the bidding documents and the proposed decisions to award contract in the event the procurement contract in question involves the use of funds allocated from the Ministry of Finance budget (a) exceeding Birr 500,000 under local bidding and (b) exceeding Birr 2 million under international bidding.

### **3.5 Public Procurement Reforms in Ethiopian**

According to a CPAR report (2002), a major civil service reform in Ethiopia was the Civil Service Reform Program (CSRP) which was originally begun in 1996 with three core sets of activities: (i) resource control and management, (ii) accountability and transparency and (iii) performance and service delivery. Budget, financial management, procurement, anti-corruption and audit reform comprises components of these core sets.

In the past few years another civil service reform i.e. Business Process Re-engineering has been launched. The reform resulted many changes in the public procurement arena, among which it include the following:

- Preparation of New Public procurement rules and regulation (Government Procurement Proclamation and Directive) based on the result of Business Procees Re-engineering.
- Coordination and Consolidation of procurement guidelines under a single set of rules and regulation
- Improving organisational structure of Public procurement and building the capacity of procuring entities
- Laying a fertile ground for competition and good governance in Public procurement system
- Creating a conducive envionment for consistency tranparency and accountability at all level of public procurement
- Procurement personnel of Procuring entities have been trained for proper implementation of procurement rules and regulation as part of the effort to build the capacity of public bodies.
- Preparation and dissemination of SBDs for all type of procurement to simplify the procurement activity and to make it consistent across the board

### **3.6 Conclusions**

Public procurement is a strategic government function. After languishing under the Minister of Finance as a department for long period of time, public procurement has been recognized in recent years as a separate area with a separate legal need. Previous legal and regulatory frameworks governing the country's public procurement were short of international standards. However, in recent years with the help of the World Bank and other international

donor agencies the Ethiopian government is now working on reforming the country's procurement system. A new proclamation has been promulgated in 2009. Also the public procurement directive and manual are issued in 2010. In addition the Ethiopian public procurement and property administration is in place to control and oversight the federal government's procurement activities. However Ethiopia is still in the midst of implementing its procurement legal reform initiated with the 2009 updated procurement proclamation.

## **CHAPTER FOUR**

### **DATA ANALYSIS AND INTERPRETATION**

#### **4.1 Introduction**

The previous chapters provided us the conceptual framework and background information about the Ethiopian public procurement. In this chapter, the study focuses on the analysis and evaluation of the Federal Government's procurement systems which provides some empirical evidences on the public procurement practices.

Here, the primary and secondary data collected from different sources have been analyzed and interpreted. Primary data collected from an intensive interview which was held with different public procurement experts inside and outside of the PPA has been discussed in this part of the study. In addition, secondary data i.e. proclamations, directives, manuals, and organizational reports have been analyzed.

The study has been analyzed thematically. Further, the study used the OECD and World Bank methodologies for the assessment of the federal procurement systems and the method is applied as an overall framework for the assessment. The researcher therefore intends to analyze data into four thematic areas. These are legal and regulatory areas; institutional and workforce areas; procurement operations and practices areas; and procurement integrity and transparency areas. Also, the study will assess the Ethiopian public procurement practices against the internationally accepted public procurement principles and tried to find out gaps.

#### **Interviewee profiles**

Rigorous interviews have been made with the country's prominent public procurement specialists. A total of six personalities have been participated in the interviews. Among these the four are at a high profile post at the Ethiopian Public Procurement and Property Administration Agency (PPA). Another interviewee was from the Ethiopian Chamber of Commerce and Sector Associations (ECCSA), who is also a member of Complaints Review Board (CRB) at the PPA delegating the country's 'business community'. The last personality is a procurement specialist from the World Bank Ethiopia country office. All these experts have given the researcher all the data he required for the successful completion of this study.

## **4.2 The Legal and Regulatory Frameworks of the Ethiopian Public Procurement**

Public procurement should be anchored in a solid legislative and regulatory framework providing the principles, organization and procedures of public procurement (Arrowsmith, 2004). The main principles of public procurement are universal and laid out in UNCITRAL Model Law on Procurement, which has been the inspiration for many legal procurement reforms around the world. The legal regulatory framework shall always be adjusted to the national settings and priorities and it should be reviewed and amended on a regular basis as needed.

According to the OECD (2001) report, 67 percent of countries in the world have no legislation or laws have gaps or conflicting provisions. Further 67 percent doesn't have adequate grievance provisions for bidders.

According to Thai (2009), a procurement regulatory system establishes standards and code of ethics that guide buyers and sellers, but may create red tape that jeopardizes procurement efficiency as well. In addition, an effective public procurement system is based on a procurement law that defines responsibility of procuring agencies and suppliers.

As we tried to state earlier, two principal legal instruments to deal with the Federal Government's public procurement are the Public Procurement Proclamation 2009 and Public Procurement directives 2010. Until the enactment of the Public Procurement Proclamation in 2009, the legal regime of public procurement in Ethiopia was based on procedures and practices inherited from the Derg regime.<sup>4</sup>

According to Nebiyu;

*...the previous following legal and legislative factors widely regarded as having contributed to poor performance of the Ethiopian public procurement in the previous regimes. These are poor advertisement; inadequate bidding period; poor specifications; nondisclosure of selection/competition criteria, award of contract by*

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<sup>4</sup> New public procurement legal frameworks were in place after the downfall of the Derg regime but not different in principle and practice when compared with that of the previous ones as it was very weak and not comprehensive, CPAR, 1998.

*lottery without having developed the tools of attracting quality bidders, conclusion of one-sided contract documents, negotiation with all bidders, re-bidding without adequate ground and corruption.*<sup>5</sup>

In addition, according to Nebiyu, the previous legislatives do not lay grounds for the establishment of public procurement complaints board and procurement performance audit units.

The current legal framework is based in the UNCITRAL Model Law for Public Procurement and now clear and stringent, with a federal procurement proclamation supported by secondary implementing legislation (procurement directive and manual) and guidelines/SBD's, even though these (SBDs) are currently not updated. According to Bruk (not his real name)<sup>6</sup>, the best legal framework lays down the establishment of an audit unit, complaint review unit, procurement oversight body, tendering committee and the enactment of secondary legislatives among others. Accordingly the Ethiopian public procurement legal framework has established all this.

The current public procurement proclamation also laid a legal basis for the establishment and operation of the Federal Public Procurement and Property Administration Agency (PPA) and the independent Complaints Board; which is under the Agency.

The Federal Government's legal framework for public procurement provides a proclamation (procurement law), supported by a directive and manual (secondary legislation), with the proclamation having clear precedence. According to Nebiyu, the methods of procurements all sorts of procurement items i.e. whether it is a good, service, or work should be clearly stated in each legal documents. All these legal documents cover goods, works, and services (including consulting services) for all procurement using national budget funds.

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<sup>5</sup> Nebiyu Kokeb, personal communication, 25/03/2011 (Nebiyu Kokeb is Public Procurement Change Development and Capacity Building Directorate Director at the PPA. He is a graduate of Economics and has worked in the Agency for six years)

<sup>6</sup> Biruk, personal communication, 02/02/2011 he is procurement specialist at the World Bank office in Ethiopia

### **4.2.1 Application of Procurement Rules on Government Owned Enterprises**

According to the draft CPAR report, 2010, it is a fundamental principle of sound public procurement that the procurement rules apply to all spending of public funds or spending of funds controlled by the public. The rationale behind this principle being that if the public ultimately funds or carries the risk of an activity, that activity should be controlled by the public. This principle is supported by the UNCITRAL Model Law on Public Procurement, which is a major deviation from international best practice for Ethiopian public procurement.

According to Biruk:

*“The public has a huge interest in making sure that these enterprises are pursuing value for money, and in bringing them under the control of the public procurement legislative framework as this will be the only way to ensure that considerable public funds are utilized in a correct manner. At the same time the public has an interest in ensuring that these enterprises are well run entities securing services for the public, and at the same time making a profit for the benefit of the public finances.”*

In Ethiopia, the current legal framework for public procurement exempts procurement carried out by publicly owned enterprises, based on the argument that these enterprises are not spending public funds, since they have income and budgets of their own, and are controlled by independent boards. However, this is against the widely accepted principle in drafting comprehensive procurement legislation.

### **4.2.2 Application of Procurement Rules Security and Defense Procurement**

According to the new Public Procurement Proclamation (№ 649/2009), the Federal Proclamation covers “all Federal Government procurement”, with a standard exemption for security and defense procurement only if a directive has been issued. No such directive has been issued, even though neither security nor defense procurement currently applies the Procurement Proclamation.

### 4.2.3 The Procurement Legislation on Product Specifications

According to Thai (2009), public procurement laws should draw up technical specifications in a manner which reduces the opportunities for abuse by procurement agents. This can be achieved by making such specifications known in advance and by restricting the element of discretion entrusted in the hands of procurement agents when setting up the final description of the goods or services to be procured.

According to the Proclamation (Article 29/2), technical specifications should clearly describe the public body's (procuring entity) requirements with respect to quality, performance, safety and where necessary dimensions, symbols, terminology, packaging, marking and labeling or the processes and methods of production and requirements relating to conformity assessment procedures.

The law further required technical specification to be in terms of performance rather than design or descriptive characteristics; national or internationally recognized standards; Inviting open competition and devoid of any statement having the effect of restricting competition.

The law in addition stated that "there shall be no requirement or reference in the technical specifications to a particular trademark or name, patent, design or type, specific original producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements of the public body.

In Ethiopia, according to Mekuria Kiflie; "in practice the capacity for drawing up technical specifications is very low, where poor specifications are to blame for the poor outcome of procurement. Often specifications are copied without the procuring entity properly adapting the specifications to the situation at hand."<sup>7</sup>

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<sup>7</sup> Mekuria Kiflie, personal communication, 12/02/2011. He is Complaints Review Directorate Director and member of the Complaints Review Board. Also he is a graduate of Economic Policy and he has twenty years of work experience out of which five years at the PPA

#### 4.2.4 Procurement Thresholds

The Ethiopian Public Procurement Manual sets thresholds for goods, services, consultancy and construction with regard to different methods of procurement (*See the following table*). However, according to the World Bank’s CPAR report, 2010; “there are no mechanisms for periodical review of the procurement thresholds in various ministries and other public bodies. Revisions of thresholds are done on an ad-hoc basis.” In addition, according to the report, “procurement thresholds aren’t being revised according to the new laws.

*Table 2 The Federal Government Public Procurement Threshold*

<b>Procurement Category</b>	<b>Restricted Tendering</b>	<b>Request for Quotation</b>	<b>International Open Tendering</b>
<b>Construction</b>	2,000,000	250,000	5,000,000
<b>Goods</b>	500,000	100,000	10,000,000
<b>Consultancy services</b>	300,000	60,000	2,500,000
	400,000	75,000	7,000,000

*Source: The Federal Government’s Public Procurement Manual, 2010*

We can see from table 2 procurement thresholds are specified for different methods of procurement. With the absence of local open tendering others have been standardized. From the table we can understand also that thresholds are set for international tenders.

#### 4.2.5 Methods of Procurement

According to Nebiyu, the Federal Procurement Proclamation is inspired by the UNCITRAL Model Law on Public Procurement and lists procurement methods in line with international best practice. The Proclamation and the Federal Directive contain adequate implementing rules for each method of procurement.

Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable. According to the proclamation (article 33), open bidding; request for proposals; two stage tendering; restricted tendering; request for quotation and direct procurement methods shall be used in public procurement.

According to Admasu Mamo, competitive procurement is the default method of public procurement. And open tendering is the most competitive means of procurement.<sup>8</sup> When we consider the Federal Government’s procurements, however, only 105 (4.68%) out of the total 2242 procurements are made by open tendering; whereas 887 (39.56 %) procurements are made by direct procurement (*See the following table*). Surprisingly, out of the total 2242 procurements, 1131 procurements or 50.45% are made through request for quotation which is the most vulnerable means of procurement for bid rigging.

The 2010 CPAR report stated: “the CPAR mission was left with the impression that the choice of procurement method was left at the discretion of the procuring entities which, due to poor control and enforcement, often choose the convenient method, rather than the most competitive method.”

*Table 3 the Number of the Federal Government’s Public Procurements by Method of Procurement*

<b>Method of Procurement</b>	<b>Total Procurements (in Numbers)</b>	<b>Procurements in %</b>
Open Tendering	105	4.68
Request For Quotation	1131	50.45
Direct Procurement	887	39.56
Restricted Tendering	80	3.57
Special Procurements	39	1.74
<b>Total</b>	<b>2242</b>	<b>100</b>

*Source: EPPA survey, 2010*

#### **4.2.6 Procurement Advertising Rules**

The legal framework requires that procurement opportunities other than sole source or price quotations (request for quotation) be publicly advertised. According to Admasu, “the legal framework provides sufficient time for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought.” For the World Bank’s CPAR report in 2010, however, “the timeframes applied and the content of the advertisements are not in line with international standards as the timeframes are too short.”

<sup>8</sup> Admasu Mamo, personal communication, 15/02/2011. He is a Public Relations Directorate Director at the PPA. He also has 23 years of work experience out of which nine is in public procurement. Ato Admasu is a graduate of Accounting.

The directive has set fifteen days for advertisement. According to the WB report, even though it is short of international standards, the private bidders are satisfied with the application of the advertisement rules and time limits, once a procurement opportunity is actually advertised.

Advertisement of open tenders is mandated in at least a newspaper of wide national circulation or in a unique internet official site, where all public procurement opportunities are posted, that is easily accessible. Advertisement through radio and television is also allowed accordingly in the proclamation.

#### **4.2.7 Complaints Review System**

The Ethiopian Public Procurement Proclamation has a Board (Complaints Review Board) established, which reviews and decides on complaints lodged in regard to public procurement and property disposal proceedings. The Board receives complains from both the procuring entities and suppliers.

The Proclamation provides the Board the following:

- The right to review for participants in a procurement process
- Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review
- Establishes the matters that are subject to review
- Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body

The Board, which is chaired by the Minister has five members. All members are drawn from MoFED; the ECCSA; public bodies, public enterprises and the Federal Public Procurement and Property Administration are appointed by the Minister. This, however pose questions about the independence of the board. According to Biruk, “it is not practical to expect the board to decide against procuring entities”.

The FPPP provides bidders and applicants with a right to complain “against an act or omission of the public body in regard to public procurement”. *The study will discuss this issue on page 64-68.*

According to the CPAR report, “the ordinary courts are considered a slow and costly option, which is confirmed by the fact that very few (<5) procurement cases are known to have been handled in the court system. Private companies site fear of black-listing as their main reason for never complaining”.

#### **4.2.8 Public Procurement Support Documents**

##### **The Federal Public Procurement Manual**

The Proclamation which has a clear precedence from other secondary legislatives has laid the ground for the preparation of public procurement support documents. Accordingly, the manual provides procurement guidance or direction to all Federal Ministries, Departments, Agencies, and all other public entities set up by the Constitution and whose funding derives from the Federal Treasury or aid grants. The Manual is intended to give advice and assistance to procurement staff to help them carry out their procurement responsibilities, and explains in more detail how specific aspects of procurement should be handled in line with the policies referred to above. It is a source of “how to” information about the tasks and elements that comprise the procurement process.

##### **Standard Bidding Documents**

The federal government is currently using SBDs which are drafted in 2006. The new SBD’s from PPA are in draft, but currently there are no SBD’s conforming with the current proclamations. Therefore, the SBD’s are outdated the adequacy has not been assessed.

Consequently, this is a crucial area which is not being sufficiently controlled by an external oversight mechanism.

#### **4.3 Institutional Framework of the Ethiopian Public Procurement**

An effective public procurement system defined structures for conducting procurement that minimize subjective decisions and politicization (including approval mechanisms,

authorities, and composition of bid and evaluation committees). In addition, procuring agencies staffed with procurement professionals, trained and recognized as such under civil service regulations (AfDB, 2010). A strong institutional set up therefore, is an essential task to be undertaken. According to the AfDB, worldwide, 44% of countries don't have a central policy body responsible for the functions of public procurement.

The new public procurement legislative has established PPA and is the key institution in terms of procurement reform. According to Admasu;

*PPA is still a relatively new organization in a number of aspects. The body is supposed to be the leading authority in Ethiopia in terms of capacity building and procurement oversight but there is need to strengthen the available capacity building activities and to engage in a closer cooperation and dialogue with other suppliers. When it comes to oversight this mechanism is not operational yet and PPA will need to build experience in that area.*

Further, the CPAR questions the Agency's independence. "PPA does not appear to be fully independent (to decide) as they are funded and subordinated to MoFED."

According to Mekuria; "I have seen the experiences of many countries worldwide that public procurement is a strategic public function which is treated independently. In Ethiopia it has been so long been subordinated under the Ministry of Finance. Therefore it should be an independent institution which directly reports to the House of People's Representatives."

#### **4.3.1 The Public Procurement Agency's Workforce**

Currently, the agency has sixty nine employees. There are however, idle posts which need to be filled by qualified manpower. Out of these employees, the majority ones are not procurement graduates.

There is no requirement in terms of specific profiles for public officials engaged in procurement. Procurement officials have a variety of backgrounds such as accounting, economics, marketing, management and law.

Table 4 the Federal Public Procurement and Property Administration Agency Workforce

	Less than 12 <sup>th</sup> grade	12 <sup>th</sup> grade	Certificate	TVET	Diploma	Bachelor	Masters	Total
Male	3	1	1	1	2	31	3	42
Female	2	7	-	4	6	8	-	27
<b>Total</b>	<b>5</b>	<b>8</b>	<b>1</b>	<b>5</b>	<b>8</b>	<b>39</b>	<b>3</b>	<b>69</b>

Source: PPA, 2010

Procurement is considered as something anyone can do and consequently the area is not highly profiled. From the total 21 public universities in Ethiopia, only Addis Ababa University is graduating students in procurement. Other universities (only Jima and Adama) were educating the discipline in a Bachelor of Education Degree in Purchasing and Supplies Management. But now both Universities have stopped it.

### 4.3.2 Procurement Training

Trainings are common at the PPA, which are organized by the Agency itself, universities, and other nongovernmental organizations like the World Bank and COMESA. As we can see from table 5, a total of 4322 individuals have attended the trainings in the last seven years. Out of which 354 or 8.20% are from the business community which includes potential suppliers.

Table 5 Training given to procurers and the business community (February 1996-September 2003 EC)

Types of Training	Number of Participants		
	Acquisition Workforce	Business Community	Total
Training on procurement	3087	-	3087
Training on Proclamations, Manuals and SBD	783	354	1137
Training on COMESA procurement system	98	-	98
<b>Total</b>	<b>3968</b>	<b>354</b>	<b>4322</b>

Source: PPA, 2010

The training programs are primarily targeted towards the public sector but are also offered to the private sector. According to Getachew (not his real name), “there are annual forums on procurement and public-private sector dialogue arranged by the ECCSA.”<sup>9</sup>

There is a variety of different procurement related training activities available. According to the 2010 CPAR report:

*...there are also some major challenges and constraints to achieving a successful long-term procurement capacity development [in the country]. One of the main issues is the high turnover of staff in the public sector in general and accordingly in procurement related functions. The high turnover of staff is a typical problem and the root cause seem to be the low salary level compared to international organizations and even the private market. The lack of recognition of procurement as a profession and its limited options in terms of building a professional career is also considered to be part of the problem.*

In addition, according to Admasu Mamo, “because of the high turnovers of the procurement staff the training programs have to be repeated often which demands considerable resources. Further according to Admasu, “there are many examples of participants taking the same training course more than once primarily to receive the associated benefits from these events.”

### **4.3.3 Procurement Decentralization**

As a result of the country’s effort to decentralize all sectors of the civil service, the procurement function is also decentralized in the various procuring entities. However, the 2002 CPAR noted the risks of a rapid decentralization process, where procurement is being carried out by procuring entities without proper capacity or training. According to the 2010 CPAR report, the decentralization process has long been completed, and large training programs have been implemented at all levels.

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<sup>9</sup> Getachew, personal communication, 21/04/2011. He is a member of the Complaints Review Board delegating the business community. He is a graduate of Business Administration.

The Federal Government, in order to gain economies of scale, is implementing a centralized procurement system in which common user items are selected by the Agency and procurements will be made centrally. Accordingly, the following items which are differentiated as goods and services are identified as common user items. These are; vehicles, stationary items, computers, printers, office furniture, cleaning materials, medicines and drugs, books and magazines, uniforms, electrical equipments, laboratory supplies and equipments, pipes and fittings, filling cabinet, herbicides and insecticides, and laboratory chemicals.

On the other hand, the following are identified as common user items (services) which are procured centrally by the Agency.

- Insurance services for government vehicles
- Vehicles maintenance services
- Security services
- Office cleaning services and
- Office machines maintenance services

#### **4.4 Procurement Operations and Practices**

Even though the country has adopted a UNCITRAL Public Procurement Model Law, it is not being implemented appropriately on ground. The Federal Public Procurement Agency has undertaken an assessment to ascertain if the Federal Government's public procurement practices are based on the rules and regulations. As we can see from table 6, there are major flaws in the procurement practices especially with regard to procurement planning and usage of the SBD.

According to Mekuria, this is due to a poor enforcement mechanism. As to an assessment by the OECD, worldwide, 56% of countries have weak public procurement enforcement mechanisms.

A total of 54 federal government ministries, agencies, universities and other institutions were assessed by the PPA. From these institutions 46 organizations (or 80.7%) do not use the SBD prepared by the Agency. In addition, 36 organizations (or 63.16%) haven't prepared procurement plan (*See table 6*).

Table 6 an Assessment Showing Public Procurement Operations and Practices Challenges

Type of Challenges Encountered	Number of Cases	% out of Total
No procurement plan	36	63.16
Not using SBD	46	80.70
Using direct procurement unjustly	34	59.65
Fractioning procurements	17	29.82
Procurement without the organization manager's approval	24	42.11
Improper application of request for quotation	24	42.11
Advance payments more than 30% of the value of the contract	12	21.05
Advertisement not in accordance with the proclamation	9	15.79
Absence of bid opening procedures minute	20	35.09
Failing to announce bid losers	35	61.40
Quick entrance into contractual agreements without waiting for complements	9	15.79
Failure to open tenders on due date	13	22.81
Procurement without contractual agreement	5	8.77

*Source: PPA Public procurement performance audit 2009/10*

#### **4.4.1 Supplier Registration and Licensing**

According to Agaba and Shipman (2009), “it is an essential feature of a sound procurement system, that it allows the procuring entities to assess the qualifications of bidders before evaluating their bids and award the contract. Properly assessing the bidder’s qualifications reduce the risk of non-performance and allow the bidders to compete on even terms, improving market performance in the long run.” A system or method for qualifying bidders must strike the right balance between giving the procuring entities the right basis for their decision and on the other hand applying administrative burdens on the bidders.

The licensing and registration of suppliers include business licenses, import licenses and register of suppliers to the public sector in general. All these licenses lay in either of these categories; i.e. goods and services, consultancy, and construction. The PPA maintains a supplier list of its own.

Table 7 the Number of Suppliers Registered by the PPA

<b>Supplier category</b>	<b>Number of suppliers</b>	<b>In %</b>
Goods and services	17205	79.70
Consultancy	1521	7.07
Construction	2861	13.25
<b>Total</b>	<b>21587</b>	<b>100</b>

*Source: PPA, March 2010*

According to Bruk, “the registration of suppliers is primarily seen as mainly serving the aim of improving the tax collection by improving the identification of enterprises and the information on their business activities.”

The procuring entities should test if bidders are included on a supplier list as part of the qualification process. According to Admasu, “when procuring entities use request for quotations method the bidders are selected from a suppliers list.” But the CPAR report goes against this claim. It claims, “...all entities questioned by the CPAR mission applied a rotational system when selecting participants.”

The Federal Public Procurement Proclamation allows the PPA, but not individual procuring entities, to blacklist and debar bidders found guilty of criminal practices or with a history on non-performance. There are no procedural rules as to the criteria for debarment.

#### **4.4.2 E-procurement**

According to Croom and Brandon-Jones, electronic procurement systems represent an important development for the purchasing process; offering benefits of purchase process efficiency and price reductions; enhanced collaborative relationships, and significant opportunity for improving internal services and statutes of the purchasing function. “It encompasses all procurement cycle i.e. from the initial need identification and specification by users through the search, sourcing, and negotiation stages of contracts and order placement, and includes mechanisms that register receipt, trigger payment, and support post supply evaluation.”

According to the new proclamation, “to achieve economy, transparency and modernization in public procurement, the Ministry (MoFED) may authorize the use of electronic means as a method of procurement.” However this is only if the Agency (PPA) ensures that public

bodies, suppliers and supervising entities develop the capacity required to implement the system. In addition, the Agency must undertake a thorough study and submit proposal to the Ministry in order to implement the system.

In 2007, delegates of the Federal Public Procurement Agency went to South Korea for experience sharing and signed a memorandum of understanding with the Public Procurement Service of South Korea to collaborate in capacity development issues. Assistance for a feasibility study of E-Procurement was agreed later by the two parties. PPA should determine when to start the work that would be supported by a grant from the 2010 budget of South Korea.

#### **4.4.3 Private Sector Involvement**

Some formal links have been established between the public and the private sector, but there is a limited understanding of the value of an improved dialogue. There are Government advisory and training programs, targeting newly established small and micro enterprises with the aim of building their capacity. There is only little focus on public procurement, and the pre-tender information and contacts to potential bidders with the aim of improving the basis for the tendering is relatively limited. An improved dialogue between the public and the private sector would thus give more opportunities, strengthen the service providers and result in better products.

According to the World Bank's CPAR report;

*“...an apparent problem is a general mistrust to the private sector and the perception among public servants and in the wider public of the private sector as only profit seeking and not being able to do anything good for society. There is thus a very limited dialogue and involvement of the private sector in public procurement affairs.”*

Despite lesser dialogue, however, business associations (for example, ECCSA) are being involved in general law preparation processes and other issues of common public private sector interest. The channel of communication is improving, but there is often more focus on disseminating information to the private sector than on improved mutual understanding and dialogue between the public and the private sectors.

In addition, government has programs to help build capacity among private companies and training to help new entries into the public procurement marketplace. Such training in particular is addressing small and micro enterprises. As we stated earlier, the Ethiopian Public Procurement and Property Administration Agency has organized a training program for the private sector.

#### **4.5 Integrity, Transparency and Accountability of the Procurement System in Ethiopia**

Transparency in the context of public procurement is considered one of the most effective deterrents to corruption. It is a precondition for ensuring public officials' accountability. Transparency is aimed at allowing the public widest possible access to information that would enable them to participate in public procurement. It further enables them to examine how the powers vested in procurement officials in Procuring Entities exercise their authority on the basis of set guidelines of public procurement activities.

Attracting a sufficient number of bidders in public procurement through processes that are open and fair is a key concern. To ensure a level playing field for bidders, all organizations need to provide:

- Transparent and readily accessible information on general laws, regulations, judicial decisions, administrative rulings, procedures and policies on public procurement; and
- Equal opportunities for participation of bidders through a competitive procedure, and the provision of consistent information to all bidders on the procurement opportunity, in particular on the method for bidding, specifications, as well as selection and award criteria.

Critical risks to integrity at all stages of the public procurement process, from the needs assessment through the bidding to contract management and payment should be assessed. According to Sue Arrowsmith, "broad definition of transparency and integrity, covering technical specifications, tendering procedures, qualification of suppliers, invitation to tender, selection procedures, time limits, documentation requirements and publication of awards and of reasons why tenders have failed [should all be verified].",

In Ethiopia, according to Mekuria,

*“Various mechanisms have been implemented to ensure procurement transparency. These mechanisms include publicity and advertisement of potential contracts and the criteria used for their award. In addition the agency discloses the procedures chosen and their way of conduct; the selection and award decisions and the reasons that led to them; and the results of each complaint reviewed.”*

According to Biruk, “in order to ensure transparency and accountability in public procurement, today’s society has to emphasize in professionalism.” The field of public procurement has to be advanced and given at college and university level. The function of public procurement is viewed as a clerical function. In Ethiopia, employees’ who are responsible in acquisition of goods and services are graduates of economics, accounting, law, or management. According to Gashaw, “the public procurement function in general, has to be transformed from a primary clerical function, into a strategic function within organizations.”

#### **4.5.1 Procurement Audit System**

With the introduction of a decentralized procurement system, the need for rigorous enforcement of the procurement audit system becomes more accentuated. Procurement audit plays a vital role in detecting and investigating fraud and corruption in procurement as well as suggesting systemic improvements. In Ethiopia a legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework. Procurement Audit Unit under the Public Procurement and Property Administration Agency is responsible for undertaking procurement performance audits. The Auditor General is largely responsible for financial audits. But there are few procurement performance audits too.

Whereas performance audit is monitoring of the proper planning before tender; adequate transparency (advertisement); correct choice of procurement method; correct application of award criteria; presence of full procurement file and the proper use of bid documents, financial audit deals about monitoring of budget compliance; proper disbursement of funds; timely and correct delivery of funds and financial integrity.

Though the Federal Auditor General is largely responsible for financial audits, it undertakes performance audits each year. However, the number of performance audits carried out by the Federal Auditor General's Office (8-10 in 2009) is limited and below their own targets. PPA has recently established an audit unit which is supposed to carry out actual procurement audits at the federal level but this process is still in the making.

According to Woldeab:

*“...the most obvious challenge to the procurement audit function is the fact that there is a lack of procurement capability vested in the control units. Thus, while the Auditor Department is keen to become involved in the procurement sector, it lacks qualified staff with knowledge of procurement. The same problems apply to the internal control units where there is a shortage of procurement professionals and even though an audit function has been established within PPA this function is still constrained and needs to build further capacity in order to function as an effective control mechanism.”*

According to the World Bank's CPAR report, “...the audits focus on the availability of documentation rather than examining the background and assessing decisions done on the procurement process.” Further, risk assessment and risk management as part of procurement processes are not mandatory or applied. It is common reporting procurement performance audit reports in such a way as significant risk, moderate risk, minor risk or no risk.

There is no established or specific program to ensure that auditors are well aware of all the requirements in public procurement. However, the auditors can participate in the general procurement training offered by the Public Procurement Agency or other training providers. Overall auditors do not have sufficient access to specific procurement audit expertise.

#### **4.5.2 Appeals Mechanism and Complaint Review**

There should be a legal ground for procurement appeals both from the suppliers and procuring entities. The complaint can be handled either by administrative or judicial mechanisms. According to the African Development Bank (ADB) report:

*“...administrative and judicial mechanisms exist for handling complaints or bid challenges from an aggrieved bidder. Such mechanisms typically have complementary functions. Administrative review allows a quick decision and serves primarily to correct errors. Judicial review, while often being much slower, is required to remedy willful misconduct that the administrative body refuses to rectify.”<sup>10</sup>*

The Ethiopian Public Procurement and Property administration Proclamation has established a complaint review board. As stated in the Proclamation (Article 70-72), the Complaints Board is established as an independent board from the PPA and consists of 5 members (2 suppliers – currently from the Chamber of Commerce and a government owned enterprise, the MoFED State Minister, public body representative – currently from the Roads Authority, the PPA General Director). The board members are appointed by MoFED for 3 years and can be appointed for a second term but not a third.

The board has so far entertained many complaints. Table 8 shows the number of complaints handled in the last six years from both suppliers and procurers.

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<sup>10</sup> ADB/OECD Anti-corruption initiative for Asia and the Pacific, curbing corruption in public procurement in Asia and the Pacific, Philippines, Manila

Table 8 Complaints Submitted by Suppliers against Procuring Entities (2004-2010)

Budget Year	Public Body given notice to: • change its decision, • take corrective measures, • that the procurement proceeding is against the law • cancel the bid (in favor of the supplier)	The procuring entity not committing offence (The procurement proceeding is not against the law)	Case not reviewed because: • the procuring entity is not a federal public body • procurement performed by World Bank procedures	Case closed because: • of absence of sufficient evidence • it was submitted after the stipulated time • it was submitted prior to the submission to the public body	Case closed because the public body and the supplier came to agreement	<b>Total</b>
2004/05	-	2	-	1	-	<b>3</b>
2005/06	2	6	-	3	-	<b>11</b>
2006/07	2	1	8	-	-	<b>11</b>
2007/08	4	3	1	-	1	<b>9</b>
2008/09	9	3	-	5	-	<b>17</b>
2009/10	11	6	4	10	-	<b>31</b>
<b>Total</b>	<b>28</b>	<b>21</b>	<b>13</b>	<b>19</b>	<b>1</b>	<b>82</b>

Source EPPA, 2010

Note: The data includes the month of September, 2010

Table 9 Complaints submitted by Procuring Entities against Suppliers (2004-2010)

Budget Year	Supplier declared not committing offence	Warning given to supplier for committing offence	Cancellation of supplier from suppliers' list for committing offence	Case closed because the public body and the supplier came to agreement	Case closed because of absence of sufficient evidence	Case being reviewed	Case not examined because the procuring entity is not a federal public body	<b>Total cases entertained</b>
2004/05	-	1	2	5	4	-	-	<b>12</b>
2005/06	1	5	1	1	13	-	1	<b>22</b>
2006/07	2	9	3	1	1	-	-	<b>16</b>
2007/08	1	2	-	2	6	-	-	<b>11</b>
2008/09	4	18	2	1	28	-	-	<b>53</b>
2009/10	9	24	-	6	11	24	8	<b>82</b>
<b>Total</b>	<b>17</b>	<b>59</b>	<b>8</b>	<b>16</b>	<b>63</b>	<b>24</b>	<b>9</b>	<b>196</b>

Source: EPPA, 2010

Note:

1. The data includes the month of September, 2010
2. There are 4 cases on public bodies under investigation submitted to the Agency from the Ethics and Anti – Corruption Commission.

As we can see from the above table, the number of complaints from procuring entities against the suppliers more than double the number suppliers made against procuring entities. According to Mekuria, suppliers unless series they found series problems, they hesitate to complement. Fear of black listing is a decisive factor in not submitting complaints

Complaints Directorate is a separate unit but is still part of the PPA organizational structure and PPA is subordinated to MoFED. Biruk said:

*“...as the Board is under the PPA and consequently receiving it’s funding from MoFED, apparently their decisions rely on a good relationship with its source of funding. Therefore, it is unlikely to be in opposition to MoFED and act independently. In some countries, complaint boards are established independent to procurement oversight bodies and their members are elected from university lecturers, lawyers, and other civil society organizations.”*

The Federal Complaints Board has been established for handling complaints not only from suppliers but also from public bodies in connection with contractual disputes. The Board cannot cancel contracts or reverse decisions (i.e. already signed contracts) but they can issue recommendations and final decisions which the complainant can take to court as a strong piece of evidence. In practice it has not come to this yet as a decision or a compromise has been reached before that.

Before reaching the Complaints Board suppliers need to go through the first level of appeal which is an internal complaint function formally placed with the head of the public body where the application has been placed.

The board keeps good track of the cases received and the number of complaints has increased over the years since the Board was established. Despite the increase in complaints received from both the public and the private sector this originates from a very low number and complaints received from suppliers are still very low. One of the main challenges is certainly the lack of promotion and awareness of the mechanism and suppliers’ right to complain.

The Federal Complaints Board is functioning well with a relevant staffing. However, the Board does not make its decisions public (only the result, not the names of the parties or the

reasoning behind the result) thereby missing out on an opportunity to communicate a legal position and help other entities improve procurement compliance.

### **4.5.3 Public Procurement Information Access**

Information concerning public procurement can be accessed from the Agency. Legislative documents are available at the Agency's website and can be downloaded freely. In addition, copying of these documents is also possible at the Agency. Also different audit reports can be found from the Agency's audit unit. Other annual reports, brochours, supplier lists are easily accessible.

But complaints review reports can't be accessed. Overall statistics regarding the number of cases handled by the Complaints Board are publicly accessible but there is no legal requirement to publish decisions and this is not being done. The researcher has personally denied these documents. However internationally it is common to seeing all decisions publicly posted in a government web site or other easily accessible places.

### **4.5.4 Anti-Corruption Measures**

In Ethiopia, According to Tesfaye Shamebo (2001);

*“According to the outcome of the corruption survey conducted in 2001, the areas where corruption is believed to be rampant in Ethiopia engaged with the allocation of land and government housing, provision of telephone and electric services, granting of loans, licensing and issuance of permits, collection of taxes and **procurement of consumable and fixed assets**. Customs and excise offices are also believed to be highly affected by corrupt practices.”*

Even though, corruption and corruption risks can take place at all cycles of the procurement process, it is widely noticed that the prequalification stage is the most vulnerable. According to Mekuria, “the supplier identification stage, specifications issues, choice of procurement methods and bid advertisement are the most corruption prone stages in procurement.”

According to Mekuria, “it should be well understood about the distinction among corruption, error and inefficiency. Not all efficiency problems are related to corruption, and vice versa; and what can look as corrupt, may also be simple error.” In Ethiopia however since corruption is not well defined in the proclamation,<sup>11</sup> it is difficult which one is a simple work error or which one stem from inefficiency. Many corruption cases haven’t been dealt alleging they are minor errors or it is due to inefficiency.

The most common unethical practices with regard to public procurement according to Ato Sileshi are: bid rigging; abusing direct procurement and request for quotation; overestimation or under estimation of goods and services to favor a particular provider; designing bidding documents or terms of reference in such a way favor a particular provider; giving an advantage to a favored supplier by exchanging confidential information; excessive or unnecessary high prices due to limited or nonexistent competition and conflict of interest are among few of others.

In an interview with procurement Biruk, the Ethiopian government if it is to curb procurement corruption, strict rules, professionalization of workforce, improving civil society and media involvement, enforcing strong audit and inspection, increasing of salary to the procuring workforce, are priorities to be considered. But except the first one (the government has drafted a UNCITAR model procurement law), others haven’t yet been improved.

The leading institution in Ethiopia in the fight against corruption is the Federal Ethics and Anti-Corruption Commission (FEAC). But the coordination and cooperation between FEAC and PPA is very limited. There is no systematic exchange of intelligence and there are no effective tools or measures in place to enhance the efforts in this area. Currently, the FEAC does not produce any significant statistics on their overall performance or their procurement related performance so it is very difficult to assess in which direction their efforts are moving.

From July 2010 onwards, however, the Commission (FEAC) has taken public procurement more seriously and it is the government’s strategic orientation in the next five years.

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<sup>11</sup> All my interviewees at the PPA don’t want to call procurement wrongdoings as corruptions. There are several wrongdoing cases dealt by the agency and taken as mistakes.

Table 10 shows the number of corruption allegations it entertained from July to December.<sup>12</sup>

Table 10 Corruption Allegations Entertained by the Ethiopian FEAC (July-December, 2010)

Month	Government's Strategic Orientation to Corruption in the Next Five Years			Others	Total
	Land Administration	Public Revenue and Tax	Public Procurement		
July 2010	11	3	13	95	122
August 2010	9	1	17	103	130
September 2010	12	-	7	79	98
October 2010	11	4	12	105	132
November 2010	13	5	7	78	103
December 2010	10	5	11	107	133
<b>Total</b>	<b>66</b>	<b>18</b>	<b>67</b>	<b>576</b>	<b>718</b>

Source: FEAC, 2010

As we can see from table 10, land administration, revenue and tax and public procurement among others are taken as the most corrupt public functions. The table shows that public procurement has got more corruption allegations than any other public function (67 in six months).

#### 4.5.5 Civil Society and Media Involvement in Public Procurement

According to the ADB report

*“...civil society organizations can complement institutional oversight bodies. But they need to be granted access to relevant information to be effective in this important role. The experience of a number of countries shows that such access to information does not necessarily interfere with the confidentiality of information, contrary to an argument commonly advanced to justify the exclusion of public oversight.”*

Unfortunately the conditions and tradition for civil society organizations in Ethiopia is rather poor. According to the World Bank CPAR, “the new proclamation restricting international funding on research and advocacy activities is a very serious threat to the

<sup>12</sup> Note: figures are only corruption allegation. They told me it is not corruption until decided by the court

independent operation of civil society organizations in Ethiopia. The proclamation has forced the limited number of well-functioning CSO's in Ethiopia to drastically changing their strategies.”

Consequently there is only one active CSO exclusively dedicated to the fight against corruption and that is Transparency Ethiopia and even though they recognize the challenge of corruption in public procurement they do not particularly focus on and monitor procurement.

In addition, the media could serve as an important watchdog in exposing the negative effects of misconduct and corruption within procurement. Also, the media may serve as an important partner in efforts to strengthen public awareness on procurement issues. Unfortunately, According to Ato Tesfaye Shamebo, “the Ethiopian media are presently not fulfilling the watchdog role, and sound investigative journalism on corruption is very limited. Likewise with procurement related journalism and the knowledge of procurement among journalist are virtually non-existing.”

## **CHAPTER FIVE**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 Introduction**

This chapter provides the concluding remarks and recommendations on key findings of the public procurement system in public procurement.

#### **5.2 Conclusions**

The findings of this study suggest that procurement reforms, particularly in the area of procurement law and regulations, occur quietly but frequently. As mentioned early, a public procurement system is built on four pillars. Weaknesses in one of the four pillars will lead to an unsound public procurement system. Thus, if a problem occurs in a public procurement system, a thorough analysis should be conducted and a well-thought reform should be applied.

In Ethiopia, much has been done (and doing) in reforming the legal and regulatory framework governing the Federal Government's public procurement. However, is still in the midst of implementing its procurement legal reform initiated with the 2009 updated procurement proclamation and other secondary legislations. In addition some supporting documents are on revision that organizations are working on the previous ones. SBDs are critical examples which are not revised according to the new proclamation.

Despite a UNCITRAL model procurement law, when compared with the coverage of the Ethiopian procurement laws with international best practice reveals a major setback as government controlled or owned enterprises currently is outside the scope of the PPA. As a result major public interests in different public enterprises go unchecked.

From the research it is clear that the PPA is the institution to oversight the activities of public procurement. But it is quite new that it requires a capacity development works. Also there a strong challenge ahead for filling the Agency in the appropriate manpower.

With regards to the institutional and formal set-up Ethiopia has in fact established many of the required institutions with a mandate to strengthening the integrity and accountability in the procurement system. Federal oversight functions have been established (Auditor

General and Complaints Board) and ethical officers have been appointed in many procuring entities.

Further, the government of Ethiopia couldn't ensure transparency in the procurement sector. Corruption is also a serious obstacle to transparent and value-for-money procurement in Ethiopia and despite the efforts made by FEAC it is evident that the current mechanism for monitoring corruption and the enforcement of anti-corruption measures are still weak.

### **5.3 Recommendations**

Based on the findings of this study the following recommendations are suggested. These recommendations are made on four public procurement pillars.

#### **1. Recommendations on the Legal Frameworks**

- Present procurement laws currently apply only to the Federal Government budget and do not cover procurement by parastatals and other public bodies, financed under separate budgets. Therefore, the federal government of Ethiopia has to draft a proclamation which is more comprehensive and uniform to all public sectors
- The standard bidding documents should be revised so as to comply with the existing legislative framework.
- The reform of the procurement system has been started in the last few years that promoting the new proclamation and other secondary legislations should be given top priorities.

#### **2. Recommendations on the Institutional Setup**

- Ensure sustainability of procurement capacity building programs through adequate resourcing, evaluation and updating of training programs and proper incentive systems
- Development of a procurement specialist career stream with adequate salary remuneration would help reduce the currently high turnover of staff responsible for the procurement activity and contribute to a higher return on the expenses related to capacity building
- The agency should be given more discretion to decide in and should be made an independent institution responsible to the House of People's Representatives.

#### **3. Recommendations on the Procurement Operations and Practices**

- Modernize business practices and competitiveness of the industry participating in public procurement
- Electronic means of procurement is becoming a central issue in the procurement system worldwide. Therefore the Federal Public Procurement Agency should work of adopting the system. The memorandum of understanding has already signed between the PPA and the Korean Public Procurement Agency that developing of the system is key task ahead.
- Improve private efficiency in contractual issues, commercial laws, import procedures by organizing seminars for importers, suppliers and consultants
- Establish Information Management System to ensure proper information flow to the PPA and allowing the PPA to gather procurement statistics and fulfill its reporting requirements.
- The Agency should ensure that procurement planning is carried out on annual basis and performance against plan monitored.

#### **4. Recommendations on the Procurement Transparency and Integrity**

- The existing oversight and control functions are still not capable of ensuring a high level of integrity and accountability in procurement related issues. Therefore, there is a great need to develop the capacity at the institutional and the individual level and to give a higher priority to these areas by acknowledging the strategic importance of public procurement in Ethiopia.
- Procurement capacity must be predominantly built at the procurement Audit department to monitor the performance of procurement entities and manage and execute procurement reviews (using in house capacity or employing skilled consultants) on a post review basis.
- The Agency should work on developing a comprehensive website so as to publish procurement information, advertisements, awards, guidelines, etc. on the government web-site to enhance transparency and access to information on procurement procedures
- Involve the civil society and the media as a whole in the procurement reform. This can be done by organizing public forums on procurement issues concerning imports, construction and the consulting profession and would increase the chances for a successful impact of the reforms

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## Appendix I

### List of Interviewees

The following table shows the list of personalities who participated in the interview. It presents the interviewees with their jobs and work experiences.

<b>Nº</b>	<b>Name</b>	<b>Work at...</b>	<b>Title</b>	<b>Work experience</b>
1.	Nebiyu Kokeb	PPA	Public Procurement Change Implementation and Capacity Building Directorate Director	16 years out of which 4 years at PPA
2.	Mekuria Kifle	PPA	Complaints Review Directorate Director and member of the CRB	19 years out of which 5 years at PPA
3.	Admasu Mamo	PPA	Public Relations Directorate Director	22 years out of which 5 years at PPA
4.	Woldeab	PPA	Public Procurements Audit Directorate Director	11 years out of which 4 years at PPA
5.	Biruk	World Bank	Procurement Specialist	12 years
6.	Getachew	ECCSA	-----	20 years

## Appendix II

### Interview questions

#### I. Interview Questions Specially Designed to Collect Data on the Backgrounds of the Ethiopian Public Procurement

My name is Yirga Tesfahun, candidate for Masters in Public Management and Policy (MPMP). I am doing a research entitled “Public Procurement Reforms in Ethiopia: Policy and Institutional Challenges and Prospects”. I have designed few questions about the backgrounds of the Ethiopian public procurement. These questions meant for assessing the historical genesis and other background information. I therefore kindly appreciate for your time and I hope your frank and straightforward responses for the following questions.

Thank you in advance!

1. Would you tell me about the historical background of the Ethiopian public procurement?
2. How much money is the Federal Government spending on public procurement? How much percent this amount this accounts with regards to the country’s GDP?
3. How much strategically important is public procurement for a country’s economic development?
4. In your opinion, has the Ethiopian public procurement been given due attention as a strategically important sector?
5. What is procurement reform? What initiates public procurement reform in Ethiopian? What is the rationale behind reforming the Ethiopian procurement system?
6. Do stakeholders work together to understand each other’s needs?

## **II. Interview Questions Specially Designed to Collect Data on the Legal and Regulatory Framework of the Ethiopian Public Procurement**

My name is Yirga Tesfahun, candidate for Masters in Public Management and Policy (MPMP). I am doing a research entitled “Public Procurement Reforms in Ethiopia: Policy and Institutional Challenges and Prospects”. I have designed few questions concerning the legal and regulatory framework of the Ethiopian public procurement. These questions meant for assessing the rules and regulations upon which public procurement practices are governed. I therefore kindly appreciate for your time and I hope your frank and straightforward responses for the following questions.

Thank you in advance!

1. When did the current proclamation drafted? Who participated in the preparation of the proclamation? (also the directive)
2. From where is the federal government’s legal framework benchmarked from?
3. Which public organizations do the proclamation and the directive not applied? Can you list them?
4. How many public procurement proclamation amendments have so far been made? If so what component of the proclamation has been changed or modified?
5. What makes different the current public procurement policy with the previous one? What is changed ever since?
6. Are conditions for use of various procurement methods clearly established in the legislation? Is there an explicit requirement that open competitive bidding is the preferred or default method?
7. In your opinion, what do you think are the real problems at the current proclamation and the directive? Is there the problem of noncompliance, fragmentation...?

### **III. Interview Questions Specially Designed to Collect Data on the Institutional Framework of the Ethiopian Public Procurement**

My name is Yirga Tesfahun, candidate for Masters in Public Management and Policy (MPMP). I am doing a research entitled “Public Procurement Reforms in Ethiopia: Policy and Institutional Challenges and Prospects”. I have designed few questions concerning the institutional framework of the Ethiopian public procurement. These questions meant for assessing the institution which controls the activities of public procurement at the Federal Government’s departments. I therefore kindly appreciate for your time and I hope your frank and straightforward responses for the following questions.

Tank you in advance!

1. How much qualified employees do the PPA has in order to accomplish it duties and responsibilities?
2. Does the agency train its acquisition workforce on the proclamation and other secondary legislatives? If so how frequently does it take place?
3. How much decentralized is the Ethiopian public procurement? How much freedom is given to the procuring entities to purchase their own goods and services?
4. Do you think that you have clear, strong and ethical executive procurement leadership at the procuring entities?
5. Does the agency empower stakeholders to coordinate, integrate, and ensure consistency among acquisition actions?
6. Are managers at all levels held accountable for their contributions to the acquisition process? If so how?
7. Does agency leadership facilitate and support clear lines of communication among all parties?

#### **IV. Interview Questions Specially Designed To Collect Data on the Public Procurement Operations and Practices of the Ethiopian Public Procurement**

My name is Yirga Tesfahun, candidate for Masters in Public Management and Policy (MPMP). I am doing a research entitled “Public Procurement Reforms in Ethiopia: Policy and Institutional Challenges and Prospects”. I have designed few questions concerning the operations and practices of public procurement. These questions meant for assessing the on ground applications of the procurement rules and regulations. I therefore kindly appreciate for your time and I hope your frank and straightforward responses for the following questions.

Tank you in advance!

1. What type of relationships do you have with your suppliers? Do you have supplier list?  
Do you certify suppliers?
2. Does the agency have a process to identify key suppliers?
3. What tools, processes, and controls does the agency use to ensure effective oversight of contractor performance?
4. Have stakeholders been asked for their views on the effectiveness of the existing acquisition process and areas needing improvement?
5. Does government hold regular meetings with the business community to discuss public procurement issues?
6. Does your organization does frequent market assessment or market research?
7. Do you have a web based procurement system?

## **V. Interview Questions Specially Designed to Collect Data on the Transparency and Integrity of the Ethiopian Public Procurement**

My name is Yirga Tesfahun, candidate for Masters in Public Management and Policy (MPMP). I am doing a research entitled “Public Procurement Reforms in Ethiopia: Policy and Institutional Challenges and Prospects”. I have designed few questions concerning the accountability, transparency and integrity of public procurement. These questions meant for assessing the transparency and integrity of procurement practices at the Federal Government. I therefore kindly appreciate for your time and I hope your frank and straightforward responses for the following questions.

Thank you in advance!

1. What measures do you take on your suppliers found guilty of wrongdoings? Do you allow them to participate in other tenders?
2. What is procurement audit? Are every government purchases audited? What is the difference between procurement audit and financial audit? Can you tell me how a government organization is audited?
3. How much auditors do you have? How much trained are they?
4. What is the role of the Complaints Review Committee?
5. What are the most frequent complaints from suppliers the board addressed so far?
6. What are the most frequent complaints from procurement entities the board addressed so far?
7. Are requirements for advertisement of contracting opportunities adequate? Does the country have a national gazette (or other similar publication) published in a timely fashion? Is it easily available to the general public?
8. Is there an accessible and secure process for bidders to report bribes by others and solicitation/extortion of bribes by government officials?