

THE CHANGES TO THE WORLD BANK'S PROCUREMENT POLICY AND THE IMPLICATIONS FOR AFRICAN BORROWERS

Sope Williams-Elegbe

(2014) 1 APPLJ 22

ABSTRACT

In 2011, the World Bank commenced the process of a comprehensive review and reform of Bank procurement policies and procedures, the first of its kind in the history of the Bank. The significance of the proposed reforms cannot be understated and they evince a step-change in the way the Bank has conceptualized and conducted procurement since its inception. The purpose of the reforms are to ensure that the Bank's procurement is fit for its purpose, is flexible, is in line with the modern practice of public procurement and can assist Borrowers to deliver on their developmental objectives. This paper examines the salient features of the reform agenda and highlights the implications of the reforms for African borrowers. It will be seen that the Bank desires to undertake a central leadership role in global public procurement and that it is putting sustainability at the heart of its reforms. It will also be seen that the Bank intends to provide more assistance to building the procurement capacity in its Borrowers to partly address the moral hazard that arises in Bank projects.

THE CHANGES TO THE WORLD BANK'S PROCUREMENT POLICY AND THE IMPLICATIONS FOR AFRICAN BORROWERS

Sope Williams-Elegbe

LLB, LLM, PhD

Senior Lecturer in Law, University of Lagos; Research Fellow, Stellenbosch University.

1 Introduction

The World Bank is a development finance institution established by virtue of the Bretton Woods agreement to provide reconstruction aid to the countries devastated by World War II.¹ The name "World Bank" is a misnomer in the sense that the term really refers to two institutions- the International Bank for Reconstruction and Development (IBRD), which was charged with providing post-war reconstruction assistance and now lends to middle income and credit-worthy low income countries and the International Development Agency (IDA), which provides grants and interest free loans to the poorest countries.² Like many multilateral agencies, the Bank imposes good-governance and anti-corruption requirements on borrower countries where it provides structural lending or finances for development projects and requires that the procurement process for funded projects is conducted according to Bank mandated procedures.³

The Bank's approach to its procurement policy has undergone significant revision since the first formal procurement procedures were issued in 1964. These changes were intended to reflect the shifts in the Bank's approach to corruption; changes in the Bank's membership; changes in the field of procurement and in the Bank's own lending products.⁴ In 2012, the Bank commenced the most substantial reform of its procurement policy yet, which is part of the Bank's broader modernization agenda

¹ Alacevich 2009: 2.

² Alacevich 2009:2; Morais 2004: 64.

³ World Bank, Guidelines: Procurement of Goods, Works and Non-Consulting Services Under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011), para 1.16 [Hereinafter Bank Procurement Guidelines].

⁴ Hunja 1997: 217-218.

and reform of its investment lending.⁵ This reform is intended to take into account the changing global operating context; the diverse and evolving needs of Bank clients and borrowers; and the diverse instruments the Bank now offers to promote development.

This paper seeks to examine the proposed changes to the Bank's procurement policy and distill the implications for the Bank and its Borrowers, especially Borrowers in Africa, where peculiar challenges are faced in the procurement context.⁶ It may be stated that the direction of World Bank procurement is of particular importance in Africa, first because the Bank provides leadership for the other multilateral development banks in relation to procurement;⁷ and second, because many developing countries engaging in the process of procurement reform are also influenced by the World Bank, either because it finances or provides other support for procurement reform.⁸

This paper will commence with an examination of Bank procurement policy between 1964 and 2014 and next, critically analyse the implications of these changes for African borrowers. It will be seen that both the Bank and its African borrowers will be required to adopt changes to their approach to and understanding of public procurement, if the proposed changes are to be successfully implemented.

2 A Brief Synopsis: Public Procurement Policy in the World Bank: 1964 to 2014

The formalization of procurement occurred in the Bank several years after the Bank begun lending. The Bank introduced International Competitive Bidding (ICB) as the normal procurement procedure in 1951.⁹ In 1956, it was decided that only Bank members (and Switzerland) would be eligible to bid for Bank contracts.¹⁰ However,

⁵ Operations Policy and Country Services, The World Bank's Procurement Policies and Procedures: Policy Review Approach Paper, (March 29, 2012). [Hereinafter Approach paper].

⁶ Williams-Elegbe 2014: 209.

⁷ Nwogwugwu 2005: 131.

⁸ Williams-Elegbe 2013: 95.

⁹ Operations Policy and Country Services, The World Bank's Procurement Policies and Procedures: Policy Review Initiating Discussion Paper, (March 29, 2012), page 2. [Hereinafter Initiating Discussion paper].

¹⁰ Initiating Discussion Paper: 2.

the Bank now permits firms and individuals from all countries to bid for Bank-financed contracts, with limited exceptions.¹¹ Soon after, the Bank realized the need to provide Bank staff with formal direction on procurement and thus in 1961, the first written procurement rules were compiled to provide guidance for staff. A few years later in 1964, the first formal instructions, which contained the procedures to be used by Bank staff in conducting international competitive bidding (ICB) were approved by the Bank's Board of Executive Directors. The first formal instructions on selecting consultants, mainly for large engineering contracts, were issued in 1966.¹² Preferences for domestic suppliers were introduced in 1966 and the specification of currency for bid comparisons was regulated in 1971.

These initial documents have undergone significant revision over the years to reflect changes in the Bank's approach to lending; changes in the global financial landscape; and innovations in the field of public procurement. The Bank's approach to procurement policy was premised on four considerations: economy and efficiency in the procurement process; competition; encouraging the local industry, and transparency. These policy considerations were implemented through specific procurement procedures; in particular, open and competitive bidding, which has been described as the "mainstay" of the Bank's policies for the procurement of goods, services, and works under Bank-financed projects.¹³ Open and competitive bidding was achieved through a default measure of requiring ICB for Bank-financed procurements. ICB in essence means that procurements are advertised internationally and are open to persons beyond the borrower country.

In the 1980s, the Bank introduced a measure of flexibility into its procurement procedures to take into account the purchases of common or "off the shelf" items, set thresholds for the use of ICB and introduced price as a criterion for the consideration of consultants' contracts.¹⁴ In addition, the 1980s evidenced a slight, if informal, move towards the use of country procurement systems, where appropriate, for Bank financed contracts.¹⁵ Other changes that occurred during this decade were increased

¹¹ Bank Procurement Guidelines, para 1.8.

¹² Initiating Discussion paper, page 2.

¹³ Approach paper: 1.

¹⁴ Initiating Discussion paper: 3.

¹⁵ Initiating Discussion paper: 3.

codification and standardization of procurement principles and the introduction of standard bidding documents.¹⁶

The 1990s wrought a step-change in the manner in which the Bank dealt with corruption in Bank-financed contracts, to take into account the “corruption eruption” of that decade as well as the considerable criticism against the Bank about its reticence to confront the issue of fraud and corruption in Bank-financed contracts. Thus in 1995, the Bank introduced an anti-corruption element into its procurement policy; implemented through a new paragraph into its procurement guidelines dealing with fraud and corruption in Bank procurements.¹⁷ This new paragraph established the Bank's intention to debar firms engaging in corruption in bidding for Bank-financed contracts and also contained a clause permitting borrowers to include a “no-bribery” pledge in bid documentation. The paragraph on corruption was again revised in 2004 to include collusion and coercive practices in the list of prohibited activities and to grant the Bank contractual access to bid and contract documentation and the power to audit the accounts of suppliers.¹⁸

The introduction of anti-corruption measures into the Bank’s procurement landscape was a long time coming and demonstrated a dramatic shift away from the Bank’s often stated policy not to interfere in domestic corruption issues, as these were considered “political,” matters outside the purview of the Bank’s jurisdiction, even where the corruption arose in Bank-financed projects.¹⁹ The prohibition against being influenced by political or non-economic considerations by the Bank is found in Article IV, section 10 of the Articles of Agreement, which provides that:

“[T]he Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic

¹⁶ Initiating discussion paper: 3.

¹⁷ World Bank, Guidelines: Procurement under IBRD Loans and IDA Credits and Grants (January 1995, revised in 1996, 1997 and 1999), para 1.15.

¹⁸ World Bank, Guidelines: Procurement under IBRD Loans and IDA Credits and Grants (May 2004), para 1.14.

¹⁹ Shihata 1997: 475. It has been argued that the Bank's concern with corruption coincided with the United States' increased attack on international bribery during the Clinton administration. See Wallace-Bruce 2000: 362.

considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.”²⁰

In 1995, the Bank decided to face the issue of corruption in developmental projects head-on and determined that it could rely on another provision in its Articles of Agreement which provides that loan proceeds must only be used for their intended purpose; to grant legitimacy to its anti-corruption efforts.²¹ The introduction of anti-corruption provisions were intended to ensure that in accordance with the Bank Articles of Agreement, Bank funds were used for the purpose for which they were intended, with due regard for considerations of “economy and efficiency” and to ensure that corruption did not continue to remain an obstacle to development.²²

Thus, by the end of the 1990s, the Bank’s procurement policy was based on the four considerations mentioned above: economy and efficiency in the procurement process; competition; encouraging the local industry, and transparency; with the introduction of an anti-corruption element that increased oversight and further encouraged economy and efficiency in project procurement.

The decade between 2004 and 2014 saw a profusion of activity and shifts in the Bank’s procurement policy although anti-corruption and governance remained at the forefront of the issues addressed by the Bank. These changes were important for borrowers in Africa and other developing countries where many of the documented instances of fraud and corruption in Bank contracts occurred.²³ In 2004, the Bank expanded its definition of corruption in its procurement guidelines to cover bid-rigging, collusion and price-fixing and also to give the Bank the right to inspect bid

²⁰ Articles of Agreement of the International Bank for Reconstruction and Development, art. IV, section 10, July 22, 1944, 60 Stat. 1440, 2 U.N.T.S. 134, amended Dec. 16, 1965, 16 U.S.T. 1942, 606 U.N.T.S. 294 [hereinafter Articles of Agreement].

²¹ Art. II section 5 (b) Articles of Agreement as amended provides “The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”

²² Winters 2002: 120.

²³ See World Bank Listing of Ineligible Firms and Individuals, available at <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>. Accessed 30 July 2014. See generally The World Bank, Office of Suspension and Debarment: Report on Functions, Data and Lessons Learnt 2007-2013.

documentation.²⁴ In addition,, the commitments of major donors and other development partners, as expressed in the Paris Declaration²⁵ of 2005 and as expanded by the Accra Agenda,²⁶ of 2008 identified reliance on country procurement systems in aid or donor financed projects as a priority for development partners.²⁷ These commitments provided the impetus for the Bank to engage in its pilot on the use of country systems. This pilot resulted in the eventual provision in the Bank procurement guidelines accepting the use of a country's procurement system (instead of the Bank procurement guidelines) in a Bank-funded project within certain narrow limits.²⁸

In 2007, the Bank went further and adopted a far-reaching Governance and Anti-Corruption strategy,²⁹ which laid out a multi-faceted approach to combat corruption and improve governance among Bank borrowers. In 2011, the revisions to the Bank procurement guidelines dealt with the issue of cross-debarment amongst the development banks and provided for a new sanction of the temporary suspension of firms involved in an allegation of fraud and corruption on a Bank financed project.³⁰

It must be noted that the shifts in the Bank's procurement policy during this time were not peculiar to the Bank's procurement framework. In particular, since the financial crisis of 2008, the Bank has been reevaluating its entire operations and governance framework in order to better respond to unforeseen global events and increase accountability, inclusiveness and participation in Bank decision-making.³¹

²⁴ Williams 2007: 152-157.

²⁵ Paris Declaration on Aid Effectiveness: Ownership, Harmonization, Alignment, Results and Mutual Accountability, High Level Forum on Aid Effectiveness, February 28 to March 2, 2005. Available at <http://www.unrol.org/files/34428351.pdf>. Accessed 23 January 2014.

²⁶ Accra Agenda for Action, 3rd High Level Forum on Aid Effectiveness, September 2-4, Accra Ghana. Available at <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf>. Accessed 23 January 2014.

²⁷ Paris Declaration, para 17; Accra Agenda, para 15. See also the Cuzco Declaration of the OECD/DAC Task Force on Procurement; Strong Procurement Systems for Effective States, May 2011 and the Busan Partnership for Effective Development Cooperation, 4th High Level Forum on Aid Effectiveness November 29 to December 2, 2011.

²⁸ Bank procurement guidelines, para 3.20.

²⁹ World Bank, Strengthening World Bank Engagement on Governance and Anti-Corruption (2007) and the updated version- Strengthening Governance, tackling Corruption. The World Bank Groups Updated Strategy and Implementation Plan (March 2012). Available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/03/14/000386194_20120314010633/Rendered/PDF/674410BR0SecM20Official0Use0Only090.pdf. Accessed 23 January 2014.

³⁰ Bank procurement guidelines, para 1.16 (d).

³¹ Mansuri and Rao 2013; Ahluwalia et al 2009; Ebrahim and Herz 2007.

The correlation between good governance and public service delivery³² informs why the Bank's procurement policies were impacted by its governance reform agenda.³³

In 2012, the Bank commenced the most holistic reform of its procurement policies, practices and procedures, which were aimed at ensuring that the Bank's procurement policies are in alignment both with the Bank's changing role and with the challenges and innovations that have dominated Bank operations since its procurement policy was first adopted.

The reform was aimed at ensuring that the Bank's procurement policy is fit for its purpose and aligns with the Bank's broader modernization agenda.³⁴ The review also has as its aims "the attainment of the larger goal of improving development effectiveness by encouraging the use of country systems and harmonization, building competitive local industries, strengthening public sector management, improving governance and anticorruption, promoting sustainability, accelerating investment in infrastructure, and deepening international trade, among others."³⁵ It is thought that these agendas converge, in some way or another, with public procurement and the review of the Bank's procurement policy will assist in identifying both the opportunities and the trade-offs in realizing these policy goals, to exploit synergies that advance the Bank's agenda, and to position the Bank for the future.³⁶

The reform commenced with a comprehensive review of the Bank's current approach to procurement under Bank-financed operations, the first such review by the Bank since it was established.³⁷ The review covered both the Bank's operational procurement policies and procedures, and their application by the Bank and its borrowers.³⁸

³² Kaufmann et al 1999.

³³ The World Bank and Public Procurement—An Independent Evaluation: Vol I, Building Procurement Capacity and Systems (2014 Independent Evaluation Group, The World Bank), 1.

³⁴ Approach paper: 5.

³⁵ Initiating discussion paper: xi.

³⁶ Initiating discussion paper: xi.

³⁷ Approach paper: para. 5.

³⁸ Approach paper: para 13.

The review led to the development of a new framework for procurement in Bank projects, which was adopted by the Executive Directors of the Bank in November 2013.³⁹ This new framework sets out for the first time, a vision statement for Bank project procurement, which is that “Procurement in Bank Operations supports clients to achieve value for money with integrity in delivering sustainable development.”⁴⁰ The importance of the articulation of this vision statement cannot be over-emphasized as it means that for the first time, the Bank is clear as to what it intends its procurement policy to achieve and further, the statement explicitly puts Bank borrowers at the centre and as the beneficiaries of its procurement policy. It appears that the Bank is aiming for a more collaborative relationship, a partnership even, between itself and Bank Borrowers. This is notable, given that prior to this review; Bank procurement policy was imposed by the Bank on its borrowers to meet the Bank’s fiduciary obligations and were adopted without input from the users, and often without taking into account borrowers needs.⁴¹ An important aspect of the vision statement is that it seeks to ensure sustainable development. This is the first time that the Bank has development at the centre of its procurement practices as opposed to its fiduciary obligations. It also signals an acceptance of the often-touted wisdom, at least at domestic level that public procurement can be a prominent tool to help achieve developmental objectives.⁴² The Framework document also emphasizes that the vision statement will be undergirded by principles of best practice in procurement, which are said to be economy, efficiency, effectiveness, integrity, openness and transparency, and fairness.⁴³

The Framework document also developed a value-proposition for the Bank. This value-proposition is focused on “achieving value for money, supporting clients in pursuing sustainable procurement goals, integration, and exercising adaptability and leadership.”⁴⁴ Again, it must be noted that this evidences a paradigm shift for the Bank. Prior to this review, Bank procurement policy was seen as a tool to

³⁹ See World Bank, Procurement in World Bank Investment Project Finance. Phase I, A Proposed New Framework (October 25, 2013). Available at <http://consultations.worldbank.org/consultation/procurement-policy-review-consultations> [hereinafter A New Framework].

⁴⁰ See A New Framework.

⁴¹ Casavola 2010.

⁴² See generally, McCrudden 2007; Arrowsmith and Kunzlik (eds) 200; Watermeyer 2000: 226-250.

⁴³ A New Framework: 4.

⁴⁴ A New Framework: 6.

standardize procurement practices and ensure the appropriate use of Bank funds, and although the Bank prided itself on its role in setting the tone for public procurement, especially for developing and African countries that looked to the Bank for guidance in relation to their procurement reform, this was the first time that the Bank expressed a formal objective to provide leadership in relation to public procurement. This leadership role will be take the form of the Bank continuing to champion procurement reform, the articulation of best practices and the Bank developing its knowledge of partner systems.⁴⁵

A major change proposed by the Framework document is in relation to the adaptability of procurement, and the Framework document expresses the desire that at the micro or project level, Bank procurement arrangements will be “fit-for-purpose”.⁴⁶ It will be interesting to see how this will be implemented, especially as the nature of Bank-financed contracts has changed significantly over the years and in Africa, for the fiscal year ending in 2013, 22% of Bank lending was to the areas of governance (public administration, law and justice),⁴⁷ which often represent smaller values and not the large infrastructure projects the Bank was once known for. However, this change will finally put to rest the criticism that the Bank used to adopt a “one size fits all” approach to its procurement regulations, which were designed for large stand-alone infrastructure projects and did not therefore meet the needs of the non-project (or program procurements) and smaller value, less complex project procurements. This new move towards adaptability means that the Bank will permit the use of country systems, where it sees that an acceptable standard of procurement will be achieved, even if the country’s approach and legal and administrative tradition differs from the Bank’s. This shift will also affect African countries, which are cumulatively the Bank’s largest borrowers and also the region with the most immense capacity challenges. A move away from standard procurement practices to more individual (even if more suitable) practices may stretch and have implications for existing procurement capacity in African borrowers.

⁴⁵ A New Framework: 6.

⁴⁶ A New Framework, page 7.

⁴⁷ The World Bank Annual Report, 2013, 26.

The proposed reform of the Bank's policy will lead to increased coherence in the Bank's procurement framework. Prior to the spate of the reforms, the Bank procurement guidelines contained all the aspects of Bank procurement. In other words, the guidelines contained procurement policy, guidelines, rules and procedures and there was no clarity on which information was mandatory and which was not. With the proposed reforms, the Bank has fragmented the all-encompassing guidelines into four separate documents: the draft procurement policy; the procurement procedures for the Bank and another set for borrowers and procurement directives.

The proposed draft procurement policy⁴⁸ is a brief document, which contains the seven principles, which will undergird Bank procurement, once the reform agenda is complete. These principles are value for money, economy, integrity, fit for purpose, efficiency, transparency and fairness. The principles will inform and drive the Bank's approach to procurement and it is hoped that the Bank will indeed be able to incorporate these principles in its complex and diverse procurement operations in Africa.

The review of the Bank's procurement policy is far from over. In August 2014, phase II of the review commenced which would articulate the Bank's new procurement framework into a fuller strategy for how the Bank would support client procurement performance and address implementation. This phase will also include more consultation with stakeholders and lead to the preparation of a detailed policy proposal, which will be presented to the Bank's Executive Directors for approval in 2015 and the policy launched thereafter.⁴⁹

⁴⁸ Procurement in World Bank Project Investment Finance: Procurement Policy (Draft), July 8, 2014. Available at http://consultations.worldbank.org/Data/hub/files/consultation-template/procurement-policy-review-consultationsopenconsultationtemplate/materials/draft_procurement_policy_for_consultation_august_2014.pdf accessed 17 September, 2014. Hereafter Draft Procurement Policy.

⁴⁹ A New Framework:16.

3 Implications of the Proposed Procurement Policy for African Borrowers

African nations make up a significant proportion of Bank Borrowers. In 2013, Bank lending to Africa stood at \$8.245 billion, in comparison with the \$4.474 billion loaned to South Asia during the same time frame.⁵⁰ Thus, any changes to the Bank's policy will disproportionately affect the region.

The proposed changes to the procurement policy will require a step change both for the Bank and its borrowers in relation to procurement policy, approach, organisation and arrangements and will also have implications for the way the Bank thinks about, organizes and conducts its procurement in future.

One of the areas that will be most affected include the Bank's approach to risk assessment as there is going to be a focus on high risk and high value contracts. African and developing countries traditionally present the highest risk to Bank lending due to the risks of fraud, corruption and performance risks on the part of contractors and negligence, corruption and a lack of capacity in following Bank rules on the part of borrowers. In addition, the Bank will see changes to its staffing requirements as Bank procurement staff will move from reviewers of contract documentation to trainers and partners. It appears that this may mean a closer working relationship, and better oversight of Bank contracts. This may not be welcomed by some borrowers, who are able to manipulate Bank processes on the basis of the limited interaction between the Bank and the borrower agencies.

In addition, and perhaps more importantly, the Bank will have to reorient its understanding of capacity development in borrowers in relation to the use of country systems. Bank intervention in procurement reform has not been altogether successful,⁵¹ especially in relation to the development of procurement capacity. Whilst reform of institutions, legal frameworks and procedures has been instituted, the moral hazard that accompanies procurement reform has not been successfully

⁵⁰ The World Bank Annual Report, 2013.

⁵¹ Williams-Elegbe 2013: 95.

addressed, and the research has shown that this prevents procurement reform initiatives from wholly succeeding.⁵²

Some of the more salient implications of the proposed changes to the Bank's procurement policy for the Bank and African borrowers include:

- i. Procurement arrangements must be “fit for purpose”: The idea of “fit for purpose” procurement is that the best outcome in relation to what is being procured should be pursued through dialogue with potential suppliers in order to generate the best overall result for the contracting agency and the users of the goods and services.⁵³ This may be one of the most difficult concepts for the Bank to adopt and internalize, as it entails a move away from the traditional procurement approach which ensures minimal pre-contract interaction between contractors and the procuring agency in order to minimize the risks of corruption and collusion in the procurement process. This approach is of particular importance in the African context, given the risks of fraud and corruption mentioned above. It must be noted that knowledge sharing and dialogue between potential contractors and the procuring agency can enhance outcomes in relation to complex contracts, where research and development or innovative solutions are required. Enhanced dialogue is already a feature of procurement regulations in other contexts such as the “competitive dialogue” procedure in the EU procurement directives.⁵⁴ It will be interesting to see how the Bank will ensure that a similar procedure in the Bank context does not lead to abuse by African Bank clients.
- ii. Value for money: The concept of value for money in public procurement regulation is hardly new, but it has transformed from a concept that pursued the least-cost procurement to a concept that is focused on the life-cycle costs of the procurement and not just the cost or purchase price.⁵⁵ Although the Bank has traditionally permitted the consideration of factors beyond the cost

⁵² Williams-Elegbe 2013: 95.

⁵³ Initiating Discussion paper: 21.

⁵⁴ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, Article 29.

⁵⁵ Initiating Discussion paper: 21.

price for Bank-funded procurements, anecdotal evidence suggests that most African borrowers would focus on price in Bank-funded projects to ensure that they do not fall afoul of the Bank guidelines. However, the Bank now seeks to make the determining factor in evaluating bids for Bank-funded projects “the optimum combination of whole-life costs and benefits.”⁵⁶ This will be very difficult for the Bank to achieve, especially in Africa where borrowers often lack capacity in the area of procurement and supply chain management.⁵⁷ This is because determining whole life cycle costs and benefits necessarily includes an assessment of factors such as maintenance cost; management costs; operating costs; the costs of disposal of goods (where appropriate) and the implications of risks and flexibility throughout the entire life cycle. Although value for money is conceptually sound, its implementation in practice may prove difficult as the inclusion of more subjective factors in public procurement always increases the scope for the abuse of discretion.

- iii. Supporting clients in pursuing sustainable procurement goals: The issue with this new policy thrust will be to determine the scope and the level of support that the Bank will be able to provide to African clients. It must be stated that at present, the Bank provides some level of support to its clients inter alia through “implementation of support missions”. These missions are often helpful in distilling the areas where Bank clients are having difficulty following Bank procurement guidelines; clarifying the objectives and outcomes for a Bank funded project and highlighting issues that Bank clients may be facing with Bank procedures for withdrawal and retirement of funds. However, it seems likely that the Bank desires to provide a greater level of support to clients to ensure that procurement goals are met. At present, implementation support missions are very process oriented and can focus on ensuring compliance with Bank regulations. It will be interesting to see whether the Bank will adopt a more flexible approach to ensuring African clients meet their goals, even if this comes at the risk of less than perfect compliance with Bank procedures. It must be noted that the Bank desires not only to provide further and where required “hands-on” support in relation to Bank-funded

⁵⁶ Initiating Discussion paper: 21.

⁵⁷ Williams-Elegbe 2014: 209.

procurements, but more generally in relation to domestic procurement. Thus, there is an indication that the Bank will devote more resources to its clients to assist them in improving their public procurement regimes by “filling gaps, streamlining their procedures and processes, overcoming bottlenecks, and providing more support for capacity building and professionalization”.⁵⁸ The second issue that will arise with this policy thrust is the implications for Bank procurement support staffing. At present, the Bank has about 220 full-time procurement staff in its offices worldwide.⁵⁹ Increasing the level of support to Bank clients worldwide may entail an increase in the numbers of procurement staff and an increase in the capacities of existing staff.⁶⁰ This will not necessarily be easy, given the vast range of clients, contracts and sectors that the Bank deals with.

- iv. Providing leadership in public procurement: The Bank has long considered itself the global leader in relation to procurement best practices, and wants to ensure that it maintains this leadership role.⁶¹ Innovations such as the Country Procurement Assessment Reports (CPARs) and the Methodology for Assessment of National Procurement Systems (MAPS) have ensured that in the area of procurement reform,⁶² the Bank indeed does have a leading role. However, it must be stated that direction in the area of procurement reform is not the sole preserve of the Bank and the United Nations Commission on International Trade Law (UNCITRAL),⁶³ is widely regarded as providing a globally acceptable template for countries which wish to reform or develop procurement regulation for the first time.⁶⁴ For the Bank to maintain relevance in the area of procurement, it will need to stop considering procurement through the narrow prism of Bank-funded projects. This is a radical change from current Bank operations and the thinking of Bank staff and may raise conflicting priorities that will need to be addressed in due course. As has been

⁵⁸ A New Framework:10.

⁵⁹ A New Framework: 10.

⁶⁰ A New Framework: 10.

⁶¹ A New Framework: 2.

⁶² Williams-Elegbe 2013: 95.

⁶³ A Guide to UNCITRAL, available at <http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf>.

⁶⁴ Arrowsmith & Tillipman (eds.) 2010: 1; Hunja 1998; Hunja 2003; Basheka 2009: 131.

discussed above, Bank regulation of procurement developed from a desire to ensure that the Bank met its fiduciary obligations as expressed in its Articles of Agreement and that Bank loans were judiciously used for their intended purpose. However, of course, procurement is a strategic function that can ensure that developing countries meet their developmental aspirations. The Bank has already realized this in its newly articulated vision statement, but it must in practice ensure that in rewriting its new guidelines and in providing support to clients, the goal is not merely to ensure that Bank funds are properly used.

4 Conclusion

This paper is an attempt to examine in detail the proposed salient changes to the Bank's procurement policy as well as the evolving nature of the Bank's procurement policy and distill the implications for the Bank and its African borrowers. A comprehensive review of Bank procurement is long overdue as the Bank has essentially maintained the same approach to its procurement policy since its establishment, despite changes in the nature of the Bank's lending, projects and clients; evolutions in procurement methods; innovations in relation to e-technologies; the trend towards harmonization of procurement practices and regulation; and other changes such as the increasing move towards public-private partnerships, outsourcing and the use of concessions. When and if the policy eventually comes to fruition, it will involve a radicalization of the approach to procurement the Bank has adopted since its inception. If implemented, the new policy will bring about significant changes to the arms-length nature of procurement interactions between potential contractors and procuring agencies; a change to bid evaluation methods to take life cycle costs into account in order to achieve value for money; changes to Bank staffing requirements in procurement to provide more support to Bank clients and a more holistic approach to public procurement to ensure that the Bank maintains its leadership role.

It is hoped that the policy will be fully developed and implemented during 2015 as stated.⁶⁵ Given the extensive nature of the proposed reforms, there is a fear that the Bank may realize that it has bitten off more than it can chew and the reforms may never be fully implemented, as was the case with the extensive reforms that were proposed in 1997, which did not have the desired or a sustained impact on Bank procurement.⁶⁶

⁶⁵ A New Framework: 16.

⁶⁶ Initiating Discussion paper: 4-5.

BIBLIOGRAPHY

Accra Agenda for Action, 3rd High Level Forum on Aid Effectiveness, September 2-4, Accra Ghana. Available at <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf>.

Ahluwalia, MS et al, (2009) *Repowering the World Bank for the 21st Century: Report of the High Level Commission on Modernization of World Bank Group Governance*. Washington:World Bank.

Alacevich, M (2009) *The Political Economy of the World Bank: The Early Years*, Stanford University Press & The World Bank.

Arrowsmith S & Tillipman J (eds.) (2010) *Reform of the UNCITRAL Model Law on Procurement: Procurement Regulation for the 21st Century*. West

Arrowsmith S and Kunzlik P (eds), (2009) *Social and Environmental Policies in EC Procurement Law* Cambridge: Cambridge University Press.

Basheka, B (2009) "Public Procurement Reforms in Africa: A Tool for Effective Governance of the Public Sector and Poverty Reduction", in Thai KV(ed), *International Handbook of Public Procurement*. Boca Raton: Auerbach Publications.

Casavola, HC (2010) "The Globalization of Public Contract Law" in Nogellou R and Stelkens U, *Comparative Law on Public Contracts*. Brussels: Bruylant.

Ebrahim, A and Herz, S, *Accountability in Complex Organizations: World Bank Responses to Civil Society* (2007) *Harvard University John F Kennedy School of Government Faculty Research Working Papers*.

Hunja R (1998) "The UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Impact on Procurement Reform", in Arrowsmith S and Davies A (eds), *Public Procurement: Global Revolution*. Alphen aan den Rijn: Kluwer Law.

Hunja R (1997) Recent Revisions to the World Bank's Procurement and Consultants Selection Guidelines, *Public Procurement Law Review*, 6: 217, 218.

Hunja, R (2003) "Obstacles to Public Procurement Reform in Developing Countries", in Arrowsmith S and Trybus M (eds), *Public Procurement: The Continuing Revolution*. Alphen aan den Rijn: Kluwer Law.

Kaufman D et al, (1999) Governance Matters, *Policy Research Working Paper 2196*. Washington: The World Bank

Mansuri, G and Rao, V, (2013) *Localizing Development: Does Participation Work?* Washington: World Bank.

McCrudden, C (2007) *Buying Social Justice: Equality, Government Procurement and Legal Change*. Oxford: Oxford University Press.

Morais, HV (2004) Testing the Frontiers of Their Mandates: The Experience of the Multilateral Development Banks *American Society of Int'l Law Proceedings*, 98:64.

Nwogwugwu E (2005) Towards the Harmonisation of International Procurement Policies and Practices", *Public Procurement Law Review*, 14: 131

Shihata, I.F.I (1997) Corruption: A General Review with an Emphasis on the Role of the World Bank", *Dickinson Journal of International Law* 15: 451.

Independent Evaluation Group, (2014) *The World Bank and Public Procurement—An Independent Evaluation: Vol I, Building Procurement Capacity and Systems*. Washington: The World Bank.

The World Bank, (2014) *Office of Suspension and Debarment: Report on Functions, Data and Lessons Learnt 2007-2013*. Washington: World Bank.

Wallace-Bruce N (2000) Corruption and Competitiveness in Global Business: The Dawn of a New Era *Melbourne University Law Review* 24:349.

Watermeyer R (2000) "The Use of Targeted Procurement as an Instrument of Poverty Alleviation and Job Creation in Infrastructure Projects" *Public Procurement Law Review*, 2: 226.

Williams S, (2007) World Bank introduces new measures to reduce fraud and corruption in Bank-financed projects and the administration of Bank loans. *Public Procurement Law Review*, 16: NA152.

Williams-Elegbe, S (2013) The World Bank's Influence on Procurement Reform in Africa, *African Journal of International and Comparative Law* 21: 95.

Williams-Elegbe, S (2014) Beyond UNCITRAL: The Challenges of Procurement Reform Implementation in Africa, *Stellenbosch Law Review* 1: 209.

Winters J, (2002) Criminal Debt in Pincus JR & Winters, JA (eds.) *Reinventing the World Bank*, Ithaca: Cornell University Press.

World Bank, Guidelines: Procurement of Goods, Works and Non-Consulting Services Under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011).

World Bank, Guidelines: Procurement under IBRD Loans and IDA Credits and Grants (January 1995, revised in 1996, 1997 and 1999).

World Bank, Guidelines: Procurement under IBRD Loans and IDA Credits and Grants (May 2004).