

UGANDA DEBT NETWORK



Civil Society Position on Key Issues in Procurement: Advocating for Improved Public Accountability and Service Delivery in Uganda

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BACKGROUND

Public procurement is the acquisition of goods, services and works by a procuring entity using public funds (World Bank, 1995). In Uganda the need for procurement reforms became urgent because of internal and external pressure given the fact that the Government was losing huge sums of money in poorly managed procurement processes that cost the tax payer a lot of money. The government of Uganda initiated reforms in the public procurement and disposal sector in 1997, following the enactment of the 1995 constitution and the introduction of several reforms and structural adjustment programmes. Prior to this, public procurement was governed by the 1977 Public Finance (Tender Board) Regulations under the Public Finance Act of 1964¹. This paper provides an analysis of the key challenges affecting public procurement in Uganda against the backdrop of reforms initiated by Government to improve management of procurement processes in Uganda. Key recommendations are also cited to address these challenges.

ACHIEVEMENTS OF PROCUREMENT REFORMS OVER THE YEARS

We, in the civil society fraternity acknowledge government's efforts and successes so far realized in establishing an enabling legal and regulatory framework governing public procurement in Uganda. This is provided for under;

- The 1995 Constitution of the Republic of Uganda
- The Public Procurement and Disposal of Public Assets Act, 2003
- The Public Procurement and Disposal of Public Assets Regulations of 2003
- The local Governments Public Procurement and Disposal Regulations of 2006
- The Local Governments Act of 1997 as amended
- Local Governments Financial and accounting Regulations of 1998
- Local Governments (Public Procurement and Disposal of Public Assets) Guidelines of 2008
- International procurement Laws e.g. World Bank Guidelines

<?> Government of Uganda (2003), The Public Procurement and Disposal Regulations. [Online]. Available at www.ppd.go.ug

Highlights of some key amendments to the PPDA Act 2003

1. To promote transparency and accountability by streamlining the functions of accounting officers and Contracts Committees; accounting officers will be personally liable for their actions in the procurement process. Also, the definition of Accounting Officers is now expanded beyond those appointed by the Secretary to the Treasury to include Heads of Statutory bodies or government enterprises.
2. Members of PDEs are prohibited from entering into contracts with their entities and all members are required to disclose any conflict of interest at key stages.
3. An emergency situation has been expanded to include a situation where a government program would be delayed or seriously compromised unless procurement is undertaken within the required time frame. Also, the definitions of “supplies” and a “public asset” have been defined.
4. Procurement tribunal has now been provided for, intended to strengthen the administrative review process and guarantee public confidence in the procurement process.
5. The law now provides for the Ministry of Defense and national security organs to appoint Contracts Committees to handle procurement and disposal of classified items who shall be nominated by the respective accounting officers and approved by the Secretary to the Treasury.
6. The law also provides for the special nature of procurement of medicines and medical supplies including providing for the specific attributes of medical supplies and defining the medical supplies which are subject to the law.
7. On the bidders’ side, firms will be able to withdraw their bids before the final date without having to seek the minister’s permission.
8. The PPDA Act is to apply to Bank of Uganda (BOU) and the Office of the Auditor General except in the performance of their core mandate under the Constitution. Formerly BOU had not been compliant to the PPDA Act in all its procurement and disposal activities.
9. A procuring and disposing entity shall ensure that the evaluation of bids is done expeditiously in accordance with the regulations with the Act.
10. To promote growth of local and small enterprises, provision is made for preference for domestically manufactured goods and Ugandan contractors and Ugandan consultants and for reservation of specified procurements.

11. Where there is a condition of a bi-lateral loan or negotiated grant that the provider should originate from the country of the donor, procurement of such a provider shall be in accordance with the PPDA Act. In case there is a conflict, the loan condition shall prevail with respect to a procurement that uses those donor funds and no others.
12. The PPDA shall determine the price, where applicable, of works, services and supplies in common use by more than one entity. Similarly, the PPDA is now mandated to review the decision of an accounting officer of an entity where an administrative review has been lodged within 15 working days before the accounting communicates it to the complainant.

All the above changes point to Government's commitment and efforts in improving the management of procurement processes with emphasis on achieving value for money. However, a number of challenges still exist that require redress.

MAJOR RECURRING PROCUREMENT CHALLENGES OVER THE LAST FIVE YEARS

We do appreciate government's efforts in instituting an enabling legal framework governing public procurement, however we are concerned about the high levels of corruption as evidenced in the World Bank (2005) report, which estimates that Uganda losses \$300m (Ush 510billion) per year through corruption and procurement malpractices. We as civil society are very concerned because we suspect that the loss of funds to procurement irregularities now amounts to over three trillion Uganda shillings. This is due to the fact that we have not seen significant impact of procurement reforms in reducing procurement-related corruption as depicted in performance reports of the Office of the Auditor General (OAG), Public Accounts Committee reports, among other official records.

An estimated 17% - 23% of the government expenditure takes place at the local government level² yet the process of extending the reforms to the local government procurement system has not yet been fully achieved. Key recurring challenges in procurement over the last five years include the following:

² MoFPED, National Budget Framework Paper, FY 2012/13 - FY2016/17

1 Flouting of prescribed procurement practices and regulations

Many central government ministries and agencies have been found not to adhere to prescribed procurement practices. Procurement audits carried out by the PPDA revealed that out of 322 contracts audited as at end of 2005, only 7 (2%) were assessed as being clean, i.e., carried out in accordance with the law and with internal structures observed³. Among the key weaknesses identified were inadequate procurement planning, leading to an excessive use of direct procurements and failure to align procurement with the budgetary process; poor record-keeping, leading to many procurement documents being untraceable (or procurements having taken place without documentation); and abuse of process, for example, contracts having been awarded to a company other than the best evaluated bidder, retrospective approvals for contracts, inconsistencies in tender evaluation and interference in the contract award process by unauthorized parties.

Several Auditor General (OAG) annual performance reports also indicate that a number of government ministries, departments and agencies (MDAs) and local authorities procure goods and services without competitive bidding and/or without following procurement procedures contrary to the Public Procurement and Disposal of Public Assets Act (PPDA Act). As a result, OAG could not confirm that value for money was obtained through the procurements.⁴

According to section 6 of the PPDA Regulations, fourth schedule, direct procurement is only permissible where there is insufficient time for any other procedure (emergency), supplies/services are available from one provider, no advantage can be obtained from further competition or additional works/services are required to be compatible with existing supplies, among others. It was established through an OAG 2011 Annual Report that the management of the Presidential Initiative on Banana Industrial Development (PIBID) project directly procured goods and services without following the above conditions stated in the regulations⁵. A review of the project annual procurement reports revealed that the direct procurement (sole source) method was used in the F/Ys 2009/10 and 2010/11 to procure such services as advertising space (Cradle Communications Ltd SHS 3, 700,000), supply of farmers' drip irrigation training kit (Balton (U) Ltd Shs 10, 000,000) and supply of comprehensive motor vehicle insurance cover (Chartis (U) Ltd Shs 5,000,000). It was also noted that management procured security services from M/S SARACEN (U) LTD on 8th June, 2009 at a cost of Shs 5,215,600 per month through a memorandum of understanding. The procurements in question violated the PPDA Act and regulations. It is possible that the project did not get value for money in these procurements since the required principles of transparency and competition were ignored.

³ BASHEKA, B. (2008) Procurement planning and accountability of local Government procurement systems in developing Countries: Evidence from Uganda.

⁴ Office of Auditor General (OAG) Performance Report, 2008

⁵ Annual Report of the OAG, for the year ended 30th June 2011 Vol 2 (Central Government).

Further, a procurement study undertaken by Uganda Debt Network (UDN) in 2001⁶ in eight (8) district local governments noted that whereas procurement officers emphasized that LG procurement above a certain threshold should be undertaken through the LG Procurement department, there were cases of procurements undertaken at sub-county levels in contravention of the PPDA Act and regulations. In relation to this, during a routine monitoring visit by community monitors in Kumi district, it was established that a double payment on a project of fencing Mukongoro Health Centre III was made on 17th September 2007, where Mukongoro Sub-County entered a contract of sh14,494,117 with a contractor, BAP Engineering Company Limited, to undertake the fencing work. The same project was allocated sh 6,277,345 based on a 21st February 2011 letter from the Acting Kumi district CAO, to facilitate completion of the fencing work. Evidence indicates that this activity had been completed in the first phase and paid for.

Recommendations:

- The PPDA through the new PPDA Act should enforce stringent penalties and sanctions against those who flout procurement laws and procedures to stem the rising incidences of non-compliance with the law.
- The PPDA should regularly blacklist companies that flout procurement laws and ban them from doing business with government for specified periods, and also publish their names in local newspapers.
- In line with the Presidential Initiative on launching government projects, public agencies should disclosure contracts to civil society and invite them to participate in monitoring processes and providing reports to such agencies for corrective action. To ensure smooth running and managing of relationships between public agencies and private contracts, government agencies should enter into memoranda of understanding spelling out roles of civil society, managing communications as well as observing ethical issues when monitoring contracts.

2 Corruption during procurement processes

Despite government's declaration of a zero tolerance policy, corruption in public procurement is still pervasive, institutionalized and endemic. Over the years several high profile cases have been reported related to procurement corruption where high profile and influential people implicated in corrupt dealings and others cited in Commissions of Enquiry reports remain unpunished. Some notable cases involving corruption in procurement processes include; the 600MW Karuma hydro-power project estimated

⁶ Uganda Debt Network (2011), Public Procurement in Uganda: Challenges and Opportunities

to cost \$2.2billion, halted due to irregularities in the procurement process, including flouting of the procurement procedures and allegations of ghost bidders. Bribery allegations to influence awarding to a Chinese firm and misrepresentation of facts and figures about its competency by another prequalified firm are said to have been cited.

Another notable case is where the Permanent Secretary (PS) Ministry of Local Government amongst others altered the decision of the Contract Committee for supplies of the 70,000 pieces of Bicycles for Local Government and as a result, the Government paid for unknown specification/type of bicycles which were also never delivered. Similarly, in a report on government compensations, Parliament's Public Account Committee noted that several of the contracts that the government signed with businessman Hassan Basajabalaba's HABA Group of companies to manage city markets, had been based on "irregular" contracts as they had not be cleared by the Attorney General as is legally required under Article 119 (5) of the Constitution.

Further, in the botched National ID project, the President reportedly influenced the procurement process of the national I.Ds by recommending single sourcing in favor of a particular company, on lobbying of the German ambassador to Uganda rather than open competitive bidding, contrary to the procurement laws. The favored company was expected to deliver 3.5 million IDs by December 2010 and at least 21 million by the end of the project in June 2013, but the firm has to-date released only 400 IDs, and the project abandoned, without those faulted being brought to book.

Further still, the much publicized 2007 Common Wealth Heads of Government Meeting (CHOGM) procurement irregularities, and many other such scandals all point to the magnitude of the problem and its persistence. Even more alarming, there is no evidence that the reforms carried out so far have been successful in reducing the incidence of corruption in public procurement in Uganda. The annual surveys by Transparency International have shown that Uganda is one of the most corrupt countries in the world and that little progress has been made in reducing it. Indeed, in 2013 Uganda's CPI score was 26 out of 100 (with 100 being the cleanest) and was 140th position out of 177 countries, a notable decline from last year's 130th position, indicating that citizens believe corruption has worsened.

Recommendations:

- Parliament should enact stringent penalties against public officials and companies proved to have engaged in corrupt procurement dealings. For example the amended PPDA law should provide for recovery of all monies and confiscation of property acquired from proceeds of corruption, such as provided for in the Anti-corruption Act, 2009 under Sections 63–66 on confiscation. Parliament should also enact an enabling law that allows for recovery of stolen funds that are deposited on accounts in foreign countries.

- We recommend the establishment of a central procurement body that handles certain specific procurements of key significance and significant financial thresholds, such as the case of Karuma Dam, roads projects and longevity in finalizing government procurements.
- Government through the DPP and IGG should desist from selective prosecution of individuals implicated in corrupt dealings (e.g. those highlighted above) as this sends wrong signals and casts doubt on its commitment to decisively fight corruption.
- The Presidency in view of the zero tolerance policy should demonstrate consistent political will and commitment to fighting corruption in all sectors including procurement. For example senior officials implicated in procurement-related malpractices should be barred from holding public office in the public interest.
- Government agencies should respect and implement recommendations of oversight institutions including Parliament, Office of the Auditor General (OAG), the Inspector General of Government and the PPDA, otherwise these are rendered toothless institutions and viewed as mere rubber stamps of the Executive.
- The role of civil society in promoting transparency, accountability and value for money in public contracts should be formally recognized and close partnerships with public agencies in this regard should be fostered. In addition, public agencies should in line with the Access to Information Act actively provide contract related information to civil society organizations to ensure their timely and positive contributions to contract processes.

3 Influence peddling and interference by politicians during procurement processes

The problem of influence peddling during public procurement at both national and local government levels is rampant and occurs both in large scale procurements worth billions of dollars to small scale procurements worth a few million shillings. Officials on the technical evaluation committees sometimes have an interest or major stake in the contracts on the table and it's very easy to influence the whole process for the contractors they prefer. At the local government level in particular, members of the evaluation committees are usually poorly compensated for their work in evaluating contracts. This therefore creates room for evaluation committee members to “get” an interest in particular contracts so that they can get kickbacks⁷.

Similarly, procurement decisions have in many instances been determined largely

⁷ NAGITTA, P.O and SSENOGA FRANCIS (2008), Tackling Corruption in Public Procurement in Uganda's Local Governments: A case study of Kampala District

by local politicians who influence the Contracts Committees and Procurement and Disposal Units. For example, President Museveni was reported to have influenced the procurement process of the botched National I.D project by recommending single sourcing in favor of a particular company rather than open competitive bidding, contrary to the procurement laws. Similarly, District procurement officers are known to be subjected to influence peddling by political leaders in their areas of operation. To quote the words of one Procurement officer, “The pressure is too much.” (UDN, 2011). They stated that they are put in difficult situations because they are recruited by the District Service Commission, whose members are appointed by the District Chairman. They stated that because of this, some district chairpersons feel that the Procurement Officer owes them, and should therefore do “something” for him/her in return for the job. Procurement officers in the target districts overwhelmingly recommended that the appointment of Procurement Officers should be done by the centre; and that they should be rotated at least every two years so that they do not stay in the same place for too long.

Recommendations:

- The amended PPDA law should provide for procurement processes and proceedings during contract awarding to be made public, to promote openness and greater transparency during public procurement. This is already the case in the Judiciary Court system, local council proceedings and even Parliament deliberations.
- The law should also criminalize and penalize inappropriate interaction between procuring entities and bidders.
- Stringent laws need to be enacted to deter political leaders from involving themselves in procurement processes and related investigations.
- Parliament should bar civil servants and their immediate family members from doing business with the Government, particularly cases where a direct conflict of interest may arise for public officials serving in a government ministry, department or agency (MDA) concerning a contract award to a family member or relative to provide services within that same MDA.

4 Delays in and/or failed delivery of executed contracts

This relates to excessive delays in completion or delivery of executed works whereby the period or duration specified for execution of procured works and services is exceeded unnecessarily. Examples have been witnessed in the delayed completion of road works such the Northern bypass, Jinja –Kamuli road; Tororo – Mbale – Soroti road; and the Kabale – Kisoro road among others. Such delays cast doubts in the public mind as to the competence of the contractors awarded the works and whether lawful procurement procedures were actually followed in contracting them.

According to an OAG performance report⁸, the Ministry of Works and Transport contracted a local company to supply two units of Mitsubishi Pajero GLX station wagon, one Fuso cargo crane truck, one Fuso Dump truck and a self-loading truck in respect of which an LC account was opened in Bank of Uganda for Shs. 1,342,142,967. The company only delivered the two units of Mitsubishi Pajero GLX and the rest of the machinery had not been delivered by the time of writing the OAG report in March 2012. This is a breach of the contract terms that specified delivery within six months.

It was further established from the above cited OAG report that the Ministry of works also solicited and obtained extra funds to finance the completion of the works under the Karamoja Roads Development Programme (KRDP). However, the extra funds requested for were to fund activities that had already been paid for but not executed. This was the case for rehabilitation of Lokichar-Turtuko-Nyakwae road, where culvert works worth Shs.418 million were paid for in May 2011 before the funds approval in June 2011 and yet at the time of audit (October 2011) the culvert works had not been executed. Similarly, during rehabilitation of Loros-Katekekile and Moroto-Nakiloro roads, extra shs. 17,090,935 was requested beyond the contractual balance of Shs.467,909,935 even when some of the items already paid for were not executed. Soliciting for funds for work items that had already been paid for is not a good practice.

The OAG Report also noted that certain contractors were awarded more than one contract located far apart. For example; M/s M&B Engineers Ltd was executing three contracts in, Rukungiri (Birara Bridge), Kibaale (Mpongo Bridge) and at the Uganda-Kenya boarder (Riwo- Muimet road). The three contracts had stalled and the contractor exhibited poor workmanship on all the three projects. Similarly, MML Road Construction Co. Ltd had a contract for Muko-Nyanamo in Kabale and another for bridge construction in Okokor, Kumi district. The two projects had all stalled.

Further, Mukalazi Technical Services Ltd had two contracts, one of opening Monyale-

⁸ Annual report of the Auditor General, for the year ended 30th June 2011 vol 2 Central Government.

Lake Opeta in Karamoja and another in Kumi, Soroti, Amuru and Katakwi Districts; both contracts stalled. Multiple contracts overstretch contractors in terms of resources and could have contributed to poor quality and delays in completion of works for all the projects audited. In addition, some of the contractors had running contracts with Uganda National Roads Authority (UNRA) and Local Governments.

It was observed from this audit and other previous audits undertaken by the OAG that a number of contractors fail to complete works and exhibit poor workmanship on all their projects. In some instances they failed to finish works they were fully paid for. Examples of Contractors under these categories are M/s MML Road Construction Co. Ltd, Mukalazi Technical Services Ltd, Omega Construction Ltd and M& B Engineers.

Recommendations:

- The PPDA and MoFPED should establish a database of service providers detailing the capacity of each firm and work load, to monitor and check the problem of delays and non-execution of works.
- Respective User departments and their accounting officers should enforce strict adherence by contractors to service and works' contract durations, and contractors who unnecessarily delay in project execution should not be given new contracts until completion of the initial projects.
- The amended PPDA law and related legislations should provide for third party monitoring, such as civil society organizations to be co-opted during contract management and monitoring, so as to monitor on-going works and service contracts, and contribute to ensuring value for money. For instance the Uganda Contracts Monitoring Coalition (UCMC) should be fully provided for under the law in this regard.
- The amended PPDA law should include a provision for interested third parties, including members of the public and civil society to participate as observers during proceedings of contract award, including on Contracts Committees and evaluation processes.

5 Limited awareness of procurement laws and procedures by key stakeholders

Despite the existence of a comprehensive legal and regulatory framework governing the practice of public procurement in Uganda, there has not been much effort by the government to widely publicize this information. This is evidenced by the high incidence of limited awareness and knowledge of procurement laws and procedures among key stakeholders directly involved in enforcement of procurement processes. For instance research has established that a number of district officials including sector and department heads are not very conversant with procurement laws and procedures, and do not have the local government Public Procurement and Disposal Regulations and guidelines and PPDA Act at hand, all of which tend to result in mal-procurements⁹. Still, others stated that some sections of the procurement law were not understandable or easy to interpret due to the technical language used.

Similarly, community members as key beneficiaries of the Local Government (LG) contracted works and services were also found lacking in knowledge about procurement laws and procedures, which greatly hinders their capacity to effectively monitor procurement works within their communities and districts at large. In the districts where UDN's research was undertaken, head teachers, members of School Management Committees (SMCs), health management committees and parish development committees were interviewed, all of whom stated that although they are aware of their supervisory roles to monitor procurement works and services, in most instances they have limited knowledge of what they are supposed to monitor. For instance, Head teachers stated that they had no knowledge of the SFG technical guidelines for school construction; and as a result they had no standards for use when monitoring the construction of school facilities.¹⁰

Recommendations:

- PPDA should carry out periodic refresher training programs for key stakeholders, including procurement officers and citizens on procurement laws and processes.
- PPDA should produce popular and simplified versions of the procurement laws and undertake to translate them into major local languages for wider reach. These should be made publicly available to the public through websites, libraries, notice boards and other avenues where they can be easily accessed by the public.

9 UDN (2011), Public Procurement in Uganda: Challenges and opportunities

10 Ibid

6 Limited citizen participation and involvement in procurement processes

One of the biggest challenges to public performance in Uganda is lack of access to contract information and citizen participation in all phases on public contracting—including planning, award, implementation and closure. The Ugandan law does not provide for mandatory participation by citizen groups in contract processes which many times have given rise to reluctance on the side of public agencies to work with CSOs. According to a study by the Africa Freedom of Information Centre (AFIC) on the status of access to information in Uganda, 3 in every 4 information requests under the Access to information Act are denied¹¹. Yet experience has shown that at every stage of contracting things have often gone wrong, hence the need for citizen participation through monitoring.

At both national and local government levels, there is limited involvement and participation of citizens in public procurement processes, and this is partly due to lack of access to relevant procurement information. For instance even though bids information is always displayed on the district notice boards, majority of local people do not access this information since they live far away from the district and the information is not always displayed at the sub-county notice boards where majority of local people would easily access it. This generates a lot of suspicion among beneficiaries that procurement processes are not fairly conducted hence their conclusion that the procedures are neither open and transparent, nor participatory. Beneficiaries, including most head teachers in UDN's research study noted that there is limited communication from the relevant officers at the Local Government (LG) to the head teachers in relation to procurement works in their schools. They stated that even after contracts have been awarded, many times they are kept in the dark about the projects and contractors simply appear at their schools demanding for a site to set up the school facility, without being formally introduced to the communities or their local leaders.

In Aguti Primary school in Tororo district, the head teacher informed UDN's study that they are never informed about what procurements are to be undertaken for the school. In one instance, a contractor just came and demanded for the site for building a classroom. Sometimes they do not even know the contractor of ongoing works or services, so they do not know who to hold accountable for the quality of works. Further, head teachers and SMCs are not availed with copies of contracts between the contractor and the LG nor Bills of quantities (BOQs); as such they are not aware of the type of building to be constructed, its specifications or its cost, all of which compromise their capacity to effectively monitor works at their schools.

In other cases, head teachers stated that they only see furniture being brought to their schools and they are unable to effectively check the quality and quantity of furniture

since they do not know what the contractor was supposed to do in the first place. Head teachers of Ntungamo Primary School in Bushenyi district and Pageya Primary School in Gulu district stated that even if they wanted to learn the procurement laws and guidelines, they have no idea how to access them at the district. All these hinder effective community participation in monitoring value for money in public procurements. Nevertheless, most head teachers knew the basic procurement procedures regarding procurement of school supplies like books, pens and scholastic materials.

Recommendations:

- The PPDA law should make it mandatory for contracted firms and entities to avail the public with all contract documents, including bills of quantities (BOQs) so that citizens are able to monitor the quality of works and services, and hold contractors accountable to deliver on their contracts.
- PPDA should work with civil society groups with interest in promoting value for money and citizen participation in contract processes. As a starting point, PPDA should liaise with respective public sector agencies to ensure that CSOs receive required contract information in a timely manner to facilitate monitoring and access to spaces in which feedback can be provided to public agencies for corrective action.
- Respective accounting officers, including the Ministry of Education, District Education Officers (DEOs) among others should prevail upon contracted firms and entities to provide contract documents such as BOQs to the public, including community members in local governments.

7 Poor documentation and record keeping

OAG performance reports indicate that in some cases districts undertake procurement of goods and services, but the OAG's office is not availed with the documentation relating to these procurements. The OAG then concludes by stating that the office cannot ascertain whether or not Value for Money was achieved in these instances¹². UDN's 2011 procurement research study established that storage of procurement files and records is a challenge in all eight districts surveyed, which could create opportunities for tampering with the integrity of the files. Procurement files are stored using a manual filing system, and there are no back-up copies of files. In most cases, procurement data is kept in one single place usually the Procurement Officers' office where in most districts, such as Katakwi and Makindye division in Kampala, documents are kept in an unsecured corner. This makes records prone to

getting misplaced and it would be easy for documents to be stolen. The study noted that the option of electronic storage of procurement files needs to be urgently explored, especially considering the fact that since LGs undertake procurements each year and the storage space is limited, then with time there will be no space to keep the files.

In Bushenyi district, it was found that documents relating to the activities of the Tender Boards (prior to 1997) were not available, and no one knew where they had been stored. In another case in Tororo district, a district official once took procurement files to his home; and he passed away before he could return the files. After his death, it was very difficult to trace and return the files. In addition, there are challenges in ensuring documentation of initial procurement, especially in the newly carved out districts. Procurement officers revealed that in many cases, new districts begin operations before the district Procurement Unit is established. However, in many cases, since the new district's Procurement Unit is not yet established, procurement procedures and documentation regarding pre-qualifications, adverts etc, are not in place. In these circumstances, the OAG would not find the documentation regarding these procurements when s/he goes to audit the district's finances. In other cases, it was established that some procurement below UGX 1 million are undertaken by LG departments. There are instances where a department can undertake many of such micro-procurements, but since the procurement is not undertaken by the LG Procurement Unit, they would not have the necessary documentation regarding the micro procurements.

Recommendations:

- Government should ensure that failure to keep proper records by procuring entities should by law attract stringent sanctions (at present it is just an irregularity that can at most attract disciplinary action).
- The Ministry of Information and Communications Technology (ICT) in liaison with the PPDA should undertake nation wide computerization of procurement records for all public procurement entities and PDUs to prevent loss of vital procurement information.
- Government through the MoFPED should increase funding to district procurement units so that they are better facilitated to undertake computerization of their records.

8 Incompetent contractors and shoddy works

One of the causes of shoddy works is that contracts are awarded to incompetent contractors through influence peddling, and also the fact that there is poor supervision and monitoring by mandated officials. Similarly, although Procurement Units are expected to verify the competencies of the contractors before they recommend an Award of contract, procurement officers in many cases are unable to undertake physical site inspections of the contractors' premises to verify the information in the contractor's bid documents. They attributed this constraint to lack of funds for the PDUs at LG levels. Furthermore, although the PPDA provides for blacklisting of incompetent firms, procurement officers who were interviewed stated that the system of blacklisting has not been effectively implemented. This is because the process involved in getting a firm blacklisted is quite long and complicated. Consequently, few firms have been blacklisted despite the fact that there are many contractors that have done shoddy work.

For instance, shoddy works were cited in Okao Primary school in Amuria district during UDN routine monitoring and inspection activities in 2012, whereby during construction of a classroom block the contractor went ahead to procure poor quality materials (half backed bricks) and in the course of work, the classroom block cracked before the completion. This drew public attention and later on the district engineer and RDC instructed for redress of the matter and told the contractor to correct the shoddy works. In Aguti Primary school in Tororo, a contractor was sent to build a pit latrine in 2010 however, the quality of construction and materials was very poor; and the door of one of the pit latrines fell off even before the toilets were handed over. The head teacher made complaints to the engineer, but found out six months later, that the contractor was fully paid even without handing over the toilets. The toilets have never been used up to now, because the school does not consider them safe for the children.

Similarly, in 2010 in Omodoi sub-county, Katakwi District, a section of the sub-county administration block collapsed before handover due to an incompetent contractor yet neither the local people nor the Sub-county chief had BOQs that they could have used to monitor the quality of the works. At the time of UDN's procurement study the section had not been worked upon for over six months despite complaints from the community.

Recommendations:

- PPDA should strictly enforce blacklisting of companies implicated in shoddy works, supply of inferior goods, non-execution of works and total non-performance of contracts. These should be published in local newspapers and not be awarded public contracts for a specified period.

- Accounting officers should enforce and ensure that contractors who do not complete works on time are not awarded new contracts until they complete all work backlogs.
- The MoFPED should provide for districts to operate a vote for district procurement units through which increased funding be channeled to enable the PDUs verify the capacity and competence of contractors, including site inspections of their facilities.

9 Poor monitoring and inspection by supervisors

In local governments, procurement works are supposed to be monitored and supervised by the user departments within the districts. The District Engineers are mandated to undertake periodic monitoring and supervision of civil works projects, prepare reports which are then used as basis for certifying works and then preparing payment for different stages completed. Sub-county officials and Councilors are also mandated to monitor ongoing works. Beneficiaries interviewed in UDNs' study confirmed that the said officials carryout supervision although these visits are few and far in between; and that even when the local people had complaints it took long for the District officials to come on ground to inspect. The District Engineers blamed inconsistencies in supervision on heavy workload and inadequate funding to undertake regular monitoring visits to all sites. The situation was found to be worse for projects in remote areas where supervision is done once in a while. Contractors in some districts further attested that engineers ask for bribes to issue certificates of completion. As result, the engineers do not supervise, but rely on the payment of bribes to issue certificates.

Further, there is need for enforcement measures to be clarified and executed more rigorously. The PPDA is empowered to recommend action when malpractices are discovered but has sometimes failed to follow up thoroughly to ensure that the recommended changes are implemented. For instance, although the PPDA provides for blacklisting of incompetent firms, procurement officers who were interviewed stated that the system of blacklisting has not been effectively implemented because the process involved in getting a firm blacklisted is quite long and complicated. Consequently, few firms have been blacklisted despite the fact that there are many contractors that have done shoddy work.

Similarly, SFG contracts provide penalties that should be imposed on defaulting contractors. However, OAG reports indicated that most districts do not take strong action against inefficient and incompetent contractors which encourages laxity and delays in constructions and could contribute to delayed completion works.

Recommendations:

- Government through the MoFPED should increase the vote to districts, particularly for the PDUs, to undertake monitoring activities to ensure periodic monitoring and inspection activities of works and services.
- Report recommendations of oversight agencies including the PPDA, IGG, OAG, Parliament and Civil society monitoring reports should be acted upon.
- Accounting officers should enforce a rigorous monitoring and evaluation system including spot monitoring checks to counter poor supervising by responsible officials.

10 Poor consultation, planning and prioritization of beneficiary needs

Further still, procurement processes in Uganda are beset by the problem of poor consultation, inadequate planning and failure to take due consideration of the specific needs and priorities of beneficiaries who are the key target of procured goods, services and works. As such, this results in wastage of public resources, lack of trust and ownership of the provided goods and services by the beneficiaries. For instance, it was noted from a 2011 OAG annual report that there was poor procurement planning in the Presidential Initiative on Banana Industrial Development (PIBID) project. This is evidenced by the numerous addenda to various contracts awarded. For instance, the contract for the supply and installation of banana processing equipment awarded to M/s INNOTECH was revised or amended four (4) times. The cause of the numerous changes in the contracts was attributed to the poor identification of project needs both at project design and procurement planning. Contract amendments escalated project costs, delayed works and affected the entire project implementation.

In Rupa sub county Moroto District local farmers in 2011 requested for SEKEDO variety of sorghum which best suits their soils and which they can reap in the short term but instead they were supplied with ABIRI variety which was not of their choice and does not favour their soils. In Ariet parish in Atatur Sub County in Kumi district the variety of beans supplied was TZ that was not requested for by the farmers and yet the farmers had requested for Saito variety, which to the farmers caused a lot of doubt and mistrust on the effectiveness of the procurement committee in playing its roles. In schools visited during UDN's procurement research in Bushenyi, Apac, Gulu and Katakwi districts the head teachers emphasized that they are not consulted on what constructions the school needs or number of desks, all they see is a truck bringing desks and that is it. In Unyama Primary School in Gulu, the head teacher stated that

whereas they are grateful when government provides them with desks, it would be better if beneficiaries are consulted on their needs, so that districts procure according to the identified needs of the beneficiaries. Such instances of poor prioritization of stakeholder needs render the whole procurement process flawed and not beneficial to citizens.

Recommendations:

- Accounting officers should prevail upon procuring entities to strictly adhere to procurement plans during project execution to ensure that executed works and services conform to original designs and specifications, and as per needs assessments.
- Government at both national and local levels should take due consideration of the specific needs and priorities of citizens during procurement planning processes to prevent wastage of public resources and to promote citizen ownership of procured works and services.

OTHER KEY EMERGING CONCERNS AND RECOMMENDATIONS

- i. We call for the expeditious approval of the PPDA Act amendments which are awaiting approval by the Minister of Finance, Planning and Economic Development. The amendments are long over-due and their delay poses a threat to compliance with procurement procedures. Similarly, we recommend that stringent measures be taken by the Responsible Officers to deal with any form of corruption in the procurement process e.g. bribery, conflict of interest, and influence peddling whenever evidence is provided.
- ii. The composition of Procuring and Disposing Units (PDUs) of PDEs should be refocused by including other professionals on the PDUs, aside from procurement professionals. This is because what is done during procurement is not only for procurement officials and in many instances there is need for legal knowledge and other technical input from other fields of expertise. We therefore propose that other professionals such as lawyers, engineers, accountants be opted in the units instead of only have one set of professionals.
- iii. We further call for a reduction in the number of committees that handle the procurement process so as ensure increased efficiency and value for money. Currently all public procurements go through the evaluation and contracts committees, accounting offices, and the user departments of entities. Instead we propose that entities should take these issues to a PDU that is adequately staffed instead of forming committees. As such PDUs should be empowered to shoulder more responsibility.
- iv. The current PPDA Act is limited in terms of the offenses that it creates. The Act does not create a general offence for breaching the provisions of the PPDA Act. Some

laws make it an offence for breaching any of the provisions of that law to cater for breaches that are not specifically made offences. The PPDA Act does not do that. In practice, most breaches are considered under the offence of abuse of office under the Anti Corruption Act. We call for this redress in the amended PPDA Act.

- v. There is need for transparency and openness in the bidding processes and evaluation processes. Civil society organisations should be co-opted in the processes of administrative reviews to participate in monitoring compliance with the regulations. According to the PPDA performance report 2012, transparency requires information to be disclosed fully i.e selection of bidders, tendering procedures and award of contract being open to public observation and review. Transparency also requires that evaluation methodology, criteria, weights and scoring rules be fully disclosed and should not be subjective. This aspect has not been fully adhered to and in Uganda the evaluation process remains vulnerable to corruption. Measures to improve transparency under the amendments will require the display of procurement plans. Competitive public procurement requires that that the bidding process is open to all potential providers
- vi. We recommend also that more specific indicators be regularly used when checking compliance of public procurements to values of fairness, transparency, competition and value for money. For example percentage (%) of contracts that have complied with the prescribed evaluation methodology, % of contracts that have complied with the disclosed evaluation criteria in the solicitation document, % of contracts subject to open competition (by contract value), % of contracts that have complied with the prescribed procurement method proscribed by law, % of contracts integrated in the annual procurement plan and budget, % of contract with complete procurement records, % of contracts completed within the original time frames, etc.
- vii. To address skills capacity gap, continuous capacity building for the different key actors directly involved in procurement processes should be intensively done, with an emphasis in ethics and integrity. These include members of Procurement and Disposal Units (PDUs), contracts committees, user departments, accounting officers and contractors (private sector). Funding can be prioritised for capacity building without increasing the resource envelop. Similarly there is need for capacity building in handling corruption cases generally, including procurement related cases. Members of the agencies involved in procurement investigations and prosecutions should be urgently equipped with relevant skills to handle cases involving procurement fraud. This will be necessary once the amended law comes into force. PPDA may need to employ both financial and engineering auditors to response to corruption related cases for evidential purposes.
- viii. There is a huge disconnect between procurement planning processes and project execution Between FY 2008/09 and 2011/12, 82% of the contracts verified, according to the PPDA, did not have a contract implementation plan. As civil society we seek to be involved through third party contract monitoring to assist in verification of contracts with complete records and promote proper record keeping by PDEs.
- ix. There is need to shorten the procurement process between when bids are advertised and when the contracts are awarded by removing some activities that may not add

- value to the process but ensure that the process still remains transparent and promotes value for money. For example the number of days for publication can be reduced. The bureaucracy involved in the process sometimes leads to the processes being manipulated including instances of bribery and influence peddling. A time frame should be stipulated across the board.
- x. We recommend establishment of an inter agency coordination mechanism for handling procurement investigations and prosecution. The coordination mechanism would involve institutions such as CID, IGG, DPP, OAG, and PPDA. It can address issues of multi- reporting of procurement complaints; multi investigations and prosecutions; training for actors in the investigation and prosecution process; taking test cases to court; sharing information and best practices for investigations and prosecutions; and fast tracking procurement investigations and prosecutions.
 - xi. In their 2012 performance report, PPDA mentions sharing reports periodically with other interested parties like OAG, CID, IGG, parent ministries and development partners. We recommend that society organizations also be included on this list of partners to receive reports and be included on the PPDA's reports mailing list. This will address the challenge of access to information and promote monitoring and follow up by civil society organizations on some major issues highlighted in the reports, especially in the districts of operation of different civil society organizations.

Conclusion

In conclusion, efforts to improve public procurement ought to be seen as a joint responsibility of governments, bidders/contractors, and the general public, including civil society. Countries with a vibrant civil society have been successful in playing a role in monitoring procurement processes. Civil society is a defender of public interests and a watchdog of government policies and activities; it must therefore be construed as a partner in development.

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UDN Vision

A prosperous Uganda with sustainable, equitable development and a high quality of life of the people

UDN Mission

Uganda Debt Network (UDN) is a policy advocacy organization working to promote and advocate for poor and marginalized people to participate in influencing poverty-focused policies, demand for their rights and monitor service delivery to ensure prudent, accountable and transparent resource generation and utilization.



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