

BID PROTESTS AS A MEASURE OF INTEGRITY IN PUBLIC PROCUREMENT: A DESCRIPTIVE STUDY OF MUNICIPALITIES IN UGANDA

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ABSTRACT. Uganda in its bid to develop has embarked on a number of reforms among which are public procurement reforms. Despite these reforms, procurement in local governments is faced with a multiplicity of challenges especially lack of integrity in its conduct and corruption. In this study we use bid protests to examine the integrity of procurement management in municipalities and identify the most vulnerable areas to corruption in Uganda.

INTRODUCTION

Addressing the challenge of bid protests is one of the most difficult tasks of the buyer and can be expected to become more difficult across the globe as countries outside the U.S. adopt bid protest procedures for their public procurement systems (Drabkin David et al., 2004). In Uganda, administrative reviews of bids are provided for in the Public Procurement and Disposal of Assets (PPDA) Act No.1 of 2003. Bid protests act as triggers to show the level of integrity of public procurement in Uganda i.e. that the procurement procedures are transparent and promote fair and equal treatment of bidders; public resources linked to public procurement are used in accordance with the intended purposes; procurement officials' behavior is in line with the public purposes of their organization and particularly that systems are in place to challenge procurement decisions, ensure accountability and promote public scrutiny. Bid protests provide information that is useful to the management of the procurement cycle and pin point specific areas or risks or weaknesses in the implementation process.

The OECD (2005) observes that, one of the fundamental obstacles in combating fraud and corruption in public procurement is the sheer difficulty in detecting wrongdoings. This difficulty stems from the fact that there's often no clear perpetrator nor victim, rather a group of individuals in collusion, with common interests in maintaining secrecy around their corrupt acts...Corruption in the procurement process is hardly limited to straightforward bribery; many sophisticated means of diverting funds and concealing these diversions exist. In other words, the procurement function is not a cause of corruption; it merely provides an opportunity which the potentially corrupt may seize upon to engage in corrupt practices (Trepte Peter 2005).

PROCUREMENT REFORMS IN A DECENTRALIZED CONTEXT IN UGANDA

In 1993 Uganda adopted a decentralized system of governance. The policy of decentralization in Uganda is a response to the nature and form of post colonial politics and the development strategies of the leaders who took power after independence. Besides the intent to ensure good governance and democratic participation in, and control of decision making by the people, decentralization was regarded as a policy aimed at improving accountability, efficiency, intra and inter-district equity, effectiveness and sustainability in the provision of social services countrywide.

The decentralization policies aimed at transferring power, resources and competence to local levels and, in the process strengthen management and technical capacities of local government (Lubanga, 2000). This required radical restructuring of the state. In effect the structure now constitutes the Government i.e the Government of Uganda (Central Government) and Local Governments. Local governments are either municipalities (the larger cities) or districts. Both the municipalities and the districts are governed by a (municipality or district) council. The district sub-divisions councils are called city council (in case of a sub-division being a city) or a sub-county council (in case of a rural area). Some of the sub-counties also have established town councils (in the small towns)

As part of the Governments drive to reform public procurement to make it transparent, accountable and capable of delivering better value for money, the Public Procurement and Disposal of Public Assets Authority (PPDA) was set up under the Public Procurement and Disposal of Public Assets Act (2003) as the principal regulatory body for public procurement and disposal of assets (National Public Procurement Integrity Survey Report 2007). Further, The Local Governments Amendment Bill (No.2) 2005 scrapping District Tender Boards to be replaced by Contract Committees was passed. This it was argued is intended to remove politicking and eliminating corruption in the tender process, which accounts for about 70% of government expenditure.

However despite these reforms, public procurement especially at the local government level is believed to be one of the principal areas where corruption takes place, although the extent of the problem and areas where it is most prevalent are unknown (Thai, 2008). In addition, the newly introduced Contract Committees and procurement units are being blamed for introducing dilatory

processes and creating bureaucracy in other procurement entities. To mitigate the precarious scenario in procurement in Uganda, administrative reviews are provided for in the PPDA Act No.1. of 2003, section 89-91. This is to enable aggrieved stakeholders seek redress.

The focus of this paper hence is to identify the areas in the procurement process/cycle whose conduct has not been undertaken with integrity and are subsequently most prone to corruption in Uganda using bid protests. This is one of the avenues of detecting corruption and whose findings can ensure integrity in the procurement process. Bid protests which emerge from disappointed bidders who may challenge a solicitation issued by a government contracting officer for failing to comply with a myriad of laws, regulations and processes governing government contracts or also challenge the decision to award a contract to another bidder and in limited circumstances may challenge a modification to an existing contract still persist (Drabkin David et al., 2004).

METHODOLOGY

In the study, we analyzed procurement investigation reports from the PPDA website (www.pdda.go.ug) as well as the Corporate Plan 2006-2009. We focused on the municipalities bid protests as municipalities are urban local governments in Uganda unlike districts. They hence are more likely to have fully constituted PDUs' and Contracts' Committees'; have a larger number of literate bidders who are knowledgeable of the procurement rules and can institute bid protests.

Table 1: Bid protests composition

Category	No. of bid protests	Percentage
Total number of published bids (as per December 2009)	59	100%
Total number covering local governments	35	62.5%
Total number covering municipalities	11	18.6%

We analyzed all the 11 bid protests from the municipalities. We also requested for and were given two relevant full investigation reports from the Inspector General of Government (IGG-the government ombudsman), Commission of inquiry reports, examined newspaper reports and had informal discussions with key informants (i.e. practitioners, Town Clerks, Procurement and disposal Unit staff, officers in the PPDA, municipal Mayors and

councilors-mainly to gain insights into the conduct and management of procurement).

We generated a table below from the information so obtained. The table hence provides a basis for the development of remedial action to curb opportunities for corruption.

Bid Protests in Uganda

Activity	Roles/ responsibility	Bid/tender protests in Uganda
Procurement plan and budget	-User departments -Procurement unit (PU) -Accounting officer -Councils	-Inadequate procurement planning (PPDA 2007; Mugisa Joseph 2008). -Mismanagement of micro-procurement e.g. Splitting of procurement to avoid the threshold required for tendering (Mugisa Joseph 2008; Kiberu Charles Nsubuga 2007)
Procurement requisition. Filled with clear specs/TOR/SOW/BOQ	-User department	-Writing/gearing towards a supplier (IGG report Kabale 2006).
Confirmation of availability of funds	- Accounting officer	-No evidence of protests found in literature
Review of specifications	-Procurement unit -User department	- No evidence of specification reviews being undertaken in all bid protests and literature reviewed. -No pre-bid meetings conducted (PPDA report on foul play in Jinja municipal council)
Review of procurement method	-Procurement unit -User department	-Not undertaken/ignored (PPDA report on Jinja day street parking).
Review of evaluation criteria	-Procurement unit -User department	-No evidence of reviews being undertaken in all bid protests and literature reviewed. Evaluation criteria are arbitrarily determined by the evaluation committees

Review of potential supply market.	-Procurement unit -User department	-Evidence of review of supply market being undertaken (Kiberu Charles Nsubuga 2007). However, it's abused in instances of few suppliers as a pretext to qualify ineligible firms/suppliers for purposes of competition (IGG report Kabale municipal council 2006). -Poor market research methodology i.e. relying on hearsay. This resulted in loss of revenue/ avenue for embezzlement/collusion as estimated number of vehicles eligible for tax hence revenue collection was less than actual (PPDA report on Jinja day street parking 2007).
Procurement method approval	Contracts committee	-Not undertaken/ignored (PPDA report on Jinja day street parking).
Preparation of bidding documents – Instructions to bidders	-Procurement unit	-Evaluation criteria not included in the bid documents (IGG report on Jinja municipal council 2007; PPDA report on Jinja day street parking 2007; PPDA report on Masaka municipal council. -Evaluation method not included in bidding documents (PPDA report on foul play in Jinja municipality 2007) -Standard bidding documents not used (PPDA report on Jinja day street parking 2007)

Preparation of bidding documents – Price schedule.	-Procurement unit	-Leaking of reserve prices to preferred firms (IGG report on Jinja municipal council 2007). -Non-inclusion of reserve prices in bidding documents (IGG report on Jinja municipal council 2007; PPDA report on Masaka municipal council 2006). -No objective method as to how the reserve price was arrived at (PPDA report on Masaka municipal council 2006).
Preparation of bidding documents – Terms and conditions.		-General terms and conditions set to favour ineligible firms bid (IGG report on Kabale municipal council 2006). Avenue for collusion. -Bidding document prices set exorbitantly high (IGG report on Jinja municipal council 2007).
Approval of Bidding Documents	Contract committee	-Contracts Committee abdication of duty to authorize/approve the solicitation document before issue (PPDA report on Jinja day street parking 2007).
Advertisement and invitation of bids	Procurement unit	-Advertising towards a firm/Collusion with firms/bidders to place adverts that conflict with the terms and conditions e.g. adverts were placed inviting all potential firms to bid yet the terms and conditions required only prequalified firms to submit bids (IGG report on Kabale municipal council 2006)

<p>Receipt and opening of bids</p>	<p>Procurement unit</p>	<p>-Poor records management systems (IGG report on Kabale municipal council 2006).</p> <p>-PDU complacency to allow disqualified/ineligible firms bids to be received. The Secretary to the Contracts Committee was absent and no other personnel from the PDU with information on eligible firms to bid was present (IGG report on Kabale municipal council 2006)</p>
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Evaluation of bids	-Evaluation committee	<p>-Detailed evaluation is conducted on criteria akin to that for prequalification.</p> <p>-Criteria used not relevant to the tender in question e.g. scores were awarded for land titles, security in bids and CVs' (PPDA report on Masaka 2006).</p> <p>-Evaluation criteria different from what was stated in the bid document (PPDA report on Mbarara 2008; PPDA report on foul play in Jinja municipal council 2007; PPDA report on Masaka 2006; PPDA report on Mbale main taxi park 2008)</p> <p>-Disqualification of a potential bidder on false premises e.g. non submission of a bank statement (PPDA report on Masaka 2006)</p> <p>-Prequalification of ineligible bidders e.g. those suspended (IGG report on Kabale municipal council 2006); those without required documents (PPDA report on Mbarara 2008).</p> <p>-Allegations of influence peddling from politicians, favouratism, tribalism and corruption in evaluation of tenders (PPDA report on foul play in Jinja municipal council 2007; Kalibala, 2007; Olupot Milton, 2008; Clarke Ian 2007).</p> <p>-No evidence of the evaluation committee having been approved by the contracts Committee (PPDA report on Jinja day street parking 2007).</p>
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<p>Review of Evaluation report (approval or rejection)</p>	<p>Contract committee</p>	<p>-Disregard of the technical evaluation report (IGG report on Kabale municipal council 2006)</p> <p>-Withholding of vital information by the PDU with the intent to influence the tender award decision e.g. an ineligible/disqualified firm was enabled to bid and be evaluated (IGG report on Kabale municipal council 2006).</p> <p>-The Contracts Committee usurped the powers of the evaluation committee (PPDA report on Mbale main taxi park 2008;Commission of inquiry report 2008).</p> <p>-Inappropriate method of contract award i.e. voting by show of hands to award a tender among members of the Contracts Committee. The basis being having reached a stalemate on no acknowledged objective & transparent method. (IGG report on Kabale municipal council 2006).</p>
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Award of contract	Contract committee	-Allegations of influence peddling from politicians, favouratism, tribalism and corruption in tender awards (PPDA report on foul play in Jinja municipal council 2007; Kalibala, 2007; Olupot Milton, 2008; Clarke Ian 2007; Biryabarema Elias 2007; Commission of inquiry report 2008).
Post- qualification	PU and negotiation committee	No protests found in literature in Uganda.
Sign contract -communicate award	Accounting officer	-No communication to tenderers whose bids had been unsuccessful (PPDA report on foul play in Jinja municipal council 2007; PPDA report on Masaka municipal council 2006).
Administrative review	Accounting officer	No protests found in the literature in Uganda.
Contract Management/ Contract monitoring	Procurement unit User department.	-Tenders being run without a signed contract. Only one party signed the municipal council. This constitutes negligence on the part of the officials (IGG report on Jinja municipal council 2007). -No records to show the approval of extension, extension period and the contract terms (PPDA report on foul play in Jinja municipal council 2007)

Payments	Accounting officer	-Allegations of bribery and kick backs (IGG report on Jinja municipal council 2007).
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In the table above, the integrity of public procurement in the municipal councils is faced with problems/challenges practically across the entire procurement cycle. This is in conformity with the observation in the National Public Procurement Integrity Survey Report (2007) that, in Uganda, public procurement especially at the local government level is believed to be one of the principal areas where corruption takes place, although the extent of the problem and areas where it is most prevalent are unknown. The problems though are not only a result of corruption but also lack of capacity of the procurement officers and inefficiency which become the basis of bid protests.

Further analysis of the table is undertaken with the aid of descriptive statistics in the table below:

Descriptive Statistics of Bid Protests - A

Activity	No. of Stakeholders	No. of Protests	Percentages of Protests
Procurement plan and budget	4	2	5.3%
Procurement requisition. Filled with clear specs/TOR/SOW/BOQ	1	1	2.6%
Confirmation of availability of funds	1	0	0.0%
Review of specifications	2	2	5.3%
Review of procurement method	2	1	2.6%
Review of evaluation criteria	2	1	2.6%
Review of potential supply market.	2	2	5.3%
Procurement method approval	1	1	2.6%
Preparation of bidding documents – Instructions to bidders	1	3	7.9%
Preparation of bidding documents – Price schedule.	1	3	7.9%
Preparation of bidding documents – Terms and conditions.	1	2	5.3%
Approval of Bidding Documents	2	1	2.6%
Advertisement and invitation of bids	1	1	2.6%
Receipt and opening of bids	1	2	5.3%

Evaluation of bids	2	7	18.4%
Review of Evaluation report (approval or rejection)	1	4	10.5%
Award of contract	1	1	2.6%
Post- qualification	1	0	0.0%
Sign contract-communicate award	1	1	2.6%
Administrative review	1	0	0.0%
Contract Management/ Contract monitoring	2	2	5.3%
Payments	1	1	2.6%
		38	100.0%

The evaluation of bids with an absolute number of 7 and a percentage of 18.4% registered the highest in bid protests followed by review of evaluation report with 10.5%. Confirmation and availability of funds, post-qualification and administrative review registered no bid protests. Procurement planning with 4 has the highest number of stakeholders involved in the cycle.

- The table has been able to identify risks to integrity in the procurement cycle in Ugandan municipalities resulting from a simple mistake in performing an administrative task to a deliberate transgression of relevant laws and related policies using the risk based approach.
- In table we have been able to establish that the most vulnerable stages to corruption due to lack of integrity in the procurement cycle are supplier evaluation and selection with a combined percentage of 28.9% of registered bid protests.
- Procurement is increasingly being recognized as a strategic function in local governments in Uganda. This is manifested by the high number of designated stakeholders involved in procurement planning and budgeting.

In a further analysis of the bid protests, we map them onto our analytically derived contemporary 8-step model for supplier selection. It is analytically derived from the evaluation of the Monczka et al. (2005) supplier and evaluation process and the De Boer Luitzen et al. (2006) 5-step supplier selection model. This is shown in the next table below:

Descriptive Statistics of Bid Protests - B

The 8 step model	Activity	Percentages of Protests	Phase
1. Recognize the need for supplier selection.	Procurement plan and budget	5.3%	Pre-contract award 58%
2. Identify the key sourcing requirements (Specification)	Procurement requisition. Filled with clear specs/TOR/SOW/BOQ	2.6%	
	Confirmation of availability of funds	0.0%	
3. Choose evaluation criteria 4. Relate criteria to each other 5. Pre-qualification	Review of specifications	5.3%	
	Review of procurement method	2.6%	
	Review of evaluation criteria	2.6%	
	Review of potential supply market.	5.3%	
	Procurement method approval	2.6%	
	Preparation of bidding documents – Instructions to bidders	7.9%	
	Preparation of bidding documents – Price schedule.	7.9%	
	Preparation of bidding documents – Terms and conditions.	5.3%	
	Approval of Bidding Documents	2.6%	
	Advertisement and invitation of bids	2.6%	
	Receipt and opening of bids	5.3%	
6. Choose weights for the criteria 7. Choose scoring methods for the criteria	Evaluation of bids	18.4%	Contract award/supplier selection phase 31.5%
8. Determine the winner.	Review of Evaluation report (approval or rejection)	10.5%	
	Award of contract	2.6%	
	Post- qualification	0.0%	Post contract award 10.5%
	Sign contract-communicate award	2.6%	
	Administrative review	0.0%	
	Contract Management/ Contract monitoring	5.3%	
	Payments	2.6%	
		100.0%	

What we establish from the table above is that, the pre-supplier selection phase cumulatively faces most bid protests with 58% followed by the supplier selection phase with 31.5% and the least with the post-contract award phase with 10.5%. This necessitates research to devise methods to deal with the most vulnerable steps to the integrity of procurement steps before the contract award/supplier selection phase. However, the vast majority of published works deal with the procurement of materials particularly by industrial firms (Aissaoui N. et al. 2007; De Boer et al. 2001). From a point of view of reflecting procurement's significance in sectors rather than manufacturing, e.g. service industry, it would be worthwhile to investigate and illustrate the specifics of using decision methods in supplier selection in those areas as well. More specifically, further research on the suitability of decision methods for supplier selection in Government Procurement seems at place given the relatively higher need for justifying public procurement decisions (De Boer Luitzen et al. 2001).

Further, that of the decision models for the final phase, only few works treat the previous steps, especially those of problem and criteria formulation. However, the quality of the choice phase is largely dependent on the quality of the steps prior to that phase (Aissaoui N. et al. 2007; De Boer et al. 2001). This observation is made more important given the demonstrably established cumulative bid protests score of 58% of the pre-contract award phase.

IMPLICATIONS

By analyzing systems in terms of their vulnerability to corruption, we can make those systems more resistant. Promote competition. Clarify discretion. Improve accountability. And take seriously the positive and negative incentives faced by the potentially corrupt (Klitgaard Robert 1999).

The findings are equally in conformity with Wittig A. Wayne's (2005) assertion that complaints by disappointed bidders of government actions before and after contract award allow the government process to improve. This is an important self-policing mechanism to assure good governance by allowing people most affected by the system to call attention to its shortcomings. Meritorious grievances of suppliers force a review of questionable or improper actions so that the procurement system is strengthened and the integrity and accountability of government maintained. However, as Kelman in Drabkin David et al., (2004) put it, they are time consuming and expensive, damage the careers of civil servants, cause buyers to be risk-averse and have

a devastating effect on a spirit of partnership between government and vendors.

In contrast, supporters of the bid protest system argue that the protests are infrequent, and protests serve as “private attorney general” to remind government that it must be accountable for how it spends its taxpayer’s dollars and in doing so prevent abuse (Lieberman in Drabkin David et al., 2004). Given the foregoing it would particularly be interesting to analyze the impact of the newly introduced administrative review fee on open bidding and selective bidding for works, supplies and services. This is in the Local Governments (PPDA) Guidelines, 2008.

In conclusion, corruption in public procurement manifests itself in a variety of ways. This paper has explored the vulnerabilities that occur in the procurement cycle in Uganda principally by the use of bid protest analysis technique. By raising awareness of these vulnerabilities across the procurement cycle, new approaches and methodologies for successful control interventions can be developed, implemented and evaluated to find the most effective mechanisms for reducing corruption and promoting integrity in public procurement in Uganda.

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