

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

Peter Obanda Wanyama

Ph.D. Candidate

University of Twente/Kyambogo University

pobanda2001@yahoo.com

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.

LITERATURE REVIEW

Integrity in public life is a prerequisite to public trust and a keystone to good governance (OECD 2005). Integrity in the context of public procurement implies that: procurement procedures are transparent and promote fair and equal treatment; public resources are 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 systems are in place to challenge procurement decisions, ensure accountability and promote public scrutiny. Beth Élodie (2005) opines that, public procurement is a business process embedded within a political system. Governments are increasingly judged on the quality of governance provided in particular how transparency, integrity and accountability are ensured in the public procurement process. Public procurement regulations provide a framework for ensuring transparency. But regulations quickly become outdated and can easily be circumvented. Therefore it is crucial to proactively identify the grey zones in public procurement process, thus anticipating opportunities for improperly influencing public decision-making in public procurement. Indeed the OECD (2005) asserts that, a clear understanding of the various procedural steps of the public procurement process can contribute to developing effective preventive means as well as indicators to detect corrupt behavior. There are many techniques to misappropriate funds and several ways to disguise corrupt behavior in public procurement. These methods can vary and can be applied at various stages of the procurement process.

In this study, we have used bid protests. Bid protests 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).

Uganda is particularly afflicted with corruption. Corruption .i.e. the misuse of public office for private gain is of grave concern to public procurement. Fair competition and equal treatment of bidders is

undermined. Corruption comes in the form of facilitation payments – inducements to get things done; grand corruption – significant amounts offered to politicians or high level officials capable of influencing large contracts. There’s a distinction between bureaucratic corruption and political corruption, between active and passive corruption, between active and passive bribery, and between public and private corruption. Further, that although the risk of corruption is present in many bureaucratic or governmental assignments, public procurement is probably the most exposed activity (Søreide Tina 2005). Nuwagaba (2009) reiterates that one major discounting factor for the failure of all our policies (in Uganda) and programmes’ including decentralization is corruption. Imagine a country that loses 600 billion shillings in corruption related to procurement in a single financial year. This is half of the budget for the ministry of education. Shah Anwar (2006) based on in-depth country studies and equally pertinent (applicable) to Uganda identifies key corruption drivers. These are that; the legitimacy of the state as the guardian of the “public interest” is contested; the rule of law is weakly embedded; Institutions of participation and accountability are ineffective and the commitment of national leaders to combating corruption is weak. He further reveals that, because corruption itself is a symptom of fundamental governance failure, the higher the incidence of corruption, the less an anti-corruption strategy should include tactics that are narrowly targeted to corrupt behaviours and the more it should focus on the broad underlying features of the governance environment.

The focus of this paper hence is to establish 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. Hence the research question: What are the most risk prone and vulnerable points at each stage of the procurement process in municipalities in Uganda?

METHODOLOGY

In the study, we analyzed procurement investigation reports from the PPDA website (www.ppda.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.

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).

FINDINGS

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	<p>-Leaking of reserve prices to preferred firms (IGG report on Jinja municipal council 2007).</p> <p>-Non-inclusion of reserve prices in bidding documents (IGG report on Jinja municipal council 2007; PPDA report on Masaka municipal council 2006).</p> <p>-No objective method as to how the reserve price was arrived at (PPDA report on Masaka municipal council 2006).</p>
Preparation of bidding documents – Terms and conditions.		<p>-General terms and conditions set to favour ineligible firms bid (IGG report on Kabale municipal council 2006). Avenue for collusion.</p> <p>-Bidding document prices set exorbitantly high (IGG report on Jinja municipal council 2007).</p>
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)
Receipt and opening of bids	Procurement unit	<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>

<p>Evaluation of bids</p>	<p>-Evaluation committee</p>	<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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Review of Evaluation report (approval or rejection)	Contract committee	<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>
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).

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 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	Percent ages 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.

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 of 4. These include the Municipal Council, head of departments, the Town Clerk (the accounting officer) and the procurement and disposal unit. Involvement of all the relevant stakeholders makes procurement participatory and subsequently the outcomes more acceptable once undertaken with efficacy.

Despite the above observation, the tables above have been able to establish risks to integrity in the procurement cycle in Ugandan municipalities resulting from a simple mistake in performing an administrative e.g. not using standard bidding documents task to a deliberate transgression of relevant laws and related policies e.g. leaking of reserve bid prices to preferred firms and writing

specifications towards a specific supplier using the risk based approach.

In tables, 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. The tendering process is heavily compromised; influence peddling from politicians, favouritism and corruption. This is especially in the form of soliciting and receiving bribes from tenderers. Technical staff serving on the Evaluation Committees and Contracts Committees solicit bribes. Politicians interfere in the management of tenders such as taxi parks, the markets and street parking. They influence the Contracts' Committee and the Evaluation committees to ensure that firms of their choice are awarded tenders/contracts.

The technical staff are not competent in utilizing contemporary decision-making methods that can yield objective outcomes in terms selecting the best evaluated bidder. For example they use techniques for supplier selection akin to those meant for the pre-qualification of suppliers as well as show of hands to determine the best bid. These are non-analytical techniques which are subjective and susceptible to abuse and manipulation. This is exacerbated by role ambiguity of the stakeholders leading to some usurping the powers of their colleagues.

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	% 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

The integrity of public procurement in municipalities in Uganda is severely compromised i.e. the procurement processes are not conducted with trust and honesty; there's unfair competition that leads to poor quality at exorbitant prices hence no value for money obtained and that the products procured do not take into account the legitimate aspirations and concerns of all stakeholders. This equally fosters an opportunity for corruption. 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). Further, there's a need for comprehensive research in public procurement beyond the procedures for choosing suppliers. The upstream phase (pre-contract award) and the downstream phase (post contract award) are equally important.

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 addition, procurement officers’ should be made accountable. Making procurement officers accountable means that they should have professional procurement training prior to employment in the municipalities in addition to on-job training, their objectives and roles clearly defined, they must have real autonomy in conducting their procurement and must be subjected to procurement audits backed by meaningful sanctions in case of non-compliance.

CONCLUSION

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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