WORKSHOP ON CHALLENGES FACING

THE

CONSTRUCTION SECTOR IN UGANDA

HELD AT IMPERIAL ROYALE HOTEL

22ND JULY, 2008

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ACRONYMS

AO	Accounting Officer
ARB	Architects Registration Board
CC	Contracts Committee
CG	Central Government
CHOGM	Commonwealth Heads of Government Meeting
DLG	District Local Government
ERB	Engineer's Registration Board
FIDIC	International Federation of Consulting Engineers.
FUCO	Federation of Ugandan Consultants Organisation
IGG	Inspector General of Government
ISU	Institution of Surveyors of Uganda
KCC	Kampala City Council
LCI	Local Construction Industry
LG	Local Government
PDE	Procuring and Disposal Entity
PDE	Procuring and Disposing Entity
PPDA Act	Public Procurement and Disposal of Public Assets Act, 2003
PPDA	Public Procurement and Disposal of Public Assets Authority
PPP	Public Private Partnerships
SBD	Standard Bidding Document.
SRB	Surveyor's Registration Board
TQM	Total Quality Management.
UACE	Uganda Association for Consulting Engineers.
UBOS	Uganda Bureau of Statistics.
UD	User Department
UIPE	Uganda Institute of Professional Engineers.
UNABCEC	Uganda National Association of Building and Civil Engineering Contractors
UNBS	Uganda National Bureau of Standards.
UNRA	Uganda National Road Authority.
USA	Uganda Society of Architect

BACKGROUND AND OVERVIEW

The Public Procurement and Disposal of Public Assets Authority (PPDA) had held several meetings with Uganda National Association of Building and Civil Engineering Contractors (UNABCEC) to discuss the challenges faced in the building and construction sector especially in the areas of criteria for preference and its application, sub contracting, empowerment of local contractors, grading of contractors, contract registration, price escalation, national works standards and securities.

It is against this background that a half day workshop was organised by PPDA to exhaustively discuss these challenges by the relevant stakeholders in the works sector.

Objectives of the workshop

The workshop was set out to achieve 2 specific objectives:

1. Identify and discuss challenging areas to both government and private sector in works sector.

2. Forge way forward to assist government achieve value for money at the same time protect the private sector's interests.

Description of the workshop format

The workshop entailed information presentation and discussion which were passed on through:

1. Presentation of the Contractors' and the consulting engineer's perspective, Prospects for the Local Construction Industry and the legal frame work in the PPDA law for the construction sector.
2. Plenary discussion on the four (4) presentations.
3. Discussion and way forward.

OPENING REMARKS BY THE EXECUTIVE DIRECTOR, PPDA- *Mr. Edgar Agaba*

The purpose of his speech was to point out the controversial areas in the works sector acting as challenges to the building and construction sector and limitation to the implementation of the Public Procurement and Disposal Authority law.

The major limitation to the construction sector was the lack of clear national construction standards and regulations. He informed the members that Government is in then process of formulating a governing policy for the construction sector, however, he cautioned them to stream line and ensure consistency with the rules affecting the private sector for example, the PPDA law that ensures efficiency and value for money. He advised them to

include performance appraisal strategies i.e. punishment of contractors with shoddy work and reward to the best performers.

He noted that the public does not know whose responsibility it is for pot holes, collapsing buildings among others. The Public always raises complaints against KCC, Ministry of Works, PPDA and some times the Contractors. He pointed out price fluctuations as one of the challenges faced by the sector and questioned on what government was doing to ensure stability. PPDA had advised Entities to include price fluctuation clauses in their Contracts with reference to the indices issued by UBOS.

Noted that most DLGs were equipped with tractors and other machines and H. E. the President was in favour of the use of such machinery for works at the respective districts under Force on Account, however, the challenge is how such works are monitored to ensure efficiency and value for money.

The lengthy procurement/disposal process is another challenge. He requested the members to propose ways of reducing the time/days spent in the procurement and disposal processes. He called upon UNRA to put more emphasis on the area of contract management records to ensure compliance and fall back position in case of inefficiency. He highlighted that PPP is a new concept that should be clearly regulated for the benefit of government.

Since the PPDA law was under amendment and Preference Schemes and Sub contracting were some of the areas to be addresses, he called upon the present stakeholders to present proposals to improve on these areas. He implored respective professional bodies to take action on irresponsible contractors; he gave an example of the Architect who designed a double stored KCC health centre without stair case. Such professionals should be punished/ disciplined.

He pledged PPDA's continuous support to PDEs with capacity building and guidance on compliance areas like procurement/ disposal planning, development of scope of works and bid evaluation. He passed a warning to Contractors on taking up assignments with unclear scope of work.

He concluded by pointing out that the private sector should invest with the assurance of making money at the same time government should get value for money.

FIRST SESSION

FIRST PRESENTATION- PROCUREMENT CHALLENGES FACED IN THE CONSTRUCTION INDUSTRY: THE CONTRACTORS' PERSPECTIVE

In line with the workshop theme, the Chairman UNABCEC, Mr. Gumisiriza Birantana presented the challenges faced by Contractors mainly in four areas i.e. the bidding Process, Evaluation and Contract Award, Contract formats and Project Execution

Bidding Process

He sated that the bidding process, is too long, involves purchase of voluminous and costly documents yet the Preference clause is always deleted**.** That most Entities prefer the use of the stringent pre-qualification criteria which de franchise local Contractors.

The Contractors have a challenge of expensive bid securities in favour of only bank guarantees and they find the 4 months period for bid validity as too long a period. He alleged that Uganda has too many qualified Contractors however, the jobs are given to a few companies due to the stringent bidding process, for example that there are only two companies doing over 50% of the available jobs

Evaluation and Contract Award

They had an issue of poor management and lack of transparency under the pass/ fail evaluation methodology. They presented that under this methodology necessary requirements are never recorded at tender opening and there is lack of verification of documents and other tendered information. The concept of Lowest Bidder is always the Best Bidder is a big challenge where by most contractors under price the bids hence compromising quality thus shoddy work and the end result of this is that Government does not attain value for money.

There is lack or delayed communication after evaluation of bids especially to the unsuccessful bidders and this includes delayed return of Bid Securities.

Contract formats

Under this area it was noted that Contractors are exploited by the Contracts signed with Government; there are no price escalation or bonus clauses, they are always silent on the time given to the Consultants to produce certificates and the allowed time for honoring of certificates (56 – 90) days is too long.

He appealed to Government at the that price escalation clauses should be included in the contract document, honouring time of certificates should be shortened, the time limit for Consultants to produce certificates should be stated in that the Consultants are held accountable for any delays and not only Contractors.

Penalty clauses should be introduced to ensure efficiency on both parties to the Contracts, for example, Government should be penalised for delayed payments.

Contract Execution

Contract management was pointed out as one of the most challenging and wanting area. The different parties take blame in this area i.e. the project manager, (representative of the Entity), Contractor and Consultant.

For example, the requirement of Performance and Advance Securities of 30% of Contract Price are not accessible for small (simple) jobs, Banks consider contracting risky business and yet Insurance Policies are never preferred and the additional bank guarantee of 10% is not logical. Contractors are faced with the challenge of increased prices of inputs, vague specifications, substandard designs, under/overestimated quantities, additional taxes like WHT of 6%, inadequate supervision ,substandard materials and unsafe working methods.

Entities were called upon to always ensure proper supervision for example; necessary equipment is on site as stipulated in tendered bids, there should be prompt periodic meetings not only site meetings to monitor progress. Government institutions like UNBS should be empowered to enforce the manufacture or importation of quality construction materials, they should be certified.

Contractors were advised to use proper working methods like “men at work” signs. The Consultants should exhibit expertise and issue timely certificates for the works. The private sector was encouraged to make use of professionals to avoid substandard/ collapsing buildings.

In conclusion he called upon Government to enact a National Construction Industry Policy and set up a body to regulate the industry by registering all Contractors and signed contracts with government among others.

SECOND PRESENTATION- PROCUREMENT CHALLENGES FACED IN THE CONSTRUCTION INDUSTRY: THE CONSULTING ENGINEER’S PERSPECTIVE- by Engineer Musiimenta Julius

The Chairman of the Uganda Association for Consulting Engineers’ presentation was on the membership criteria of the association, its objectives, contribution to society and then challenges faced by engineers in the procurement cycle under the construction industry.

He informed the members that engineers are middle men for the contractors and their clients. The association has the duty to further professional etiquette and inform clients and society about the duties and the expected professional conduct of the consultants. He added that UACE is a full member and subscribes to the membership criteria of FIDIC and make its opinions known and contributes to the shaping of FIDIC. It always puts forward observations regarding the profession’s problems and successes, thereby helping FIDIC to keep abreast of new ideas and developments

He pointed out the following as the challenges faced by the engineers in the construction industry.

- Lengthy procurement process i.e from bid submission and contract ward.
- Most contracts are referred to as small or short period contracts and therefore do not allow for price escalation.
- Delayed payments for both contractors and consultants.
- Excessive and uncontrolled power given to project manager under Part 4 of the General Conditions of Contract for the Procurement of Works – where the Project manager decides contracting matters between employer and contractor in the role representing the employer. Impartiality can be challenged by the contractor in the case determination of the Project Manager is not acceptable.
- Lack of provisions for part completion certificates. Clients always request for certificates of completed works yet some parts of the works are always under use by the beneficiaries. This affects the defect liability period.
- Delayed release of bid securities to unsuccessful bidders.
- Lengthy process of approval of variations by Contract Committees for both consultants and contractors.
- Ignorance/fear of Entities' right to recommend to PPDA to formally blacklist firms that produce shoddy works.
- Lack of legal framework for the classification of contractors and consultants under the current registration system in Government departments, for example, it does not differentiate between foreign and local firms to avoid unfair competition for jobs.
- Stringent conditions for post-qualifications i.e. experience, annual turnover, Equipment, Personnel, Audited Accounts, Eligibility, particularly in international competitive bidding limit the local providers.
- PPDA Regulations do not explicitly state how to avoid under-priced bids-The fairest method of assessing cost variation is the use of a Price Adjustment Formula based on Consumer Price Indices. Capacity to develop and regularly update these indices is required in UBOS to ensure readily available and reliable data.
- Non disclosure of evaluation methodologies in SBDs or change of methodology during evaluation causes lack of transparency.
- Accounting Officers' failure/ refusal to handle administrative review applications at Entity level and instead informally blacklist the complainants basing on personal differences.

He was of the view that PPDA should participate in the evaluations of bids at Local Government level, however it was clarified that the procurement process was decentralised and therefore since PPDA is a regulator, it should not get involved.

In conclusion he called upon government to enact a National Construction Industry Policy, recognize UACE and rely on its data base for qualified engineers to avoid shoddy works by ill-equipped and inexperienced firms.

SECOND SESSION

DISCUSSION OF THE ABOVE PRESENTATIONS- By Engineer Karuma Kagyina, representative of Ministry of Works and Transport.

The discussion focused on procurement planning, bid evaluation, contract management, record keeping, respect of ethical code of ethics and discouragement loss/peasantry talk, delayed payments among others.

He was of the view that there are few jobs in Uganda, therefore the prequalification of Contractors, Engineers and Consultants with experience may not be the solution.

Role of Stakeholders

He noted that the problem was not only with Engineers or Contractors but all stakeholders, including the technocrats for example Entities issue incomplete SBDs with fake specifications, unclear ToR, they never visit the sites and delayed payments among others.

There is always poor/no procurements planning and this makes the process seem lengthy. He clarified that the law is not superfluous, its up to the practitioners to abide by it. The technocrats should not misuse their powers to delegate by assigning all their roles to junior/inexperienced officers.

Bid evaluation

He advised that evaluations should be done by experienced persons.

Contract management

He suggested that the best solution to shoddy work is to have sufficient supervision. The supervisors (contract managers) should be more knowledgeable than consultants. He advised UNRA as the newly established body in charge of roads to assign experienced staff to supervise the consultant and contractors.

On the issue of record keeping, he advised that all the parties to the contract should keep records on the entire procurement process.

Ethical code of conduct

Ethical Conduct seems to be a myth in Uganda. He called upon all stakeholders to abide by the law. The practitioners should always act professionally, respect the ethical code of conduct, keep clean records, avoid brief case contractors. On this matter therefore apprentice was recommended for all young practitioners.

Late payments

In order to discourage late payments by government, the user departments (contract managers) should be involved in the payment of the contractual sum since they are knowledgeable of the hardships faced by the contractors and consultants.

Loose/peasantry talk

He stated that there is a lot of loose talk at both the central and local government. Contractors are said to take/give bribes, and always talk ill of their competitors - there is need for sensitisation of the masses of what is involved in the construction sector.

In conclusion he acknowledged the challenges faced by the construction industry and called upon all stakeholders to curb them, for example government officers/ PDEs should plan all procurements and make timely payments to enable smooth completion of works.

DISCUSSION BY THE PLENARY

The following issues were raised and clarified during the plenary discussion,

- Most works are done by investors – they come in the country with their plans which are only approved by KCC, for example the CHOGM related works were not done by consultants – architects were not involved.
- All government entities should recruit professionals for the works, for example, it was alleged that KCC does not have professional architects despite the many works contracts they enter into on behalf of government.
- Indices compiled by UBOS are available, however, they are not utilised – the contracts don't refer to them.
- Development of local capacity should be a government effort in all sectors like it is done in South Africa, Malasia, Asia, China among others.
- There is need to look at and handle issues objectively, politicians should shy away from fear of losing votes (politics) or donor approvals, they should approve the national construction policy.
- KCC is putting in place the certification system TQM- international construction policy.
- Shoddy work is caused by the concept of lowest bid is best bid, consultants usually submit lower bids and they use incompetent staff hence compromising quality of work.- In Kenya, minimum 10% is requirement as consultant fees and all the listed staff in a bid should be employed by consultant.

THIRD PRESENTATION – PROSPECTS FOR THE LOCAL CONSTRUCTION INDUSTRY- By Eng. Ssebbugga Kimeze – Uganda National Road Authority.

The Director, Operations, UNRA shared with the members the Authority's set objectives and responsibilities as set out in UNRA Act May 2006. These are,

- Provide an improved road management environment;
- Be responsible for the professional management (maintenance and development) of the National Roads Network;
- Advise Government on general roads Policy;
- Contribute to the addressing of transport concerns;
- It is responsible for the management of the national road network thus planning, design, maintenance, rehabilitation and development.

He informed the members that to ensure a safe and efficient network UNRA' strategies will include;

- Routine maintenance
- Renewal/Rehabilitation of existing paved roads given overall priority to stem the growth of the maintenance backlog
- Studies for rehabilitation improvement and upgrading projects
- Improvement and Upgrading of key export road corridors which include Malaba/Busia-Kampala, Kampala-Katuna and Kampala-Nimule among others
- Improved and effective axle load measures and ferry services.

He disclosed that UNRA has prospects for Local Construction Industry (LCI) with the planning function which basically handles studies (Feasibility, design, Procurement, Supervision etc.). Under this the local construction industry is to take part through sub contracting, joint ventures and to a limited extent outright competition e.g. Multiplex/Omega had been warded the black spots tender. The LCI is expected to play a role in the

- Supply of materials like culverts, guard rails, lime etc;
- Routine Mechanized Maintenance ;
- Periodic maintenance;
- Rehabilitation ;and
- Bridge rehabilitation and maintenance
- Restricted Local Competitive bidding whereby tenders will be advertised for different classes
- Open Local Competitive Bidding preferred for contracts of over Ushs 1.6 Billion
- Open, Restricted Bidding and Request for Quotations for supply of road materials
- Open and Restricted Bidding for Request for proposals for consultancy services
- Direct procurement for emergencies

Contractors/Consultants Registers

He mentioned that UNRA was in the process of developing/ updating the Contractors/Consultants Registers for 2009/2010, however, in the meantime they had in

the interim period adopted the then recently approved MoWT register and any other approved list of providers from entities and authorities handling procurements similar to UNRA.

Challenges to the LCI

From UNRA's perspective, the Construction Industry is faced with the following challenges;

- Limited Capacity and lack of professionalism- Different contractors fronting same consultant, submission of under priced bids in order to be BEB, resident engineers are never on site, poor financial management.- UNRA had plans of assisting in developing their capacity through giving sustainable job opportunities and ensuring effective supervision.

- Failure to take advantage of domestic preference in international assignments- Contractors/Consultants were required to organize themselves to form strong consortiums in order to benefit.
- Price Escalation- It is acknowledged that this is a very big problem especially with the fluctuating fuel prices, currently contracts less than 18 months do not attract the clause – the Contractors were advised to professionally quote for the jobs to take care of some of the fluctuations.
- Bid, advance and performance securities are a challenge to most contractors- He clarified that bank guarantees are necessary for bids and advance guarantees and where feasible, insurance bonds are acceptable.
- Long Procurement Process- this is a result of the different agencies and PPDA regulations. Although UNRA was to try to shorten the time, bidders were advised to professional take care of this in their quotation.
- Delayed payments - They pledged an improved funding system with efficient disbursement and payment procedures are being put in place and ensure prompt payments to its service providers

In conclusion he commended the holding of a Joint PPDA/LCI/UNRA/MOWT and other stakeholders' workshops and pledged the operation of an open door policy and close coordination with UNABCEC and PPDA

FOURTH PRESENTATION – FRAME WORK IN THE PPDA LAW FOR THE CONSTRUCTION SECTOR-*By Mrs Cornelia K. Sabiiti, Director Legal and Compliance -PPDA.*

The presentation focused on five (5) areas; the legal framework, key stakeholders, procurement principles, key procurement issues and challenges faced.

Public procurement in the construction sector in Uganda is regulated by the PPDA Act No. 1 of 2003 and the Regulations 70 of 2003 made there under, the Local Government (Amendment) Act No.2/2006 (February 2006) and Regulations SI No.39/2006 (August 2006), Standard Bidding Documents and PPDA Guidelines.

It was highlighted that both the public and private sector have a stake in the construction sector. It involves Government, Development Partners, central and local government PDEs, Private Sector – Consultants and Contractors, Business development organisations – UACE, FUCO & UNABCEC, Professional Bodies – UIPE, USA, ISU, Regulatory Bodies – PPDA, ERB, ARB & SRB, Educational Institutions – Universities, technical colleges and training centres and the Public.

With reference to Part IV of the PPDA Act, there was a recap of procurement principles i.e. transparency, accountability, competition, confidentiality, economy and Efficiency and Non-discrimination – except for preference and reservation schemes.

The following were given as the key procurement issues

i. Project planning and design
ii. Tendering and Selection process
iii. Contract placement
iv. Contract management and monitoring
v. Complaint mechanisms
vi. Enforcement measures

Project planning and design

Project planning involves recognition of need, availability of budget, funding arrangements, identification of the objectives of the required services/works, development of detailed TOR, scope of works, Bills of quantities and drawings, supervision requirements i.e. working relationships and specific administrative arrangements to be applied, duration of the services/works, relevant industry standard among others.

Tendering and selection process

The tendering process should be in accordance with the five (5) procurement methods under Part VI of the PPDA Act, i.e. Open Bidding – Domestic or International, Restricted Bidding- Domestic or International, Request for Quotations and Proposals, Direct Procurement and Micro Procurement. However, each of these procurement methods has a specified threshold value, minimum bidding period and Standard Bidding Document.

Selection process

At the selection stage, the following are considered for submission of a responsive bid, clear understanding of the Statement of requirements, bid format and submission methodology, bid validity period, format of authorisation to submit bid, relevance of pre-bid / site meetings, currency of the bid, amount and form of Bid security, amount and form of performance security, evaluation criteria and compliance with the bidding period and attendance at bid opening where applicable.

It was clarified that the law provides for the following evaluation Criteria

a. Preliminary - Eligibility & Administrative compliance
b. Technical Responsiveness
c. Financial Comparison
d. Post qualification

Different evaluation methodologies are used for consideration of technical responsiveness of a bid for consultancy services and works i.e.

- Consultancy Services - PDEs are required to use Quality and cost based selection methodology (QCBS) Quality and cost based selection methodology (QCBS). However they may also use Quality based selection methodology (QBS) or Fixed Budget Selection (FBS).
- Works – PDEs are required to use Technical compliance selection methodology (TCS). However, Quality and cost based selection methodology (QCBS) may be used for procurement of works for design and build or turnkey contracts due to the consultancy element.

Contract placement

The members were enlightened on the areas to be complied with by the PDE after the Contract Award Decision by the CC before contract signing:

- Within 5 days of the decision PDE should display a Best Evaluated Bidder Notice for 5/10 working days and send it to all bidders.
- Confirm that Award decision is not under Administrative Review
- Obtain Approval of relevant agencies including SG where contract is above Ug. Shs 50m.
- Commitment of the full funding for period of contract.
- Issuance and Signing of contract documents by AO.
- Notify unsuccessful bidders and release any bid securities

Contract effectiveness

This is usually specified in contract; however, it may be dependent on the PDE's receipt of the performance security or advance payment guarantee or the provider receipt of advance payment or acceptable letter of credit.

Contract management

With reference to Part V of the PPDA Regulations 70 of 2003, it was reiterated that every Contract should clearly spell out its type, obligations of parties clearly identified, clear payments terms- method, structure, currency, documents, period, risk to PDE minimised but Contract fair and equitable, price adjustment clause, dispute settlement clause, time frame/schedule for execution of the services/works, value for money maximised with monitoring and cost control measures in place, effective supervision arrangements in place, roles of a Contract Manager/Supervisor, variations & change orders vs. contract amendments, emergencies and termination of Contracts.

A contract manager is expected to prepare a contract implementation plan, ensure providers meet terms and conditions of contract and advises PDE to meet payment obligations, manages handover/acceptance procedures, provides full details of contract amendment/termination to CC, submits progress/completion reports and keeps all contract management records-file & register.

Complaint mechanisms

To ensure fairness of the system, openness/transparency and accountability, the law provides for a complaints review mechanism by both the AO and PPDA.

The application for an administrative review by AO is accompanied by payment of a prescribed fee in accordance with Guideline 6 of 2003; however, such fees are to be refunded if complaint is upheld.

The modus operandi for the compliant review mechanism is as follows;

Administrative Review by AO

- Bidder to submit Complaint to the AO within 15 working days from the date the bidder first became aware of the circumstances giving rise to the complaint.
- AO to suspend the procurement if continuity will worsen the situation or result in incorrect contract award
- AO to make a decision within 15 working days giving reasons for decision with copy to PPDA.
- Bidder may appeal to PPDA if AO fails to take a decision within 15 days or if Bidder is dissatisfied with the decision of the AO (within 10 days)

Administrative Review by PPDA

- Notify the respective PDE & all interested bidders
- Suspend the procurement or disposal;

- Investigate whole process.
- Issue decision within 21 working days;
- Dismissing complaint
- Upholding complaint and annulling in whole or part procurement process and any other corrective action/remedies.

A Bidder may appeal to the High Court if still dissatisfied with PPDA decision.

Enforcement measures

The law provides for enforcement measures for punitive actions applicable for breach of the law. It was noted that punitive action may be taken by PPDA against PDE in form of recommendation for disciplinary action on AO, CC members, PDU members or UD or suspension of bidders on recommendation of CC.

Challenges

As a regulatory body for public procurement and disposal in the construction sector among others, the Authority faces the following challenges;

- Limited procurement and contract management records
- Limited capacity of local providers – technical and management capacity
- Restricted access of contractors to timely and adequate financing to cover bid security, advance payment and performance security due to poor credit ratings.
- Lack of legal framework for classification and grading of contractors and consulting engineers
- Late payments resulting in contractors facing difficulties in repayment of loans used to invest in acquisition of machinery and equipment.
- Under pricing by providers who later seek to recoup profits through cost variations leading to disputes and litigation.
- Price fixing (cartels) by the more established providers
- Lack of feed back to contractors and consultants on their performance to help the improve in future projects.
- Requests from LGs to use Force Account.
- Non existence of mandatory sub-contracting packages and joint ventures under open international bidding

DISCUSSION OF THE ABOVE PRESENTATION- *Eng. John Twinomujuni Ministry of Water and Environment*

The discussion was on perceptions based on research results involving 32 respondents covering 39 construction contracts including Donors, Contractors, Consultants and Contract Managers.

He concurred with most of the issues in the presentation and requested to add mutual trust under the procurement principles i.e. minimising suspicion by all parties to the procurement process. Client/Consultant/Contractor relationship should be more of

partners with common objective rather than “boss attitude” which encourages conflict and litigation.

He proposed that culture change could be achieved through interactive workshops for confidence building of all stakeholders. Under project planning and design, he cautioned the PDEs to set clear objectives/ scope to ensure delivery of good works/services and attain value for money.

He appreciated that the tendering and selection process is adequate and flexible enough, however the PDEs need to appreciate financial implications of the following:

- Clear understanding of statement of requirements
- Bid validity period
- Performance security
- Amount and form of bid security

He cautioned the PDEs to always ensure the evaluation criteria is well thought out to avoid use of wrong/incompetent contractors. On the issue of contract Management, he was of the view that there is need to explore other types of contracts for example, target cost contracting and partnering with open book accounting.

Although the law empowers the AO, PPDA, and High Court to handle the complaint mechanisms, he proposed a review of the appeals process in order to clearly spell out IGG’s role in the procurement cycle.

The following were raised as the challenges to the construction sector;

- Limited affordable credit facilities to contractors hence a problem with advance guarantees, bid and performance securities
- Cash flow constraints faced by Government Clients due to unpredictability of cash releases from MoFPED
- Much emphasis put on pricing rather than management techniques as a tool to the bidding process price cutting.
- Inadequate capacity at all levels of implementers i.e. consultants, contractors and Clients.
- Tight conditions set by donors for the “No objections”, this is an equivalent of parallel approval structures which causes delay.
- Lengthy procurement process

In conclusion he recommended for capacity building at all levels(contractors should be encouraged to have software packages specifically for resource revelling such as PERTMASTER), culture (Mind-set) change, introduction of value management in the procurement process and encourage target cost and Partnering contracting

DISCUSSION BY THE PLENARY

The following issues were raised and clarified during the plenary discussion

- The unsuccessful bidders should be refunded the funds spent on the purchase of the bidding document.
- KCC was not accepting insurance bonds because of the problem of calling on them.
- To achieve the objectives of the PPPs, small scale projects at local level by the private sector initiatives, e.g. construction of village roads by "small" contractors should be encouraged.
- The SBDs issued by PPDA should be simplified with reference to FIDIC and World Bank. It was clarified that this was already done, however, the law is clear that these SBDs are a mere guide to the Entity therefore can be used with modifications and PPDA encourages Entities to always seek clarification
- For quality assurance of construction materials, the laboratories were to be retained by MoWT and not to be taken over by UNRA.
- Entities were encouraged to use performance based contracts to avoid shoddy works, especially large contracts i.e. between 500-1000km for multi year. Such contracts provide for maintenance of roads for a given period of time after the contract period.
- It was noted that UNRA was to consider this area with reference to thresholds to be agreed upon with PPDA. They were yet to conduct pilot studies on national roads. –To use module used in other countries – reduce scope to 100 to spread the risk and engage more local contractors.
- Ugandan contractors have no capacity for such works. UNRA should consider sharing risk with contractors in performance based contracts.
- Lack of price escalation clauses for contracts below 18 months. With the price fluctuation of materials and fuel, this area called for special attention. Price escalation – it was clarified that Reg. 245 of the PPDA Regulations 70 of 2003 provides that the Entity may include the price escalation price in the SBDs, therefore the parties may agree on the matter.
- In Local Governments, use of local languages in a bidding document was acceptable but not central level.
- Solicitor General's clearance is sought for all contracts above 50m by both CG and LG and this had been made easy by establishing regional offices.
- Since the local authorities (politicians) are at the grass root, they should be involved in the supervision and monitoring of works projects in their respective areas.
- "Force on account" is not a procurement method, however, the use of in house machinery or consultancy services is encouraged as long as the materials to be used are procured using the procurement methods under the law.
- There are cartels in some of CG entities like Ministry of Water and Environment, Ministry of Health and Ministry of Education. Their prequalified providers are not

known, they don't promote local contractors. Cartels lead to delayed or cancelled procurements.

- PPDA should issue special guidelines for semi private Entities that compete for opportunities with providers in the private sector job like NEC. Entity was advised to apply for accreditation under Reg. 342 of the PPDA Regulations.
- There is a challenge of requesting for separate tax clearance to respective Entities for the different procurement processes. However, this was clarified that URA had cleared this issue and PPDA issued circular to that effect.
- The role of the IGG in the procurement process. It was clarified that the IGG has constitutional powers to investigate complaints in all areas economic, social, procurement inclusive. PPDA is mandated to regulate the procurement/disposal processes. However, since IGG has regional offices, they are more accessible than PPDA.

RECOMMENDATIONS OF THE WORKSHOP

- Public Procurement laws should compel foreign companies to form joint ventures or associate with local firms or sub-contract a defined percentage of the work or services, for purposes of improving the participation and development of our local firms
- UACE should pre-qualify providers on behalf of government or for quality assurance purposes, should be given the mandate together with UNABCEC to issue certification to the respective professionals at pre-qualification stage for all works both at central and local government.
- All providers in the construction sector should be classified and graded according to capacity and experience.
- Evaluation teams should be facilitated to verify works done by foreign contractors, they should be evaluated on site in their respective countries of origin.
- PPDA and UNRA should promote labour based technologies and framework contracts.
- PPDA should urgently implement preference schemes -Uganda should favour its local contactors like it is in Tanzania- this will help contractors and consultants get required experience.
- Government should recognize and support professional bodies like UNABCEC, UACE and others in the construction industry.
- The Joint Building Council that used to exist before and that united the architects, contractors, engineers and surveyors should be revived and mandated to publish price escalations per month.
- Architects should head the contract management teams for works.
- PPDA should request the Attorney General to allow regulatory bodies to discipline their respective practitioners.
- To ensure quality management within firms i.e. contractors and engineers– should use TQ/ISO requirement for prequalification of providers.
- ISO certification should be a requirement at pre-qualification not at evaluation
- PPDA should train PDEs on evaluation methodologies.
- Evaluation teams – should have qualified personnel to interpret the designs and bills of quantities and mode of measurements.
- “Small” contractors should be trained on format and interpretation of SBDs and Contract documents.
- There should be a joint quality assurance tribunal to ensure compliance.
- Government should open letters of credit upon signing contracts to facilitate prompt payment to contractors.
- Penalty measures under PPDA should be implemented and provide more deterrent measures.

- Drawing of designs and supervision of works should be awarded to the same contractor to avoid shoddy work and transfer of blame between Contracts and Consultants.
- There is need for a shift in mindset on PDEs when preparing evaluation criteria from lower costs at the expense of quality to value management and life cycle costing in order to ensure that operating, maintenance and disposal costs are also considered up front
- Value Management and value engineering could be made part of bid evaluation process
- PDEs should encourage target cost and Partnering contracting
- Stakeholders should be trained on the culture of compliance and professional bodies, like PPDA should be empowered to enforce compliance, it should be given power to cancel contracts based on flout laws
- The general public need to be sensitised on the works sector to avoid miss information .
- Since UNRA is in the process of grading contractors, it should be conducted transparently.
- UACE should pre qualify providers on behalf of government.
- The PPDA Price adjustment formula should be included in the works contract document.
- Evaluations should be conducted by experts and it should be emphasised that the lowest bidder need not be the best evaluated bidder. PPDA should train PDEs on evaluation methodologies under the law.
- Evaluation teams need to carry out due diligence on the bidders to verify works claimed to be done by the bidder, machinery and personnel.
- There is need to regulate the time frame of the evaluation process in the PPDA law.
- Contract documents should provide for compensation of Contractor in case of change of scope of works
- Works should be supervised by experts and with project managers with reference to the terms of reference in the SBD.
- Supervisors should keep records on the works projects.
- Local authorities and communities need guidelines do that they can also be involved in monitoring of contracts.

WAY FORWARD

1. PPDA should forward the recommendations of the workshop to Ministry of Works and Transport as an input in the National Construction Industry Policy.
2. PPDA and the Ministry of Works and Transport should expedite the establishment of the Register of Providers and the Contractors Registration Board.
3. PPDA should continue with capacity building of professional and business development organisations in the construction industry on PPDA law, technical standards and key aspects of project management to improve the quality assurance process and minimise suspicion by all parties to the procurement process.
4. The on going amendment of the PPDA law should address the management of Public Private Partnerships, Preference and Reservation schemes. The amendments should also examine the price escalation issue and how to prevent repeated variations in the works sector based on price indices issued by UBOS.
5. PPDA should organise a follow on workshop on the use and interpretation of SBDs and procedures under PPPs.
6. PPDA should consult with the competent authorities and issue a circular to clarify the use of insurance bonds as bid security for works.
7. PPDA is to follow up on the informal blacklisting of providers especially by Local Government PDEs and the emergence of cartels in the large Central Government PDEs that involve collusion between the PDE and the providers thus restricting open competition.

Annexes

1. Attendance list
2. Programme of the Workshop

Annexture L.C. 1 ATTENDANCE LIST

NO.	NAME	ORGANISATION	DESIGNATION	TELEPHONE CONTACT & EMAIL ADDRESS
1.	E. Male	Ministry of Works and Transport	Assistant Commissioner	0772442975
2.	Henry Lubega	Ministry of Works and Transport	Senior Structural Eng.	0772410587
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5.	Eng. Jonathan Mwedde	UNABCEC	Dep. Secretary General	0772494329
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PROGRAMME FOR THE WORKSHOP