



SETTING THE RECORD STRAIGHT ON THE DELAYS IN VARIOUS PROCUREMENTS WITHIN THE COUNTRY

On the 2nd December, 2010 the New Vision newspaper run an article "Bad Roads: who is to blame". In the article, a number of persons interviewed blamed the Public Procurement and Disposal of Public Assets Authority (PPDA) and the PPDA Act and Regulations for causing delays in obtaining services that are needed in the country. PPDA would like to clarify on a number of issues that were raised in the article and on its role in public procurement.

The Objectives of PPDA:

PPDA derives its mandate from the PPDA Act No. 1 of 2003 and PPDA Regulations No. 70 of 2003 that set up the PPDA. The objectives of the Authority as stipulated in Section 6 of the PPDA Act are to:

- Ensure the application of fair, competitive and transparent, non-discriminatory and value for money procurement and disposal standards and practices. This the Authority implements through advising Procuring and Disposing Entities (Ministries, Local Governments, Statutory Bodies, Parastatals) of their various roles in line with the Act and the Regulations
- Set standards for the procurement and disposal system in Uganda by developing standard bidding documents, guidelines.
- Monitor compliance of Procuring and Disposing Entities (PDEs) with the Act and Regulations
- Build procurement and disposal capacity in Uganda

Section 26 of the PPDA Act gives Accounting Officers (Permanent Secretaries, Chief Executive Officers of Statutory bodies, Chief Administrative Officers, Town Clerks, Medical Superintendents, University Secretaries, or any other Official appointed by the Permanent Secretary / Secretary to the Treasury as an Accounting Officer) the overall responsibility for the execution of the procurement and disposal process in their respective PDEs. This implies that the planning, budgeting and actual procurement of services, works or supplies needed in each PDE rests solely with the Accounting Officer and his/her technical staff i.e. the Contracts Committee and Procurement and Disposal Unit.

Is the PPDA Act and Regulations responsible for the lengthy procurement process?

NO. The PPDA Regulations define timelines for two (2) main areas in the bidding process. These are:

1. Bidding period (Reg. 144-145). This is aimed at giving potential providers adequate time to prepare responsive bids. This period is determined by a number of factors:
 - The complexity of the tender and the time required for bidders to obtain the necessary securities and prepare responsive bids.
 - The need for bidders to submit authenticated legal documents or equivalent documents as part of their bids and the time required to obtain such documents
 - The location of the potential bidders

The minimum bidding periods for central government are as follows:

- Open domestic bidding, 22 working days
- Open international bidding, 33 working days
- Restricted domestic bidding, 15 days
- Restricting international bidding, 20 days

2. Notice of best evaluated bidder (Reg. 224). The notice of best evaluated bidder is published on the entity's notice board to inform all providers who participated in the tender of who has emerged as the best evaluated bidder.

A notice of best evaluated bidder shall be published for a minimum of 10 working days in the case of procurements which require open or restricted bidding. This is not only aimed at upholding the principles of transparency but to give bidders adequate time to lodge their complaints if they are dissatisfied with the notice of best evaluated bidder (BEB).

If an Entity used open domestic bidding the total number of days for bidding and display of the best evaluated bidder notice is **32 working days which is approximately one and a half months**, three quarters of which is given to bidders to prepare their bids.

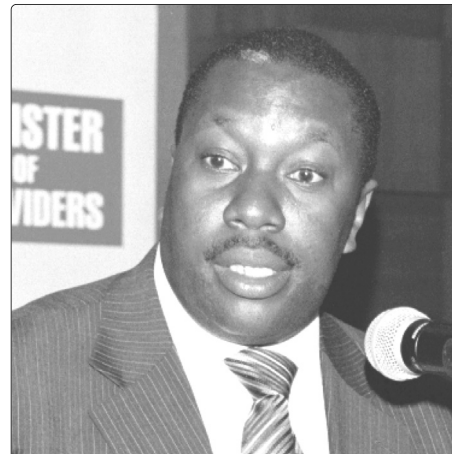
The question that we need to answer is what is causing the unnecessary delays in the procurement process.

The PPDA Act has stipulated days for the bidding and display period. However loopholes remain in the procurement process most of which are within the control of the PDEs. Some of the areas that have resulted in procurement delays are the following:

Late initiation of the procurement process: Many Accounting Officers do not initiate procurements until funds have been remitted to their account. This is WRONG and contributes to unnecessary delays in the procurement process! Once the budget has been approved, an Accounting Officer should ensure that procurements are initiated early enough. An Entity that intends to procure supplies worth 70 million Uganda shillings in December 2010 for instance knows that this automatically falls under the open domestic bidding method. Such procurement should be initiated by July 2010 taking into consideration: the bidding period which is the time given to bidders to prepare and submit their bids, the evaluation period for the bids received and the administrative review if any.

The Permanent Secretary/ Secretary to Treasury has issued a circular to all Accounting Officers advising them to initiate their procurements in time with or without having actual funds on their accounts provided that the Entity has an approved budget and only wait to sign the contracts when funds are released. This will help address the low absorption of funds in government and ensure that PDEs implement their procurement plans.

Poor implementation of procurement plans. Every financial year institutions of government submit their work plans, budgets and procurement plans to the Ministry of Finance, Planning and Economic Development upon which budgets are released. However when it comes to implementation of these budgets procurement plans are not adhered to. Not only are PDEs failing to implement their procurement plans, some PDEs don't even have procurement plans! To date a total of 93 Procuring and Disposing Entities have not even submitted their procurement plans for this financial year to PPDA! How then can a PDE be expected to procure when its procurement plan is non-existent 6 months to the end of the financial year!



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The PPDA has taken up this matter and is currently working with the Ministry of Finance, Planning and Economic Development to revise the procurement plan so that it is aligned and part of the national budget for ease of implementation and tracking

Delayed evaluation processes. Best practice requires that the evaluation team is approved by the Contracts Committee. However most Entities wait until bids have been opened to approve the evaluation committee. The biggest delay in works contracts however is in the actual evaluation of the bids. PPDA has records of procurements carried out in some PDEs where bids have taken 2 years to be evaluated!

As PPDA we have taken up this issue and are currently consulting various stakeholders on how best to address this problem. We believe that there is need to streamline the evaluation process by setting minimum timelines within which evaluations should be done. Once we get a consensus we shall issue a guideline on bid evaluation.

UNRA has cited Administrative Reviews as a bottleneck in the implementation of most of their projects. Can administrative reviews be abolished in the procurement process?

No, the PPDA Act gives providers a platform for redress where they are aggrieved. PPDA as a regulator cannot be seen to be hindering a bidder's right to seek for redress because this is not only a right under the law but a basic principle of natural justice.

While it is true that UNRA has had a significant number of administrative reviews, a number of the complaints have had merit and have resulted in the Entity having to re-evaluate the bids.

However the Authority is currently reviewing the administrative review fees with the view of increasing on the fees, especially for works procurements whose thresholds are far above those of other PDEs. The revision of the administrative review fees is aimed at discouraging frivolous complaints without necessarily denying providers the right to be heard.

I wish to inform the members of the public that the PPDA Act and Regulations are not as rigid as most Accounting Officers may want to believe. The Law provides other remedies where effective

implementation of the law can not be realized. These remedies include the following:

1) Accreditation

Reg. 342 of the PPDA regulations provides for accreditation of an alternative procurement and disposal system to a PDE where that PDE:

- Operates in a specialized field or discipline which requires alternative or additional regulations
- Has a status which requires alternative or additional regulations
- Has other reasonable grounds for using an alternative system

To date PPDA has accredited the following institutions: Post Bank, National Housing and Construction Company (NHCC) and is currently considering requests from the following Entities: Uganda Printing and Publishing Corporation (UPPC), Uganda Air Cargo, National Medical Stores(NMS), Uganda National Roads Authority (UNRA) and National Social Security Fund (NSSF). If an Accounting Officer believes that his entity operates in a unique and specialized field that requires an alternative procurement and disposal system, such an entity is free to apply for accreditation.

2) Emergency procurements

Under Reg. 110 a Procuring and Disposing Entity may proceed under emergency in situations that are unforeseen or urgent where:

- The country is seriously threatened by or actually faced with a disaster, catastrophe, war or an act of God e.g. earthquakes, floods etc
- Life or the quality of life or environment may be seriously compromised e.g. an outbreak of an epidemic like ebola etc

In such circumstances, an Accounting Officer may make use of emergency provisions regardless of the amount of money in question.

3) Deviations

Under the law (Reg. 339) the PPDA can also grant deviations from a rule, a method or a document where there is reasonable justification for the deviation.

4) Force on Account

This is a mechanism for implementing public works using equipment and personnel owned by an institution of government. It is aimed at helping institutions make use of their available equipment and personnel for the maintenance or construction of works that may not require the use of private contractors. However the institution would still have to procure the supplies e.g cement, bricks, sand etc competitively. Many Local Governments are already using force account.

Let me end by reiterating my point. The PPDA Act and Regulations is not responsible for the delays in public procurements. The PPDA Act and Regulations simply provides a mechanism to guide Accounting Officers in the implementation of their procurement plans so that there is transparency and accountability in the procurement process.

Let us stop the blame game and focus on planning and early initiation of procurement plans in order to ensure effective service delivery.