

Baseline Indicators Tool for Assessment of a National Public Procurement System Uganda

Background

The intergovernmental discussions that culminated in the Johannesburg Round Table produced a tool for assessment and comparison using baseline standards of quality for procurement systems. As a party to the Johannesburg Declaration that was made at the conclusion of the Round Table, the Government of Uganda has agreed, among other things, to utilise the approaches and tools prepared under the Round Table processes and to provide feedback about quality and areas for improvement. This exercise has now been undertaken by the Public Procurement and Disposal of Public Assets Authority (PPDA), which is the regulatory body for public procurement and disposal in Uganda.

Baseline indicators assessment tool

2. In accordance with the recommended methodology, the PPDA Management made an internal assessment of the extent of achievement within Uganda of the baseline elements, indicating whether the element has been fully achieved, substantially achieved or not achieved, using the definition of each level of achievement and the assessment key agreed at the Round Table.

Level of Achievement	Assessment Key
FA (procurement system fully achieves the baseline)	All baseline elements are substantially met
SA (procurement system substantially achieves the baseline)	More than 70% of baseline elements are substantially met
NA (procurement system does not achieves the baseline)	Less than 70% of baseline elements are substantially met

The methodology requires that the internal assessment should be validated by the donor partners and other stakeholders. This was done through the Working Group on Procurement whose membership includes representatives of leading donor partners including the World Bank, the UNDP, the Royal Netherlands Government, DANIDA and USAID. The Working Group made several adjustments which are reflected in the revised assessment that is attached.

3. The assessment indicates that Uganda has in place a legal and institutional framework that fully meets the requirements of a good public procurement system. The Public Procurement and Disposal of Public Assets Act and associated Regulations became law in 2003 and created the institutional framework, including the PPDA, which performs the following functions:

- **A policy function** – advising and reporting on public procurement and disposal processes
- **A regulatory function** – issuing the various tools for conducting public procurement and disposal and monitoring compliance with the law
- **A data management function** – developing a system for managing data on all public procurement and disposal
- **A capacity building function** – developing procurement and disposal capacity through training and line support
- **An audit function** - auditing the bid preparation process and the award and completion of contract

Shortcomings arise mainly in the enforcement of the existing rules and in the collection of data to monitor the performance of the procurement system. These are among the areas to which future efforts will be directed.

*PPDA
December 2005*

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Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
Pillar I: The legislative and regulatory framework					
Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations					
1A: Scope of application and coverage of the legislative and regulatory framework	Contracting entities at all levels, including government authorities, municipalities, regional authorities and utilities/state-owned enterprise, are covered		x		The existing legislative and regulatory framework covers central government entities and statutory bodies. A Bill to harmonise the local government procurement system with the national standard has been passed by Parliament and is awaiting the assent of His Excellency the President. It is expected to be enacted before the end of 2005
	All areas of procurement: works, goods and consulting services, are included	x			There are specific rules for each of these areas in the Regulations
	Procurement using public funds, irrespective of contract value, is included	x			Separate rules apply to various procurement values, including micro-procurements
	The applicable legislative and regulatory framework is structured,	x			The Act, Regulations, Guidelines and other documentation are available in printed

Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
	consistent, and accessible to users and all interested stakeholders				format and can be found on the PPDA website, www.ppda.go.ug
1B: Procurement methods	Stated preference for the use of open, competitive procurement unless otherwise justified in accordance with the legislative and regulatory framework	x			Section 80 requires procuring and disposing entities to use open domestic bidding, except where otherwise provided for in the Act
	International competitive tendering methods defined for specified contracts (e.g. where monetary thresholds exist) that are consistent with international standards	x			Thresholds for procurement methods are specified in Guideline No. 1/2003, with open bidding being prescribed for all high value contracts
	Defined basis for the procurement method, if other than open competition	x			Conditions for use of each procurement method are specified in the Fourth Schedule to the Act and also covered in the Regulations and Guidelines
	Negotiated procedures and direct purchasing only under well-defined and justified circumstance, subject to controls	x			Circumstances where direct purchasing may be used are defined in the Fourth Schedule to the Act and the rules for direct procurement are stated in Regulation 119; the use of negotiations is also covered in Regulations 219-222
1C: Advertising rules and time limits	Mandatory and accessible publication of opportunities for competitive procurement	x			Regulation 140 specifies that bid notices be published in at least one newspaper of wide circulation and be displayed on the procuring and disposing

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					entity's notice board and on the Authority's website. Minimum advertising periods also apply
	Mandatory publication of result information on contract awards based on defined thresholds	x			Notices of best evaluated bidder and of contract award must be displayed
	Minimum time limits for submission of tenders and applications, which should be consistent with method of procurement, national conditions and, when applicable, international requirements	x			Minimum bidding periods are specified in Regulation 145 for each method of procurement
1D: Rules on participation and qualitative selection	Fair, predictable and defined rules for participation that rely on qualifications and ability to perform the requirement	x			Rules on eligibility to participate, including pre-qualification, are defined in the Regulations. Sections 44 and 45 of the Act lay down the principles of non-discrimination, transparency, accountability and fairness that apply to all procurements
	Limited and controlled use of price preferential clauses		x		The legislation includes provisions on the use of preference and reservation schemes but a detailed scheme of control has not yet been devised
	Debarment process if covered, on defined basis, allowing for due process and appeal	x			A provider may only be suspended upon the recommendation of a contracts committee and after a process of

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					investigation by the Authority that allows the provider to submit information or evidence in his or her defence
	Rules for participation of government-owned enterprise that provide for equal treatment in competitive procurement		x		Government-owned enterprises are normally treated on the same basis as privately-owned enterprises. However, government hospitals and clinics are required to approach the National Medical Stores first for the supply of drugs and medical consumables
1E: Tender documentation and technical specifications	The minimum content of the tender documentation is specified	x			Standard bidding documents have been issued
	Neutral technical specification with reference to international standards where possible	x			Regulation 135 refers to the use of national or international specification standards
	Content of tender documentation is relevant to meeting requirement and implementing the process	x			Procurements must normally use the standard solicitation document which define the requirement precisely
1F: Tender evaluation and award criteria	Objective, fair and pre-disclosed criteria for evaluation and award of contracts	x			The evaluation criteria form part of the solicitation document
	Clear methodology for evaluation of tenders based on price and other fully disclosed factors leading to award of contracts	x			Evaluation criteria must be related to the statement of requirements and shall not be drafted in a way that restricts competition (Regulation 172)
	Requirement to maintain confidentiality	x			The chairperson is responsible for ensuring

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	during the evaluation process				that all members of the evaluation committee are aware of the need for confidentiality
1G: Submission, receipt and opening of tenders	Public opening of tenders in a defined manner that ensures the regularity of the proceedings	x			The procedure for public bid opening is specified and bidders' representatives may participate (Regulations 162 and 163)
	Clear requirement to maintain records of proceedings and process that are available for review/audit	x			Record-keeping is required for all procedures and records must be made available for inspection by the Authority (Section 56 and Regulations 89-92)
	Requirement to maintain security and confidentiality of tenders prior to bid opening	x			Bids must be kept in a sealed bid box or by other secure procedures until the deadline for bid submission (Regulations 157-159)
	Submission and receipt modalities of tender documents are well defined	x			Specified in Regulation 155
1H: Complaint review procedures	Inclusion of complaint and remedy procedures that provide for fair, independent and timely implementation	x			There are procedures for complaints and for administrative review

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Indicator 2: Existence of Implementing Regulations and Documentation					
	Implementation regulations that define processes and procedures not included in higher-level legislation	x			The Public Procurement and Disposal of Public Assets Regulations, 2003, provide for the implementation of the principles in the Act
	Model tender documents for goods, works and services	x			Standard bidding documents have been issued
	Procedures for pre-qualification		x		Guidelines on pre-qualification procedures have been sent to the Minister for laying before Parliament prior to issue. It is intended also to prepare a Standard Bidding Document on pre-qualification. With the completion of these measures, this baseline will have been fully achieved
	Procedures suitable for contracting for services or other requirements where technical capacity is a key criterion	x			Covered by Part VI, Division III of the Regulations
	User's Guide or manual for contracting entities	x			A User Guide on the Regulations has been issued
	General Conditions of Contracts for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements	x			Covered by Part V of the Regulations

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Pillar II: Institutional Framework and Capacity					
Indicator 3: Mainstreaming Procedures into Public Financial Management					
	Procurement planning and data on costing is part of the budget formulation process and contributes to multi-year planning			x	This will be a requirement in the budgetary process for the 2006-07 financial year
	Budget law and financial procedures support timely procurement, contract execution and payment	x			Part IV, Division II of the Regulations specifies that procurement plans shall identify the timing of requirements and the availability of funds. The Regulations also deal with contract management and the payment period
	No initiation of procurement actions without existing budget appropriations		x		While stipulated procedures support this rule, some exceptions have been made
	Contract execution is subject to budgetary controls to ensure sufficient funding for contract	x			Procurement proceedings may not be initiated unless funds are available and adequate (Regulation 105). A contract may not be entered into unless the required funds have been committed for the proposed contract (Regulation 226)

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	Budgeting system provides for timely release of funds to make payments against contractual obligations			x	Release of funds do not always meet budgetary allocation
	Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming			x	The contract manager is required to submit reports on the progress or completion of a contract but does not always achieve this linkage with budget execution and programming
Indicator 4: Functional Management/Normative Body (the Body)					
	The status and basis for the functional normative bodies is covered in the legislative and regulatory framework	x			The powers and functions of the PPDA are specified in the Act and Regulations

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	<p>The responsibilities address a defined set of functions that include, but are not limited to: providing advice to contracting entities; drafting amendments to the legislative and regulatory framework and implementing regulations; providing monitoring of public procurement; providing procurement information; managing statistical databases; reporting on procurement to other parts of government; developing and supporting implementation of initiatives to improve the public procurement system; and providing implementing tools and documents to support training and capacity development of implementing staff</p>		x		<p>All these responsibilities form part of the PPDA's mandate. However, the PPDA has not yet put in place the necessary systems and resources to discharge some of these functions. In particular there is need to generate statistical databases that would provide reliable information on the performance of the procurement system at the central and local government levels and to step up enforcement measures. These needs are being addressed.</p>
	<p>Organisation, funding and staffing and the level of independence and authority (formal power) of the bodies is sufficient and consistent with their responsibilities</p>		x		<p>The procurement regulatory body is financed by the Government of Uganda and by donor partners but funds have not always been released to meet budgeted programmes and staffing in some key areas is inadequate</p>
	<p>Responsibilities provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions</p>	x			<p>Separation of roles is clearly set out in Act and Regulations</p>

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Indicator 5: Existence of Institutional Development Capacity					
	A system exists for collection and dissemination of procurement information, including tender invitations, requests for proposals and contract award information			x	While the law provides for the collection and dissemination of information, the facilities to obtain this information are not yet in place
	A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented		x		A training programme has been provided to central government ministries and statutory bodies. However, the training programme for local government staff has not extended beyond the sensitisation stage. A training of trainers programme has been conducted to increase training capacity and a programme prepared for capacity building in local government procurement
	Systems and procedures exist for collection and monitoring of national procurement statistics			x	Procurement statistics are not collected at present though there are plans to do so through returns from procuring and disposing entities and through surveys. A first survey is expected to take place during the 2005-06 financial year.
	Quality control standards are disseminated and used to evaluate performance of staff and address capacity development issues		x		These standards are in place for the central regulatory body but have not yet been extended to staff in the procuring and disposing entities, though many ministries have their own quality control standards in place

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Pillar III: Procurement Operations and Public Procurement Market Practice					
Indicator 6: Efficient Procurement Operations Capacity and Practice					
	The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities			x	There is lack of information about the level of competence among procurement staff and procurement audits have revealed certain shortcomings. However, a programme for training and capacity building is in place and will be developed on the basis of a training needs assessment. Planned measures for professional accreditation have not yet been implemented
	The procurement training and information programmes implemented for government officials and private sector participants is consistent with demand		x		To boost training capacity, a training of trainers programme is underway
	The existence of administrative systems for public procurement operations, and information databases, to support monitoring of performance and reporting to and responding to the information needs of other related government systems		x		Procuring and disposing entities are required by law to submit monthly reports. Some are late and incomplete but the situation is improving

Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
	The existence and implementation of internal control mechanisms for the undertaking of procurement operations at the contracting level, including a code of conduct, separation of responsibilities as a check/balance mechanism and oversight/control of signature/approval authority	x			Control measures are specified in Act and Regulations
	The existence of norms for the safekeeping of records and documents related to transactions and contract management		x		Rules are in place but are not always followed strictly, as Procuring and Disposing Entities are not fully conversant with the rules
	Provisions exist for delegation of authority to others consistent with capacity to exercise responsibilities	x			Part II, Division V of the Regulations deal with the delegation of functions, including which functions may not be delegated
Indicator 7: Functionality of the Public Procurement Market					
	There are effective mechanisms for partnerships between the public and private sector			x	Such partnerships only arise on ad hoc basis
	Private sector institutions are well organised and able to facilitate access to the market		x		Much of the private sector is small and not well organised

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	There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market		x		Access to credit is a frequent problem
	There are no major constraints that inhibit competition (e.g. technical, labour and other standards)	x			No major constraints
	There are clear and transparent rules for determining whether to engage international or national markets, based on a sound development and business logic	x			The criteria for use of open domestic bidding and open international bidding are set out in the Regulations. Foreign bidders may participate in open domestic bidding

Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
Indicator 8: Existence of Contract Administration and Dispute Resolution Provisions					
	Procedures are defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures and methods to review and issue contract amendments in a timely manner	x			Procedures covered fully in the Regulations
	Dispute resolution procedures are included in the contract document providing for an efficient and fair process to resolve disputes arising during the performance of the contract	x			Uganda has an Arbitration Act that reflects international standards. Settlement of dispute provisions that make reference to the Arbitration law are included in the General Conditions of Contract
	Procedures exist to enforce the outcome of the dispute resolution process	x			Decisions of the Arbitration Court are binding on the parties to the dispute

Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
Pillar IV: Integrity and Transparency of the Public Procurement System					
Indicator 9: Effective Control and Audit System					
	A legal framework, organisation, policy and procedures for internal and external control and audit of public procurement operations exists and operates to provide a functioning control framework		x		A system is in place but coverage has so far been low. There are plans to increase the frequency of procurement audits and to improve on the measures taken to implement the recommendations
	Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance		x		Follow-up action is taken but stronger enforcement measures may be needed
	The internal control system provides timely information on compliance to enable management action		x		Procuring and disposing entities are required by law to submit monthly reports but some are late and incomplete
	The internal control systems are sufficiently defined to enable performance audits to be conducted	x			Performance audits are regularly conducted
	Auditors are sufficiently informed about procurement requirements and controls systems to conduct quality audits that contribute to compliance	x			Audits are conducted by the specialised audit staff of the PPDA and by external auditors who are pre-qualified on the basis of their expertise

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Indicator 10: Efficiency of Appeals Mechanism					
	The existence and operation of a complaint review system that gives participants in the public procurement process a right to file a complaint within the framework of an administrative and judicial review procedure	x			The Regulations contain provisions for administrative review by the Accounting Officer of the procuring and disposing entity in the first instance and thereafter, if the complainant is dissatisfied, by the Authority. Decisions may also be challenged in the Courts
	Decisions are deliberated on the basis of available information and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law	x			The factors to be considered during an administrative review are specified in Regulations 346 and 347. The decisions of the Authority following an administrative review are binding unless challenged in the Courts
	The complaint review system has the capacity to handle lodged complaints efficiently and a means to enforce the remedy imposed	x			As above

Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
	The system operates in a fair manner, with outcomes of decisions balanced and justified on the basis of available information	x			As above
	Decisions are published and made available to the public	x			The Authority's decisions, including the reasons and corrective measures, must be communicated to the concerned parties. A summary of the Authority's findings is published in the Annual Report, which is available on the website.
	Administrative review body or authority is separate from the regulatory body, executing agency and the audit/control agency			x	Administrative reviews are conducted in the first instance by the Accounting Officer of the procuring and disposing entity and, if the complainant is not satisfied, he may request the regulatory authority to conduct its own administrative review. However, decisions may be appealed to the courts
Indicator 11: Degree of Access to Information					
	Access to information by stakeholders in the process is supported by publication and distribution of information through available media with support from information technology when feasible	x			The regulatory body publishes an annual report and maintains a website

Pillar and Indicator	Baseline Element	FA	SA	NA	Remarks
	Systems exist to collect key data related to performance of the procurement system and to report regularly		x		While the law provides for the collection and dissemination of information, the facilities to obtain this information are not yet in place. There are plans to collect data related to the performance of the procurement system through periodic surveys and the first such survey, on perceptions of corruption in public procurement, will take place this year
	Records are maintained to validate data		x		There is a requirement to maintain procurement files but this is not always followed
	There is clear legal basis providing access to information to the public	x			A freedom of information act has been passed
Indicator 12: Ethics and Anti-corruption Measures					
	The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing the issue of corruption, fraud, conflict of interest and unethical behaviour and states actions which can be taken with regard to such behaviour (either directly or by reference to other laws)	x			The Act contains a Standard Declaration Form on conflict of interest and a Code of Ethical Conduct in Business
	The legal system defines responsibilities, accountabilities and penalties for individuals and firms involved in fraud or corruption cases	x			Contained in Prevention of Corruption Act and other legislation

Pillar and Indicator	Baseline Element	FA	SA	N A	Remarks
	Evidence of enforcement of rulings and penalties exists	x			Cases of suspected corruption are referred to the Office of the Inspector General of Government for further investigation and prosecution
	Special measures exist for the government to prevent and detect potential fraud and corruption in public procurement (e.g. procurement audits)	x			Evidence of corruption that emerged in the course of procurement audits would be referred to the appropriate authorities for further investigation and prosecution
	Stakeholders (private sector and civil society) support the creation of a procurement market known for its integrity and ethical behaviours		x		While there continue to be widespread instances of corruption in procurement, public opinion is generally supportive of measures to counter it
	Existence of a secure mechanism to report fraudulent, corrupt or unethical behaviour	x			Reports may be submitted to the Inspector General of Government. The identity of witnesses may be protected and there are arrangements to protect whistleblowers
	Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions	x			There are Codes of Conduct for the public service and specific Codes relating to procurement
Total number and % of baseline elements under each grading		54 (66 %)	20 (24 %)	8 (10 %)	