



PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

**STUDY ON THE BARRIERS HINDERING PARTICIPATION IN PUBLIC
PROCUREMENT**

DECEMBER 2019

1.0 BACKGROUND

In Uganda, the public sector demand accounts for a large share of public expenditure with over 50% of the national budget being expended through public procurement. Because of the magnitude of the spending involved, public procurement is a source of business opportunities for the private sector and therefore can be used as a policy tool to make markets more competitive and thus improve the quality of government services (World Bank, 2016).

The Public Procurement and Disposal of Public Assets (PPDA) Act, 2003 provides that all procurement and disposal shall be conducted in a manner that maximizes competition and achieves value for money. According to the Authority's strategic plan for the period of FY 2014/15 to 2018/19, the outcome of the objective on increasing competition is an increase in the average number of bids received per procurement to 5 by the end of financial year 2018/19.

However, according to the performance reports, there are low levels of competition for government contracts with an average of two bids received per procurement. The Audit findings for the FY 2016/17 revealed that 63% of the entities reported unsatisfactory performance on bidder participation. This was an increase from 52% of the entities reported in FY 2015/16 that were compliant with at least 3 bids per procurement.

The Authority therefore conducted a survey to establish the causes of low levels of competition for government contracts and recommend mechanisms that can enhance competition in public procurement.

1.2 Objectives of the Study

The major objective of the study was to establish the barriers hindering the business community from participating in public procurement and recommend mechanisms that can enhance competition in public procurement

2.0 METHODOLOGY

A survey was conducted to establish the opinions of sampled service providers and key stakeholders. Respondents were sampled from the PPDA Register of Providers and Entities' prequalification lists. The participants completed a semi-structured questionnaire that was administered physically and in some cases by email. A total of 1,200 participants were invited to participate and 737 (61%) responded to the survey.

Face to face interviews were conducted with 10 key informants from competent institutions including Head Procurement and Disposal Units, Private Sector Foundation Uganda, Uganda Manufacturers Association (UMA) and PPDA.

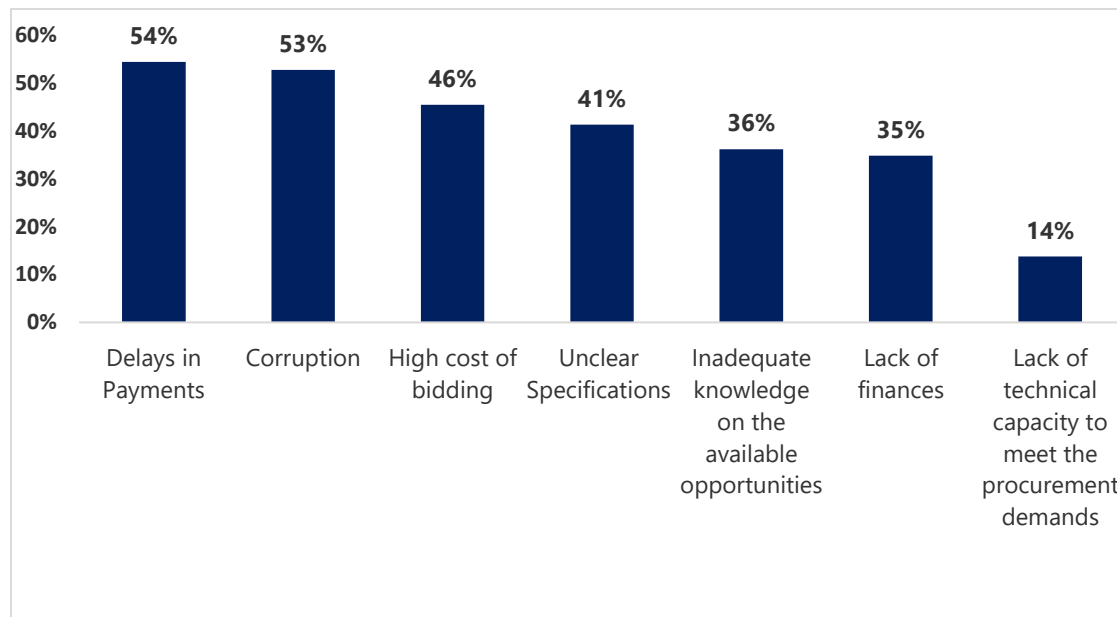
Data analysis was conducted using descriptive analysis (for quantitative data); thematic analysis (for qualitative data); and content analysis (for data from secondary sources).

3.0 KEY FINDINGS OF THE STUDY

3.1 BARRIERS HINDERING PARTICIPATION IN PUBLIC PROCUREMENT

67% of the respondents reported more than one barrier hindering their participation in bidding for government contracts. Overall, 54% cited delays in payments, 53% cited corruption, 46% reported high cost of bidding, 41% reported ambiguous/ unclear specifications, 36% reported inadequate knowledge of the available opportunities, and 35% reported lack of finances and 14% reported lack of technical capacity to meet procurement demands.

Figure 1: Barriers Hindering Participation in Public Procurement



3.2 EXPLANATION OF THE BARRIERS HINDERING PARTICIPATION IN PUBLIC PROCUREMENT

3.2.1 Delayed Payments

Review of the annual procurement audit report for the last 2 financial years (FY 2015/16 and FY 2016/17) revealed that an average of only 40% of the entities audited had a satisfactory¹ performance under the “payment ratio²” indicator.

The PPDA Law provides that the period for payment shall be thirty (30) days from certification of invoices however respondents reported that in most cases the payments by Government are beyond the required time that could even go up to beyond six months. Delays in payments lead to increase on the cost of capital where the providers have used borrowed money to execute the contracts.

The study revealed that delays in payments are caused by a number of factors including delays in approvals by the respective entity staff, poor planning and budgeting especially in the local governments that have unprotected votes which means that entities are committing government without securing funds for payments of the delivered goods, services or works. In other instances the entities experience budget cuts by the Ministry of Finance Planning and Economic Development (MoFPED) and are therefore not able to pay the providers in time.

3.2.2 Perception of Corruption in Public Procurement

Respondents reported that there is no transparency in the entire procurement process as sometimes the contracts are awarded to companies owned mostly by the government employees and politicians or their relatives in the respective entities. In other instances the procurement officers leaked the information to favored bidders

“The advertising process is just a formality to just comply with the PPDA requirements” reported a respondent.

Some respondents reported that that there is corruption even during payment processes as they are asked to pay bribes so as to access payments for the already implemented contracts.

¹ Satisfactory performance indicates a compliance score of greater than 60%

² This assesses the time taken to pay contractors to ensure that contract implementation is not delayed (30 working days from receipt & certification of invoices).

According to the 3rd Public Procurement Integrity Survey conducted in 2015, 71.8% of respondents believed there is corruption in public procurement. The survey further revealed that 60 per cent of service providers reported that they had bribed public officials to influence tenders and 54 per cent of respondents reported that the value of bribes was over 10 per cent of the contracted procurement value. It is because of these perceptions that the bidders are discouraged from bidding for government contracts.

“It is a waste of money to spend on the bidding process yet the best bidders are already determined” reported a respondent.

Corruption has an impact on the cost of delivering services, as firms anticipate paying bribes, they increase the contract price by an amount corresponding to the anticipated bribe resulting in high public spending and therefore fewer services are provided with the available resources. If tendering processes are rigged, “competition cannot play its role of driving the prices down and the quality up” (World Bank, 2016).

3.2.3 The High Cost of Bidding

Respondents reported that the bidding process involves regulated and unregulated costs that discourage potential bidders from bidding for government contracts. Some of the direct costs incurred by providers include:

- i. the non-refundable bidding fee,
- ii. Printing and photocopying of bidding documents,
- iii. the cost of obtaining bid securities from the bank (*between 1 -2% of the estimated value of the procurement*)
- iv. cost of obtaining the eligibility documents from the different institutions e.g. certificate of incorporation, trading license, PPDA certificate
- v. Cost of preparing the bidding documents (some bidders hire consultants to prepare the documents)

PPDA Regulations (2014) provide that the bidding documents may be sold in order to recover the cost of printing, copying and distribution and the price shall be calculated to cover only the costs and shall not include any profit however the survey noted that some entities are using the bidding fees as a source of revenue for the entity leading to the increased costs. The transactions costs incurred in fulfilling bidding requirements is more burdensome for mostly the smaller firms as the larger firms are more likely to have the necessary expertise and connections to meet bidding requirements.

In some entities, costs are paid before and after prequalification processes. To a bidder who participates in bidding for more than one procurement to broaden their chances, these costs are higher. Respondents further reported that some entities still request for bid securities even when the PPDA law was amended to provide for the bid securing declaration for quotations and restricted domestic bidding methods and in the procurement of consultancy services.

3.2.4 Unclear Specifications

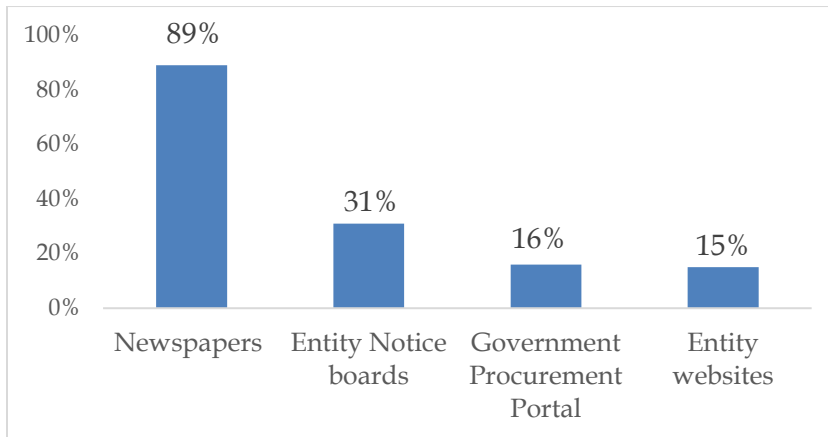
Respondents reported that sometimes the requirements stated in the bidding requirements are vague. In addition, respondents reported that in some cases the amount of experience and amount of turnover rates required are not necessary for the procurements stated. This discourages potential bidders as it favors only the few large firms. An example is requiring equipment such as motor grader, bulldozer, and roller when bidding for a classroom block. The setting of restrictive criteria is questionable as the specifications indicated are in some cases exaggerated for the procurement and hence limits the participation of many bidders.

3.2.5 Accessibility to Government Opportunities

Respondents reported that the bidding opportunities have not been publicized enough and sometimes they miss out on participating because of lack of knowledge on the available opportunities. In some cases the knowledge about the opportunities is obtained when it's already too late to prepare and submit responsive bid documents, in other instances providers that are prequalified are not contacted to participate in the bidding for contracts.

The survey sought to establish the medium through which respondents access the tender information. 89% of the providers have accessed the tender advertisement through newspapers, 31% through the entity notice boards, 15% through entity websites and 16% through the Government procurement portal.

Figure 2: Accessibility to Government Procurement Opportunities



3.2.6 Lack of Finances

Respondents reported that challenges of lack of access to capital/funds to enable them boost and sustain their businesses is a barrier to their participation in public procurement.

3.2.7 Lack of Technical Capacity

The study revealed that some bidders are unable to participate due to lack of the required skills and equipment to meet the procurement demands.

3.2.8 Other Challenges faced by Potential Bidders

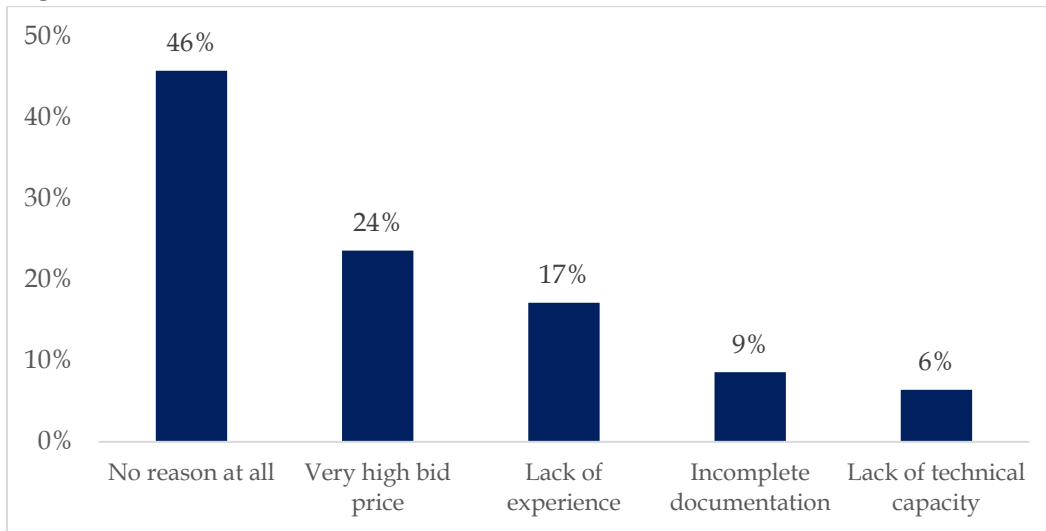
In addition to the above barriers, the other challenges reported by respondents include;

- a. Challenges in acquiring the URA tax clearance certificates especially in the upcountry districts.
- b. Delays in the procurement processes: Entities do not adhere to the timelines indicated in the tender advertisements and therefore bidders are not able to effectively schedule their activities.
- c. Complex Bidding Requirements.
- d. Poor working relationship between the procurement officers and the providers, this has led to negative attitudes towards participation in bidding for Government Tenders. Sometimes bidders are intimidated by the procurement officers or their fellow competitors.
- e. Some respondents reported that the time allocated for the bidding process is not sufficient.

3.3 BIDDER RESPONSIVENESS

The findings revealed that 58% of the respondents had not been awarded at least one government contract in the last 3 years while 42% have been awarded at least one contract in the last 3 years. The study sought to establish the reasons for the unsuccessful bids. 46% of the respondents reported that they had not given the reason for failure, 24% reported high bid price, 17% reported lack of experience, 9% reported incomplete documentation and 6% reported lack of technical capacity to meet the procurement demand.

Figure 3: Reasons for unsuccessful Bids



Majority of the respondents did not know why their bids were not successful and are therefore not aware on where they should improve when participating in the next opportunity.

4.0 RECOMMENDATIONS

The following recommendations are proposed to address the barriers hindering bidder participation in public procurement.

- i. **Enforce Timely Payments:** In order to strengthen the compliance of PDEs to the payment terms as stipulated in the PPDA Act. There is need to establish an effective monitoring system on the use of the Integrated Financial Management System (IFMS) in payment of providers. This will enable the Authority to identify the points of delay and put in place sanctions for entities that delay payments.

- i. **E-government Procurement:** The E-procurement system will reduce physical interface between providers and the officials responsible for procurement; hence, reducing the space for negotiating corruption. The system will foster easier and faster access to information, lower transaction costs, participation of a larger pool of firms from broader markets, and a faster bidding process.
- ii. **Improve Transparency in Public Procurement:** There is need to sensitize bidders on the existing complaints handling mechanisms and encourage them to report corrupt tendencies.
- iii. There is need to sensitize PDEs on the implementation of the use of the bid securing declaration instead of bid security for quotations and restricted domestic bidding methods. In addition PDEs should reduce the costs at the participation stage to allow more bidders to participate for example at the prequalification stage.
- iv. **Increase Awareness on Public Procurement among the Bidding Community** through conducting regular trainings for the private sector on public procurement procedures including bid document preparation, specification designing. PDEs should be encouraged to conduct regular pre- bid meetings, bidders' forums and provide feedback to unsuccessful bidders as these will improve the relationships and perceptions of the providers towards the personnel in the PDEs.
 - a. The Authority should conduct regular media campaigns to emphasize transparency in the procurement process and highlight mechanisms for reporting any corrupt tendencies.
- v. **Strengthen collaboration between the private sector and government institutions:** Collaborate with the private sector to provide a platform that allows for continuous capacity building of the business community, report and addresses the challenges of delayed payments, promote partnerships among the foreign companies and national companies, build confidence and promote competitiveness in the business sector.
- vi. **Implementation of Reservation schemes to promote local providers:** Implement the guidelines on reservation schemes to promote participation of the small and medium enterprises.