FACTORS THAT INHIBIT THE PRIVATE SECTOR FROM ENGAGING IN PUBLIC INFRASTRUCTURE PROCUREMENT PROCESSES IN UGANDA

SUMMARY PAPER

"*In our district, there was an advert for constructing two latrines, firms applied, and the selection was made. The evaluation committee selected the best bidder, and one evaluation committee member altered the scores in favour of another bidder and the best bidder had been notified of the evaluation results. The best bidder logged a complaint and an administrative review was conducted using the PPDA guidelines, and a report was written. The best bidder whose results had previously been altered was awarded the contract,"* ***Anonymous respondent from Gulu district.***

November 2021

Introduction

The participation of the private sector in the public procurement processes has been reducing year by year e.g., In 2016/2017, there were 553 registered providers, and this declined to 466 registered producers in 2017/2018 and further declined to 371 registered providers in 2018/19. From this background, CoST Uganda and partners commissioned a study to assess the factors that inhibit the private sector (local and foreign) from participating in public infrastructure procurement processes and develop recommendations that will increase transparency, boost trust and confidence of private sector firms leading to their increased participation. To attract the private sector to participate and provide the services needed, the Government of Uganda needs to improve the operating environment.

Over 60% of the total national budget is spent on procurement of good, works and services by ~~in~~ the different Procuring and Disposing Entities (PDEs), making public procurement one of the most desired business opportunities for the private sector. However, CoST Uganda analysis of infrastructure data disclosed on the Government Procurement Portal (GPP) for selected PDEs in June 2020 revealed that 51% of the projects had fewer than three bids while 48.7% had three or higher projects bids, coupled with unfair business practices. The study further explored the effectiveness and identified strategies for improving the performance of joint ventures, subcontracting and hybrid projects.

The study applied a mixed methodology focusing on quantitative and qualitative, including document review; interactive sessions like key informant interviews (virtual and physical) and focus group discussions; and a quantitative survey was sent to UNABCEC and UACE membership using Kobo, an online data collection software. Finally, the data collected were systematically analysed, and a report was written.

Findings from the study on factors affecting private sector participation in public infrastructure procurement processes.

The study revealed an increasing decline in the number of private providers participating in infrastructure projects each year. For example, according to the GPP Infrastructure dashboard on procurement by CoST Uganda, there were 553 registered providers in 2016/2017 and 371 registered providers in 2018/2019, leading to a reduction of 182 registered providers.

Key study findings are summarised below.

1. 100% of the firms engaging in procurement for infrastructure projects have been from Uganda, China, India, Tanzania and Serbia. According to a Consulting Engineering based in Scotland, the USA and UK firms do not participate because they are risk-averse and have neglected the market due to failure to prevent corruption, respectively.

2. Major players in the infrastructure projects in the year 2018/2019 included: Terrain Services Ltd, Chongging International Construction, Wanyoto International Limited, Byiringiro Building Services, Ambitious Construction Company Ltd and Kangaroo (U) Ltd.

51% of the local firms consulted had never participated in public procurement processes, pointing to the high cost of bidding and unfair competition with foreign firms while others considered public procurement a waste of time and resources inspite of the existence of preference and reservation schemes in favour of local firms. 88% of the respondents knew about the existence of reservation and preference guidelines but doubted their implementation. 12% did not know about their existence when they were developed, their intended purpose and responsible entity.

3. 67% of the respondents noted that there was unfair competition with foreign companies. Foreign firms easily access finances at very low interest rates (2-3%) in their home countries, while local firms borrow from commercial banks at an interest rate of 20-25%.

4. The study identified a lacuna in the implementation of guidelines on reservation scheme to promote local content in public procurement such as reservation of public contracts by the threshold to national and resident providers and reservation of at least 30% value of works and supply of materials, equipment and services. Currently, this is not being respected in its totality, which frustrates the national and resident providers.

5. Hybrid procurement was found to be increasing in the sector. In Uganda's context, hybrid procurement is understood as procurements where the local and central governments conduct joint procurement. They promote Value for Money (VfM) through their efficiency. However, they are characterised with delayed implementation, delayed procurement, lack of clarity on who owns and is accountable for the overall project performance, often have coordination challenges, delayed reporting, scanty information or no data centralisation since each entity archives what matters, these procurements are not backed by any law to them among others.

6. Joint ventures were starting to get appreciated and more common between foreign and local firms. Foreign firms majorly used these to gain acceptance and recognition in the sector.

7. Throughout the study, we noted limited capacity by national providers, such as equipment, finances, and capacity to prepare quality bids, documentation such as audited books of accounts, business reports, and tax clearance certificates.

8. Over 38% of the respondents reported having had quality concerns with their progress reports, confirming the limited capacity and integrity to submit the required information during the bidding processes. Furthermore, by the time of the study, only 15% of the respondents reported participating in capacity building activities by PPDA or PSFU.

9. Clustering of projects limits the participation of the local private sector due to high requirements, e.g., bid security and multiple equipment, for example, clustering of roads in different parts of Kampala, and the USMID road construction in the different project municipalities.

10. Limited access to procurement information by national providers. During a stakeholder forum in February 2021 by CoST Uganda, out of the 76 business representatives, only 3 confirmed that they knew that the Government Procurement Portal (GPP) existed. During interviews, stakeholders revealed that they knew of existing business opportunities by visiting public offices or checking through PDE websites once in a while. The scoping study by CoST Uganda revealed that the private sector didn't know about the existence of GPP and usually got business by walking into the PDEs to make inquiries on any procurement.

11. 43% of the respondents reported corruption as a major challenge in public infrastructure procurement. For example, procurement is done in favour of foreign firms in some PDEs. Also,

the perception of corruption in public procurement makes the private sector fear participating in the bidding. PPDA’s Integrity survey for 2020 had also revealed that at least 20% of the respondents indicated having paid a bribe.

12. The study found that because of the perceived unrealistic bid qualification requirements (local firms cannot afford), about 80% of civil works contracts in Uganda were undertaken by foreign firms, and a big portion of the construction supplies and requirements for both road and energy projects were imported.

13. The study revealed that project delays in procurement were attributed to lengthy administrative reviews and the use of government staff in the evaluation of public infrastructure tenders which affected the integrity of the procurement processes hence delaying project implementation.

14. The study found it unclear whether hybrid procurement would actually deliver practice what they promise in theory as are based on absent guidelines and no law, often characterised by delayed review system because of the multiple partners involved (local government, central government and development partners), and local governments have no full control over the projects from the initiation to implementation up to evaluation among others.

15. Subcontracting was a very common practice in the construction industry between foreign firms and local contractors in Uganda. The lead companies were responsible for all aspects of the works, including quality management, safety management, and business conduct compliance. However, the study discovered that whereas the bidding documents necessitates subcontracting, the final contracts rarely had a clause on subcontracting. In addition, limited trust between foreign and local firms, poor enforcement of the guidelines on reservation schemes and limited negotiation skills by national providers were among the factors affecting relationships between foreign and local firms during subcontracting.

16. Joint ventures, also known as JVs, are arrangements between two or more firms that commit to working together for a common goal on a specified project or projects. It was a new concept and a growing phenomenon that was gaining acceptance in the sector. JVs were being implemented between foreign and national firms or national and national firms. The study discovered that foreign firms majorly used joint ventures to gain recognition and acceptance, and others used them to win tenders, and a few local firms had started embracing them.

Recommendations to Increase Participation of the Private Sector in the Public Infrastructure Procurement Processes in Uganda.

Recommendations to Government of Uganda

1. The MoFPED should establish an infrastructure industry development fund or credit facility in Uganda Development Bank (UDB), where local firms could borrow at an interest rate between 3-5% annually. The Ministry is also encouraged to ensure that PDEs comply with timely payments to contractors and consultants upon completion of works and services.

2. The PPDA should develop guidelines and regulations to guide the establishment and management of all forms of joint ventures between foreign and local firms and local and local firms in Uganda.

3. The PPDA is encouraged to strengthen subcontracting between foreign and local firms to ensure at least 30% of the value of works through subcontracting of works and supply materials, equipment and services, and reservation by threshold apply to only national providers with capacity. In addition, foreign bidders should demonstrate the capacity to subcontract local firms before they are considered for any project.

4. The PPDA should establish programmes to uplift the local private sector, for example, the capacity building of contractors in preparing quality and winning bids and creating a special infrastructure unit to support the sector. PPDA should also consider categorising/documenting women/women-led firms engaged in infrastructure procurement processes in Uganda.

5. The PPDA should rebuild trust in public procurement through strengthening transparency, considering independent actors to undertake the evaluation of tenders to address conflict of interest, strengthen accountability and leveraging on e-procurement system, ensuring disclosure of available business opportunities using international standards such as the Open Contracting for Data Infrastructure Standard (OC4IDS).

6. The PPDA should establish clear guidelines and regulations on the reservation and preference schemes. Whereas the guidelines provide for the definitions of national provider and resident provider, the study recommends that a resident provider should at least have 10 years of operating before it is incorporated, with demonstrated evidence of doing business and

complying with standards and owned by foreigners who have resident status and permission to work in Uganda. In addition, there should be strict adherence and separation of the threshold for national and resident providers.

7. The PPDA should strengthen local content monitoring, evaluating and reporting, and timely feedback on the reservation and preference schemes, joint ventures and subcontracting. Publish regular reports on how local content monitoring is implemented in the country, including naming and shaming PDEs not adhering to local content guidelines.

8. The MoWT is encouraged to expedite operationalizing the national consultants and contractors register and networked with NITA-Uganda for proper record keeping. The MoWT should also support developing and reviewing the construction sector classifications, handbooks and policies, e.g., the National Construction Industry policy should be prioritised.

9. The Anti-corruption Agencies such as Directorate for Ethics and Integrity should address the perceived corruption in the sector. Implementing the business code of ethics and operationalisation of the district integrity forum to promote ethics and accountability should be emphasised, and the perceived political interference during procurement.

Recommendations to Development Partners

1. Development partners should allow procurement systems to be governed by country policies and systems or the use of flexible hybrid policies and systems e.g., if a project is funded by the World Bank then its procurement systems and policies take precedent.
2. Development partners should work with PPDA, respective PDEs and the civil society actors such as CoST, UNABCEC and UACE to build the capacity of the local private sector in preparation of winning proposals, financial management, among others.
3. Development partners should support the development of policy and legal frameworks to implement hybrid financing and procurement.

Recommendations to Civil Society and private sector actors

1. The UNABCEC and UACE should advocate being established by an Act of Parliament in order to have a stronger voice that can be heard and allocated resource to benefit the private sector. The law should also make it mandatory for contractors and consultants to belong to UNABCEC and UACE
2. The UNABCEC and UACE should work with development partners, PPDA and PDEs to build the capacity of their members to address the prevailing gaps.
3. CoST Uganda should enhance its work across all entities and sectors, especially advocacy for fair business practices should be a long-term conversation, and the assurance process should be sustained and conducted annually.
4. CoST Uganda should be positioned as a trusted platform for all actors to influence legal and policy frameworks within the construction sector.

In conclusion, the study found several factors limiting the participation of the private sector in the public infrastructure procurement processes. Several factors include; inadequate finances, equipment, capacity, corruption and political interference, guidelines on reservation schemes to promote local content, unfair competition with Chinese firms, expensive bid documents, and unrealistic bid requirements like bid security, expertise, and experience. In addition, the study found limited subcontracting between foreign and local firms as provided in the guidelines to promote local content. Joint ventures between foreign and local firms is a growing concept gaining a lot of acceptance by the major players in the sector. The study further found hybrid contracts to be efficient on paper, promising the much-needed value for money and promoting quality assurance, but difficult to assess their effectiveness. Government, development partners, private and civil society actors must address the identified factors as recommended above to increase the participation of the private sector in the public procurement processes in Uganda.