

Chapter 9

Legislation for Public Procurements and Disposal of Public Assets: The Case of Uganda

Simeon Wanyama

Uganda Martyrs University, Uganda

ABSTRACT

This chapter is about corrupt practices in the public procurement cycle. Taking the example of Uganda, it identifies what takes place at each of the stages of public procurement and examines the perspectives of stakeholders regarding alleged corruption, misappropriation, and fraudulent practices during the public procurement process. It also reviews the governance systems that have been put in place to try and stem out these malpractices and ensure proper governance in the administration of public procurement. The research followed a qualitative approach aimed at getting the views of stakeholders and understanding whether what is in place is adhering to the principles of public procurement which foster good governance and value for money. The findings of the study indicate that the perception of the majority of the respondents is that corruption is pervasive in public procurement in Uganda despite good laws, regulations, and guidelines that have been put in place and that it manifests itself at all the stages of public procurement.

1. INTRODUCTION

Provision of public services in any country is dependent on public procurement. Government cannot provide public services without public procurement. In all countries public procurement takes up a significant portion of the national budget. In countries like Uganda, public procurement is said to account for about 70% of the national annual budget. A lot of money is involved in this process, so questions arise about whether this money is being used properly in (1) providing services to the people and (2)

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taking care of the developmental needs of the respective nations. It is not uncommon to hear allegations of corruption, misappropriation and other fraudulent practices in public procurement.

The World Bank defines procurement corruption as the offering, giving, receiving or soliciting; directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution (World Bank, 2004). It involves a clear misuse of public office. First, the act must be intentional. Second, the person must derive some recognizable benefit from the act. Third, the benefit derived must be a direct return from the act of corruption (Rafay, 2021).

This chapter concentrates on procurement by state owned entities of Uganda that use public funds to procure goods, works and services. The procurement cycle will be used as the basis of study to establish the perceptions of various stakeholders as to whether corruption takes place at any or all of the stages of the procurement cycle. The principles of public procurement will be reviewed to see whether they are actually being applied in public procurement and whether these affect the level of corruption and lack of integrity in some of the procurements. The chapter will examine, among other things, whether non-observance of these principles may be due to corruption and whether non-observance leads to compromise in the procurement process.

2. PUBLIC PROCUREMENT IN UGANDA

Section 2 of The Uganda Anti-Corruption Act of 2009 makes it an offence to be involved in a corrupt act either as a giver or a beneficiary of the corrupt act. Corruption in public procurement mostly consists of violating the principles of transparency, accountability, fairness, maximization of competition, ensuring value for money and promotion of ethics, including integrity.

Section 3 to The Public Procurement and Disposal of Public Assets (Amendment) Act, Act No. 11 of 2011 describes procurement as “*acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or any other contractual means, of any type of works, services or supplies or any combination*”. Similar section defines public funds as “*monetary resources appropriated to procuring and disposing entities through budgetary processes, including the Consolidated Fund, grants and credits put at the disposal of the procuring and disposing entities by foreign donors; and revenues generated by the procuring and disposing entities*”. These entities generally consist of Government Ministries, Departments and Agencies (MDAs) but they include all institutions that make their procurements from funds drawn from the consolidated funds of the country.

2.1 Regulatory and Legal Environment

Each country has its own system of oversight over the procurement process. In Uganda, for instance, there is the PPDA Act (2003) as amended in 2011 and the PPDA Amendment Bill 2019 (still to be assented to by the President at the time of writing this chapter in July 2020). There are also Regulations that were made in 2014 to operationalize the 2011 Act and various Guidelines that have been issued to assist in the implementation of the PPDA Act and Regulations. In addition to the Act and Regulations applying to the Central Government, there is the Local Government (Amendment) Act 2 of 2006 and Regulations issued in the same year. The official Regulatory Authority is the Public Procurement and Disposal of Public Assets Authority (PPDA) which is supervised by the Minister responsible for finance. PPDA has a Board appointed by the respective Minister. The Board exercises oversight over PPDA. However, ag-

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