



Uganda National Roads Authority

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Effect of Procurement Procedures and Project Implementation on Resource Absorption

Experiences of the Road Sector in Uganda

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1 Introduction

The number and scale of Government projects in the roads sub – sector in the past 3 years is unprecedented. Government spends over UGX 1.5 trillion a year on goods, land, works and services to ensure roads are maintained and developed. Over 90% of the expenditure on roads goes towards payment for goods, works and services provided by private sector providers procured following the Public Procurement Law and Procedures.

Therefore, the pace of absorption of the funds made available to the Sector depends to a great extent at the pace of (i) engaging the private sector providers to provide services; and (ii) eligible outputs for payment from services provided by the private sector providers. By definition, RESOURCE ABSORPTION is the ability to expend financial resources available to an organization for legitimate outputs from service providers.

The successful delivery of Government’s programmes and therefore effective absorption of funds hinges on minimizing project uncertainties which directly improves delivery times, to the desired quality and stays within budget; and procurement is central to the management of these risks. The effective delivery of these projects requires procurement to be a key component in the journey to effective delivery to ensure that the right service provider is engaged; with the right contract and contract management systems, enables Government to achieve the right result.

Government is becoming more reliant on its service providers as implementers, both for the delivery of services and for the creation of new or improved processes to support service delivery. This is because of the recognized fact that in many cases the private sector has achieved levels of efficiency that government cannot achieve. The key issue is choosing the right provider at the right price and time of delivery. Procurement is the vehicle through which these efficient service providers are safely engaged and contracts managed to conclusion. A failure in procurement is very likely to put service delivery or resource absorption at risk. Procurement is therefore a crucial importance to the Government’s delivery agenda.

Public procurement is the process whereby the public sector organizations acquire goods, services and works from second parties. It also includes a growing trend where the private and third parties provide key services directly to Government. Procurement therefore embodies the journey from planning, initiation, tendering, contract placement and the implementation. Therefore, project implementation is the operational phase of the procurement process where services are provided and financial resources are expended (absorption). Good contract management eases the efficient absorption of funds. The stages before contract placement are critical in shortening the time to the commencement of absorption, then the implementation phase is where absorption takes place.

2 Resource Absorption

As explained earlier, *RESOURCE ABSORPTION* is the ability to expend financial resources available to an organization for legitimate outputs from service providers. The primary drivers of resource absorption amongst other things include the following: -

(a) Procurement process: - there are four major issues in the procurement process that can impact on absorption which are

- (i) **Length of Procurement Process**: - The duration of time it takes to engage a service provider to implement a project determines how much time you will have left in the financial year to absorb funds and thus the absorption rate. From our experience over the past 6 years, the following are the lead times for procurements

#	Procurement Method		Average Duration (Months)
1	Open Domestic		6 - 9
2	Open International	Post Qualification	9 - 12
		Pre - Qualification	12 - 16
		Single stage 2 Envelope	6 - 9
3	Restricted Domestic		4
4	Restricted International		5 - 7
5	Direct Procurement		3 - 4
6	Micro - Procurement		< 1

- (ii) **Action by oversight agencies**: - the actions of oversight agencies such as the Inspectorate of Government, PPDA, Police and the Courts of Law can affect the procurement process and prolong its duration. We have had a number of cases where the intervention of say the PPDA or the IGG has prolonged a procurement by over 6 months. This additional time has an effect on resource absorption;
- (iii) **Liberties accorded to complainants by the Procurement Law**: - the liberties accorded to complainants under the PPDA Act give them the latitude to delay the conclusion of procurements which in turn affects absorption. Most importantly, the cost the economy suffers from the delayed conclusion of procurements is not commensurate to the fees paid by complainants to enforce a stoppage in order that a procurement review is done;
- (iv) **Need for due diligence**: - this has become a necessary activity in the procurement process to avert frequent misrepresentations of experience and capacity by bidders. This process which serves to confirm all material facts on a bidder as indicated in their bid while necessary has added a time burden to the procurement process.

- (b) Level of project preparation: - Having in place designed projects ready to go for tender. By the time UNRA began operations, we had to readily designed projects that could go out to tender and as such our absorption rate was very low. Over the last 6 years, Government has invested heavily in project preparation and we have designed over 2,000 km of road projects for upgrading to bitumen standard, rehabilitation, reconstruction, etc. This level of preparation has increased our absorption from 80% in 2008 to a deficit situation currently;
- (c) Pace of Project Implementation: - the speed of project execution invariably has an effect on the drawdown of the budget hence the absorption given that the major costs are incurred at this stage. However, there are many other contributory factors that can affect the pace of project execution such as (i) quality of design, (ii) right of way acquisition, (iii) impact of design review which may call for variations to the contract, (iv) pace of effecting changes to the project scope arising from design review recommendations, (v) availability of funds to pay for services provided, (vi) capability of contractor and attitude of supervision consultant, etc. All these factors will have varying influences in combination and in isolation to the pace of project execution and thus the absorption of resources;
- (d) Alternative Options for Project Delivery Methods or Modalities: - the availability of a variety of project delivery options gives the entity or client an opportunity to decide on which one is most appropriate to a particular project's circumstances. How a programme is designed and constructed or the project delivery method; is one of the most important decisions made by a PDE. With a variety of delivery methods available today across the design and construction industry, it is possible to tailor a delivery method that best suits the unique needs of each project. The fundamental project considerations that impact the choice of delivery method include (i) the need to adhere to a realistic budget; (ii) a schedule that accurately presents the performance period; (iii) a responsive and efficient design process that leads to a quality set of documents; (iv) a thorough risk assessment followed by the proper allocation of risk by the Client; and (v) recognition of the level of expertise within the Client's organization or available to it.

At the time of UNRA's inception, the only delivery method use in the road sector was the Design – Bid – Build (DBB) which customarily involves three sequential project phases of design, procurement and construction. The project cycle for a DBB typically takes a minimum of two and a half years for works to commence i.e. nine months to procure a design consultant, twelve months to prepare the design, nine months to procure the works contractor. Because of the limitation of this approach, the absorption capacity of UNRA at the start of operation was limited. Over time, the Design – Build (DB) approach which combines engineering design and construction performance under one contract has been tried and is being mastered. This approach avoids the prior design stage in the DBB which gives it a time advantage. Each of these delivery methods carries a different level of risk for

the Client and generally the level of risk depends on the level of control between the Client and the contractor. None of these delivery methods is right for every project and for each situation there will be advantages and disadvantages of each. However, the availability of a range of delivery methods including term contracts (which reduces the cycles of procurement), framework contracts (which allows quick starting of small assignments), etc. gives the employer more flexibility in dealing with large programmes such as the one UNRA is managing.

Each of the delivery methods also carries a different level of risk for the Client and control between the Client and Contractor as illustrated in the following chart: -

Project Delivery Methods		
<i>Design - Build</i>		<i>Design – Bid - Build</i>
Least	Client's Risk	Greatest
Greatest	Contractor's Risk	Least
Least	Owner's Control	Greatest
Greatest	Contractor's Control	Least

As the project delivery methods continue to evolve, there is need to have alignment with procurement methods to ensure value for money is not lost.

- (e) Integrity of the Procurement System and Process: - this is one of the most important facets of the procurement function as it mitigates the risk of externalities such as action by oversight agencies and frivolous complaints. It also gives assurance and confidence to the stakeholders that no abuses or breaches to the process are being done by the entity. UNRA has implemented an array of measures to improve the integrity of the procurement system and process from (i) upgrading the procurement function to a directorate level giving it Top Management attention, (ii) aligning the professionals in this directorate to the engineering functions which form the core business of the Authority, (iii) use of international consultants to provide technical assistance in core areas and mentor staff in various procurement fields, (iv) implementing the independent parallel bid evaluation – IPBE by an independent overseas company which is used to benchmark UNRA's internal evaluations, (v) accreditation of procurement processes that recognize the unique business processes required for a road management organization, (vi) subscription to the Construction Sector Transparency – COST Initiative for purposes of improving disclosure of UNRA activities to stakeholders and the public as a confidence building measure, etc

All the above actions have reduced both the number and frequency of complaints to an absolute minimum. While the complaints have reduced over time, there will be a need to evolve over time as the safeguards we have in place now may not be appropriate in the future.

- (f) Funding arrangements: - while most of the activities in UNRA's business are either multi – year or continuous all year round, the funding and budgeting arrangements still revolve around an annual budget. Despite the existence of a Medium Term Expenditure Framework (MTEF), it would not be unusual for new activities to be proposed in the middle of its 3 – year cycle which changes the whole dynamic of forward planning. There is need for say a 5 year core work – plan around which 80% of the Entity's business will rotate and this gives ample lead time to carry out the lead preparatory activities like land take, design reviews, procurement of supervision consultants, etc.

3 Importance of Procurement

Effective public procurement is crucial for good public services and good government. Government therefore has to apply the highest professional standards when it spends this money on behalf of taxpayers, to ensure a good deal and to provide appropriate and necessary goods and services to the quality required to meet user needs. The procurement process spans the life cycle from the identification of the need, through selection of service providers, to post – contract award management, including disposal. Given that procurement covers the whole project cycle from conception to delivery, it is a vital operation that has a substantial effect on effective resources utilization.

Therefore, procurement determines when a project will start, when a project will be completed and the quality of outcomes from a project. All these are key determinants of value for money especially when it comes to how soon the public can make use of a public good and the level of service that will be obtained as a result.

3.1 Hidden costs related to procurement

The procedures to govern procurement are considered onerous and require time and resources to process. The process in Uganda is more rigorous than other countries and places an increased burden on the Authority.

Only with forward planning and sufficient numbers of staff in the various Directorates with allocated time to focus on the procurement process, can projects be delivered on time. To

provide for forward planning, UNRA requires a five year procurement plan that is adhered in the typical 7 year project cycle from design to completion of a project.

A long procurement process adds unnecessary cost to a project. Someone has to pay for the cost of inflation as a contractor cannot simply absorb these costs increase. To survive a contractor has to build in inflation costs into his contract. With regard to FIDIC conditions of contract, inflation in the costs of a project start from a point in time of 28 days before a tender is submitted i.e. the base date used for indices which are used to calculate increase in costs of materials etc. As such the longer it takes from submitting a tender to a contractor starting work on site, the more the client will end up paying. If we assume inflation is 12% a year, then on a US\$ 100 million project, each extra month spent processing the contract costs US\$ 1 million more.

With regard to price increase there are main options open to a client:-

- Pass the risk to the contractor – in this case the risk of increase in cost of materials for a project is passed to the contractor through a fixed price contract. In this case the contractor adds in the expected cost of inflation plus an allowance for increased risk as he may not reliably estimate what the cost will be. If he seriously underestimates the cost he may well go bankrupt.
- The risk of inflation in costs of materials is shared between client and employer. In this situation the contractor is paid for a proportion of the additional increase in the cost of materials through a variation in price mechanism, found in most contracts e.g. FIDIC clause 13.8. In the end the employer will pay the true increase in cost of the materials.

3.2 Avoidable delays related to Procurement during Implementation

The procedures make it difficult to efficiently manage road contracts where changes are inevitable.

An example is Variation Orders, which are an embedded process in FIDIC to allow the contract to be altered and therefore change managed. Road construction by its nature covers many kilometers typically from 50 to 150 km. This greatly increases the risk of unforeseen circumstances, which may require changes to the scope of works. Once a change in scope is identified, it is important the Variation Order (VO) is issued within say a month. This approach reduces the risk of the contractor claiming for extension of time for the period it takes to process the VO. Currently Variation Orders take 4 to 6 months to be processed.

3.3 Areas of Continuing Challenge

The key areas of challenge, that directly impact on the absorption of funds include: -

■ Procurement Issues-

- There is need to reduce the time taken from Initiation up to contract signing;
- There is need to reduce uncertainty on when the procurement process up to contract signing can be concluded;
- There is need to reduce time taken to handle variations / contract amendments;
- There is need to synchronize procurements so that the implementation of one does not inhibit the implementation of the other for example, land acquisition and the supervision services should be procured well in advance of the works procurement;
- There is need to reduce delays to obtain clearances from the stakeholders namely PPDA and SG.

■ Cost Estimation

- Inaccurate cost estimate which lead to a repeat of the procurement process especially when the bids submitted are far higher than the estimate. This could be caused by poor estimation or market volatility.

■ Capacity of Authority

- The procurements being handled in a year far exceeding the staff available to handle them thus leading to increased procurement times;
- Failure to adapt to new and innovative project delivery mechanisms;
- There is need to harmonize interpretation of Rules;
- Tendencies to disqualify bidders on non material grounds at the expense of ensuring value for money for Government;
- Frivolous complaints need to be reduced;
- Misuse of the whistle blowers law to lodge unfounded allegations and the stealing of confidential procurement data and documentation;
- Unbalanced power distribution among procurement parties.

■ New Provisions in the PPDA Act

- Market Price - no contract can be signed above the market price;
- Contract Variations – no variations to contract will be allowed above 25% of the original project scope

3.4 Examples of Procurements gone bad

Below are examples of projects of projects which suffered delay for various reasons outside the entity's control: -

- **Rehabilitation of Tororo – Mbale – Soroti (152km):** - Contract for rehabilitation was awarded in September 2010 which was 11 months behind the programme date. Administrative challenges to the bidding process by bidders caused a delay to this award which was initially expected by October 2009.
- **Rehabilitation of Mukono – Jinja (52km):** - Contract was awarded in September 2010 which was also 11 months behind the programme date. The delay was caused by administrative reviews of the procurement process arising from complaints of the losers.
- **Rehabilitation of Mukono – Kayunga (59 km) and Kayunga – Njeru (45 km):** - The award of contract for works for this project which was expected in October 2009 was never effected due to (i) repeated administrative challenges to the bidding process by bidders, and (ii) with the passage of time of over 1 year, funds were unavailable to sustain procurement. Procurement of works has only recently been restarted in 2014 and works are expected to commence in by May 2014.
- **Overlay rehabilitation of Malaba / Busia – Bugiri (82km):** - This project was awarded in July 2010 as opposed to the initially planned date of October 2009. This delay was mainly caused by Administrative challenges to the bidding process by bidders and investigations by both PPDA and the Inspectorate of Government (IGG) into the bidding process. It was only after finally getting clearance from the IGG that the procurement got concluded.
- **Rehabilitation of Kafu – Karuma (67km):** - According to our original programme, works for this project were supposed to commence by February 2009 and UNRA had intended achieve this by using the direct procurement method to secure the services of a contractor carrying out similar works on an immediately adjacent road to this project. However, the Public Procurement and Disposal of Public Assets (PPDA) disapproved

UNRA's approach which called for a new approach. Works for this project were only recently awarded in December 2013 and works are due to commence by March 2014.

- ***Upgrading of Mbarara – Kikagati (45 km):*** - This was the first design – build project for road upgrading in Uganda and this project delivery method was chosen given the urgency to commence works. The planned commenced date was April 2010 but the contract was only signed in July 2011, a delay of almost 13 months. The cause of delays to the project was administrative reviews sought by one of the bidders both to UNRA and PPDA following which PPDA ordered a re-evaluation. This particular procurement was also affected by the fact that this was a pioneer design – build project and the need for compliance with minimum design standards was not well understood by all actors in the procurement process. The pressure of the read out prices also had an impact on the decisions by the actors and this took vital time away from the project.
- ***Emergency Replacement of the Ntungwe and Mitaano Bridges In Rukungiri and Kanungu Districts:*** - This procurement was initiated on the 08 July 2012 following the collapse of Ntungwe bridge on 15 April 2012 and Mitano bridge on the 13 May 2012. While the process of selecting a provider was supposed to be concluded within 6 months, a number of factors came to play to delay the procurement process. These include (i) due diligence, (ii) investigation of procurement by the IGG, (iii) judicial review interventions by the high court and court of appeal, etc. All the above have delayed the commencement of the emergency works on this project by more than 1 year.

It is evident from the foregoing that it is very difficult to predetermine the course, pace and timing of process of engaging service providers. When the element of time lost in the above cases is put into context and monetary value is put on it to determine lost benefits to the public and likely increased of services, only then can we appreciate the true importance of procurement. The unseen or hidden costs and lost benefits are likely to even be higher than the costs of the projects reflected through absorption which is the subject of this paper. Maybe this is the point at which value for money is lost even if we register good absorption!

3.5 Potential Mitigation Measures

A number of efforts are being made to try and tackle the above bottlenecks and these are listed below: -

- Raising the thresholds of the different methods of procurement so that some procurements can be handled under shorter bidding periods and less complex processes. The expected new regulations are expected to tackle this;
- Initiation of procurements in the year proceeding the year of expenditure whenever there is firm commitment from MoFPED;
- The increased use of framework contracts in supplies services and works to cut down on the lead times;
- The handling of some of the variations and contract amendments at the Contract Manager level without going to the Contracts Committee;
- Classification of Contractors before hand and not just for handling restricted bidding procedures, to ease qualification evaluation of bids;
- The documentation of the procurement procedures in an easy to follow handbook .This will ease and quicken the implementation process and provide a good training platform for new entrants;
- Introduction of e – procurement, basically to digitize the procurement process which will definitely ease retrieval and follow up; facilitate communication between various stake holders; ease the audit the process ; reach a wider pool of potential providers;
- Establishment of a cost estimating unit in the entity;
- Redistribute the powers of the Contracts Committee in order to reduce the work load on the Committee and
- The institutionalization of independent parallel bid evaluation (IPBE) to provide a good benchmark for evaluation as well as a deterrent to sloppy evaluation.

4 Best Practices

Procurement is not well understood. Too often, the focus is on the process, which is seen as overly formal and lengthy. It leads to the perception of a function which merely ‘protects’ entities from legal challenge and which calls service providers to account when problems arise. Instead, procurement should be seen as an opportunity to agree clear, joint objectives in a commercial arrangement aligned with a service provider’s capability to drive successful delivery. This should happen at an early stage in the process in order to better assure value.

The latest challenge is to adapt procurement to match the increasingly complex needs of Government. These include: -

- The country’s varying needs make demand unpredictable (*this calls for a wide variety of procurement and project delivery models*);

- Commercial arrangements need to be innovative and flexible (*like in the case of financing from China, blending of loans and grants and contractor facilitated financing*);
- There is an inability to define fully the requirement, or significant elements of it (*no design if perfect and therefore there must be scope for modifications*);
- There is difficulty in determining, at the outset, the best model for delivery (*with experience, this difficulty reduces*);
- There is a likely impact of future events (*which requires a flexible arrangement to accommodate required changes in the future*).

In the face of such uncertainty, service providers will judge the potential impact of these risks on cost and take account of this in the price they offer. Competitive pressure will go some way to constrain such increases; but service providers may, under such pressure, simply ignore the potential impact, to win business. Their assessment will be heavily influenced by the procurement process adopted and the proposed form of contract. Put simply, the service provider's reward must exceed the likely cost of delivery, including their estimate of the impact that risk might have on those costs. Unintelligent competition runs the risk of engaging the wrong service provider, operating at unnecessary levels of risk, and failing to deliver overall value for money. In extreme cases, this can lead to failure in delivering the required outcome at all. This is why we should not be misled to favour very low bids which many times increase the cost of the entity supervising the service provider.

Examples of differences in procurement practices are highlighted below: -

- Uganda: - Our procurement system in Uganda is overly prescription by way of its regulations imposing onerous business process challenges to procuring entities. By being prescriptive and requiring deviations for any modifications to the regulatory requirements, the transaction processes are unduly prolonged denying procuring entities ability to conclude procurements early;
- Ethiopia: - The Ethiopian Procurement Proclamation is not regulated (no prescriptions of processes) but gives general guidelines within which to undertake procurements. This allows procuring entities to customize the procurement processes to their circumstances to ensure early conclusion of procurements;
- Uganda: - Contract Management or Administration are subjected to procurement procedures and this increases the chances of projects getting into more serious trouble if approvals do not come soon enough. Furthermore, the exposure to claims can be increased if delays other than project related ones are introduced by having to seek approvals through the institution's procurement system;

- Ethiopia: - Contract Management or Administration is not subject to procurement procedures and the Accounting Officer is responsible for issuing variations and amendments to contracts. This reduces transaction processing time and improves organizational efficiency as all those involved have necessary professional competencies in the field of the organization's business.

5 Conclusion

Resource absorption in the sector is a function of a three major factors viz pace of engagement of service providers, degree of preparedness (having designed projects in place) and pace of project implementation. Considering the fact that procurement covers the entire life cycle of a project, resource absorption is inextricably linked to the management of the procurement function. Given the scale of Government investment in the road sub – sector and the sub – sector reliant on the private sector to deliver services, procurement plays a central role in enabling Government achieve its goals. Related to this is the multiplier effect investment in the sector has on the economy through facilitating its growth and creation of employment.

Therefore, for entities to manage their resource absorption there is need for a thorough think - through their business processes by paying attention to (i) the procurement process, (ii) level of project preparation, (iii) pace of project implementation, (iv) available options for project delivery, (v) integrity of procurement systems and processes, and (vi) the funding arrangements. Fundamental to resource absorption is pace at which services are provided i.e. engagement and implementation. Most of the sub – sector's activities are carried out using the private sector whose services have to be sourced following the PPDA Act and Regulations of 2003. Therefore, apart from the technical issues dealt with during the design and implementation of projects, the procurement of these services (design and supervision consultants, and works contractors) is a very important facet of the programme implementation process. Every project under the programme goes through a series of stages and sometimes there are drawbacks that take place which impact or affect the achievement of the planned milestones and thereby absorption.

There are other critical issues related to procurement and absorption which can go unnoticed if we focus too much on absorption. There are hidden costs related to delays in procurement for example for every month lost while procuring a US\$ 100 mn project, the taxpayer will inherently pay an additional US\$ 1 million to cater for inflation losses. Apart from the cost of delay, the public will also take longer to enjoy the public good which is a lost benefit. True value for money can be lost through these unseen and undeclared costs since they don't appear on the absorption balance sheet.

The common perception that procurement is process which you implement by following a set of procedures should be discarded. Effective procurement should be looked at as an opportunity to align the entity's objectives and available project delivery strategies with the service provider's capability. This alignment is what would ensure value for money is not lost and the public expectations are met. While doing all this, attention must always be paid to the potential action by third party actors and oversight agencies. That's why the integrity of the procurement system may be the most important facet for any entity as it assure both the public and entity that the decisions being made are robust and have followed the laid out guidelines.