



**MINISTRY OF FINANCE,  
PLANNING AND ECONOMIC DEVELOPMENT**

# THE NATIONAL PUBLIC SECTOR PROCUREMENT POLICY

**2019**



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ECONOMIC DEVELOPMENT

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## FOREWORD

The Government of Uganda spends trillions of shillings annually in provision of goods, services and works in a bid to execute its mandate of service delivery to its citizens. Public Sector Procurement accounts for up to 60% of government expenditure. The bigger percentage is expended on health, security, education, energy and infrastructure. This significantly high expenditure has a great impact on the economy and has raised interests of taxpayers, policy makers, legislators, development partners and many other stakeholders.

Effective public sector procurement is essential for economic development and accounts for up to 30% of GDP in developing countries, which is therefore very critical and cannot be ignored.

The need to improve public sector procurement in the country warranted the development of a procurement policy. This policy document provides strategic direction for the procurement function through a defined policy framework aimed at achieving government objectives. The policy introduces a paradigm shift from the traditional approach that views public sector procurement as an operational function, to a strategic one.

This policy document has been developed and formulated through consultative process involving Central and Local Government, procurement practitioners, civil society, providers, oversight institutions, development partners and other key stakeholders. The formulation of this policy has also taken into consideration regional cooperation and integration under the EAC and harmonized it with international protocols and integration under the EAC and harmonized it with international protocols and declarations. Subsequently cabinet approved the NPSPP on 1st April 2019.

This policy document strongly advocates for procurement as a socio-economic tool in fostering economic development and transformation. Through Sustainable Public Procurement, the policy will open doors for inclusive growth to the local industry, innovation, local content, the environment and support for marginalized groups among others.

I strongly urge all Ugandans to support the implementation of the National Public Sector Procurement Policy for a better Uganda.

Matia Kasaija (MP)  
MINISTER OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT



## PREFACE

Public Sector Procurement in Uganda has evolved from a largely clerical and administrative function to more strategic and policy function. The landscape currently involves high volume and complex acquisitions, new technology, dynamism within the markets, and new financing mechanisms of infrastructural projects. It is now a fundamental and integrated part of the governance and public financial management system in any given country.

Consequently, government seeks to utilise public procurement as a fundamental policy tool in the socio-economic transformation of Uganda. The National Public Sector Procurement Policy defines the critical pillars that support the public procurement system in delivering value for money in service delivery. It is based on a holistic approach to the acquisition and disposal of goods, services and works. This provides a policy framework for government to ensure efficient and effective public procurement, enhanced good governance and human resource capacity, collaborative, sustainable and socially responsive procurements, promotion of good practice and innovation in public sector procurement among others.

This policy document has been developed and formulated through consultative processes. I wish to thank all stakeholders who spared their valuable time to contribute to this policy: namely; the Public Procurement and Disposal of Public Assets Authority, the Uganda National Roads Authority, the World Bank, Central and Local Government entities, members of PEMCOM, the civil society, providers, procurement cadre, academicians, practitioners and the UN Environment. In this regard, I would like to acknowledge the efforts of the Accountant General for providing overall guidance to the development process.

I am confident that adoption of this policy will result in a more thorough, comprehensive and value adding public sector procurement function, for the good of our country.

Keith Muhakanizi  
PERMANENT SECRETARY/SECRETARY TO THE TREASURY  
MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT



# TABLE OF CONTENTS

<b>ABBREVIATIONS AND ACRONYMS</b>	<b>v</b>
<b>1. SECTION ONE: INTRODUCTION AND BACKGROUND</b>	<b>1</b>
1.1 Introduction	1
1.2 Background	2
1.3 Rationale for a Public Sector Procurement Policy	4
<b>2. SECTION TWO: PURPOSE OF PUBLIC PROCUREMENT</b>	<b>5</b>
2.1 Introduction	5
2.2 Vision	5
2.3 Mission Statement	5
2.4 The primary goal for the NPSPP	5
2.5 Means of Attaining VFM in Procurement	5
2.6 Specific policy objectives	6
2.7 Values for the NPSPP	6
2.8 Scope of the Policy	6
<b>3. SECTION THREE: PUBLIC SECTOR PROCUREMENT SYSTEM</b>	<b>7</b>
3.1 Introduction	7
3.2 What is a National Public Sector Procurement System?	7
3.3 Pillar No.1: Policy Framework	7
3.4 Pillar No. 2: Institutional Framework	8
3.4.1 The Policy as a Strategic Organ	9
3.4.2 Procurement and Disposal Entities	10
3.4.3 The Regulator	11
3.4.4 The Appeals Tribunal	11
3.4.5 The Auditor General	12
3.4.6 Civil Society	12
3.4.7 The Attorney General	13
3.5 Pillar No.3: Legal and Regulatory Framework	14
3.6 Pillar No.4: Human Resource Management	15
3.6.1 The Procurement Professionals Body	16
3.7 Pillar No.5: Market Practices	17
3.8 Pillar No.6: Procurement Operations	18
3.8.1 Identification and Definition of the Need	18
3.8.2 Valuation of Acquisitions	19
3.8.3 Market Research	19
3.8.4 Procurement and Disposal Planning	20
3.8.5 Requisitioning	21
3.8.6 Sourcing	21
3.8.7 Pre-Bid Meetings/Site Inspections	22
3.8.8 Bid evaluation	23
3.8.9 Negotiations in Public Procurement	23
3.8.10 Contract Management and Administration	24
3.8.11 Emergency Procurement	25
3.8.12 Monitoring and Evaluation (M&E)	26
3.8.13 Disposal Management.	27

3.8.14	Internal Control Systems	28
3.9	Pillar No.7: Integrity and Accountability	29

---

<b>4. SECTION FOUR: PROCUREMENT PRACTICES.</b>	<b>29</b>
--	-----------

---

4.1	Introduction	31
4.2	Incorporating the Supply Chain Management philosophy	31
4.3	Public Sector Procurement and Disposal Management Information	32
4.4	Supplier Management	32
4.5	Promoting the use of Procurement and Disposal Strategy in PDE's	34
4.6	Security-Related Procurement	34
4.7	Complex and Strategic Procurements	35
4.8	Value Engineering	36
4.9	Outsourcing in Public Sector Procurement	37
4.10	Complaints handling mechanism in Public Sector Procurement	37
4.11	Handling of abnormally priced bids	38
4.12	Handling of unsolicited Proposals/Bids	39
4.13	Risk Management	39

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<b>5. SECTION FIVE: PROCUREMENT AS A POLICY TOOL</b>	<b>41</b>
--	-----------

---

5.1	Introduction	41
5.2	Innovation	41
5.3	Sustainable Procurement	42
5.4	Multilateral/Regional and International Trade Agreements	43

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<b>6. SECTION SIX: IMPLEMENTATION ARRANGEMENTS AND TOOLS</b>	<b>43</b>
--	-----------

---

6.1	Introduction	45
6.2	Collaborative Procurement	45
6.3	Framework Contracting Arrangements	45
6.4	Electronic Procurement	46
6.5	Procurement Classification System	47
6.6	Whole Life Cycle Costing	47
6.7	Due Diligence	48
6.8	Force Account	48
6.9	Spend Analysis	49
6.10	Private Finance Initiatives (PFI)	49
6.10.1	Concession Contracts	50
6.10.2	EPC Contracts	50
6.10.3	Public Private Partnerships	51
6.11	Implementation arrangements and tools.	52
6.11.1	Implementation arrangements	52
6.12.	Monitoring and Evaluation framework	53



## ABBREVIATIONS AND ACRONYMS

<b>AG</b>	Attorney General
<b>AGO</b>	Accountant General's Office
<b>AO</b>	Accounting Officer
<b>CC</b>	Contracts Committee
<b>CG</b>	Central Government
<b>CMT</b>	Contract Management Team
<b>DP</b>	Development Partners
<b>EAC</b>	East African Community
<b>EPC</b>	Engineering, Procurement and Construction
<b>EC</b>	Evaluation Committee
<b>FINMAP</b>	Financial Management and Accountability Programme
<b>GoU</b>	Government of Uganda
<b>GPP</b>	Government Procurement Portal
<b>IFMS</b>	Integrated Financial Management System
<b>IGG</b>	Inspector General of Government
<b>JBSF</b>	Joint Budget Support Framework
<b>KPA</b>	Key Performance Areas
<b>KPI</b>	Key Performance Indicators
<b>MoFPED</b>	Ministry of Finance, Planning and Economic Development
<b>MoLG</b>	Ministry of Local Government
<b>MoPS</b>	Ministry of Public Service
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>PDE</b>	Procuring and Disposing Entity
<b>PDU</b>	Procurement and Disposal Unit
<b>PFM</b>	Public Financial Management
<b>PPDA</b>	Public Procurement and Disposal of Public Assets Authority
<b>PPDA</b>	Public Procurement and Disposal of Public Assets Act No. 1/2003
<b>PPDAR</b>	Public Procurement and Disposal of Public Assets Regulation, No.70/2003
<b>PS/ST</b>	Permanent Secretary/Secretary to the Treasury
<b>SG</b>	Solicitor General
<b>TWG</b>	Technical Working Group
<b>UD</b>	User Department
<b>UGX</b>	Uganda Shillings
<b>US\$</b>	United States Dollars
<b>VFM</b>	Value for Money

# ACCOUNTANT GENERAL'S STATEMENT

Public sector procurement is a significant component of public expenditure management which contributes to effective service delivery, good governance, and sustainable development in all economies. This is a crucial function in public financial management, as it seeks to create value for 'public' money in the acquisition and disposal of public assets.

The National Public Sector Procurement Policy (NPSPP) is an important policy framework that ensures government adopts appropriate procurement strategies that promote operational efficiency and attain strategic resource allocative efficiency. It supports the identification and selection of goods and services that are fit for purpose and also ensures aggregate fiscal control by minimizing on cost blowouts in major investment projects.

Since the early 1990's, the Government of Uganda has been pursuing strategic reforms in Public Financial Management (PFM) aimed at supporting government's goal of poverty eradication through the achievement of good governance, sustainable growth targets and a stable macro- economic environment.

Public sector procurement reforms in Uganda that started in 1997 have largely focused on the legal and institutional framework and related capacity building of public procurement with limited strategic direction for the entire system. While legislation provides the rules for the system to operate, attainment of government procurement objectives requires clearly marked out policy direction and strategic intent.

The significance and complexity of public sector procurement warrants government to put in place a well-defined policy framework that provides strategic focus and direction for the system.

The systems approach advocated by this policy will enhance government's need to focus on all the seven pillars that make up the public sector procurement system. Internal efforts will continue to focus on professionalising and building capacity in national procurement systems. These efforts are consistent with the goals of good governance. There are immense opportunities to adopt best practice and innovation into public sector procurement in this country.

The policy is coming at a time when government is under immense pressure to increase service provision in form of schools, hospitals, energy and expand the existing infrastructure like roads, airports, railways among others. Furthermore, public expenditure money is becoming more complex, increasingly requiring specialised skills and large investments. Practices like supply chain management, life cycle costing, collaborative procurement among others as well as tools like spend analysis, electronic government procurement have been incorporated within the public procurement policy framework. It is envisaged that these efforts will trigger and enhance more efficient and effective public sector procurement in Uganda ultimately leading to economic transformation and better delivery of services.

To the procurement practitioners, this policy provides a good foundation for talent management in the public-sector procurement system. With clearly defined functional vision, mission, values, and objective, practitioners can now see where they fit within the public sector



procurement system.

I once again congratulate my technical working team for the great work done in coming up with this policy document where good practices and tools are being introduced in the public sector procurement system for the first time. It is my belief that this policy will be the foundation for promoting best practices and tools in the public sector procurement system in Uganda.

A handwritten signature in black ink, appearing to read 'Lawrence Semakula'.

Lawrence Semakula  
ACCOUNTANT GENERAL

## ACKNOWLEDGEMENT

I wish to thank all those who contributed to the development of the National Public Sector Procurement Policy. I wish to specifically recognise the efforts of the Technical Working Group led by Mr. David Nyimbwa Kiyingi, as well as the other members including: Mrs. Bernadette N. Kizito, Mrs Jacqueline Rwabajungu, Ms. Esther Kusiima, Mr. Godfrey Matovu, Mr. Stanley Ahabwe, Mr. Ojambo Nakomolo, Ms. Yerusu Nyangoma and Dr. Levi Kabagambe;

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Furthermore, the contribution of other key stakeholders who contributed to this policy; the Public Procurement and Disposal of Public Assets Authority, The Uganda National Roads Authority, the UN Environment, the World Bank, members of PEMCOM, the civil society, providers, local government entities, practitioners and academicians.



Lawrence Semakula  
ACCOUNTANT GENERAL



## EXECUTIVE SUMMARY

The Government of Uganda spends trillions of shillings each financial year in the provision of goods, services, and works in a bid to execute its mandate of service delivery to the citizens. Public sector procurement accounts for a significant 60% of government spending. The strategic importance of public procurement in transforming the economic landscape of the country through a defined policy framework on government acquisition and disposal is very critical and cannot be ignored.

Since the early 1990's, the government of Uganda has been pursuing strategic reforms in Public Financial Management (PFM) aimed at supporting government's goal of poverty eradication through the achievement of good governance, sustainable growth targets and a stable macro-economic environment. Subsequently, government embarked on major public sector procurement reforms in 1997 that culminated in the current legal and regulatory framework, institutional framework and practices and procedures.

A number of achievements have been registered through the previous public sector procurement reforms. These include having a legal framework, institutional and established structure in the public procurement system. The Ministry of Finance, Planning and Economic Development undertook a policy analysis of different reports that included the Auditor General's reports, Internal Audit reports, PPDA Audit reports of 2011/12, the CPAR of 2012 and realised the need to provide guidance on the strategic direction of public sector procurement in Uganda.

The identified policy issues generated by the analysis compelled the Ministry of Finance, Planning and Economic Development to develop a comprehensive National Public Sector Procurement Policy justified by the need to:

- (i) Implement fully the Cabinet Memorandum, CT 2000 Minute 29, dated 19/1/2000 Public Procurement Reform;
- (ii) Promote good governance within the Public Sector Procurement System;
- (iii) Strategically position the public sector procurement function at policy and operational levels.
- (iv) Enhance procurement as a mechanism for attaining sustainable socio-economic development.
- (v) Improve the effectiveness and alignment of public procurement objectives towards achieving the national objectives (Uganda Vision 2040).
- (vi) Institute public sector procurement to focus on attainment of results and ultimately service delivery.
- (vii) Harmonise the existing public sector procurement system with regional and international protocols/declarations (East African Community, Johannesburg Declaration, among others).
- (viii) Incorporate supply chain management practice within public sector procurement system.
- (ix) Promote and embrace the use of science, technology and innovation (STI), which has been recognised globally as a driver for stimulating public and private investment.

This policy document has been developed and formulated through consultative processes involving Central and Local Government, procurement practitioners, civil society, providers, oversight Institutions, development Partners among other key stakeholders.

The policy introduces a paradigm shift from the traditional approach that views public sector procurement as an operational function to a strategic function. Public Sector Procurement today is seen as a facilitator of socio-economic development and transformation.

The policy consists of six sections highlighting the critical pillars that support public sector procurement to deliver value in public sector management.

Section One presents the introduction and the background to the policy. This section refers to evolution of Uganda's public sector procurement system from a centralised to decentralised system.

Section Two defines the purpose of public sector procurement the policy vision, mission, primary goal and means of attaining value for money (VFM).

Section Three presents the public sector procurement system that is comprised of seven pillars.

Section Four demonstrates procurement practices that play a critical role in adding value to the public sector procurement function. The policy emphasises the following concepts; supply chain management philosophy, risk management, monitoring and evaluation, and strategic approach to acquisition.

Section Five illustrates Sustainable Procurement and its contribution towards socio-economic development through the protection of the environment, fight against modern day slavery, and provision of incentives to local providers and SME's.

Section Six introduces key strategic tools in Public Sector Public Procurement whole life cycle costing, collaborative procurement, E-procurement, among others that government will explore and implement with a view of improving the efficiency and effectiveness within the procurement system.



# SECTION ONE: INTRODUCTION AND BACKGROUND

## 1.1 INTRODUCTION

In the last decade, governments across the world have attempted to reform public sector procurement through legislative and institutional frameworks. However, persistent challenges still remain within the procurement operations, market practices and integrity of the public sector procurement system. This indicates gaps in procurement governance hence a failure to attain the envisaged benefits of the reforms.

Globally, countries ranked highly in public sector procurement governance like Australia, Ireland and South Africa have proven that well developed and functioning public procurement policy frameworks provide strategic guidance in procurement systems.

Similarly, in the region, the East African Community advocates for member states to establish harmonised public sector procurement policy frameworks as drivers for socio-economic transformations and improved trade.

Therefore, it is even more critical for Uganda to put in place such a policy framework that will propel the public sector procurement system to deliver value for money in all government acquisitions.

According to the World Trade Organisation (WTO), on average, government procurement accounts for 10-15% of the GDP of an economy. Furthermore, estimations drawing from national accounts data, on NDA, governments in OECD member countries spend on average 12% of their GDP on public procurement, (OECD, 2008).

Similarly, across Africa, government procurement averages around 10% of GDP (Steven Woolcock 2008). In Uganda, public sector procurement accounts for a significant 60% of government spending excluding wages, and 30% of the nation's Gross Domestic Product (GDP). It is by far the largest share of GDP that is under direct control of the Government of Uganda<sup>1</sup>.

Today, Government of Uganda like many other developing countries faces tough policy choices. Increasing population growth, financial crisis resulting in economic meltdown and a reduced resource envelop which creates enormous pressure for government to deliver adequate and quality services to its citizens. This constrains public sector procurement as an instrument for public expenditure management.

The existing legal and regulatory framework although well formulated lacks adequate strategic definition and guidance on the direction of public procurement in Uganda. The institutional frameworks need to be further streamlined to avoid ambiguity and hence promote good governance.

<sup>1</sup>Source: Tapping the potential? by Bodo Ellmers: A case study from the European Network on Debt and Development (Eurodad) with the Uganda National NGO Forum (December 2010) National Public Sector Procurement Policy - April 2019

Various reviews and studies have reported persistent inefficiencies within the procurement operations. There is also a tendency to focus on rules other than results hence hindering service delivery.

The current public procurement market in Uganda remains fragmented and underdeveloped to support competition and fair play.

Furthermore, integrity and accountability in the system remains a big challenge since there are ample opportunities that provide breeding ground for fraudulent and corrupt practices.

The limited capacities and competencies of those involved further hamper development within the public sector procurement system.

It is, therefore, important to critically address the above cited gaps in order to attain better budget execution of government programmes and fulfillment of national objectives.

## 1.2 BACKGROUND

Government spends trillions of shillings each financial year in the provision of goods, works and services to the people of Uganda. This expenditure, estimated at 60% of the total national budget therefore reflects the strategic importance of the procurement function in government. It further illustrates why the function should increasingly be considered as a critical instrument for socio-economic transformation.

Since 1997, a number of achievements have been registered through previous public sector procurement reforms including establishment of a legal and regulatory framework, institutional structures, policy, implementation and oversight agencies. However, policy analysis and review supported by findings in various local and international assessments indicate lack of value for money in public expenditure management.

Various audits (PPDA and OAG), studies and diagnostic studies have indicated that the acquisition of goods, services and works in Uganda is still faced with problems of delays, highly priced bids and fraud among many others that have greatly affected the quality of service delivery by government. According to the PPDA annual report of 2014/15, the average procurement lead time under open international bidding from 258 (2013/14) to 181 days. Nevertheless, there is a variance of 71 days or 39.2% from the recommended 110 days by PPDA. The Country Portfolio Performance Report 2 of 2014 puts the delay at twice the planned time. Delays in completion of contracts may lead to delays in service delivery, poor resource absorption, increase in domestic arrears, abandonment, and in some cases cost overruns (through variations).

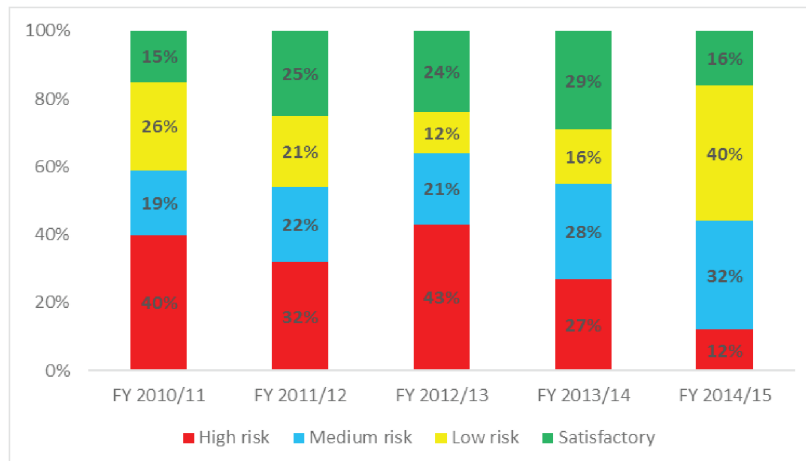
The graph (1) below indicates the trend of contracts rated “Satisfactory” from procurement audits carried out by the Authority (PPDA) in the last four financial years. While the high-risk contracts have reduced from 40% to 12%, the overall percentage of satisfactory contracts have remained below internationally acceptable standards.

<sup>2</sup> Uganda Country Portfolio Performance Review, March 31, 2014



According to the recent Integrity Perception Survey conducted by M/s Reeve Consult International, the perception index about existence of corruption in public procurement was 71.8%, up from 69.8% in the previous survey (2009)<sup>3</sup>. Corruption in public sector procurement means public funds are wasted on an enormous scale and the benefits these funds should have realised are lost.

**Graph 1: Performance Trend of Contract Audits Conducted<sup>4</sup>**



In the Annual Report of the Auditor General for the year ended 30<sup>th</sup> June 2013, it was observed that a number of government contracts/projects amounting to a total of UGX 99,768,530,540, US\$ 8,688,122.11 and Euros 940,720 that had been on going or were started during the financial year lagged behind schedule or demonstrated signs of failure. It was noted that a number of these contracts/projects had exceeded their completion dates while others had been abandoned. There appeared to be inadequate supervision by the responsible entities and laxity in enforcing the contract terms.

Achieving strategic public sector procurement outcomes will involve setting strategic priorities and direction, embracing good practices, utilizing appropriate tools, and abandoning the current 'one size fits all' approach. Realising better VFM in the procurement of goods, services and works by public sector entities, forms one aspect of governments ability to deliver better services to its citizens hence contributing to socio-economic development.

### Policy problem statement

A strong public procurement system is central to a well-functioning public financial management system and good public sector governance. A good procurement process is one that obtains goods, works or services in the correct quantity, of the appropriate quality, at the required time, from the best supplier, with the optimum terms, and under appropriate contractual obligations. Good procurements should meet public needs, secure value for money for the people, and be fair to all providers. Value for money takes into account the entire mix of timeliness, quality, optimal pricing, as well as fitness for purpose and risk.

<sup>3</sup> PPDA 3<sup>rd</sup> Integrity Survey Report

<sup>4</sup> PPDA Annual Report 2014-15

However, acquisitions of goods, services and works in Uganda face under deliveries of up to 30% to 100% (air supply); abandonment of sites of up to 50%, supply of up to 50% substandard goods, services and works; delays up to 50% to 100% of the planned timelines, pricing hikes by up to 100%; up to 30% incompetent providers; up to 30% improper solicitation documents; 70% of public needs unmet.

All these have contributed towards poor service delivery, poor resource absorption, increase in domestic arrears and in some cases, cost overruns (through variations) of 30% to 100%. There is, therefore, need for intervention in order to move to the desired levels of the required procurement.

### 1.3 RATIONALE FOR A PUBLIC SECTOR PROCUREMENT POLICY

- (i) Implement fully the Cabinet Memorandum, CT 2000 Minute 29, dated 19/1/2000 Public Procurement Reform.
- (ii) Promote good governance within the public sector procurement system.
- (iii) Strategically position the public sector procurement function at all levels such as policy and operational level.
- (iv) Enhance procurement as mechanism for attaining sustainable socio-economic development.
- (v) Improve the effectiveness and alignment of public procurement objectives towards achieving national objectives (Uganda Vision 2040).
- (vi) Institute a public sector procurement system to focus on attainment of results and ultimately service delivery.
- (vii) Harmonise the existing public sector procurement system with regional and international protocols/declarations.
- (viii) Incorporate supply chain management practice within the public sector procurement system.
- (ix) Promote and embrace the use of science, technology and innovation (STI), which has been recognised globally as a driver for stimulating public and private investment.

It is against this background, that the Uganda Government acknowledges the need for a public sector procurement system that recognises and balances all these considerations.



## SECTION TWO: PURPOSE OF PUBLIC PROCUREMENT

### 2.1 INTRODUCTION

Public sector procurement refers to the government's process of acquiring goods, works and services it requires to carry out its functions. The public sector presents a unique and complex environment in which the procurement function has to operate.

Governments have to strive to achieve a multiplicity of goals for diversified stakeholder groups within a regulated environment and limited resources.

This policy document, therefore, defines the vision, mission, values and objectives of the public sector procurement system, thereby defining the purpose and strategic direction. This policy document shall communicate the primary and secondary objectives to all stakeholders in the Government of Uganda public sector procurement system.

### 2.2 VISION

"A model public procurement system that facilitates socio-economic transformation."

### 2.3 MISSION STATEMENT

"To facilitate public service delivery through a responsive, flexible, efficient and effective public sector procurement system."

### 2.4 THE PRIMARY GOAL FOR THE NPSPP

The fundamental goal of the Public Sector Procurement Policy is:

'To ensure that procurement activities achieve Value for Money while supporting the delivery of government services.'

Value for money in public procurement refers to the achievement of a desired procurement outcome at the best possible price, based on a balanced judgment of financial and non-financial factors relevant to that specific procurement.

### 2.5 MEANS OF ATTAINING VFM IN PROCUREMENT

To attain VFM, entities shall;

- (i) Intergrate VFM in the entire procurement cycle and allow flexibility since different acquisitions have different value drivers;
- (ii) Incorporate the concept of 'Whole Life Cycle Costing' in public sector procurement;
- (iii) Ensure that all procurements are fit for purpose and delivered effectively and efficiently;
- (iv) Establish well defined VFM monitoring and evaluation mechanisms;
- (v) Ensure that competition provides ample and equal opportunity for participation by interested and qualified providers in a regulated environment;
- (vi) Promote transparency in all public sector procurement practices, processes, policies and relationships with all stakeholders in a manner that is accessible and readily available, while ensuring protection of confidential information.
- (vii) Adopt and promote collaborative procurement and also use tools like E-procurement, benchmarking, cost analysis (where competition is limited or absent).
- (viii) Promote the concept of procurement marketing;
- (ix) Promote sustainable procurement in all Government acquisitions.
- (x) Adopt a supply chain management approach; and
- (xi) Incorporate risk management in public sector procurement.

## 2.6 SPECIFIC POLICY OBJECTIVES

- (i) To ensure that all acquisitions using public funds in all government institutions are effectively and efficiently conducted.
- (ii) To promote and strengthen good governance in the key institutions within the public procurement system.
- (iii) To strengthen and enhance the knowledge, skills and attitudes of the human resource interfacing with public procurement.
- (iv) To promote sustainable public sector procurement.
- (v) To enhance and promote Socially Responsible Public Sector Procurement (SRPSP).

## 2.7 VALUES FOR THE NPSPP

- (i) **Good Governance:** This is the primary core value of the public sector procurement system. The principles of good governance include but are not limited to segregation of responsibilities, focusing on the organisation's purpose, making informed and transparent decisions as well as managing risk. In order to deliver good governance in the public sector procurement, both governing bodies and individuals working for entities must act in the public interest at all times, consistent with the requirements of legislation and Government policies, avoiding self-interest.
- (ii) **Openness:** Ensure transparency and clarity in policy and its delivery.
- (iii) **Integrity:** Ensure that the appropriate policies and procedures are in place to promote ethical practice within the public procurement system and guard against malpractice and unethical behaviour.
- (iv) **Customer satisfaction:** Ensure that both internal and external customers' needs are understood, and responded to beyond their expectation.
- (v) **Fair and equal treatment:** The concept denotes non discrimination and objectivity in taking procurement decisions that affect providers.
- (vi) **Sustainability:** Assurance that the system will have internal capacity to achieve the continuity of its internal workings and, or catalyze the achievements attained.
- (vii) **Responsiveness:** Public procurement officers shall endeavour to meet the aspirations, expectations and needs of the government/community.

## 2.8 SCOPE OF THE POLICY

The National Public Sector Procurement Policy will be executed under the National Public Sector Procurement System, the overall framework of the public procurement system, and shall consist of the following seven (7) pillars:

- (i) Policy Framework;
- (ii) Institutional Framework;
- (iii) Legal and Regulatory Framework;
- (iv) Human Resource Management;
- (v) Market Practices;
- (vi) Procurement Operations; and
- (vii) Integrity and Accountability.

This policy will apply to all acquisitions of goods, works and services under central government internally and externally, local governments and other entities using public finances or those established to offer public services.



## SECTION THREE: PUBLIC SECTOR PROCUREMENT SYSTEM

### 3.1 INTRODUCTION

This section provides an overview of Uganda's public sector procurement system and the key policy issues, objectives and statements in regard to the components of the system.

### 3.2 WHAT IS A NATIONAL PUBLIC SECTOR PROCUREMENT SYSTEM?

The national public sector procurement system is the overall framework for public procurement in any given country. For purposes of this policy document, the following constitute the pillars of the national public sector procurement system in Uganda;

- (i) Policy Framework;
- (ii) Institutional Framework;
- (iii) Legal and Regulatory Framework;
- (iv) Human Resource Management;
- (v) Market Practices;
- (vi) Procurement Operations; and
- (vii) Integrity and Accountability.

### 3.3 PILLAR NO.1: POLICY FRAMEWORK

#### Introduction

The significance and complexity of public sector procurement warrants government to put in place a well-defined policy framework that provides strategic focus and direction for the system. This policy framework is also a tool for government in enhancing socio-economic transformation and improvements in effective and efficient delivery of services to its citizens.

#### Policy Issue

Public sector procurement reforms in Uganda have largely focused on the legal and institutional framework and related capacity building of public sector procurement practitioners with limited strategic direction to the entire system.

While legislation provides the rules for the system to operate, attainment of government procurement objectives requires clearly marked out policy direction and strategic intent. There are unclear lines between policy formulation, implementation and oversight.

#### Policy Objective

To provide an overall goal and strategic direction for public sector procurement system in the country.

#### Policy statement

In order to achieve the above objective, government shall:

- (i) Clearly define the goal that the system must pursue, which shall be aligned to the national policy objectives.
- (ii) Involve key stakeholders and use evidence-based research during policy formulation and review process;

- (iii) Take into account emerging trends in both the local, regional and international public sector environment;
- (iv) Assess the impact of the policy and inform those directly or indirectly affected by the policy;
- (v) Build relevant competences and skills within the established structures in developing and reviewing policy implementation;
- (vi) Ensure that policy formulation, implementation and oversight functions are clearly segregated for purposes of good governance.
- (vii) Put in place appropriate instruments and strategies for implementing the policy; and
- (viii) Continuously review and undertake systematic evaluation of the existing policy to ensure that it meets its objectives and relevance to overall national policy objectives.

### 3.4 PILLAR NO.2: INSTITUTIONAL FRAMEWORK

#### Introduction

An effective public sector procurement system is characterised by a strong and well organised structure of relationships and distribution of roles. The institutional framework in Uganda comprises of a number of key players that perform different functions within the system.

The Executive Arm of Government is responsible for overall policy guidance. As a custodian of the PFM policies, the Ministry responsible for Finance in the country has the overall responsibility for the public sector procurement system including the direct role of informing public sector procurement policy, monitoring the implementation of those policies particularly with regard to public expenditure, and facilitating proper understanding of the governing documentation service-wide.

The Parliament of Uganda is mandated to review and issue all legislations to guide the public sector procurement function.

Policy implementation has evolved from a centralised to a decentralised system necessitating the creation of new structures to implement the change. In the decentralised regime, procurement of goods, services and works is a responsibility of individual procurement and disposing entities.

The regulatory body was established in 2003 by an Act of Parliament – the Public Procurement and Disposal of Public Assets Act, with a mandate to regulate the public procurement function in Uganda.

In 2011, the above law was amended leading to the creation of the PPDA Appeals Tribunal among others. As part of the oversight function, the Auditor General is mandated to undertake procurement audits across whole of government.

The Attorney General is mandated by the Constitution of the Republic of Uganda 1995 under Article 119 to be the principal legal adviser to the Government on all contracts. As part of this mandate, the Attorney General provides legal advice and undertakes reviews of procurement related contracts above a given threshold.



The Office of the Auditor General (OAG) is the Supreme Audit Institution (SAI) of Uganda. This Office is mandated by the Constitution of the Republic of Uganda (1995) as amended under Article 163 to undertake audits, and report on the public accounts of government. The National Audit Act, 2008 further requires the AG to undertake procurement audits and enhances the financial and operational independence of the office.

Civil society has become a significant actor in the public sector procurement as it acts as an intermediary between the public and the State.

### **Policy Issue**

In the promotion of good governance, there is still need for clear definition of roles and responsibilities for key actors as well as addressing conflict of interest of all stakeholders in the procurement system.

There is no coordinated approach to handling procurement related issues by the various oversight agencies<sup>5</sup>, leading to duplication of roles and wastage of resources which ultimately increases the cost of service delivery.

### **Policy Objective**

To establish a coherent and effective framework for the management of the public procurement and disposal function for better service delivery.

### **Policy Statement**

In order to achieve the above objective, government shall;

- (i) Strategically position the procurement function at all levels to facilitate the management and implementation of public sector procurement policy objectives.
- (ii) Define and harmonise the roles and responsibilities of all key players in the procurement system taking into consideration good governance and all other values of the system.
- (iii) Compel oversight agencies to use third-party procurement agencies in order to avoid conflict of interest<sup>6</sup>.
- (iv) Ensure oversight institutions collaborate to resolve procurement issues.

## **3.4.1 The Policy as a Strategic Organ**

### **Policy Issue**

While the line ministry responsible for public financial management has a well-established budgeting, accounting and internal audit function, the procurement function is yet to be fully developed and equipped with the necessary skills and competencies to fully execute its mandate. Furthermore, the policy and strategic function as per the existing legal framework is not segregated from the regulatory function, compromising good governance values.

### **Policy Objective**

To establish a policy organ with overall responsibility for formulation, monitoring and reviewing policies and strategies for a public sector procurement system.

<sup>5</sup>Oversight agencies in this context include the Auditor General, the Police, Inspector General of Government, Solicitor General etc.

<sup>6</sup>Oversight agencies in this context are the Ministry of Finance, Planning and Economic Development, PPDA, Office of the Auditor General and the Inspector General of Government and Office of the Prime Minister among others

### Policy Statement

In order to achieve the above objective, the Ministry responsible for Finance shall:

- (i) Take overall responsibility for policy formulation, implementation, monitoring and evaluation;
- (ii) Inform and publicise the Policy;
- (iii) Ensure that Government establishes the procurement and disposal function at a strategic level;
- (iv) Ensure that Government establishes adequate structures to deal with specific public procurement management functions in the national procurement and disposal governance system;
- (v) Coordinate and harmonise public procurement policy related matters with other governments, regional and international agencies;
- (vi) Undertake and promote research, innovation and manage information in public procurement policy.
- (vii) Set uniform standards for managing the procurement cadre across the profession.

### 3.4.2 Procurement and Disposing Entities

#### Policy Issue

Despite the establishment of functional Procurement and Disposal Units in individual Procurement and Disposal Entities (PDEs), the procurement function is often focused on the process and compliance with the existing laws, rendering it more clerical than strategic.

In addition, there is still insufficient capacity, authority and skills to adequately execute this increasingly complex function in government.

In a bid to increase transparency in the implementation of the procurement and disposal function, the system has a number of approval levels through various committees. However, this has resulted in fraudulent practices, increased costs and unnecessary delays.

#### Policy Objective

To establish and empower the institutional framework within the PDE to efficiently and effectively manage the procurement and disposal function.

#### Policy Statement

In order to achieve the above objective, government shall;

- (i) Enhance the establishment of the function at the strategic level with appropriate capacity and empowerment;
- (ii) Provide guidance on how the function shall operate and coordinate with the existing disciplines and activities within any given public institution;
- (iii) Ascribe roles and responsibilities for the various key stakeholders in the procurement process within any given government institution to enable decision making;
- (iv) Ensure that appropriate monitoring and evaluation of the entire institutional framework within a PDE is put in place and information is shared by the key stakeholders;
- (v) Ensure publication of information on future procurements, which may contribute to improved transparency throughout the procurement process.
- (vi) Institute capacity development programmes for all stakeholders within the PDE.



### 3.4.3 The Regulator

#### Policy Issue

The operations of the Regulatory Authority are largely centralised creating a challenge for institutions to conveniently work with the regulator in the performance of its functions. This also creates administrative challenges to the regulatory body in performing its role. Recently three(3) new branches were established in Mbarara, Gulu and Mbale districts.

The current mandate of the regulatory authority extends into operational processes which interferes with its independence as a regulator. In addition, there is limited coordination among oversight agencies on crosscutting matters relating to procurement, leading to duplication of roles and in some cases, resulting in conflicting outcomes.

#### Policy Objective

To effectively regulate and enforce compliance to the public procurement and disposal legal framework.

#### Policy Statement

In order to attain the above objective, government shall:

- (i) Strengthen and empower the regulator to effectively regulate, monitor, and evaluate all public sector procurement and disposal activities to ensure compliance;
- (ii) Set standards for the implementation of the procurement regulatory frame work;
- (iii) Devolve the regulatory function to effectively execute its mandate;
- (iv) Promote awareness of the public procurement and disposal legal and regulatory framework.

### 3.4.4 The Appeals Tribunal

#### Policy Issue

The complaints handling mechanism within the procurement and disposal function has been strengthened through the creation of an Appeals Tribunal. However, the three-tier system involving the Accounting Officer, the Regulator and the Appeals Tribunal lengthens the procurement lead time and may increase service delivery costs.

Furthermore, the intended independence is in some cases compromised by the involvement of the review institution.

#### Policy Objective

To establish an independent complaint handling mechanism that is effective and efficient.

#### Policy Statement

In order to attain the above policy objective, government shall:

- (i) Establish and empower an Appeals Tribunal to handle complaints in an effective and ensure that the effective manner.
- (ii) Ensure that the complaints are handled in a professional, objective and timely manner.

<sup>7</sup> Refer to sections 7(h), (l), (m) and (n) of the PPDA Act

### 3.4.5 The Auditor General

#### Policy Issue

The Auditor General is guided by international auditing standards; However, in applying these standards, key subject experts in procurement are needed to clearly bring out procurement control concerns from a professional perspective.

The existing legislations provide shared responsibility for procurement audit under the Auditor General and the regulatory body causing a duplication of efforts and mandates. Furthermore, the practice is focused primarily on compliance with the law and not the entire function indicating limited capacity development in procurement auditing.

It is observed that oversight agencies manage their own procurement operations and perform procurement oversight function which is perceived as conflict of interest.

#### Policy Objective

To establish an effective external oversight system for purposes of better management of public resources.

#### Policy Statement

In order to achieve the above objective;

- (i) The Auditor General shall undertake procurement audits on all government procurement and disposal activities.
- (ii) Government shall ensure the development of procurement audit capacity and related practices.
- (iii) In the interest of good governance, oversight agencies shall outsource their procurement operations.

### 3.4.6 Civil Society

#### Policy Issue

The existing system does not explicitly take into consideration Objective (x) of the 1995 Constitution, which states that “The State shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them”.

Secondly, there is inadequate contract monitoring of government projects acquired through the procurement process by the public. PDU's single handedly cannot effectively monitor contracts issued as they are not adequately facilitated and are too thin on the ground.

#### Policy Objective

To institutionalise the participation of the Civil Society in the Public Sector Procurement System.



### **Policy Statement**

In order to achieve the above objective, Government shall;

- (i) Establish a formal process for engaging the civil society in policy formulation and monitoring of policy implementation.
- (ii) Ensure that participation of civil society does not infringe on the core values of the system that is, good governance.
- (iii) Support civil society in accessing relevant information from key players within the public sector procurement system.
- (iv) Ensure adequate capacities and competencies are built in participating Civil Society groups and organisations.

### **3.4.7 The Attorney General**

#### **Policy Issue**

While the current legal framework mandates the Office of the Attorney General to be the principal Government legal adviser on all contracts; on a number of occasions, entities have had challenges in complying with this mandate. In compliance with this mandate, procurement lead times have on a number of occasions been affected, causing delays in service delivery.

On the other hand, it has been observed that PDE's sign contracts without clearance from the Attorney General/Solicitor General, leading to audit queries.

#### **Policy Objective**

To provide legal guidance and support in the public sector procurement system.

#### **Policy Statement**

In order to achieve the above objective, Government shall:

- (i) Direct/Require all entities to seek legal advice from the Attorney General on public sector procurement contracts.
- (ii) Ensure that there is adequate capacity with in the Attorney General is office to execute his/her mandate.

## **3.5 PILLAR NO.3: LEGAL AND REGULATORY FRAMEWORK**

### **Introduction**

The legislative and regulatory framework sets the basic conditions for the manner in which procurement and disposal may be undertaken procedurally. The essence of public procurement legislation is to define and enforce those procedures that will produce a productive and efficient result, while respecting the public nature of the process.

Regulation is a policy instrument used by government to pursue its social and economic objectives. The legal framework in this case is a policy instrument used by government to pursue its public sector procurement system objective.

### Policy Issue

The Public Procurement and Disposal of Public Assets Act 2003 and related regulations are in place to guide on the procurement process. The current legal framework was adopted from the United Nations Commission on International Trade Law (UNCITRAL) Model Law on procurement of goods, construction and services. However, this law needed to take into consideration the local and regional environments to make it suitable for public sector procurement in Uganda.

Despite the existence of a robust legal framework and capacity building programmes that have been implemented, oversight reports indicate that compliance by most PDEs remains a challenge. The primary legislation is rigid such as during the bidding and evaluation process, and does not necessarily take into consideration the uniqueness of certain sector requirements.

There is need to harmonise the existing legislation with the fiscal decentralisation strategy in regard to the reporting requirements in sub-counties and district Local Governments. In line with the regional integration objectives, it is important to align our legislation with the member countries commitments and principles in relation to public procurement. There are still many public officers who have remained reluctant to follow the PPDA law and other relevant laws to the detriment of the taxpayer and overall government reputation.

### Policy Objective

To institute a suitable and comprehensive legal and regulatory framework that promotes improved service delivery.

### Policy Statement

In order to achieve the above objective, government shall:

- (i) Establish a comprehensive and effective legal and regulatory framework that enables attainment of value for money in public procurement and disposal of public assets.
- (ii) Provide clear guidelines, procedures and structures for development and management of the public procurement function.
- (iii) Ensure compliance with the legal and regulatory framework and provide for sanctions on violation of the law.
- (iv) Align and harmonise the legal and regulatory framework with all national, regional and international policies in relation to procurement;
- (v) Inform and publicise the legal and regulatory framework;
- (vi) Develop sufficient capacity for implementation and oversight of the procurement legal framework;
- (vii) Recognise that commercially registered parastatals may not be able to fulfill their objectives and compete within the rigid PSP legal framework.



### 3.6 PILLAR NO.4: HUMAN RESOURCE MANAGEMENT

#### Introduction

A capable human resource is the machinery that drives an organisation's policy objectives into actions thereby translating its goals into reality.

In this respect, government requires well-thought out strategies for human resource management and their development to derive the intended goals of the public sector procurement system. It is, therefore, important to effectively coordinate and channel human capital into increased productivity.

This is a new profession in government previously undertaken by supply officers. Procurement cadres in Central Government are centrally managed, while in Local Government it is decentralised in accordance with the fiscal decentralisation policy to bring services closer to the people. However, this has caused governance tensions within, the Local Government.

#### Policy Issue

There is lack of a harmonised human resource policy regarding public sector procurement practitioners in the country, Central Government procurement officers who are centrally managed are regularly rotated while those under Local Government are not. This denies the officers opportunities of exposure that would be gained from other sectors of government.

The various assessment and audit reports indicate a lack of adequate knowledge and skills in procurement. Further more given the newly implemented reforms and increasing procurement volumes, staffing structures and levels in some PDE's are not adequate to match expected performance.

#### Policy Objective

To enhance the development of a competent and professional human resource that will effectively deliver the requirements of the public sector procurement system.

#### Policy Statement

To achieve the above objective, government shall ensure that;

- (i) The structure for public sector procurement shall be commensurate with the importance and strategic function of the system;
- (ii) A conducive working environment is accorded to the human resource to execute its mandate;
- (iii) Human resource competences and capabilities to effectively manage the public sector procurement system are built;
- (iv) Competent authorities are supported in development of public sector procurement curriculum and promotion of procurement values.
- (v) Management practices of the human resource in public sector procurement are harmonised.

### 3.6.1 The Procurement Professionals Body

Professional bodies have a crucial role to play as part of the regulatory landscape. Professional body membership gives key stakeholders and government assurance that services are being delivered by qualified, competent officers who are self-regulating, based on a code of professional practice and standards.

#### Policy Issue

As government procurements increasingly become more complex and riskier, there is need to have consistent growth in procurement professionalism.

The procurement operations in several industries such as drug/medicine, construction among others have a direct impact on the population which must be protected. There is lack of clear guidance on definition, roles and regulation of different categories of procurement professionals for audits, specialists, affiliates and others participating in procurement related activities.

While the National Council of Higher Education issued minimum training standards for procurement in Uganda under Statutory Instrument No. 35 of 2008, there are many training providers in procurement who do not meet the minimum standards.

Various assessment reports indicate a lack of compliance to set rules and regulations partially attributed to unprofessional conduct and malpractices within the procurement system. This hinders service delivery and creates loss of public confidence and trust in government operations. To address this concern, the existing institution i.e. the Institute of Procurement Professionals of Uganda (IPPU), recently issued a Code of Conduct. However, it is facing challenges in implementation, given the limited legal basis for enforcement.

While the Public Service Standing Orders are in place for the civil servants, a number of practitioners within the function are not necessarily public servants, e.g. procurement auditors and procurement specialists managing government projects. The standing orders have also been found to be too bureaucratic and do not effectively control errant public sector practitioners.

In line with the EAC<sup>8</sup> harmonisation, Uganda remains the only country without a professional body to guide the practitioners in public sector procurement.

#### Policy Objective

To establish and empower a professional body that will develop, monitor and regulate the procurement professionals.

<sup>8</sup> In Tanzania, the Procurement and Supplies Professionals and Technicians Board (PSPTB) was established in 2007 by Parliamentary Act No. 23 as the successor of both the National Board for Materials Management (NBMM) founded in 1981 by Parliamentary Act No.9, and Materials Management Caretaker Committee. (MMCC founded in 1978) The Kenya Institute of Supply Management (KISM) is a national body for professionals in the practice of procurement and supplies management in Kenya. The Institute draws its mandate from the "Supplies



### Policy Statement

To achieve the above objective, government shall;

- (i) Establish and empower a professional body responsible for;
  - (a.) Setting and observing professional standards of the procurement practitioners;
  - (b.) Accredite and certify procurement professionals to practice procurement;
  - (c.) Accredite trainers to conduct professional procurement training;
  - (d.) Promote integrity and work ethics of procurement practitioners through development and monitoring of a code of ethics for both the practitioners and providers;
  - (e.) Conduct continuous professional development trainings for the professionals to enhance career development and sustainable capacity building;
  - (f.) Maintain a register of procurement practitioners;
  - (g.) Define categories of procurement professionals, and oversee their operations;
- (ii) Pursuant to the ongoing harmonisation of PFM standards in line with the East African Community Monetary Union Protocol, harmonise professional standards with those of other member countries.
- (iii) Ensure that a local professional body that will regulate the practitioners and bring together both the public and private sector procurement professionals in Uganda is established.

## 3.7 PILLAR NO.5: MARKET PRACTICES

### Introduction

Market conditions have a great influence on public sector procurement practitioners' effort to attain organisational objectives. Public sector procurement requires performance not only from the public sector, but also from private sector participants. Therefore, a functioning and competitive market is a key element and hence a key pillar to the public sector procurement system. However, to be an effective partner, the market must also have confidence in the existing public sector procurement system.

The Global Competitiveness Report 2012-2013 ranked Uganda 123 out of 144 economies - lower than 121 last year, this indicates a downward trend. In East Africa, Uganda still lags behind Rwanda (which continues to rise up the index as the top performer in Africa), as well as Kenya and Tanzania. According to this report, Ugandan products and services are less competitive today than they were a year ago. In a world that is increasingly getting globalised or regionalised, this is absolutely important as local products will not match imported ones, leading to outflow of the meagre forex through public sector procurement.

### Policy Issue

The existing public sector procurement system does not have in place a mechanism of analysing the market structures for different supply markets where entities obtain products and services. This has led to entities adopting a "one size fits all" approach when selecting procurement methods.

As markets become more and more globalised through regional and international trade agreements and treaties, public procurement practitioners are to face greater challenges. In addition to compliance with their governments' procurement laws, policies and international trade requirements, they face additional challenges like communication, currency exchange rates and payment, customs regulations, lead-time, transportation, foreign government regulations, trade agreements and transportation among others.

**Policy Objective**

To proactively and strategically manage the market to adapt to public procurement needs.

**Policy Statement**

To achieve the above objective, government shall:

- (i) Take a strategic, long term approach to the marketplace to gain suppliers knowledge of markets and trends (market engagement), as well as gain an understanding of the capacity and capability of markets in relation to specific products and services (market sounding).
- (ii) Promote active competition within the market by building sufficient sustainable capacity and capability within the various procurement institutions.
- (iii) Develop and disseminate guidance on strategies for the different supply market structures.
- (iv) Gather and consider market intelligence within key sector groups and consider the suppliers' perspective during the public sector procurement process.
- (v) Introduce procurement marketing concepts (reverse marketing) which allows government or any other institution to stimulate the market to supply or receive supply with the view of creating a saving or adding value.
- (vi) Keep the market informed about opportunities and brief providers about procurement decisions.

**3.8 PILLAR NO.6: PROCUREMENT OPERATIONS****Introduction**

Procurement processes and practices are necessary to define the workflow and methodologies required for an organisation to achieve its goal(s). The procurement cycle runs from needs identification to contract management and monitoring a number of different key players are involved. Therefore, the processes within this cycle should clearly be understood and easy to apply.

It is also important to provide for a monitoring and evaluation mechanism to ensure that the process is achieving the desired objectives.

Prior to the PFM reforms, procurement in Uganda was seen as a back-office function, following simple processes, supplier focused, with relatively low value goods of low risk processes. Today, government procurement is becoming more complex and strategic, requiring a move from 'fit for all' to 'best fit' approaches.

In adoption of the supply chain concept, providers must be seen as strategic partners to provide government with a complete service solution, especially when dealing with strategic and complex contract relationships. As government pursues its Vision 2040, procurements are increasingly becoming high value, with high risk. It is evidently critical to review existing processes and practices to suit the emerging demands.

**3.8.1 Identification and Definition of the Need****Policy Issue**

Requirements for goods, services and works originate from different users within any given institution. It is good practice to conduct needs and wants analysis purposely to identify and rank the essential needs and desirable wants in a PDE. It is at this stage that buyers discuss with key stakeholders on the concerns, challenges, risks and opportunities related to the needs identified. These are documented for planning, acquisition and disposal purposes.



Defining the requirements of a PDE is the cornerstone of a successful procurement process. The responsible officer in an entity shall clearly understand and define the need to be addressed since the greatest contribution to achieving value for money is made at the earliest stages of requirements definition. Likewise, government entities must clearly identify and define the needs as well as requirements for disposal of public assets.

There is inadequate capacity and guidance in government to define procurement and disposal requirements. This has negatively impacted on attainment of organisational objectives. Currently, defining the need is primarily focused on conformity to defined specifications rather than the purpose or benefit to be derived.

The above challenges have also contributed to the poor responses to opportunities advertised in the media, in addition to increased disputes leading to poor absorption capacities and poor service delivery.

### **Policy Objective**

To precisely define and communicate the requirements of an organisation in order to satisfy an identified need.

### **Policy Statement**

To achieve the above objective, Government shall:

- (i) Ensure that organisations establish generic functional and performance specifications that meet the need;
- (ii) Promote the development of performance-based specification in defining of needs;
- (iii) Ensure involvement of the end user (s) in the defining of need;
- (iv) Encourage the use of competent authorities or expertise where applicable in generating appropriate need definition;
- (v) Ensure harmonisation of the statement of requirements with industry practices and the market;
- (vi) Ensure that identification of a need is backed by a justification of that specific need and its contribution to organization objectives;
- (vii) Take into consideration the whole life cycle cost of the need in question;

## **3.8.2 Valuation of Acquisitions**

### **Policy Issue**

There is no guidance on valuation of acquisitions and disposals especially for services and IT Solutions. Organisations always under or overestimate the values of the requirements and this has a direct impact on the budgeting, planning and selection of the method of procurement to be used. Subsequently, this increases the lead time and total cost of acquisition.

### **Policy Objective**

To promote the use of standardised valuation of acquisitions and disposals.

### **Policy Statement**

To achieve the above objective, the Government shall:

- (i) Develop a standardised mechanism for valuation of acquisitions and disposals;
- (ii) Ensure that the valuation estimates are incorporated in the procurement planning stage;
- (iii) Build capacity in valuation of different acquisitions and disposals.

### 3.8.3 Market Research

#### Introduction

Market research shall identify relevant potential providers and products/services that meet the needs of the organisation. The depth of the research would depend on the risk and/or value of the needs in question.

#### Policy Issue

Government lacks complete and accurate information on markets from which it intends to acquire goods and services to inform sourcing decisions.

The current system charges the Accounting Officer with the responsibility of assessing the market prices for all planned acquisitions. Accounting Officers and delegated officers need guidance on how to conduct market research, especially for complex and strategic procurements. This is further hampered by lack of accurate and complete statistics on market performance and operations.

#### Policy Objective

To understand the market and its capability in meeting the Government's procurement requirements.

#### Policy Statement

To achieve the above objectives, Government shall:

- (i) Develop guideline and capacity for conducting market research.
- (ii) Identify a competent body to develop a centralised system for collecting, tracking and disseminating current information on markets on behalf of entities where relevant.
- (iii) Ensure that sourcing strategies take into consideration relevant market research information.

### 3.8.4 Procurement and Disposal Planning

#### Policy issue

An effective plan provides a framework to guide procurement practitioners in the achievement of their tasks and duties. Unfortunately, most PDE's do not give procurement planning due attention but treat it as an activity to meet a process reporting obligation rather than a strategic management function.

Approximately 80% of the plans submitted to management and oversight agencies are 'wish lists' and not consolidated. Reports from the Regulator indicate that many procurement practitioners do not outline their procurement activities, at the beginning of a financial year and those who attempt have incomplete and hence poor plans. Ineffective procurement planning has led to many PDE's' failure to achieve planned activities thus affecting the provision of service by government to its citizens.

Despite efforts to link procurement planning to entities' business processes, procurement planning still remains weakly aligned to the budgeting system.

#### Policy Objective

To enhance procurement planning as a strategic management tool for procuring and disposing entity's attainment of their overall objectives.



### Policy Statement

To achieve the above objective, Government shall:

- (i) Align procurement and disposal planning and associated activities to the annual government budget formulation and execution process;
- (ii) Develop guidelines for effective and comprehensive procurement and disposal planning which is aligned to the organisation's goals;
- (iii) Incorporate the supply chain concept in the planning process;
- (iv) Ensure that all entities publicize the planned procurements and disposals;
- (v) Ensure that procurement and disposal plans are submitted in a timely manner to relevant oversight agencies;
- (vi) Encourage the publication of a general procurement notice of government's planned procurements.
- (vii) Put in place provisions of "not-buy" options such as make, lease and hire purchase.
- (viii) Ensure that procurement practitioners undertake what is known as "scoping" or pre-procurement engagement work for purposes of developing effective procurement plans;
- (ix) Ensure that PDEs with complex and strategic procurements set up adhoc multi disciplinary procurement planning teams to handle activities like;
  - a. Situation analysis of the existing procurement system. The analysis is expected to lead to the identification of potential bottlenecks in the supply system, hence facilitating corrective action at the policy, structural or functional levels.
  - b. Reviewing the goods, services and or works and minimum supplier requirements as well as administrative procedures for planned procurements.
  - c. Participating in the process of market analysis for selected items/services. It is vital for the PDEs to have a strong understanding of the market dynamics of the industry they are to procure from prior to commencement of the procurement process.
  - d. Undertaking a spend analysis within PDEs and making sure that the information obtained informs all future procurement planning arrangements.

### 3.8.5 Requisitioning

#### Policy issue

A number of entities issue solicitation documents and/or receive goods, services before the undertaking of a formal requisitioning and approval process.

At the same time, the information from the user departments is limited to the content of the standard requisitioning form. The limited information has not only led to issuance of incomplete information in the solicitation documents but splitting of requirements which all compromise the responsiveness of providers and attainment of VFM.

#### Policy Objective

To facilitate and enhance better flow of information from the user to the provider and hence contribute to the achievement of organisational goals.

### Policy Statement

To achieve the above objective, government shall:

- (i) Promote the use of requisitioning packages in the public sector procurement process.
- (ii) Develop elaborate guideline on how requisitioning for different procurement needs shall be undertaken.

### 3.8.6 Sourcing

#### Policy Issue

Well-designed sourcing initiatives can generate substantial value within the procurement process of a given requirement and enhance customer satisfaction if well planned and managed.

The current procurement practice in Uganda is characterised by the reactive sourcing approach i.e. buyers responding to requisitions or other unexpected requirements from the User Department. Most organisation's focus on acquiring needs and no effort is given to understand the nature and varied characteristics of the upstream side and the whole life cycle of the requirements that are acquired.

The task of strategic planning within sourcing is not appreciated despite the fact that supply-based management processes contribute extensively to an organisation's goals. This results into "disconnected" sourcing and hence suboptimal use of public resources.

#### Policy Objective

To achieve long-term supply stability for a need identified and minimise supply chain risk.

#### Policy Statement

To achieve the above objective, the Government shall:

- (i) Promote proactive sourcing mechanisms in identifying "best fit" approaches for defined needs;
- (ii) Adopt supply chain concept in sourcing products, works and services;
- (iii) Promote and give guidance on strategic sourcing and devise mechanism for supply market development;
- (iv) Promote and support local providers' participation in Public Sector Procurement;
- (v) Create an optimal portfolio of providers that satisfies the entities' acquisition requirements;

### 3.8.7 Pre-Bid Meetings/Site Inspections

#### Policy Issue

Pre-bid meetings and site inspections provide a forum for clarification of unclear issues arising from a bidding document.

This results into better understanding of the requirements. Failure to hold pre-bid meetings/site inspections for complex, high value and specialised procurements leads to misunderstanding and misinterpretation of the statements of requirements. It has been observed as one of the causes of poor, nonresponsive and noncompetitive bids leading to increased procurement lead time and non-attainment of VFM.

#### Policy Objective

To institute mechanisms for enhancing better understanding of the procurement requirements before bidding.



### Policy Statement

To achieve the above objective, the Government shall:

- (i) Ensure that pre-bid meetings/site inspections are held for all high value, complex and/or unique procurements.
- (ii) Ensure that pre-bid meetings/site inspection shall be managed by multiskilled teams in a professional and transparent manner.

### 3.8.8 Bid Evaluation

#### Policy Issue

Bid evaluation is one of the critical and complex stages within any procurement process and it is one of the most vulnerable stages. Failure to conduct bid evaluation professionally affects attainment of VFM. Some of the typical challenges cited in the audit reports range from deviation from the stated evaluation criteria, substitutions of offers, abuse in the correction of arithmetic errors and delayed evaluation among others.

Bid evaluation focuses on conformance to specified requirements of needs rather than intended benefit which may exclude suitable and innovative solutions.

#### Policy Objective

To determine the most responsive, capable and competent provider.

#### Policy Statement

To achieve the above objective:

- (i) Government shall develop appropriate guidelines on conducting evaluations for all procuring and disposal entities;
- (ii) Organisations shall constitute evaluation teams with appropriate skills to handle the evaluations in a timely manner;
- (iii) Where organisations lack the skills in-house, the skills may be sourced from competent agencies;
- (iv) In cases where an entity may have a conflict of interest or is unable to conduct an evaluation in-house, the evaluation can be contracted to the third-party provider;
- (v) PDEs shall adequately plan for and facilitate evaluation processes;
- (vi) Bid evaluation shall take into consideration innovative solutions;
- (vii) Bid evaluation shall focus on the benefits to be derived from and take into consideration innovative solutions;

### 3.8.9 Negotiations in Public Procurement

Negotiation is a strategic process requiring special skills to reach a desired outcome through discussions and bargaining on the essentials of a contract to reach a compromise.

#### Policy Issue

The current legal framework limits negotiations to only procurement of consultancy services, sole sourcing and cases where one bid is received during an open competitive process. However, non-consultancy services, works and some specialised procurements, entail risks and unforeseen circumstances which may require negotiations in order for the entity to obtain the intended outcome.

#### Policy Objective

To enhance mutual understanding of each parties' obligations in order to minimise the supply chain management risks.

**Policy Statement**

To achieve the above objective, government shall ensure that:

- (i) Clear guidance is provided for negotiations in public sector procurement;
- (ii) Negotiations are considered for all high value, high risk, unique or complex procurements;
- (iii) Cross-functional teams are set up to manage the process professionally;
- (iv) Adequate capacity is developed in negotiation skills for all key stakeholders involved in the public sector procurement process;
- (v) Win-win outcomes are promoted;

**3.8.10 Contract Management and Administration****Policy Issue**

Contract management and administration has been cited as a cross cutting challenge within the public sector procurement process. Limited awareness and capacity at both Central and Local Government has resulted in delays in project implementation, poor contract execution, delayed payments to providers, leading to poor service delivery and wastage of valuable resources.

The existing legal framework requires PDU's to undertake contract monitoring. This has been given limited attention as very few PDEs have an established contract monitoring frameworks in place.

**Policy Objective**

To enhance successful management and execution of contracts.

**Policy Statement**

To achieve the above objective, Government shall ensure that:

- (i) Guidelines on contract management and administration are developed;
- (ii) All contracts are comprehensive, clearly defining the obligations of all parties and clearly expressed prior to the sourcing process;
- (iii) All contracts clearly specify a Contract Manager or Contract Management Team (CMT);
- (iv) All contracts are effectively supervised, monitored and documented;
- (v) A separate closeout function/desk within the PDE is established.
- (vi) Contract performance shall inform future contracting processes;
- (vii) All addendums reached after negotiations shall form part of the contract and shall be adhered to by all parties;
- (viii) Contract execution is aligned to the financing of the contract;
- (ix) Sufficient capacity is built and there is awareness on contract management within all Government entities;
- (x) Channels of engagement and information sharing are created to enable the civil society participate in contract monitoring;



### 3.8.11 Emergency Procurement

#### Policy Issue

The country is often faced with emergency situations that are life threatening like; floods, landslides, and epidemics among others. In the long run, some of these undesirable situations lead to reduced economic activity and poor welfare. The emergency procurement procedures in place are inadequate to deal with urgent demands of goods works and services to support the affected communities leading to destruction of property and loss of life.

#### Policy Objective.

To ensure timely delivery of goods, works and services in emergency situations to minimize the adverse effects.

#### Policy Statement

To achieve this policy objective, government shall

- (i) Decentralise procurement of emergency relief items.
- (ii) Standardise specifications of commonly used relief items
- (ii) Promote the use of frame work contracts for emergency relief items.
- (iv) Reduce the number of players in the procurement process.
- (v) Ensure bidding procedures, requirements and documents are simplified with reduced timelines.
- (vi) Adopt the use of Information Communication Technology in procurement.
- (vii) Adopt the use of a cost reimbursable contract approach for goods works and services.
- (vii) Promote the use of a risk-based management approach in Public Sector Procurement.

### 3.8.12 Monitoring and Evaluation (M&E)

#### Policy Issue

The existing tools in monitoring and evaluation of the public sector procurement system have limited coverage of the entire system. Recent efforts to measure the existing system such as PEFA and CPAR yields limited results given the fact that the scope in the assessment did not sufficiently cover all the pillars or components of the national public procurement system.

The existing Government Procurement Portal (GPP), an information management system is limited to the performance of the PDE in terms of compliance to procedures other than service delivery satisfaction. The tool is limited to the measurement of one out of the five components of the public procurement systems.

Furthermore, other institutions that are supposed to monitor the system like the Ministry responsible for Finance have limited capacity to undertake this function.

#### Policy Objective

To provide a holistic approach in monitoring and evaluating the performance of the Public Sector Procurement system.

#### Policy Statement

To achieve the above objective, Government in collaboration with other key stakeholders shall;

- (i) Ensure that performance measurement within a public procurement system is handled at three different levels as follows:
  - (a.) The Ministry responsible for Finance shall handle the national (Meta) level performance assessment of the national public procurement system.
  - (b.) The Regulator shall handle the macro level performance assessment of the Procuring and Disposing Entities.
  - (c.) The Accounting Officer shall handle the micro level performance assessment of the procurement function of the entity.
- (ii) Establish base line requirements and set performance indicators at all the above three (3) levels for guidance purposes;
- (iii) Ensure that Provider/Customer Satisfaction Surveys are conducted at all the above levels to gain insight on how the system is meeting its objectives;
- (iv) Develop communication strategies on what has been measured to all the key stakeholders.
- (v) Develop appropriate tools for monitoring and evaluating Public Sector Procurement and disposal performance;



### 3.8.13 Disposal Management

#### Policy Issue

PDEs hold obsolete, expired, redundant and damaged inventory at a cost. There is laxity in disposing obsolete inventory and assets which results in loss as the residual value continues to decline.

#### Policy Objective

To provide a mechanism for the disposal of obsolete, expired, redundant and damaged inventory and assets at the optimum residue value in a cost-effective manner.

#### Policy Statement

To achieve the above objective, government shall:

- (i) Develop and establish a simplified mechanism for timely disposal of obsolete, expired, redundant and damaged inventory and assets that shall be put in place for use by the PDEs;
- (ii) Ensure that disposal of assets is undertaken at market value, unless specific exemption has been provided by other competent authorities;
- (iii) Ensure that there is maximum value gained whenever entities undertake disposal of public assets;
- (iv) Provide for a wide range of disposal options to entities;
- (v) Ensure that all asset disposal decisions are clearly documented and filed;
- (vi) Ensure that disposal of assets shall be fully accounted for in the PDE's financial statements on an accrual basis;
- (vii) Establish a clearing house that would provide for the whole of governments coordination for the disposal of real property like land and buildings. The body would put in place a central listing of all properties that are proposed for disposal in Government, accessible by all general government agencies and public financial or nonfinancial institutions.

### 3.8.14 Internal Control Systems

#### Introduction

Controls exist to address risks. Procuring and Disposing entities are responsible for establishing arrangements for ensuring the proper conduct of public sector procurement, including conformance to standards of good governance and accountability.

#### Policy Issue

Traditionally, internal auditing has focused on financial systems and financial controls within an organization. This explains the current limited interface of the internal audit departments in the procurement and disposal activities in most of government institutions. Reports from the office of Auditor General, Internal Audit, PPDA, Budget Monitoring and Accountability Unit among others have continued to cite non-compliance with existing legal framework, long procurement lead times, and poor alignment of organizational goals with the public sector procurement objectives as key challenges

the system is facing. These challenges have contributed to the poor service delivery within most government entities, a situation that depicts that internal control systems are wanting.

By looking beyond processes and controls, Internal Audit can play assurance and advisory roles within any given entity.

It can identify entity-wide cost efficiencies, provide strategic insights that improve performance and provide key insights that focus on the risks that matter.

#### Policy Objective

To identify, mitigate, assess and manage risks that may hamper attainment of the entities objective.

#### Policy Statement

In order to achieve the above objective, government shall ensure;

- (i) That entities establish and organize internal audit as a “supervisory function” within the organization’s internal control system.
- (ii) That internal audit provide an independent and continuous appraisal of an entity’s internal control system and continuing assurance that its internal control systems are adequate and effective.
- (iii) That adequate capacity and competences are built within the internal audit function to ably conduct performance audits of the function and hence add value to the public sector procurement system.
- (iv) Internal Audit function provides professional guidance to management to identify risks and develop appropriate mitigations.
- (v) That internal control and risk management systems are regularly reviewed and updated to ensure their continued effectiveness.



### 3.9 PILLAR NO.7: INTEGRITY AND ACCOUNTABILITY

#### Introduction

Promotion of ethical conduct is essential for good governance, service delivery and social economic development. Considering that public sector procurement accounts for approximately 55% of the national budget, it is important that the function is entrusted to people with integrity.

With vast resources being channeled through the public procurement function, governments that have weak transparent and accountable systems run the danger of misuse of public resources by stakeholder within the procurement system.

Independent internal control systems are ideally a part of the framework of public sector procurement. Such mechanisms allow the openness of the process and the involved parties held accountable for their actions throughout the cycle (OECD, 2007:89-120).

#### Policy Issue

While the government has instituted independent bodies and systems to fight corruption, it has remained weak and slow in corruption prevention and detection. According to the Transparency International Corruption Perceptions Index of 2014, Uganda was positioned at 142, a decline from 130<sup>th</sup> position in 2012 with a score of 26 points. This reflects the low integrity levels in the society.

Performance assessment and audit reports from OAG and PPDA indicate that in a number of cases, entities lacked complete documentation of the procurements undertaken. This implies that the officers responsible for the procurement process cannot account for their actions and decisions raising the risks of fraud and corruption.

Despite the recent reforms, public sector procurement remains a “complex and vulnerable” area for mismanaging government resources. This has been worsened by the limited capacities and competence of the oversight agencies, the media and the civil society.

Most of the efforts to improve on ethics and accountability have been focusing on the procurement practitioners despite the fact that the point of weakness can originate from any (or all) of the pillars of the system.

#### Policy Objective

To promote integrity and accountability in public sector procurement.

#### Policy Statement

To achieve the above objective, government shall ensure that;

- (i) Ethical values and standards are observed in the entire government system and should form the basis for all policies, procedures, and actions.
- (ii) An updated code of conduct is maintained and communicated effectively.
- (iii) All actors in public procurement system observe the established code of conduct at all times.
- (iv) Transparency is promoted without compromise to confidentiality.
- (v) A culture of integrity and accountability is promoted by putting in place an effective reward and sanctioning system.
- (vi) Good practices in internal control systems and reporting are in place to deliver effective accountability and achievement of organisational objectives.

- (vi) A culture of open communication and dialogue on integrity and accountability in all sectors including the public, private and civil society is encouraged and sustained.
- (vii) Accountability procedures for archiving, recording and reporting in all government institutions are standardised
- (viii) The use of open data contracting standards is encouraged and promoted that involves civil society and citizens in contract monitoring and social accountability.



## SECTION FOUR: PROCUREMENT PRACTICES

### 4.1 INTRODUCTION

Adopting industry best practices has become a necessary prerequisite to the success of organisations where the ‘right’ methods, processes and philosophies are in place.

### 4.2 INCORPORATING THE SUPPLY CHAIN MANAGEMENT PHILOSOPHY

#### Introduction

The current public sector procurement system has traditionally focused on the acquisition process with first tier suppliers the supply chain members with whom the procuring organization directly contracts. By focusing on the first-tier supplier, government is unable to obtain favorable cost for the acquisitions made. For instance, ensuring sustainability of supply, guaranteeing of quality, maintenance and disposal requirements are not optimized.

Consequently, supply chains and their associated management processes are not visible to the public sector clientele, making it difficult to undertake comprehensive planning and hence leading to suboptimal customer satisfaction.

#### Policy Issue

“Supply chain management is the continuous planning, developing, controlling, informing and monitoring of actions within and between supply chain links so that an integrated supply process meets overall organisational goals.”<sup>9</sup> Therefore, a supply chain is the combination of all parties (e.g. external suppliers, partner organisations, internal corporate services units) both inside and outside the organisation, involved in delivering the inputs, outputs or outcomes that will meet a specified public sector procurement requirement.

#### Policy Objective

To enhance efficient and effective acquisition processes that contribute to improved long-term sustainability and better capacity management of supply markets within the supply chain.

In the context of this policy, supply chain management is concerned with co-ordination of all parties involved in delivery, combination of inputs, outputs or outcomes that will meet a specified public sector requirement.

The current public sector procurement system has traditionally focused on the acquisition process with first tier suppliers – the supply chain members with whom the procuring PDE directly contracts. But by focusing on the first-tier supplier, government is unable to obtain favourable cost for the acquisitions made. Sustainability of supply, guaranteeing on quality, maintenance and disposal requirements are hence often overlooked.

Consequently, supply chains and their associated management processes are not visible to the public sector clientele making it difficult to undertake comprehensive planning and Consequently leading to suboptimal customer satisfactions.

<sup>9</sup>CIPS Australia

**Policy Statement**

In order to achieve the above objective, government shall:

- (i) Adopt and implement the Supply Chain Management concept in its Public sector procurement system where applicable;
- (ii) Encourage all entities to understand their own capabilities in managing the supply chain.
- (iii) Ensure that all entities strike a balance between allocating management of their supply chains and to the parties best suited to understand and coordinate the activities within the organisation.
- (iv) Develop specific supply chain strategies for the different acquisitions within the public sector.

### **4.3 PUBLIC SECTOR PROCUREMENT AND DISPOSAL MANAGEMENT INFORMATION**

**Policy Issue**

Most government institutions have no comprehensive and reliable information on public sector procurement. As such, government faces a challenge in making strategic decisions on acquisitions. Accurate and timely procurement information enables execution of efficient procurement, effective governance and provides the foundation for determining current and future trends.

**Policy Objective**

To enhance availability of a comprehensive, reliable and integrated information management system that supports management decision-making in public sector procurements and disposal of public assets.

**Policy Statement**

To realise the above objective, government shall;

- (i) Establish a comprehensive and integrated information management system for public sector procurement and disposal management;
- (ii) Ensure that all procurement related information is captured, maintained and managed by Procuring and Disposal Entities and the Ministry responsible for Finance is regularly updated.
- (iii) Ensure that public sector procurement information is accessed for timely decision making, without compromising confidentiality;
- (iv) Promote the use of automation of information management at all levels;

### **4.4 SUPPLIER MANAGEMENT**

Good suppliers are an important asset to government because they provide the products and services that are essential to daily operations. Each supplier represents a relationship that needs to be nurtured, as well as an element of risk which needs to be managed. The concept of "Supplier Management" looks at optimising the end to end process; from supplier identification and selection, to engagement, maintenance and sustainability.

Capturing value from sourcing depends on how well government manages suppliers. Supplier Management is a continuous process and can be a difficult task, especially if the right management tools and methodology are not in place.

Engaging an incompetent supplier can be a very expensive and disastrous to any given country's economy.



### Policy Issues

Underperformance amongst providers has remained one of the major obstacles to service delivery in Uganda. The current rigorous assessment process has not been able to address this challenge. During a two-day construction industry professionals' symposium at Speke Resort Munyonyo in September 2013, the Executive Director of PPDA, decried the high rate of good proposals submitted by some contractors that unfortunately failed to perform the contracts awarded. (New Vision of 6th September 2013)

The current system has regulations on pre-qualification of providers can be . However, there is limited sector specific guidance on the detailed requirements and assessment process.

Apart from a few authorities and parastatals, very few government entities have in place a provider management strategy that would enable them discuss and share information. This does not only promote arm's length relationships but also denies government entities an opportunity to tap into the hidden resourcefulness of providers.

While the legal framework has a provision of mandating the PDU to undertake contract monitoring, the current structure has no provision for established personnel to monitor performance of providers.

Furthermore, the providers have several registration points with the government (Ministry – IFMS, Entity level & PPDA) requiring different information and access criteria, which makes it costly and inefficient.

Obtaining correct and reliable Information from actual and potential suppliers is still a challenge to the extent that it is not uncommon to find different sets of data on experience and or financial status from one provider submitted to three different entities within the same time-frame.

### Policy Objective

To enhance service excellence in provider management and mitigate risks within the procurement cycle.

### Policy Statement

In order to achieve the above objective, the government shall:

- (i) Develop comprehensive guidelines taking into consideration sector uniqueness in managing providers for different services, goods and works;
- (ii) Have a one-stop center in the form of a portal where potential providers can access information on prequalifications and register to participate in government procurement and disposal related opportunities;
- (iii) Ensure that each entity holds regular provider performance reviews on all contracts; (where applicable);
- (iv) Institute a mechanism of monitoring the performance of suppliers in government entities; Reports generated should be shared with all key stakeholders to avoid recycling of non-performers in government entities;
- (v) Establish supplier risk management strategies;
- (vi) Ensure that the regulatory body enforces suspension of incompetent and fraudulent providers;
- (vii) Encourage different sectors to form industry association for better management and standards control for example, the construction industry to establish the Uganda Construction Industry Commission (UCICO) to regulate all construction companies in the country;
- (viii) Support the establishment of a supplier information management system at both entity and at centralised portal level.
- (ix) Build capacity of suppliers.

## 4.5 PROMOTING THE USE OF PROCUREMENT STRATEGY IN PDE's

### Introduction

A Procurement and Disposal Entity must understand the strategic context in which the procurement of goods, works and services is undertaken. Each procurement activity, irrespective of size or scope, impacts on the entity's operations.

By developing a strategic approach to public sector procurement, a PDE can increase the likelihood of obtaining best value for money spent. Organisations need to be updated on market information, particularly on trends, characteristics and performance in order to inform strategic decision making within the procurement system.

In the current era of rapid technological, social, economic and environmental changes, there is a need to keep abreast with the changes in order to design best fit procurement strategies.

### Policy Issue

Procurement in the public sector is largely reactive to user departments' demands, as such; PDUs are seen as clerical and non-strategic. Procurement practitioners within the entities are pre-occupied with rules compliance with limited appreciation of long-term strategic planning for the function within their respective entities. As a result, acquisition of items is undertaken with limited consideration of market capability and associated risk among other factors.

### Policy Objective

To provide guidance on development of appropriate procurement strategies in the acquisitions of goods, works and services aligned with the overall strategic objectives of the entity.

### Policy Statement

To achieve the above objective, government shall;

- (i) Provide guidance on the development of a procurement strategy, which among others shall be informed by;
  - a. Objectives of the organisation;
  - b. Definition of the need;
  - c. Market analysis;
  - d. Resources availability; and
  - e. Risk analysis;
- (ii) Ensure that PDU's develop procurement strategies which are aligned to the PDE's strategic objectives.
- (iii) Ensure that PDU's are proactive in managing the public sector procurement function.
- (iv) Ensure that the acquisition of goods, works and services is guided by appropriate public sector procurement strategy.

## 4.6 SECURITY-RELATED PROCUREMENT

Security related procurements constitute a significant portion of the national budget and are very sensitive and require confidentiality.

### Policy Issue

For purposes of national security, procurement of security related items warrant different acquisition approaches.



Secondly, the existing system recognises this category of procurements as classified and closed, which makes them prone to mis-procurement due to inadequate guidance on their acquisition and disposal.

Further still, different security agencies don't have a common understanding or classification of security needs or requirements and determination of what is regarded as classified, is left to each entity which is prone to abuse.

### **Policy Objective**

To provide a framework for the management of security related procurements.

### **Policy Statement**

To achieve the above objectives government shall:

- (i) Guide on the management of security related acquisitions and disposals;
- (ii) Generate a database on what constitutes security related procurement needs as approved by the National Security Council;
- (iii) Establish special measures and impose special requirements for the protection of classified information;

## **4.7 COMPLEX AND STRATEGIC PROCUREMENTS**

### **Policy Issue**

Complex, strategic and unique procurements offer great contribution to the attainment of national goals. However, these procurements always carry high risk, requiring a special acquisition framework.

The current system tends to treat all procurements as a "one-size-fits all" despite the fact that some procurements are complex, unique and strategic that deserve different approach attention.

### **Policy Objective**

To provide a framework for handling complex, strategic and unique procurements in an efficient and effective manner.

### **Policy Statements**

To realise the above objective, government shall;

- (i.) Adopt a systems approach in the procurement of complex procurements;
- (ii.) Provide guidance on strategic, unique and complex procurements;
- (iii.) Establish adhoc multidisciplinary procurement teams to plan for complex and strategic procurements;
- (iv.) Ensure that a procurement strategy is developed for all complex and strategic procurements prior to initiation of the acquisition process;
- (v.) Identify the legal barriers and develop appropriate solutions to the alternative acquisition mechanism of complex and strategic procurements;
- (vi.) Support and encourage use of third-party providers to assist in the planning, designing, procurement, monitoring, of complex and strategic acquisitions;
- (vii.) Adopt a whole lifecycle costing approach to all complex and strategic procurements;
- (viii.) Introduce and adopt flexible procurement procedures and methods e.g. competitive dialogue, plus other negotiated procedure methods;
- (ix.) Build capacity within all Government PDU's relevant skills in disciplines like project management;

- (x.) Take precautionary measures to minimise the risks involved in the design, build, manage and transfer contracting approach.
- (xi.) Ensure that an entity handling a complex procurement has or plans to possess the necessary knowledge, resources and technical support, to properly manage these complexities and deliver successful contracts.

## 4.8 VALUE ENGINEERING

### Introduction

Value engineering is an organised/systematic formal technique in which the providers propose solutions for performing more economically and share any resultant savings with the procuring and disposing entity.

Value engineering promotes the use of less expensive alternatives, methods and materials that are consistent with the required overall performance, reliability, quality, longevity and safety. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

### Policy Issue

In today's environment of increasing stakeholder demands and reducing budgets, the government can no longer afford the increased costs that procurement projects have incurred in the past. When one procurement project costs more than planned, decision-makers are forced to delay or cancel other planned activities.

Value for money has traditionally been limited to the price of the best evaluated bidder, following evaluation of supplier/contractors offers and based on the terms and conditions in the solicitation document. This has resulted into sub optimum use of the suppliers/contractors potential and creativity to add more value during contract execution.

### Policy Objective

To introduce and promote the use of value engineering in the Public Sector Procurement System.

### Policy Statement

To achieve the above objective, government shall;

- (i) Equip key stakeholders with the relevant technical expertise and ensure continuous development;
- (ii) Support research and development in this area;
- (iii) Adopt the use of value engineering in solicitation documents;
- (iv) Develop comprehensive guidelines for using and administering value engineering techniques in contracts. Among others this shall guide on;
  - a. The best approach to be used in different cases, voluntary or mandatory
  - b. Cost-effective value engineering procedures and processes;
  - c. Acceptance and rejection, including proposal/bid validity;
  - d. Which goods, works and services including which contract types qualify for value engineering;
  - e. Appropriate contractual clauses including in subcontracting;
  - f. Percentage and proportion of sharing savings, including but not limited to the sharing period, rate, on ongoing/current and future contract savings;
  - g. On case by case basis, the appropriate party responsible for bearing the cost of preparing the proposal.



## 4.9 OUTSOURCING IN PUBLIC SECTOR PROCUREMENT

Outsourcing in the procurement function is one of the strategic solutions of managing procurements where PDEs have limited or no competences and capacities to handle certain procurements, and also where there is likely to be a conflict of interest.

### Policy Issue

There is inadequate guidance on outsourcing under the public sector procurement which needs to be addressed.

While the objective of outsourcing has been primarily to create efficiency and cost containment in government, it has been observed that in some cases, these objectives are not realised. This may be due to divergence of the objective of the provider and the entity itself.

### Policy Objective

To efficiently complement the Procurement and Disposal Entities capability to manage acquisitions.

### Policy Statement

To realise the above objective:

- (i) Government shall;
  - (a.) Develop and issue guidelines on outsourcing in public sector procurement;
  - (b.) Provide technical support for developing and managing outsourcing strategies;
  - (c.) Ensure that the overall objectives of the entity and providers are aligned;
- (ii) Small entities may aggregate their needs and use a single procurement agent to undertake this function.
- (iii) Entities may use public or private procurement agents to advise them or manage their procurement function. Where a private sector provider is used, they must adhere to this policy.

## 4.10 COMPLAINTS HANDLING MECHANISM IN PUBLIC SECTOR PROCUREMENT

### Policy Issue

The complaints handling mechanism in Uganda has been cited as one of the major stumbling blocks in the existing procurement process particularly for high value procurements, hence crippling service delivery. While providers have a right to seek redress to genuine complaints, there are a number of 'spoilers' who have abused the system, and thus frustrated government Projects.

### Policy Objective

To provide an effective, efficient and fair complaints resolution system without compromising service delivery.

### Policy Statement

To achieve the above objective, government shall:

- (i) Institute a streamlined, efficient and effective complaints handling mechanism that balances the need to attain the public sector procurement objectives and at the same address providers' complaints.

- (ii) Strengthen and support the complaints handling body;
- (iii) Develop effective complaints mitigation mechanisms and strategies for both pre and post contract complaints;
- (iv) Build capacity in key competences to support the complaints handling mechanism and its enforcement;
- (v) Ensure that a maximum of a two-tier system is put in place and the time frame be defined at both levels;
- (vi) Ensure the independent complaints handling body has powers to give interim relief on a case by case basis;
- (vii) Establish and enforce a sanction mechanism for all stakeholders found at fault arising from the complaint.

## 4.11 HANDLING OF ABNORMALLY PRICED BIDS

### Policy Issue

Entities receive abnormally low or high bids during the public procurement process with differing consideration due to absence of guidance. For abnormally low bids, the general perception is that the provider is likely to offer inferior products; not to have comprehended the requirements; or will fail to perform. On the other hand, abnormally high bids are perceived to be of superior quality products/services, inflated price or a result of collusion within the market among other factors.

There is absence of further investigation and analysis to establish the root cause of the abnormal pricing.

### Policy Objective

To maximise value arising from abnormally priced bids.

### Policy Statement

In order to achieve the above objective, government shall;

- (i) Shall Issue guidelines on management of abnormally priced bids;
- (ii) Investigate and establish the causes for the abnormal pricing before conclusion of the evaluation process;
- (iii) Subject the bid to market analysis to establish the performance risk before a decision is made;
- (iv) Provide an opportunity for the bidders at this stage, they are still bidders of abnormally priced bids to give justification and make clarifications where the entity is not able to discern the reasons for the abnormality;
- (v) Institute a mechanism for managing high or low bids on a case by case basis prior to taking a decision;
- (vi) Institute a penalty for repetitive cases of such to curb the behaviour.



## 4.12 HANDLING OF UNSOLICITED PROPOSALS/BIDS

### Introduction

These are provider-driven proposals that may offer a solution to a perceived need. Unsolicited proposals are a valuable means for Government to obtain innovative or unique solutions from both public and the private sector.

### Policy Issue

Government has been receiving unsolicited proposals with no policy guidance on how to handle them. Where unsolicited bids have been adopted, the approach used has been subjective and lacking transparency. Government, consequently lost out on a wealth of innovative solutions and associated benefits.

### Policy Objective

To maximise value from unsolicited proposals/bids.

### Policy Statement

To achieve the above objective, government shall;

- (i) Develop detailed guidelines on how unsolicited proposals and or bids shall be managed and ensure that the acceptability of proposals/ bids contains:
  - a. An element of innovation;
  - b. An offer of overall social economic benefit or advantage;
  - c. Sustainable capacity to deliver;
  - d. Minimal risk;
  - e. Linkage with government priorities within the existing National Development Plan;
  - (f.) Openness to competition to the extent possible;
- (ii) Ensure that the process is transparent while information of the unsolicited proposal/bid is treated as confidential and “not subject to disclosure”;
- (iii) Protect the proprietary of any data, concept, idea or other part of an unsolicited proposal.

## 4.13 RISK MANAGEMENT

### Policy Issue

Managing risk in public sector procurement is an operational activity and a responsibility of the PDE engaged in acquiring goods, works or services. Good practice in public sector procurement involves putting in place measures to understand and manage both the internal and external risks faced by entities.

Inadequate attention towards risk management in public entities has led to loss of valuable resources through litigation, outright fraud and failure to execute the contract.

### Policy Objective

To mitigate against risks in public sector procurement.

### Policy Statement

To achieve the above objective, government shall;

- (i) Provide guidance on managing risks in public sector procurement system.
- (ii) Institute mechanisms of identifying risks and developing risk mitigation strategies at various levels in the procurement system;
- (iii) Establish mechanisms for continuous development of the capacity of key stakeholders in risk management;

- (iv) Institute frameworks that embed risk management in procurement activities where:
- a. The value of the procurement is high and/or strategic.
  - b. The procurement process is complex.
  - c. Adverse consequences could significantly affect public interest.



## SECTION FIVE: PROCUREMENT AS A POLICY TOOL

### 5.1 INTRODUCTION

As the country seeks to transform its society from a peasant to a modern and prosperous country within the next 30 years (Vision 2040), public sector procurement is a key vehicle in realising this vision.

Government decisions with regard to whom, how, what and when its contracts have a significant impact on the socioeconomic transformation of the country given the size and volume of public sector procurement. It is government's responsibility to create and maintain healthy local economies, promote equitable and inclusive societies, and ensure stimulation of employment, innovation and environmental protection. This needs to take into consideration policy objectives beyond the country boundaries in order to promote regional and international trade and development.

Unfortunately, for a number of years, measures to achieve free trade in public markets by key influencers such as the World Trade Organisation have limited governments to focus on processes rather than utilising the function as a policy tool.

### 5.2 INNOVATION

#### Policy Issue

The potential to foster innovation through public sector procurement remains largely untapped in the country.

Currently, the system focuses on how to procure rather than what to procure, with no incentives for innovative solutions to optimally meet the need at hand. Therefore, untested products/services are closed out of the procurement market since a provider must demonstrate successful execution of a product or service to render it eligible.

The risk-averse attitude of public sector buyers towards new and innovative goods or services has also greatly created a barrier to buying these products and services in government.

#### Policy Objective

To promote innovation in public sector procurement.

#### Policy Statement

To realise the above objective, government shall;

- (i) Develop a guiding framework to promote innovation with useful instruments for the various circumstances;
- (ii) Equip key stakeholders in the public sector procurement system with the technical expertise to enhance PDE's capability to act as an "intelligent customer";
- (iii) Encourage and support research and development as a means of promoting innovation in public sector procurement;
- (iv) Promote the fusion of performance-based specifications and flexible processes and procedures;
- (v) Ensure that all public procurements are based on the principles of social, economic and environmental aspects of sustainability;
- (vi) Introduce and adopt "catalytic procurement" wherever feasible where government

stimulates for private demand by acting as a launch customer of an innovative product or solution.

- (vii) Encourage collaboration between institutions, the public and the private sector;
- (viii) Design incentive schemes for innovators and protect their proprietary right;
- (ix) Promote national providers engaged in innovations;

## 5.3 SUSTAINABLE PROCUREMENT

### Policy Issue

Procuring Sustainably helps government to minimise damage to the environment, maximise resource efficiency, stimulate innovation, create employment, promote a healthy local economy, and an inclusive society.

The existing public sector legal framework does not provide for sustainable procurement, therefore, hampering the attainment of the UN 2030 sustainable government agenda.

The system places much emphasis on the acquisition cost, with little or no attention to the operation/maintenance and disposal costs, and in a way, government fails to achieve “value for money on a whole life basis.”

PDE's have often not considered the negative impact arising out of public procurement activities on the social well being of citizens and local communities. There has been minimal participation of marginalised groups, due to limited socioeconomic empowerment arising from a lack of a deliberate effort by government to promote their participation. These marginalised persons or groups consist of those predisposed of opportunities for living a respectable and reasonable life by virtue of age, gender, disability, ethnicity and geographical location, or other social attributes.

Although government has made efforts to boost participation of national providers through preferential and reservation schemes, the domestic supplier base remains weak and limited. They lack sufficient capacity, access to information, appropriate technology, credit facilities and conducive institutional support to actively engage in public sector procurement. Large scale providers have benefited mostly while SMEs have lagged behind.

### Policy Objective

To establish a public sector procurement system that is inclusive of social, economic and environmental aspects of sustainability.

### Policy Statement

To realise the above objective, government shall;

- (i) Promote a culture that recognises and places priority on environmental and social issues and encourage green associations of SME's and institutions.
- (ii) Support and institute deliberate effort to offer less environmentally damaging products and services, and promote innovative green processes, designs, models, practices, products and services.
- (iii) Adopt the “Whole Life Cost” (WLC) approach, including budgetary mechanisms that allow for “Total Cost of Ownership”(TCO).
- (iv) Develop environmental standards, criteria, specifications and initiate ECO-labeling schemes, programmes and recognise, offer support and incentives to environmentally-friendly products and services.
- (v) Empower by developing capacity building programmes for relevant stakeholders (local



- providers, local communities, women, youths, PwDs, SME's and marginalised groups) to enable their participation in the procurement.
- (vi) Establish a regulatory and monitoring mechanism for sustainable procurement and ensure that sustainability is embraced throughout the entire procurement system"
  - (vii) Ensure that procurement policies and standards are consistent with the national, regional and international principles of environment protection, conservation and those related to supporting social inclusion, decent work and promoting employment opportunities.
  - (viii) Ensure that public contracts are awarded to providers who maintain acceptable standards of business probity and ethics, and promote ethical trading initiatives - build-in safeguards with respect to the standards of working conditions, prohibition of child labour and modern-day slavery;
  - (ix) Ensure that there is effective access of information and credit facilities to local providers, local communities, marginalised groups, SME's and other relevant stakeholders.
  - (x) Promote progressive policies which are receptive to, and mindful of social, environmental aspects and local economy i.e. promoting local content.
  - (xi) Institute deliberate effort to involve and support SMEs and local provides in public sector procurement and disadvantage groups by virtue of age, gender, disability, ethnicity and geographical location or other social attributes including but not limited to women, youth and PWDs

## **5.4 MULTILATERAL/REGIONAL AND INTERNATIONAL TRADE AGREEMENTS**

### **Policy Issue**

Public sector procurement markets operate beyond the country's boundaries. Uganda's external trade policies are therefore designed to create an enabling environment for regional and international economic integration. This is in order to ensure a sufficiently large market for its commodities and development of its industries. In pursuit of that objective, Uganda has already signed the EAC Customs Union and the Common Market Protocols.

It is therefore evidently critical for member countries to harmonise public procurement policies in order to promote the EAC integration and intended objectives. Consequently, the joint effort in development of regional markets enables countries to competitively participate in procurement at an international level. While this initiative supports cross border trade and country development, it is important to protect individual country markets.

Besides, Uganda being a member of the EAC, it is also committed to bilateral, multilateral, regional and preferential trade arrangements like the WTO, Common Market for Eastern and Southern Africa (COMESA) Intergovernmental Authority on Development (IGAD) and U.S. African Growth Opportunity Act (AGOA), among others. Under these agreements, Uganda and the partner states accord each other the most favoured special treatment in all matters relating to their mutual trade relations.

Each country has its own standards and hence different definitions for the various needs acquired in government institutions. This renders cross border trade amongst the member states difficult and cumbersome.

Multiple memberships of regional economic communities by individual EAC countries remain among the main impediments to full harmonisation, and further complicate trade-related procedures in the region.

The region has a considerable wide market within which local firms can participate. However, this is dominated by foreign firms increasingly limiting growth by the local industry.

### **Policy Objective**

To promote trade through enhanced market integration and development.

### **Policy Statement**

In order to achieve the above objective, government shall;

- (i) Harmonise public sector procurement policies to the requirements of regional, bilateral, multilateral and international treaties;
- (ii) Incorporate national and regional thresholds below which only national and/or regional companies can compete, as a way of affirmative action to protect local interests.
- (iii) Deliberately make effort to match local capacity to required regional and international standards.



## SECTION SIX: IMPLEMENTATION ARRANGEMENTS AND TOOLS

### 6.1 INTRODUCTION

Governments use strategic tools to harness efficiency and effectiveness within the procurement system. This section provides policy guidance on the key tools to be used in public sector procurement in Uganda.

### 6.2 COLLABORATIVE PROCUREMENT

#### Policy Issue

With pressure to deliver more for less, collaboration has in recent years become increasingly one of the preferred approaches for government acquisitions of commonly used items.

The regulatory authority, in its various reports, has demonstrated huge anomalies in the prices paid by different entities for similar goods such as stationery, vehicle spare parts, and air tickets, among others. This implies that a number of contracts for the same goods or services across government are acquired at different rates, and at times from the same provider, leading to wastage of valuable resources.

As the country invests in ICT, collaboration is a proven strategy that acts as a catalyst for other tools like e-procurement, sustainability and demand management.

#### Policy Objective

To maximise opportunities for aggregation of common user items and services with a view to attaining better value for money in the delivery public services.

#### Policy Statement

In order to achieve the above objective, government shall:

- (i) Provide guidance for the different models of collaborative procurement that can be pursued by entities;
- (ii) Establish a governance framework to handle specific or categories of items/services to be acquired on a collaborative arrangement;
- (iii) Develop specific procurement strategies for collaborative contracts, taking into consideration the market conditions and characteristics of the item/service in question;

### 6.3 FRAMEWORK CONTRACTING ARRANGEMENTS

#### Policy Issue

Framework contracts are agreements under which PDEs enter into arrangements with one or more providers to supply goods, services or works under agreed conditions for a specified period of time.

The decentralised model of procuring activities in government faces many challenges which include differing prices amongst entities for the same item, long procurement lead time, frequent stock outs and high inventory levels.

Buyers in Government are predominantly clerically engaged in routine transactions, failing to take advantage of strategic tools like Framework Contracts where similar requirements could have been aggregated and a single contract is processed.

This would reduce on the transaction resources and provide an opportunity to exploit economies of scale.

### **Policy Objective**

To promote optimal utilisation of resources in the procurement of common user items.

### **Policy Statement**

To realise the above objective, government shall;

- (i) Ensure the use of framework contracting for common user items;
- (ii) Provide guidance on the use and define items eligible for framework contracting;
- (iii) Put in place a mechanism to limit monopolistic behaviour while engaging framework contracting providers;
- (iv) Determine categorisation of government spend and align it with appropriate framework contract arrangement;

## **6.4 ELECTRONIC PROCUREMENT**

### **Policy Issue**

The Government of Uganda recognises the role of Information and Communications Technology (ICT) in fostering economic development. It has taken steps to adopt the emerging new technologies in order to modernise public financial management. This commitment is demonstrated by the issuance of an e-governance policy and institutional set up of a National Information and technology Authority to oversee ICT implementation in the country. Subsequently, government has made substantive investment in automation of key PFM processes such as IFMS.

However, procurement as a function has lagged behind, characterised by largely manual processes. Where attempts have been made to automate procurement processes, they remain uncoordinated and disintegrated. This has translated into inefficiencies and lack of transparency in the procurement process, among other challenges noted. Therefore, integration of ICT in PSP needs to be fully conceptualised and defined before implementation to avoid wasteful expenditure and suboptimal utilisation of the systems already acquired.

Successful implementation of e-procurement involves all key stakeholders including buyers, providers and customers of the organisation. Thorough analysis and readiness of all these stakeholders is a prerequisite to design of a suitable e-procurement strategy and solution.

While efforts have been made to expand the ICT infrastructure throughout the country, access to internet still remains a challenge. Furthermore, the dynamic nature and required capacities for ICT creates another challenge.

### **Policy Objective**

To promote the adoption of a 'best fit' e-procurement solution for government.

### **Policy Statement**

To achieve the above objective, the government shall:

- (i) Promote the use of ICT in public sector procurement as a business led model rather than an IT led model.
- (ii) Ensure full conceptualisation of the need and business case developed in order to inform the e-procurement strategy development.
- (iii) Engage and critically assess readiness of all key stakeholders including buyers, providers,



- and customers so as to inform the design of the e-procurement strategy and solution;
- (iv) Ensure that the adaptation of e-procurement is sustainable both in terms of functionality and financial resources;
- (v) Ensure accessibility to required ICT infrastructure and integration with existing systems to harness the benefits of these technologies;
- (vi) Build capacity of the stakeholders to utilise the e-procurement technology;

## 6.5 PROCUREMENT CLASSIFICATION SYSTEM

### Policy Issue

The current public sector procurement process and procedures lack a national standardisation and referencing system. It has been observed that providers interpret buyers' needs differently and this breeds non responsive to bids.

Absence of a standard classification system has rendered conducting a comprehensive spend analysis in the current system complicated.

### Policy Objective

To establish a standardised classification and referencing system for effective communication of procurement requirements and ease of tracking budget expenditures.

### Policy Statement

To realise the above objective, government shall;

- (i) Critically assess and select amongst existing global classification systems (e.g. CPV, UNSPSC, e.t.c) one classification system.
- (ii) Ensure that a competent authority or cross functional team maintains and up to date the selected classifier.
- (iii) Ensure that the selected classifier interfaces or links with the existing Chart of Accounts.

## 6.6 WHOLE LIFE CYCLE COSTING

### Policy Issue

Whole Life Cycle Costing (WLCC) is the process of identifying and documenting direct and indirect costs involved over the life of an asset. There is limited consideration of the WLCC in the procurement and disposal process within the current system, hence compromising the attainment of VFM. Most acquisitions in government do not take into consideration the costs of maintenance and disposal, leading to cost overruns and wastage of valuable government resources. This is further hampered by an absence of capacity to determine the full life cost of an item and limited disclosure of the required information by providers.

### Policy Objective

To promote the use of WLCC in the acquisition of public assets.

### Policy Statement

To realise the above objective, government shall;

- (i) Develop and promote the concept of WLCC in all government procurements;
- (ii) Provide guidance and build capacity on the application of the WLCC, taking into consideration the complexity and uniqueness of each sector, products, services and works.

- (iii) Ensure that providers disclose adequate information at acquisition of an item, service or works.
- (iv) Ensure that PDE's make reference to competent authorities or internationally recognised agencies in determining WLCC.

## 6.7 DUE DILIGENCE

### Policy Issue

The need and importance of due diligence is being imposed by the need to verify provider's information on any given public sector procurement. As one of the strategic processes, entities conduct due diligence to gain a better understanding of providers' in-depth contract performance capabilities.

A number of government projects have failed due to engagement of incapable providers. Entities have often awarded contracts to bidders basing on the paperwork submitted. However, during contract implementation, some of these providers are found to be incapable of delivering the required services, goods or works. Failure to undertake due diligence has led to disruption of contract implementation, incomplete service delivery and loss of public resources.

In some incidences, this has resulted into lengthy litigation processes and costs to the government.

### Policy Objective

To ascertain the provider's legal status, physical existence and capacity to perform the contract.

### Policy Statement

To realise the above objective, government shall ensure that;

- (i) PDEs' undertake due diligence on the acquisition of all high valued and high-risk goods, services and works.
- (ii) Technical guidance is provided to all stakeholders on due diligence.
- (iii) There are mechanisms/frameworks to ensure that the due diligence process is adequately resourced and comprehensively carried out in a timely manner.
- (iv) The outcome of the due diligence process informs the contracting of goods, services and works.

## 6.8 FORCE ACCOUNT

### Policy Issue

Force Account relates to government institutions using their human resources (staff) and/or equipment to acquire and execute simple and low value construction services.

In a number of entities and projects where the concept has been introduced, there has been limited compliance by the user departments to the existing public procurement policy and legal framework in place. Focus has been placed on users such as engineers other than the other key players in the acquisition process.

There is also a challenge of cost control due to poor planning, abuse and mismanagement of resources like poor maintenance of expensive equipments by the relevant authorities.

### Policy Objective

To promote use of own resources in service delivery.



### Policy Statement

Pursuant to the above policy objective, government shall:

- (i) Promote the use of Force Account in accordance with this policy and related legislation.
- (ii) Develop, provide and disseminate comprehensive guidelines on circumstances under which the concept could be used;
- (iii) Ensure that all entities that use the Force Account approach adhere to the existing public sector procurement primary goal and values.
- (iv) Ensure that quality and cost control during implementation shall be monitored independently of the User Department.
- (v) Ensure that there is engagement of all key players in the use of Force Account.

## 6.9 SPEND ANALYSIS

### Policy Issue

Spend analysis is the process of aggregating, classifying and leveraging spend data for the purpose of gaining visibility into the total spend made through procurement with a view of identifying cost reduction, performance improvement, contract compliance opportunities, and achieving economies of scale among others.

Different government bodies and development partners use varying statistics whenever referring to the percentage of total spend and actual figures on Uganda's public sector procurement spend. This is a result of the current system not having a mechanism of analysing public sector procurement spend in PDE's.

The implication of not knowing how government is spending implies lost opportunity to optimise value in public sector procurement.

### Policy Objective

To develop a mechanism of gaining visibility into public sector procurement expenditure with a view of enhancing value addition.

### Policy Statement

To achieve the above objective, government shall:

- (i) Ensure that spend analysis is mandatory in all government entities and the process is facilitated.
- (ii) Promote use of both internal and externally managed spend analysis tools.
- (iii) Ensure that reports generated on PDE spend are shared with the Ministry responsible for Finance for purposes of managing future spend within government, tools

## 6.10 PRIVATE FINANCE INITIATIVES (PFI)

The Private Finance Initiative relates to a financial mechanism in which government uses finances from the private sector to undertake investments in infrastructure without affecting public borrowing.

Most PFI projects are long term in nature, associated with high risks, huge investment, and determining the actual costs and benefits of the investment can be challenging. The private sector in Uganda is yet to be fully sensitised and educated on the opportunities that exist under the PFI contractual arrangements.

Financial markets also require reassurance to accept financial commitments from entities other than the government. This has led to some institutions signing MoUs that legally may not be enforceable, hence causing implementation challenges.

Private Financing Initiatives provide the potential to achieve all the cost and operational efficiencies associated with the traditional Build Operate and Transfer (BOT), Build, Operate, Own and Transfer (BOOT), and Design Build, Finance and Operate (DBFO) approaches. These contracting arrangements are complex and require a strategic approach on the part of government to ensure that planned objectives are met.

The primary vehicles for PFI opportunities involving direct private sector investment are the concession agreement, Engineering, Procurement and Contracting (EPC) and Public Private Partnerships (PPP).

### 6.10.1 Concession Contracts

#### Policy Issue

A concession is a grant of rights, land or property or, often, a right to operate in a particular sector – by a government, local authority, corporation, individual or other legal entity. The concession may include the right to construct and/or use some form of public infrastructure or the right to exploit certain natural resources.

Under a concession agreement, the concessionaire (typically a private company) builds and/or operates some form of infrastructure project (e.g., a toll road) or provides services of public interest. There is limited guidance on how public institutions should adopt and embrace acquisitions that are subjected to the concessional approach.

Where attempts have been made to introduce concessional agreements, there has been limited stakeholder engagement and guidance on the contracting process. Some authorities have perceived concessions as investments rather than procurements leading to use of unconventional acquisition procedures.

#### Policy Objective

To exploit alternative financing through concession agreements in the delivery of public services.

#### Policy Statement

To achieve the above objective, government shall:

- (i) Promote the use of concession agreement for strategic and large-scale public sector procurements that foster socio-economic development;
- (ii) Develop guidelines for operationalising concessional agreements.
- (iii) Promote competition and ensure transparency and equity in the contracting process;
- (iv) Undertake precautionary measures to minimise the risks involved in the design, build, manage and transfer contracting approach;
- (v) Ensure appropriate institutional set up and capacity to manage and oversee these agreements;
- (vi) Ensure that the public interest is protected in undertaking concessional agreements;

### 6.10.2 Engineering, Procurement and Construction (EPC) Contracts

#### Policy Issue

Engineering, Procurement and Construction (EPC) contracts are the most common form of



contracting used to undertake construction works by the private sector on large-scale and complex infrastructure projects. Under an EPC contract, a contractor is obliged to deliver a complete facility to a developer within a guaranteed price, date and functional level. Failure to comply with agreed requirements usually results in the contractor incurring penalties.

While government has taken initiatives to approach providers to execute complex projects through EPC, there is no clear policy in place to guide the management of these projects.

There is limited participation by government in the design and acquisition of components under the EPC infrastructure projects that may lead to failure of procurement to meet the desired outcomes.

### **Policy Objective**

To enhance effective utilisation of private capacities in engineering contracts.

### **Policy Statement**

To achieve the above objective, government shall:

- (i) Promote the use of EPC for high value and complex engineering projects.
- (ii) Provide guidance for engaging and managing of EPC contracts.
- (iii) Minimise the risks involved in the design, build, management and transfer contracting approach;
- (iv) Ensure that all EPC contracts contain performance guarantees backed by Performance Liquidated Damages (PLDs) payable by the contractor if they fail to meet the performance guarantees;
- (v) Enhance the introduction and development of construction insurance that must be invoked in the EPC projects;
- (vi) Develop capacity within the policy, operational and oversight agencies for managing these contractual models;

## **6.10.3 Public Private Partnerships**

### **Policy Issue**

Public Private Partnership (PPP) is a partnership between the public and private sector for the purpose of delivering an infrastructure or service traditionally provided by the public sector.

Government's position for adopting PPP has always been based on their ability to provide value for money. This presupposes that the estimated cost over the life of the contract (calculated at Net Present Value by assessing future costs at today's prices) is lower than the notional cost of traditional procurement using a Public Sector Comparator. Unfortunately, this is one of the most challenging tasks faced by government in the decision-making process for adopting PPP's.

In line with this concept, government adopted a PPP policy which demonstrates its commitment towards private sector engagement. However, there is a need to embed this policy framework within the National Public Sector Procurement Policy and align its implementation with the policy objectives to avoid ambiguity in management and oversight of PPP's.

PPP's impose a new and more complex procurement process in the public sector. The complexity of the procurement arises out of the difficulty to comprehensively define needs, assess suitability of the design and compile all the likely risks within the given recovery period of say 20 to 40 years.

One of the perennial objections to PPPs in other countries relates to the private sector's cost of funding these projects.

There is a challenge of working out the optimal cost of funding for a typical 20 to 40-year project leading to the argument that PPP projects are very expensive.

Furthermore, PPP requires different potential bidders to come up with individual designs. This complicates the comparison during the evaluation stage in contrast to the traditional contracting approach where the designs are made by the government and only one design is issued to the potential bidders. While this approach stimulates innovation, government is limited by capacity to assess the offers.

### **Policy Objective**

To promote efficient development and delivery of public infrastructure and services through private sector engagement for economic growth and development.

### **Policy Statement**

In order to achieve the above objective, government shall:

- (i) Promote the use of PPP's for public infrastructure and services.
- (ii) Provide guidance on operationalising PPP's in public sector procurement.
- (iii) Set up an institutional framework to manage and oversee PPP projects.
- (iv) Develop capacity to undertake comprehensive project cycle management in government.
- (v) Ensure protection of public interest as well as minimal social and financial cost to government;
- (vi) Ensure that the acquisition process is consistent, transparent, competitive and managed by procurement professionals;
- (vii) Ensure that the determination of any expected outcome of the PPP project remains with the relevant entity in charge of the provision of service or infrastructure in question;
- (viii) Ensure that the choice to undertake a PPP is governed by evidence that value for money will be attained and innovative solutions are promoted;
- (ix) Introduce flexible procurement practices like competitive dialogue in the acquisition process;
- (x) Ensure that all the potential legal impediments to the proposed PPP projects are identified at an early stage before committing government;
- (xi) Effective stakeholder consultation is done before embarking on any given project;
- (xii) Minimise the risks involved in the PPP contracting approach;

## **6.11 IMPLEMENTATION ARRANGEMENTS AND TOOLS**

### **6.11.1 Implementation Arrangements**

Implementation planning is critical to ensuring that the planned outcomes are delivered on decisions made by government.

The NPSPP like many other policies, involves a high level of implementation risk and thus requires appropriate management discipline, including engagement with all key stakeholders to maximise the prospects of successful delivery.

Whilst the Ministry of Finance, Planning and Economic Development will be the lead implementer of the National Public Sector Procurement Policy, it will work with other relevant stakeholders to achieve a smooth and effective execution of the policy.

A two-level multi-stakeholder coordination mechanism is recommended, namely:



- (a.) The Steering Committee (SC) at the executive level, chaired by the Minister of Finance, Planning and Economic Development or the office of the Prime Minister.
- (b.) The Implementation Task Force (ITF) at the operational level headed by the Accountant General.

The main actors at the national level include the following:

- (i.) Ministry of Finance Planning and Economic Development
- (ii.) Office of the Prime Minister
- (iii.) National Planning Authority
- (iv.) Public Procurement and Disposal of Public Assets Authority (PPDA)
- (v.) Ministry of Local Government
- (vi.) Solicitor General's Office
- (vii.) Ministry of Works and Transport

At the operational level, the task force will adopt the 'engagement principle' that is Committing key stakeholders to work collaboratively with each other throughout the implementation process.

## 6.12 MONITORING AND EVALUATION FRAMEWORK

Effective planning, monitoring and evaluation enhance the procuring and disposing entities' ability to establish clear links between past, present and future initiatives. This action plan will act as a Monitoring and Evaluation tool for all stakeholders to assess the progress made by government towards attaining the objectives of this policy. Without effective planning, monitoring and evaluation, it would be impossible to judge if work is progressing in the right direction, whether success can be attained and how future efforts might be improved.

To improve the chances of success, attention will be placed on the following four major areas; First, planning which involves setting goals, developing strategies, outlining the implementation arrangements and allocating resources to achieve those goals. Planning will help the implementers of this policy to define what a particular PDE, programme, project, or units objectives are and how they will go about attaining them. Having a clear action plan will help PDE's to focus the limited resources on priority activities, that is, the ones most likely to deliver the desired change.

Secondly, throughout all stages of planning, monitoring, evaluating, learning and improving, it is highly recommended to engage stakeholders, promote buying and commitment and motivate action.

Thirdly, a good communication strategy which results in strong stakeholder buy-in and mobilisation.

Additionally, communication improves clarity on expectations, roles and responsibilities, as well as provides information on progress and performance. This clarity helps to ensure optimum use of resources.

Fourth, monitoring and evaluation PDEs', programmes, projects and or activities with strong monitoring and evaluation components tend to stay on track. Furthermore, challenges and limitations are often detected earlier, which reduces the likelihood of unnecessary delays, cost overruns or entire collapse of the activity.

All the above four areas should be geared towards ensuring that results are achieved, not necessarily towards ensuring that all activities and outputs get produced as planned.

## STAKEHOLDERS CONSULTED IN THE DEVELOPMENT OF THE NATIONAL PUBLIC SECTOR PROCUREMENT POLICY (NPSPP) BETWEEN 2013-2018

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Boorekwa Robert	Senior Procurement Officer	Electoral Commission
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<b>OTHER INSTITUTIONS CONTACTED/CONTRIBUTED TO THE DEVELOPMENT PROCESS</b>		
The World Bank		
The Public Procurement Disposal of Public Assets Authority		
The African Development Bank		
The Uganda National Road Authority		
The Public Expenditure Management Committee(PEMCOM) / Ministry of Finance, Planning and Economic Development		
The Institute of Supply Chain Management (Members in attendance)		



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