

Standard Practices for an Effective Competitive Tendering Process for Public Works Procurement

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Abstract This paper is a desktop study that targets the identification of standard practices for an effective competitive tendering process for public works procurement in developing countries. After defining the process and detailed activities involved, it was divided into five following phases: tender planning, tender documentation, tender solicitation, tender evaluation and tender pre-award. Then, an intensive analysis of different public procurement laws and related documents of seven developing countries was performed. As results, 38 standard practices were identified. Using the frequencies and relative frequencies, 33 were found implemented in the seven developing countries and only 20 representing 52.64 % attracted frequencies above 5/8. The study found that following practices are the most frequent: develop a realistic procurement plan, accurate budget, get approvals and publish it, appoint suitable design team, obtain a complete project design, select appropriate tendering option; secure project design quality, use standard documents, review and approve tender documents before publication; advertisement of tender proposals, proper handling of requests for clarification, etc. The study concludes that when these practices are fully implemented, they will surely produce the predicted results.

Keywords Standard Practices, Competitive Tendering, Works Procurement, Developing Countries

African Development Bank (AfBD), and the Organization for Economic Co-operation and Development (OECD). As a result, the majority of developing countries prescribed it as the prime method of public works procurement. Although CT appears to be the most acceptable method of selecting contractors [4], and the most beneficial to local construction industries [5], its implementation has been the most difficult in developing countries [3]. For instance, despite the reforms of Public Procurement Acts, Regulations and Procedures that consecrated the standardization of tender documents in the majority of developing countries, the implementation of CT remains challenged by excessive delay imputable to a lengthy process; and fraudulent and corrupt practices do persist. Furthermore, losses of time and cost due to long process are estimated between 20 to 30% of grant-in-aid according to OECD-DAC (Development Assistance Committee) [6].

This situation has led to Paris Declaration on the Aid Effectiveness for partner countries; which declaration stressed the urgent need for improvement of effectiveness in Public Procurement practices [6]. Therefore, the present study aims at identifying the key activities that can be standardized in order to improve the effectiveness of Competitive Tendering Process (CTP) in public works procurement in developing countries. Two specific objectives are set: define the main phases of the process at pre-contract stage and identify the most frequent practices for standardization. A part from introduction and conclusion, the paper is structured into three sections. The first section briefly presents literature review followed by the method employed while the third section presents the main findings including results discussion.

1. Introduction

In public works procurement, Competitive Tendering (CT) is widely recognized as an attractive procurement mechanism due to its widespread benefits. These include promoting competition and hampering corruption [1], reducing cost by broadly 20% [2], and providing the enabling environment for effective utilization of scarce resources in the economy [3]. Consequently, CT is strongly advocated by international organizations like World Bank (WB), European Union (EU),

2. Literature Review

Standard practice refers to widely accepted and core activity, technique, principle, method or process that is regarded as effective to achieve certain goals in a sector or sphere of business [7], [8], [9]. In addition, it is a best practice that has shown through experience to consistently lead to the desired result and when executed effectively leads to superior project

performance. Not only that, standardization is a way of prompting the process by a limited number of key practices [10]. Therefore, the standardization aims at gathering and harmonizing a limited number of key practices that can enable a process to be effective and easy to implement and to generalize.

Based on these assertions, seven Public Procurement Acts of developing countries were thoroughly reviewed. Though the competitive tendering process may vary from one country to another despite the reforms undertaken in 2000s, a typical process can be divided into five following main phases: Tender planning, Tender documentation, Tender solicitation, Tender evaluation and Tender award. Concerning the practices, Patrice [11] has identified 47 steps or activities from tender planning up to the award of contract in Chad Republic. Another recent study of Douh [12] has identified 49 activities ranging from needs assessment up to works commissioning. Undoubtedly, such process is not only very long and laborious but it is responsible of excessive delays in project delivery. Besides, the compilation of consulted sources has found about 38 most frequent activities distributed along the five phases of the competitive tendering process at pre-contract stage. Therefore, there is obviously a need for shortening the process by a way of standardization. The complete list of these activities is tabulated in the third section.

3. Method

The study adopted a mixed method with desk study using

secondary data and descriptive statistic. Principal sources are Public Procurement Acts or Laws, regulations and associated manuals of procedures, procurement bulletins, periodic reports, and casual study reports. Using non-probability sampling technique, a judgmental sample of eight (8) Public Procurement Acts including seven developing countries is purposively selected. These countries are Ghana, Chad, Cameroun, Uganda, Rwanda, Senegal, and Kenya and United Nations Commission on International Trade Law (UNICITRAL) which is used for benchmarking [13, 14, 15, 16, 17, 18, 19].

Then, a methodology involving three steps is used for data analysis. First, an intensive literature review has resulted in a list of 38 core practices. Second, the identified practices were checked against the articles of the Acts including those of UNICITRAL [20]. Third, using frequencies of occurrence, every identified practice is assessed. Thus, a variable that has occurred 5 times over the 8 sources will score 5/8 (i.e. 62.5%) and is considered as very common and therefore qualified for standardization.

4. Results and Discussion

As introduced above, the literature review has revealed a list of 38 core practices which is displayed in Table 1 below with their respective sources. Based on this list, the above method was used to analyze and establish the most common practices that can be adopted as standard practices in developing countries.

Table 1. Standard practices of Competitive Tendering Process in some Developing Countries

Baseline Standard/Best practices	Chad	Ghana	Kenya	Rwanda	Senegal	Cameroun	Uganda	UNCITRAL	Others
A. Tender Planning Phase									
1. Needs assessment and formulation of project initial brief	Art 14	S 21			Art 5	Art 6	Art 58		
2. Publication of approved Annual Procurement Plan	Art 14	S 21		Art 6	Art 6, 56	Art 6	Art 54,58	Art 6	
3. Provision of an adopted accurate estimate in the national budget	Art 15				Art 8	Art 6	Art 58	Art 12	
4. Selection of an appropriate Tendering Option	Art 36						Art 63	Art 26	
5. Appointment of an Independent and Free Tender Committee	Art 22	S 17	Art 28		Art 36		Art 26, 38		
6. Development of detailed project design by competent professionals	Art 15				Art 5		Art 31		
B. Tender Document Development Phase									
7. Provision of complete project design documentation						Art 6	Art 59		
8. Setting of Non-discriminatory Eligibility/Participation conditions	Art 15	S 22			Art 46	Art 17	Art 43, 63	Art 8	
9. Use of Standard Tender Documents		S 50	Art 52		Art 10		Art 56	Art 39	
10. Use of neutral & standard Technical specifications	Art 15	S 49	Art 34	Art 25	Art 7		Art 61	Art 10	
11. Pre-disclosure of Evaluation criteria and expected terms of contract	Art 29						Art 71		
12. Pre-disclosure of Tender Award criteria							Art 66	Art 11	
13. Alignment with primary & secondary objectives	Art 7		Art 39						
14. Requirement of approval of Tender documents or No-objection	Art15, 23,30				Art 58				
C. Solicitation of Tenders Phase									
15. Pre-Tender meeting									Papyrus
16. Allocation of sufficient time to Advertisement of tender proposals	Art 30	S 44	Art 54	Art 28	Art 63	Art 20		Art 33	
17. Use of multiple and/or dedicated media for Tender Advertisement	Art 30	S 44	Art 54	Art 29	Art 63	Art 20		Art 33	
18. Grant of enough time for preparation of Tender Bids			Art 55	Art 29	Art 63		Art 64	Art 33	
19. Sale of Tender document at a minimum price					Art 58				
20. Reception and response to Requests for Clarifications	Art 38	S 51			Art 66		Art 65	Art 15	
21. Submission/ Reception/of Tenders and Public Opening of Bids	Art 51	S 56	Art 58, 60	Art 32,34	Art 67	Art 25	Art 68	Art 40,42	
D. Evaluation of Bids Phase									
22. Constitution of qualified and ethical Tender Evaluation Panel	Art 52	S 63	Art 44, 139	Art 15-17	Art 38,40			Art 26	
23. Appointment of an Independent Observer to monitor the process	Art 22	S 19				Art 96	Art 37		
24. Evaluation of tenders using Points system of scoring		S 58	Art 66	Art 39	Art 68-70	Art 27		Art 43	

From the Table 1, out of the identified 38 practices, 33 were found implemented in developing countries but only 20 representing 52.64 % attracted frequencies varying above 5/8. Among the 20 most common practices presented in Table 2 below, only 16 have been identified as very common in developing countries representing 42 %. The rest four practices are provided by UNICITRAL and are: *Selection of an appropriate Tendering Option, Pre-disclosure of tender Award criteria, Pre-Award meeting to Adopt Tender evaluation report, and Right to challenge and appeal tender procedures*. Even though these last practices are not formally prescribed in Public Procurement Acts of developing countries, they are implemented for major projects in Chad and Ghana as best practices in the area of procurement.

Table 2. Core practices and Frequencies

Relevant Standard practices	Mark (> 8)
A. Tender Planning Phase	
1. Publication of approved Annual Procurement Plan	7
2. Needs assessment and formulation of project initial brief	5
3. Provision of an adopted accurate estimate in the national budget	5
4. Appointment of an Independent and Free Tender Committee	5
B. Tender Document Development Phase	
5. Use of neutral & standard Technical specifications	7
6. Setting of Non-discriminatory Eligibility/Participation conditions	6
7. Use of Standard Tender Documents	5
C. Solicitation of Tenders Phase	
8. Reception/Submission of Tenders and Public Opening of Bids	8
9. Allocation of sufficient time to Advertisement of tender proposals	7
10. Use of multiple and/or dedicated media for Tender Advertisement	7
11. Grant of enough time for preparation of Tender Bids	5
12. Reception and response to Requests for Clarifications	5
D. Evaluation of Bids Phase	
13. Requiring of tender security covering the Validity Period	7
14. Constitution of qualified and ethical Tender Evaluation Panel	6
15. Evaluation of tenders using Points system of scoring	6
16. Requiring of necessary clarification of bids	6
17. Appropriate use of Margin of Preference	5
E. Pre-Award Phase	
18. Provision of Complete recordkeeping of procurement proceedings	6
19. Publication of tender results including successful & Unsuccessful	6
20. Provisional award of contract	5

The resulting relative frequencies are displayed in the Table 3 below which shows that 34.30% are specific to each country whereas five practices representing 13.16% are not prescribed at all in the Public Procurement Acts.

In conclusion, the 20 practices tabulated in Table 2 are considered very common practices and fully discussed below along the identified five phases of the competitive tendering process.

Table 3. Frequencies and Relative Frequencies

Classes	Frequencies	Relative frequencies
0	5	13.16 %
1	1	02.63 %
2	8	21.05 %
3	2	05.26 %
4	2	05.26 %
5	8	21.05 %
6	6	15.79 %
7	5	13.16 %
8	1	02.64 %
Total =	38	100.00 %

4.1. At Tender Planning Phase

Under this phase, four practices have scored above or equal to 5/8 frequencies. The first common practice is *Wide, earlier and timely publication of a realistic annual procurement plan* with 7/8. This high score confirms the fact that procurement plan is a key element which provides contracting authority with project brief that has to comply with national or local goals and both primary and secondary objectives of development [19, 13, 21]. Not only that, timely published procurement plan allows the private sector to respond more effectively to the project requirements and specifications. Furthermore, Thai [22] states that Procurement Plan is a core document from which all tendering activities shall flow. The second practice is *Ascertain the accuracy of the allocated budget* with 5/8. In effect, cost has been a determinant factor in planning stage of every construction project. Most often, Governments do conduct feasibility study, prior to the budget planning, to improve the estimate accuracy. The third practice is the *Appointment of an Independent and Free Tender Committee (with 5/8)*, for the project design and coordination team quality is a determinant success factor in construction project asserted Watermeyer [21]. The last practice at this phase is the *Appropriate assessment of needs* (with 5/8). Ideally, a public construction project has to meet beneficiaries' expectations and needs. Often, many Government projects fail to meet the actual needs of people when political considerations are involved. From what precedes, the most common practices that can contribute in increasing the effectiveness of CTP at planning phase can be summarized as follows: develop a realistic procurement plan based on an appropriate needs assessment including an accurate budget, widely published and managed by a suitable project team.

4.2. At Tender Documentation Phase

Out of the eight practices identified under this phase, only three have scored above or equal to 5/8. The first is *Use of neutral and standard Technical specifications* with 7/8 which is in line with the recommendation of OECD/MAPS (Methodology for Assessing Procurement Systems) [23] because it limits collusive practices. The second practice with 6/7 is *Setting of Non-discriminatory Eligibility/Participation conditions* that are able to ensure some fairness and equity to all bidders; for it is observed that eligibility conditions are designed such a way that favors some participants to the detriment of others. The last is *Use of Standard Tender Documents* with 5/8. Indeed, since the reforms of PPA in 2000s, there is a worldwide agreement on the mandatory use of standard tender documents in both international and national tendering transactions. Ideally, tender documentation must be complete, précised and clear in an applicable language as well including neutral specifications and non-discriminatory eligibility conditions.

4.3. At Tender Solicitation Phase

Five out of the six identified practices are found relevant. The first practice is the *Submission or Reception of Tenders and Public Opening of Bids* with 8/8. In fact, it is recommended to register all the bids received on receipt before storing them in the designated box in a prominent place and kept locked until the opening session. Then, tender opening commences immediately and must take place on the date, time, and venue advertised. A tender opening panel shall comprise at least three persons including a member of the entity's tender committee. For purpose of transparency, it is not allowed for a tender opening session to be halted or postponed once the process has begun. Following recommendations are made to guarantee the effectiveness of the process: ensure that opening session is public and minutes of proceedings are duly written and signed as well as the attendance list; and original copies of bids are secured at all times. In case of rejection, the bid must be returned unopened.

The two following practices have attracted 7/8 each: *Allocation of sufficient time for Advertisement of tender proposals* and *Use of multiple and/or dedicated media for Tender Advertisement*. Solicitation of tenders begins with tender announcements and obviously, tender announcements' channels play a vital role as well as advertisement duration. A tender proposal should be advertised in a way to attract a wide pool of potential bidders by using several media and allocate sufficient time for preparation [24]. That is why regulations impose at least two national newspapers of wide circulation (Chad), a dedicated procurement gazette (Uganda, Rwanda and Kenya), Public Procurement Authority Electronic Bulletin or a website (Ghana, Senegal), or international newspapers or radio for large projects. The two last practices are *Grant of enough time for preparation of Tender Bids* with 5/8 and *Reception and response to Requests for Clarifications* with 5/8. Indeed, requests for clarifications, in all cases, have to be answered and copies placed in the procurement record file. So, any response to a tenderer must be communicated to all tenderers without identifying the author of the request. It will be noted that when a response to request for clarifications generates substantial modifications in the project, it is recommended to extend the submission date accordingly.

4.4. At Tender Evaluation Phase

Out of the six practices identified, five are found relevant. This has made evaluation of bids a very sensitive step in tendering process [25]. Following practices have to be considered carefully. First is the *Request of tender security covering the Validity Period* with 7/8. Secondly, comes the *Constitution of qualified and ethical Tender Evaluation Panel* with a score of 6/8. In constituting the panel, the highest ethical standards shall be applied to ensure fairness, transparency and trust. To comply with international practices, an evaluation team should be selected among the

specialists in the area and comprising at least three to six people. Lloyd [26], recommends the involvement of an independent observer on the evaluation panel because his presence helps ensure that competing bids are impartially evaluated and provides reassurance to participants as to the integrity of the evaluation process. Furthermore, no meetings or consultations between the Procurement Entity and tenderers are permitted during this phase.

The third position goes to *Evaluation of tenders using Points system of scoring* which has gained 6/8 indicating clearly that this system is perceived as more objective and straight forward. *Requiring of necessary clarification of bids* has attracted 6/8 occupying the fourth position. During the evaluation, only criteria listed in the bidding documents will be applied. And when clarification is needed, it must be required without hindering fairness and equity. The last practice is *Appropriate use of Margin of Preference* with a score of 5/8, what is a relevant practice to accomplish some secondary objectives. Therefore, according to Appiah and Adam [27], the role of tender evaluation phase is of paramount relevance in CTP and all endeavors are to be directed towards an irreproachable evaluation process to meet the foreseen expectations and maintaining trust.

4.5. At Tender Pre-award Phase

Provision of Complete record keeping of procurement proceedings through an evaluation report and Publication of tender results including successful and unsuccessful are the two first practices that have the identic score of 6/8. Usually, a period of 10 to 14 days is allocated for eventual complaints, because bidders have the right to protest the results as opined Lloyd [26] as well as the procurement acts. When there is a formal founded protest, the award process is suspended till the settlement of the case. If no formal complaint is registered after the prescribed period, a provisional notification is issued to the winner who should be required to confirm in writing acceptance of the tender award and submit the appropriate performance security; after what the final notification is issued. The third practice is Provisional award of contract with 5/8. After evaluation report approval, the procuring entity should send a provisional notification to both successful and unsuccessful tenderers. A debriefing is to be organized with all tenderers to publicly release tender results. Failure to do that may constitute grounds for the annulment of the award. In that event, the Procurement Entity may award the contract to the next lowest evaluated bidder, whose offer is substantially responsive and qualified to perform the contract satisfactorily. Generally, a pre-award meeting is held to review and adopt the tender evaluation report. Prior to the meeting, a formal commitment of the required funds must be done in the form of 'Funds Availability Attestation'.

Before concluding, it is worthy to add that three following practices were revealed by the study: Pre-Tender meeting applied in Papyrus, Risk analysis at pre-award phase by

Construction Industry Development Board (CIDB) [28] in South Africa, and Pre-Contract Audit by Government of Jamaica. Actually, the practice of Pre-tender meeting, suggested by Papyrus, prior the preparation of bids is relevant because it helps bidders understand the project objectives and client expectations. Risk analysis prior to the award of contract, as proposed by CIDB [28], is also a best practice for its implementation can mitigate some risks associated. Furthermore, the Pre-Contract Audit is very popular in Jamaica as well as in USA where its implementation saves up to 10% of the bid amount.

5. Conclusions

The study has fully defined the concept of Competitive Tendering Process and a typical process is divided into five following main phases: Tender planning, Tender documentation, Tender solicitation, Tender evaluation and Tender pre-award. Briefly, the study identified the following practices as common standard practices that can lead to an effective CTP: Develop a realistic procurement plan including an accurate budget, get the required approvals, publish it, appoint a suitable project design team, obtain a complete project design, and select an appropriate tendering option; secure project design quality, use standard documents, and review and approve tender documents before publication; wide and long advertisement of tender proposals, proper handling of requests for clarification, and publicly opening session; appoint a suitable evaluation panel team, use of points scoring system, drafting the report on time using standard format, and include a clear recommendation for the award; review and adoption of tenders evaluation report, publication of tender results, resolution of eventual complaints / disputes before final award.

It is often recommended to hold a pre-award meeting for adopting the evaluation report before the publication of the results. Lastly, giving a right to tenderers to challenge the procedures seems be a good practice that enhance equity and fairness.

Lastly, as a matter of fact, by reducing the CTP at only 20 key activities, the study has the merit of shortening the process. Not only that, when these practices are fully implemented as proposed, they would produce undoubtedly the predicted results. These advantages could be savings in time and cost by broadly 20% of total cost incurred as it is USA and Cyprus. However, it is still observed that although CT is the most employed method and the most beneficial to construction industries, yet its implementation remains ineffective due to the lack political will to fully enforce laws and regulations as prescribed. This can be traced to the lack of performance assessment culture in one hand and the resistance to changes in the other hand. Therefore, the study recommends a change of mind to use the standard practices in order to improve the effectiveness.

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