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## **Public Procurement and Administrative Justice**

This report was produced in connection with the Strengthening Rwandan Administrative Justice (SRAJ) Project, which was funded by the United States Agency for International Development under Grant No. AID-696-A-17-00008. It was prepared by the Institute of Policy Analysis and Research (IPAR-Rwanda) and the University of Massachusetts Boston. The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States.

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For further information contact:

**Seth Karamage**

Resident Country Director, SRAJ project, University of Massachusetts Boston

skaramage@gmail.com | +250 788 309 914

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# An Overview of Administrative Justice in Practice in Public Procurement

Public procurement at the district level has a profound impact on businesses of all sizes and types in Rwanda and helps shape overall opinions about the state of the investment climate in the country. The perceived fairness of procurement processes and competence of procurement officials has an important bearing on public trust in local government. To explore the functioning of administrative justice in public procurement at the local level, field research was conducted in five districts (one from each Province and the City of Kigali). The research involved surveys administered to 50 bidders who had participated in tenders in the five districts over the past four years, as well as in-depth interviews conducted with 20 district officials, and group discussions with tender

committee members in four of the five districts. A group discussion was also conducted with procurement officers from each of the five different districts. These sources of data collectively informed the findings and recommendations below.

This section discusses the general contours of local procurement practice, based on both the applicable legal framework (as described in the SRAJ Project's Phase I Report) and the views of both citizens and district officials. The second section summarizes the results of the bidders' survey, while the third section contains key lessons learned and recommendations from the field research.



## Public procurement and procurement disputes:

Public procurement encompasses the procedure through which a public entity acquires goods, construction, or services from outside vendors in return for a price. There are four types of public procurement in Rwanda: procurement for works; procurement for goods or supplies; procurement for consultancy services; and procurement for non-consultancy services.

Procurement disputes generally concern issues of compliance with the procurement rules, such as those related to the evaluation of bids (selection criteria), cancellation of the contract, and various penalties that may be assessed for failure to execute the contract as specified.

## Procurement plans and the procurement process

The procurement process starts with the preparation of the public entity's budget for the financial year and the subsequent elaboration of a procurement plan indicating upcoming tenders and associated information.<sup>1</sup> The procurement process starts with the preparation of the public entity's budget for the financial year and the subsequent elaboration of a procurement plan indicating upcoming tenders and

associated information.<sup>1</sup> The procurement plans are prepared by different departments within the district government and consolidated to form a plan for the entire local entity. Procurement plans that are not put together properly or timely shared with the public often lead to disputes about potential tenders, according to private sector bidders who were interviewed as part of the field research.

<sup>1</sup> Article 16 of the law N°62/2018 of 25/08/2018 governing public procurement (hereinafter Public Procurement Law) requires each procuring entity to prepare and submit to the responsible Ministry and Rwanda Public Procurement Authority the annual procurement plan indicating activities to be submitted to tender and related budget.

The procurement process must follow key timelines as part of the execution of the procurement plan. The main steps of any procurement process are: preparation of the tender, advertisement of the tender (call for bids), bid evaluation, award of the contract, and contract management.

Once a tender is published, anyone can consult it for information about requirements and procedures. At this stage, it is common for bidders to have many kinds of questions—about terms of reference (which can be unclear or contradictory), the nature and format of required documents for the submission, and the e-procurement system—that can lead to disputes/claims. Clarifications may be needed, and a clear format for seeking and receiving such clarifications is necessary. Eventually, according to the prescribed timetable, bidders submit their bids and receive an evaluation, which can sometimes be judged by the bidder to be unfair. At this point, bidders can meet with officials in person in an effort to clarify the issues (allowing the latter to explain their decisions and reasons therefor), while others may simply elect to complain in writing.

The contract is negotiated and signed between the successful bidder and the Chief Budget Manager (see below for a description of his/her role). Following award, the contract is often amended due to changed circumstances, especially matters concerning the timeline for deliverables. Occasionally, contracts are even canceled for certain reasons, which can also lead to disputes. When the service/good in question has been delivered or the work has been completed, the district is obligated to pay the bidder. Failing to do so in due time may result in a complaint, although some bidders do not like to complain, since they want to work again with the procuring entities and do not want to spoil their relationship with them.



## Public procurement stages

The principal stages of the procurement process include: Preparation, Advertisement, Bid Evaluation, Contract Award and Contract Management.

1. **Preparation of the tender documents:** This encompasses a number of different decisions and activities, starting with development of technical specifications and selection of the procurement method. For the most part, the procuring entity awards public procurement contracts through open competition, unless otherwise provided by law, which could encompass other methods such as restricted tendering; a request for quotations; single source procurement; or direct contracting.
2. **Bid evaluation:** This includes the opening of bids; evaluation of the bids, which consists of a detailed administrative, technical and financial review;; a further round of clarification and evaluation involving finalist bidders; and possible negotiation with the finalist(s).
3. **Award of the contract:** This stage entails contract negotiation and signing of the contract. It is important to note that the contract can be amended up to 20% of the initial tender price via an addendum to the contract.
4. **Contract management:** This stage involves monitoring of the execution of the contract. The procuring entity usually appoints a specific supervising official to monitor execution of the contract in collaboration with the procurement officer. Monitoring can include discussions about the timing and quality of the goods or services being delivered; clarifications or improvements necessary to bring the work into line with the contract requirements; and invoicing and payment for deliverables. It can also involve penalties or withholding of payment for delays or failures of performance.

## Practice and recent changes in the procurement process

Until recently, the procurement process in districts and central institutions was guided solely by procurement law and regulations, as well as Rwanda Public Procurement Authority (RPPA) guidelines. The submission of bids was made by hand or by post to the physical address of the procuring entity. However, today, bids are submitted electronically following new electronic procurement (e-procurement) guidelines.<sup>2</sup> All submitted information can be electronically verified and retrieved by the RPPA in its role of overseeing all public procurement processes in the country.

### A well-defined procurement process

RPPA as an institution has continuously sought to improve the procurement system based on fundamental principles of transparency, competition, and value for money. According to findings from key informant interviews and group discussions with district officials, the rules and regulations are now quite clear and the RPPA guidelines of RPPA well-articulated. In this regard, districts for the most part appear to follow transparent standards in preparing bid documents, evaluating tenders and awarding contracts. The tender document facilitates the process, as it indicates all information the supplier needs in order to prepare the solicited quotations and other materials. This information includes, among others things, documents required to be submitted by the supplier, necessary specifications, and a price schedule in an appropriate format. Moreover, the district legal advisor is supposed to actively assist, advise, and ensure that the legal requirements are followed.

### Using IT Solutions: The E-procurement system

With the advent of the e-procurement system, regulations and guidelines are accessible online via a transparent interface that moves the user through the process step by step, making it harder for bidders

to make mistakes or miss certain requirements. Interviewees indicated that the system has reduced the number of bids disqualified due to the lack of items required to be submitted. Moreover, E-procurement has also improved the RPPA's auditing capabilities. No longer limited to conducting retrospective audits, the agency now has the ability to monitor ongoing web-based procurement processes to obtain real-time information, making it easier to detect problems and react to potential irregularities promptly. In general, by limiting discretion by front-line procurement officers at the district level, the e-procurement system curtails opportunities for bid manipulation or the extension of favors to certain bidders.

### Key roles and responsibilities of district actors in the procurement process

While the entire district staff can be said to participate indirectly in the procurement process via their role in helping put together the district procurement plan, the implementation of the plan is led by specialized units and committees and overseen by the Chief Budget Manager (CBM), who is usually the Executive Secretary of the District. The CBM is mandated to establish a tender committee of seven members from different units, which has the job of evaluating tenders and recommending awards.<sup>3</sup> The tender committee is specifically charged with approving procurement plans, reviewing technical specifications, opening and evaluating bids, notifying bidders, and awarding contracts. It may also get involved to a limited extent in contract management. The tender committee reviews the technical specifications as well as tender requirements before they are published for purposes of quality assurance, fair competition, and transparency. The committee evaluates the bids and submits their evaluation results to the CBM/Executive Secretary.

<sup>2</sup> Article 4 of the Public Procurement Law requires the use of e-procurement for public procurement in all public procuring entities. However, RPPA may give authorization to conduct public procurement proceedings without using the e-procurement system upon request of the procuring entity, which must give proper grounds for not using the electronic system.

<sup>3</sup> Article 10 of Public Procurement Law provides that responsibilities of the Tender Committee include: evaluation of bids; recommendation for tender award; providing recommendations on all issues relating to public procurement; providing advice on tender documents before their publication; recommending tenders to be awarded through methods other than open competition; making recommendations on any change to be carried out on the procurement contract and the opening of bids in cases where they have not been submitted through the e-procurement system.

**BOX1: Examples of Collaboration: Testimonies from Procurement Officers**

One officer reported that the exchange of information between the authority and the procurement unit is well organized, especially regarding complaints related to tenders. Procurement unit works with the Chief Budget Manager (CBM) and Division Manager in charge of corporate services (DM) and technicians. She noted: “We work together, as we need advice from each other in order to resolve certain problems.” She explained that the DM is the one in charge of disseminating tenders after the tender requirements have been stated. The tender committee works with the DM and the whole procurement unit during the entire tender process. The legal advisor is not continuously involved in the process, but is kept in the loop so that in case a problem arises, he or she has a clear understanding of how the process was handled up to that point.

Another officer said he routinely seeks advice from the tender committee when he cannot resolve an issue. He thinks it is key that the legal advisor participates in the process, especially at the contracting stage where he advises on how the contract is proposed and how agreements should be formulated.

Yet another officer highlighted that the fact that procurement officers can readily ask other relevant staff for help, e.g.: asking the DM to resolve disputes or other problems before engaging in written correspondence (i.e.: before documenting how a case was handled).

The tender committee is composed of members selected from departments that will be using the procured goods/services in question based on the specific procurement. Members are appointed by the CBM of the district based on their technical knowledge in particular relevant fields. After nomination, the members are supposed to be provided training in the procurement process, even if they have been involved in prior procurements (since each procurement has its own specific requirements and idiosyncrasies). Nevertheless, it was reported during group discussions with both bidders and district officials that some members of a tender committee may have insufficient knowledge of the subject matter in question or may lack the requisite experience in contract management. This can lead to unnecessary confusion and mistakes, even when, as is necessary, members consult internal or external experts.

Meanwhile, one or two procurement officers are charged with following up on all of the district’s procurement obligations. The procurement officers essentially carry out day-to-day operations of the procurement process in collaboration with other members of the tender committee and the CBM. These operations include, among other things, preparation of tender documents; preparation and review of terms of reference (TOR) in collaboration with related departments; preparation and publication of related advertisements; receipt of submitted bids; organization and participation in the evaluation of bids, as well as notification to the

successful bidder. In addition, they receive and initially process any appeals from complaining bidders. The procurement officers also prepare the contract with the successful bidder, and get involved as necessary on an advisory basis in contract management in collaboration with the relevant district department.<sup>4</sup>

Another important actor in procurement matters at the local level is the district legal advisor. The legal advisor participates in district management meetings, for the purpose of advising on legal and procedural requirements on any matter of the district. Legal advisors also specifically cross check the type of tender or bid to be awarded, so as to ensure it fits within the announced procurement plan of the district and associated district budget parameters. They also play a major role in helping procurement officers draft the different documents required by the procurement process. Finally, legal advisors provide legal advice during the handling of appeals from bidders, including with regard to the rights of bidders and communications with them (e.g., concerning the basis for a decision and the marshaling of relevant evidence/justification therefore).<sup>5</sup>

It is important to note that in the case of infrastructure procurements involving roads that are large and complex, districts may also utilize the support services of the Association d’Exécution des Travaux d’Intérêt Public (ASSETIP), an association that brings together various actors in the field of infrastructure projects. ASSETIP assists districts in planning, design,

<sup>4</sup> Article 11(79) of Public Procurement Law provides that procurement officer(s) have, among other responsibilities, to monitor contract execution in collaboration with concerned departments.

<sup>5</sup> One other function of the legal advisor is to guide the district leadership on how best to deal with internal legal matters involving procurements, e.g., possible measures to be taken against a member of a tender committee caught in, or suspected of, wrongful conduct. Note that every Tuesday in most districts, there is also a general staff meeting in which the Mayor seeks to address problems affecting the work of individual departments, including those involved in procurement matters.

procurement, delivery and maintenance of feeder roads. This kind of work may actually also require the cooperation of the Rwanda Transport Development Agency (RTDA), the Road Maintenance Fund (RMF), the Local Administrative Entities Development Agency (LODA), and the concerned districts to reach a consensus on the conceptual approach to the roads in question, not to mention material and unit costs for maintenance.

The process is intended to optimize the efficient use of resources by the Government. ASSETIP may also help streamline development of the terms of reference (ToR) and technical specifications for large, complex projects other than those concerning infrastructure. This has helped districts to recover many discrete costs while building their capacities.

## Dispute resolution in procurement cases

According to the Procurement Law and associated regulations, those bidders appealing a procurement decision are required to write a letter to the relevant tender committee within seven (7) days following the announcement of the bid evaluation results (Art. 51(2) of the Law on Procurement). They are entitled to receive a response no later than seven (7) days after submitting their complaint (Art. 51(3)).<sup>6</sup>

As noted above, some bidders mentioned that they try to settle a dispute orally through a meeting with procurement staff. In this case, the complaint process often stops after the discussion, with or without a satisfactory decision. Other appeals may be submitted in writing to the district procurement officer, even if they are initially addressed to the top leadership of the district through the central secretariat. Once the appeal is received, the district tender committee in question convenes a meeting to discuss the substance of the complaint and provide feedback.

If a bidder is not satisfied with the response at the district level, he/she can bring the appeal to the Independent Review Panel of the RPPA. The Independent Review Panel must make a decision within thirty (30) days following receipt of the appeal. If the panel is unable to reach a decision within thirty (30) days, it must inform both the procuring entity and the complainant of the need for extra time, which cannot exceed an additional thirty (30) days. In case of administrative silence by the IPR after the initial 30 days, a complainant is permitted to lodge an appeal to the competent court, which in this case means the Commercial Court.<sup>7</sup> This is also the applicable procedure when the complainant is otherwise dissatisfied with a decision rendered by the Independent Review Panel.



### Appeal mechanisms

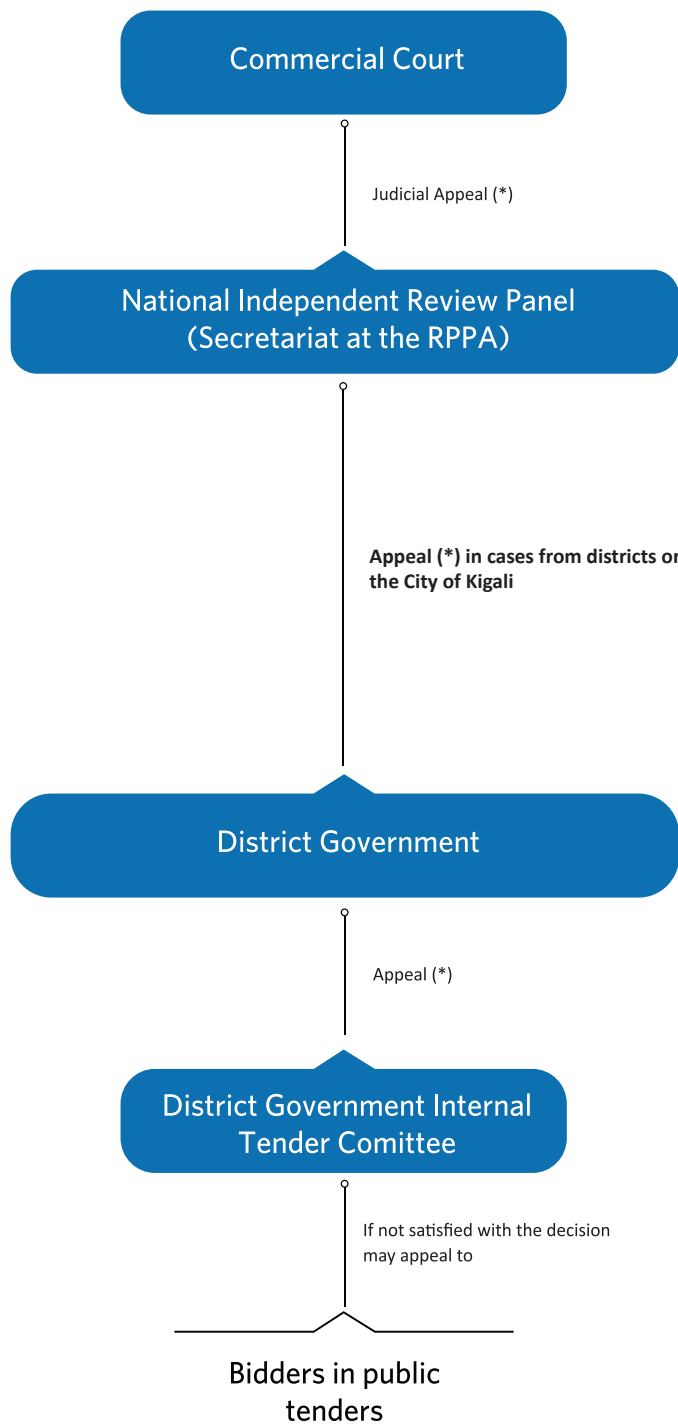
Below are the available remedies in procurement disputes:

1. **Request for review to the procuring entity:** A request for review is permitted if it is submitted within seven (7) days after the bidder becomes aware of the circumstances giving rise to the request. The procuring entity must respond within seven (7) days after receipt of the request for review.
2. **Review by Independent Review Panel:** A bidder who is not satisfied with a decision lodges a complaint with the Independent Review Panel. The Independent Review Panel must make a decision within thirty (30) days following receipt of the complaint. In case of any inability to do so, it must inform both the procuring entity and the complainant of the need for the extra time, which cannot go beyond an additional thirty (30) days. In case of failure to take a decision within thirty (30) days, or to inform both the procuring entity and the complainant of the need for the extra time, or in the case of an adverse decision by the IPR, the complainant is allowed to lodge his/her claim with the Commercial Court.
3. **Court Review (Commercial Court):** This is the last recourse for procurement disputes resolution. Lodging of the claim requires the exhaustion of administrative remedies, however.

<sup>6</sup> From our survey, we note that 59.6% of bidders mentioned that they received feedback on their initial complaint within two weeks. Note that the survey is not representative of bidders in Rwanda as a whole, and these data should not be generalized beyond the sample.

<sup>7</sup> Article 81(16°) of the Law N°30/2018 of 02/06/2018, Determining the Jurisdiction of Courts, provides that the Commercial Court is the competent court for hearing cases related to public tenders.

# Administrative Decision Pathways in Public Procurement



(\*) If not satisfied with the previous decision, bidders may appeal to



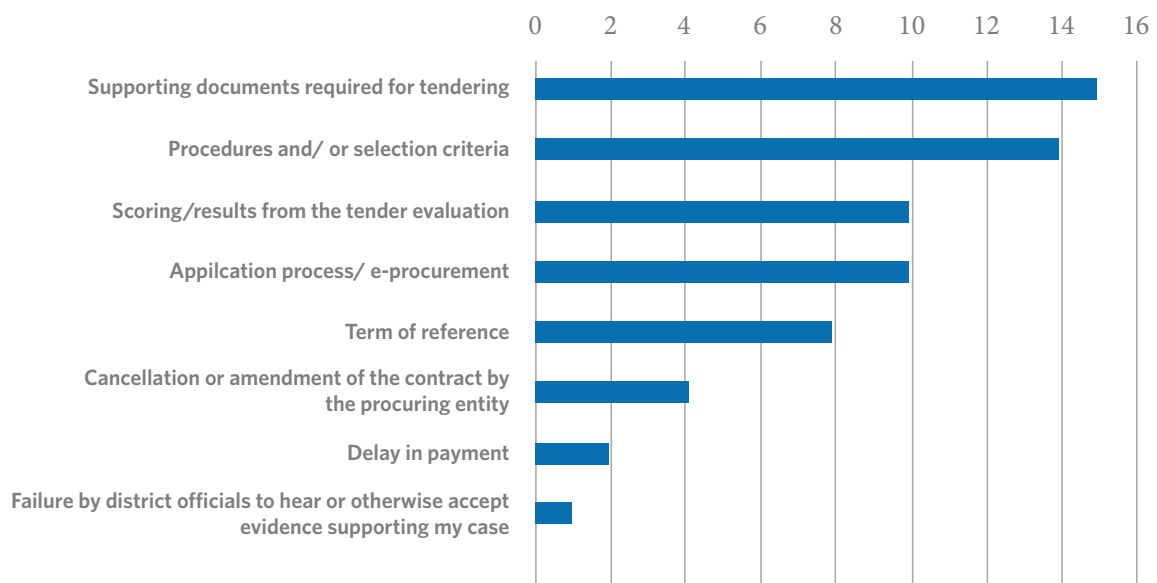
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## Procurement and Administrative Justice: Some Quantitative Data from Bidders

This section includes quantitative data derived from a survey of 50 private entities (bidders) across five districts<sup>8</sup> that lodged complaints about some aspect of the procurement process during the period 2015-2018. In terms of demographic characteristics, the sample of respondents consisted disproportionately of men (94%) with a university education (90%). The firms represented were made up mostly of small and medium businesses (SMEs - 82%), and the largest proportion came from the construction sector (36%); the next largest type of firm represented were those supplying general services (14%). Nearly 70% of the respondents had participated in public tenders more than 20 times in the last four years. Regarding the value of the tenders they were involved in, 40% of respondents reported to have participated in tenders with a value higher than 500.000.000 Rwf.

Figure 1 indicates that the main reasons that impelled respondents to lodge procurement appeals were related, respectively, to the supporting documents required for tendering (15 cases, or 23%); procedures and/or selection criteria (14 cases, or 22%); and the application process and the e-procurement, as well as the scoring/results from the tender evaluation (10 cases each, or 16%).

**Figure 1: Reasons/basis for lodging complaining (# of cases)<sup>9</sup>**



Out of the total sample of 50 bidders, 82% of complainants said they were informed<sup>10</sup> (either well informed or somewhat informed) about their rights related to the public procurement process, while 18% said they did not feel well informed. Individually, men (85%) felt well informed relative to women (33%)<sup>11</sup>, and older respondents felt they were better informed than younger ones.<sup>13</sup> Meanwhile, 100% of large businesses reported being informed (well informed: 88.9% and somewhat informed 11.1%), while 78.1% of SMEs reported being informed (well informed: 41.5% and somewhat informed 36.6%). From a sectoral standpoint, the most well informed sectors are those comprising manufacturing; water supply, sewage, waste management and remediation activities; transportation and storage; food service and hospitality/accommodations; and information and communications—in all of

<sup>8</sup> The sample is obviously not representative of the national population of complainants in public procurement. The results cannot be generalized outside the respondents' sample..

<sup>9</sup> IPAR's calculation.

<sup>10</sup> Either well informed (50%) or somewhat informed (32%).

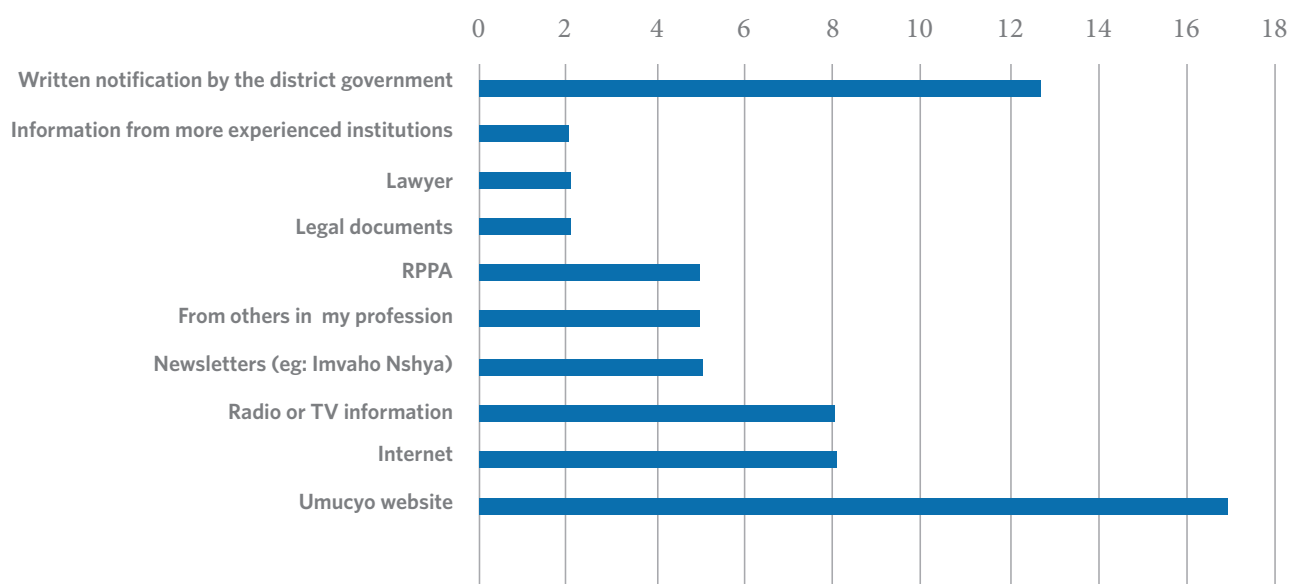
<sup>11</sup> Well informed (50%);Somewhat informed (32%); Not very well informed (12%); and Not well informed at all (6%).

<sup>12</sup> This result must be taken with caution given that there were only 3 women in the sample.

these sectors, 100% of respondents reported that they were at least somewhat informed about their rights in the procurement process.

The main source of information accessed by procurement complainants (see Figure 2) is the Umucyo (e-procurement) website, from which 27%<sup>13</sup> of the respondents obtained information. In terms of the types of information that respondents felt were useful to receive from district officials, 52% indicated that information about terms of reference were helpful, while the same number (52%) felt that information about technical specifications and procedures and/or selection criteria were helpful.

**Figure 2: Main sources of information accessed by bidders (Frequency)<sup>14</sup>**



When respondents lodged complaints about some aspect of the procurement process (following any informal complaint or discussion that might be placed with the original tender committee), they mainly appealed to the district procurement officer (83%). When a complaint was presented to the district procurement officer, complainants generally reported receiving a response in less than 2 weeks (when complainants chose to complain initially to a higher authority within the district, they reported receiving a response in a less efficient time frame—1 to 3 months). In both of these cases, however, 80% of respondents indicated that they did not get helpful information from these institutions/officials. Only the Independent Review Panel was reported to have provided very helpful information, according to 4 out of 5 respondents. Similarly, procurement offices at the district level scored poorly with respect to courtesy or attentiveness shown to bidders (only 23% of respondents found procurement staff courteous and 26% found them attentive),<sup>15</sup> while the national-level Independent Review Panel was found to be both courteous (4 out of 5 respondents find them very courteous) and attentive (3 out of 5 bidders found them very attentive).

In terms of further feedback about their experiences interacting with various first instance institutions on appeal (as noted above, this mostly concerns district procurement offices (83% of all respondents), 81% of bidders indicated that they were provided with verbal or written information about how the complaint/appeal process operated, and 66% said they were given an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing. At the conclusion of the appeal process, 83% of complainants were

<sup>13</sup> The question allowed for multiple answers. Except for people who asserted to not be well informed on procurement rights, the rest had up to two sources of information. The figure represents 17 out of 62 answers provided (i.e. 47 with at least one source of information and 15 with a second source of information). In numbers, 94% had a source of information (on 50 interviews) of which 32% had two sources of information (15 out of 47).

<sup>14</sup> IPAR's calculation.

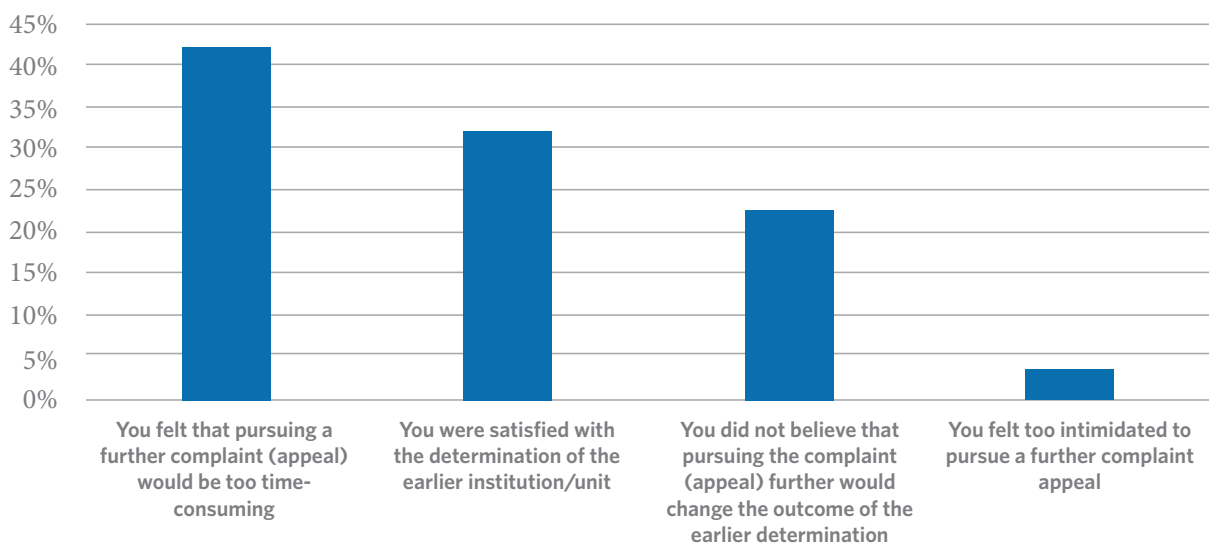
<sup>15</sup> Very courteous 15.4%, Courteous 7.7%; Discourteous 20.5%; Very discourteous 38.5%.

Very attentive 15.4%; Somewhat attentive 10.3%; Mostly inattentive 12.8%; Not at all attentive 43.6%

provided with a written decision, and 75% of respondents reported receiving a decision that was accompanied by an explanation with reasons for the decision. However, 77% of respondents were not provided with information about how and where to further appeal their cases. At the initial stage of appealing a decision (where most bidders are effectively seeking some kind of review or reconsideration by the district government), as many as 85% of respondents said they had not been represented by a lawyer.

After this first level of appeal, 31% of complainants indicated that they pursued a second instance appeal to an independent review panel, either at the national level (36%, which now is the only IPR that exists), or at the district level (21%, where an independent review panel existed up until the fall of 2018, when the Procurement Law was amended). The reasons why nearly 70% of respondents did not pursue a complaint to a further (second instance) appeal level are provided in Figure 3. Of these, 32% of them did not pursue the case because they were satisfied with the determination of the prior appeal institution.

**Figure 3: Reasons for not pursuing a further (second instance) complaint (by percentage)**



When interacting with institutions to which they appealed in the second instance, 86% of those complainants reported being provided with verbal or written information about how the complaint/appeal process operated, 71% indicated that they had been given an opportunity to make their views known and to offer any evidence supporting their case verbally or in writing, and at the conclusion of the process, 57% said they were provided with a written decision (and of those who received such a written decision, all respondents said it was accompanied by an explanation with reasons). However, fully 86% of respondents were not provided with information about how and where to further appeal their cases. At this second instance stage of appeal, 71% of respondents indicated they were not represented by a lawyer.<sup>16</sup>

Most respondents (72%) felt that the most important improvement to be made regarding administrative justice in public procurement disputes are to improve the e-procurement system. 16% of respondents also recommended expanding provision mediation and other Alternative Dispute Resolution (ADR) mechanisms to help resolve certain procurement disputes, and 12% suggested improving training and oversight of government officials to ensure better understanding of legal requirements and procedure on procurement.

<sup>16</sup> Only 5 respondents reported pursuing a third instance appeal, so drawing any conclusions from a number that small is not meaningful. Still, after the second instance appeal, 58% of this small pool of respondents decided not to pursue a further appeal, mainly because it would be too time-consuming (86%) or because they were satisfied with the administrative decision (14%).

## Lessons Learned and Recommendations

### **Enhancing the professionalism and ethics of bidders:**

Interviews and group discussions indicated that some bidders lack professionalism and ethics in participating in the procurement process. This sometimes leads to illegal practices, such as the submission of forged documents, and disqualification—often complained about—when the fault lies with the bidders themselves. Poor practices and/or low capacity have also led some bidders to submit unduly low price quotations, which may gain them the tender, but ultimately lead to non-fulfillment of their contractual obligations (which in turn generates disputes with local governments that could obviously might have been avoided). As revealed through the field research, still other bidders may betray a lack of professionalism by participating in multiple tenders at times when they lack the internal resources to carry out projects should they be awarded (resources are shifted from one tender to another due to poor or unrealistic planning, and relevant staff cannot be hired, causing deadlines and deliverables to be missed). Public education efforts – especially those highlighting the consequences of bad practices (including the imposition of sanctions or loss of contracts for poor performance) – could better alert firms to the dangers of engaging in unprofessional behavior.

### **Harmonizing technical specifications/terms of reference for similar tenders across the districts:**

Field research also indicated that different districts may be pursuing exactly the same tenders but with different specifications/terms of reference. This creates unnecessary preparation and monitoring work for district governments and bidders alike. The RPPA could help the situation by providing more guidance and standard specifications/terms for similar tenders across all districts.

**Strengthening market price guidelines:** Interviews revealed that district officials very often lack accurate information about market prices. The RPPA could address this problem by periodically conducting a national market price survey and updating its applicable price indexes on its website in order to help district procurement officers better respect the principle of economy (i.e., value for money) as provided by the Procurement Law.

**Delays in payment:** Interviews and group discussions with public officials and bidders indicated that there is a tendency for district governments to delay payments to bidders even while expecting the latter to deliver procured services in a timely fashion according to agreed-upon deadlines. This puts bidders in a financially vulnerable situation, and yet the law does not require the procuring entity to pay interest for payment delays unless this is specifically stipulated in the contract. A clear instruction on this issue in the law or in RPPA regulations as a default stipulation should be adopted to ensure greater fairness and improve contractor performance.

### **Issuing guidelines to clarify the roles and responsibilities of procurement officers, tender committees, and user departments:**

While the relevant district user department(s) should be involved from the stage of needs identification all the way to execution of the contract, if for any reason such units do not prepare adequate technical specifications in timely fashion, it may adversely affect any subsequent stages— particularly those of evaluation and contract management. This can lead to a variety of complaints. RPPA should issue clear guidelines and provide for appropriate oversight and training on the respective roles and responsibilities of these three actors (procurement officers, tender committees, and user departments) in the procurement process (focusing on the key issues of planning, specifications, evaluation, and contract management).

### **Strengthening the capacity of procurement officers, tender committee members, and contract managers from user departments:**

Gaps in procurement knowledge among those responsible for various parts of the procurement process surfaced during the field research. If procurement decision-making at the district level is to be improved, specialized training for district officials in technical specifications, contract management, logistics/supply chain management, and tenders for specific types of public works, supplies, and consultancy projects must be expanded. These capacity needs were especially apparent when survey data on bidder complaints was examined: 80% of bidders said that they do not receive helpful information from

district procurement and other local officials regarding the complaints process (only independent review panels at the national and (formerly) district level were viewed as providing useful information—100% and 80%, respectively).

More important, only 66% of bidders surveyed said that they were given an opportunity to make their views known and to offer evidence in support of their case. And while 83% of bidders were provided with a written decision, only 75% were provided with reasons supporting the basis for the decision. Moreover, 77% were not provided with information about how and where to further appeal their cases. Finally, district officials involved in rendering initial procurement decisions scored low with respect to general courtesy shown to complainants (only 32% of bidders). All of this argues for significant and concerted capacity-building training to ensure that proper procedure is followed and bidders' rights are respected.

**Consultation of legal advisers:** Interviews and group discussions indicated that at various stages of the procurement process, district legal advisers are not adequately consulted by procurement officers, tender committee members, or contract managers. This consultation should be systematically enforced through better district management processes and guidance so as to reduce the number of incorrect or improper decisions taken and in turn, prevent unnecessary disputes from arising.

**Raising bidder's awareness of procurement procedures and associated rights:** Although 82% of bidders lodging complaints felt that they were either well informed or somewhat informed about rights related to the public procurement process, in depth interviews with bidders revealed a need for greater dissemination of information about both the operation of the procurement process and dispute settlement procedures—especially since some district officials apparently fail to give bidders helpful background information (which bidders do


believe is useful, especially with regard to terms of reference (52%) and technical specifications and procedures/selection criteria (52%)). In this regard, free-standing information outreach as well as training should be organized for bidders, helping improve their understanding of their rights and responsibilities. This could also improve the quality of appeals and reduce their incidence—since many bidders simply complain orally about their grievances without submitting a factual record of what they believe is in dispute. This—combined with greater availability of mediation as an option in procurement disputes—could in turn lead to better practices on both sides and fewer disputes ending up with the RPPA or in court.

**Training on the use of e-procurement system:** Interviews and group discussions also indicated that in many cases, officials as well as bidders do not fully understand the e-procurement process—either in terms of the submission process or the initiation of appeals (it was revealed that some bidders actually press the button to submit a complaint before they have fully read the decision or the instructions for appealing). Expanded and improved training on e-procurement for both district officials and bidders should result not only in improvements to the e-procurement system—which 72% of bidders indicated was their top recommendation—but more effective dispute resolution.


**Providing temporary expertise to district for specific tenders.** Tenders requiring specialized expertise not available at the district level should be supported with technical assistance by experts from the central level through RPPA—particularly tenders involving certain ICT functions and complex road construction projects, where technical expertise is often not available at the district level.



## The Institute of Policy Analysis and Research (IPAR-Rwanda)

 Kimihurura, KG 627 St, Building No.4

 P.O Box 6005 Kigali-Rwanda

 Tel: (+250) 789099704

 E-mail: [info@ipar-rwanda.org](mailto:info@ipar-rwanda.org) |  Website: [www.ipar-rwanda.org](http://www.ipar-rwanda.org)

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### For further information contact:

 **Seth Karamage**

Resident Country Director, SRAJ project, University of Massachusetts Boston

 +250 788 309 914

 [skaramage@gmail.com](mailto:skaramage@gmail.com)

[seth.karamage@umb.edu](mailto:seth.karamage@umb.edu)



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