

CONTRACT MONITORING IN THE INFRASTRUCTURE SECTOR AT DISTRICT LEVEL



CONTENTS

| | |
|--|-----------|
| Acknowledgments | 4 |
| I. GENERAL INTRODUCTION | 5 |
| 1.1 Background | 6 |
| 1.2. Objectives of this study | 7 |
| 1.3 Methodology | 7 |
| 1.3.1 Study Delimitation | 7 |
| 1.3.2 Approach | 7 |
| 1.3.3 Research Techniques and Choice of Informants | 7 |
| II. CONTRACT MONITORING IN THE INFRASTRUCTURE SECTOR | 9 |
| 2.1 Regulatory Framework Governing Public Procurement | 10 |
| 2.2 Contract monitoring in the infrastructure sector: the texts | 10 |
| 2.3. Contract monitoring in the infrastructure sector: practices | 11 |
| 2.4. Inefficient Work Monitoring | 11 |
| 2.5. Quality of Tender Documents | 11 |
| 2.6. Corruption risks in infrastructures | 12 |
| 2.6.1 Interference of the budget administrator | 12 |
| 2.6.2 Suspicious delays in payment | 12 |
| 2.6.3 Instructions which are complementary to tender documents | 13 |
| 2.6.4 Emergence of unregulated companies | 13 |
| 2.7. Lack of a contract monitoring and evaluation plan | 13 |
| 2.8. Overburdened staff in need of technical capacity building | 14 |
| 2.9. Disproportionate bargaining power | 14 |
| III. CONCLUSION | 16 |
| IV. KEY REFERENCES | 17 |
| 4.1 Study reports | 18 |
| 4.2 Legal texts | 18 |
| Annex 1: ACTION PLAN 2013-2015 | 19 |
| Annex 2: INTERVIEW AND CONSULTATIVE MEETINGS' GUIDE | 21 |



Acknowledgments

In June 2011 the World Bank Institute (WBI) hosted a “Kick-Off Meeting on Contract Monitoring” in Kampala, Uganda. The meeting gathered participants from Kenya, Rwanda, Tanzania, Uganda and Zambia. Following the meeting, organisations from Rwanda have decided to build a coalition with the aim of monitoring public contracts in infrastructures. Members include Transparency International Rwanda (TI-Rw), Rwandese Association of Local Governments Authorities (RALGA), Private Sector Federation (PSF), Association des Entrepreneurs du Batiment et Travaux Publics (AEBTP), Rwanda Public Procurement Authority (RPPA), Rwanda Association of Architects (RAA) and Rwanda Governance Board (RGB).

As one of its first activities, the coalition, under the leadership of TI-Rw, the civil society organisation leading the fight against corruption and promoting good governance, has carried out this situation analysis study of the current status of contracting in the infrastructure sector of Rwanda, which will provide the basis for more substantive and longer term monitoring initiatives in the next three years.

This research would not have been possible without the support and engagement of a number of institutions and committed individuals. Therefore, on behalf of TI-Rw and of the whole coalition, I would like to warmly thank the World Bank Institute which funded the research and thus showed its commitment to enhance transparency and fight corruption in procurement. My gratitude also goes to Dr. Aggée Mugabe Shyaka, the consultant who helped the coalition to carry out the study. I would also like to thank TI-Rw Executive director, Apollinaire Mupiganyi, for his guidance and inputs, as well as TI-Rw research team, in particular Alessandro Bozzini, for their time and work in assuring the quality of this research. It is equally important to thank the World Bank Rwanda office, representatives of the coalition member organisations: RALGA, PSF, AEBTP, RPPA, RAA and RGB, for their invaluable inputs based on their first-hand knowledge of the issue.

Last but not least, I wish to thank the individuals and organisations who accepted to be interviewed and shared their experience and perception about public contracts in infrastructures, which are the backbone of this report.

A handwritten signature in blue ink, appearing to read 'Ingabire'.

Marie Immaculée Ingabire

Chairperson of Transparency International Rwanda

GENERAL INTRODUCTION

I

GENERAL INTRODUCTION

1.1 Background

Given the importance of public funds channelled through public procurement (more than 52% of the annual budget of GoR), corruption in this sector is likely to affect the quality of infrastructure by adding extra costs and depriving the state of resources that could have been used to fund other sectors. In most developing countries, the most common practices were related to the abuse of waiver procedures. On exception, mutual agreements had become the rule in procurement. The urgency that should legally justify the use of such a procedure was often mentioned by some managers for works that had actually been planned for a long time¹.

In Rwanda, efforts to fight against corruption have been acknowledged at the international level and significant progress has been made². Nevertheless, these advances do not mean that corruption has disappeared. Recent studies carried out by national³ and international⁴ bodies clearly show that corruption exists in Rwanda. One of the sectors perceived as particularly prone to corruption is that of procurement. As a reminder, this area comes in fourth⁵ position of those seen as “the most corrupt” in the eyes of the Rwandan population⁶.

To be able to control corruption in this particular sector, the Government of Rwanda keeps multiplying efforts. In this regard, the legal and regulatory framework has been regularly improved. Besides Law No 12/2007 of 29/03/2007 on Rwanda Public Procurement, two Ministerial Orders, also aiming to insure sound management of Published Tenders, have been issued.

These are the Ministerial order n° 002/10/10/TC of 25/06/2010 governing public procurement and tender document types and the Ministerial Order No. 001 / 11/10/TC 24/01/2011 establishing the professional code of ethics governing state employees involved in procurement. The three documents contain provisions that are clearly hostile to corruption. To achieve this, these documents foresee a follow-up or “monitoring” mechanism, which aims to limit as much as possible the risks of corruption in public procurement.

Acknowledging that large amounts are invested in the infrastructure sector, the legislature has provided specific articles on the control and prevention of corruption in this particular sector through procurement exercise and management of public procurement. For example, Article 73, paragraph 7 provides for the establishment of arrangements for monitoring contract implementation. According to the following paragraph, the execution contract stipulates the terms for partial or overall delivery of works, supplies and services.

Studies on compliance with the law and with other instruments governing public procurement in Rwanda are still rare. However, corruption perceptions in this area are already well present. According to a recent study conducted by the Rwandan Association of Local Government Authorities (RALGA⁷) on procurement practices in local government, procurement procedures are followed in the districts covered by the study. Nevertheless, the results of the same study indicate “an inadequate monitoring and evaluation of contract implementation”⁸. However this study considers procurement practices in general, just like the previous studies, and does not focus specifically on the infrastructure sector, yet the latter consumes more budget both at local and national level.

¹ On this, read USAID, *Evaluation de la corruption au Sénégal, Août 2007*.

² Transparency International Rwanda

³ Office of Ombudsman and Transparency International Rwanda

⁴ Transparency International

⁵ Behind the police, the judiciary and land-related services.

⁶ Office of the Ombudsman, *Etude sur les formes, les niveaux et les mécanismes de contrôle interne de la corruption au sein des institutions publiques au Rwanda, Kigali, August 2009*.

⁷ Member of the Rwandan Coalition in the Public contracts monitoring

⁸ RALGA, *Procurement practices in local governments, Kigali, May 2010, p.7*.

1.2. Objectives of this study

Following to the meeting held in Kampala and referred on above, several Rwandan organizations which took part in it⁹ decided to build a coalition whose long term goal is to contribute to the promotion of transparency and the strengthening of rule of law through “monitoring contracts in the infrastructure sector” at district level.

The immediate objective of the study is to produce a comprehensive picture of the practices related not only to procurement in infrastructure at the district level, but also of the management and monitoring of these contracts. Indeed, to date, as mentioned earlier, this area has been given little attention in studies previously conducted on corruption in Rwanda, despite its importance in national development.

This situation analysis has the following specific objectives:

- Provide the coalition with basic information on the situation of transparency in public contracts at the district level;
- Carry out an appraisal of contract monitoring in the field of infrastructure at district level;
- Develop indicators of transparency in infrastructure contracts for the coalition and thus put at its disposal a framework for contract monitoring in the infrastructure sector at district level;
- Identify potential barriers to effective contract monitoring in the field of infrastructure in Rwanda;
- Develop an action plan for the coalition for contract monitoring in the area of infrastructure at the district level;
- Formulate recommendations to improve transparency and efficiency in monitoring contracts related to public procurement in the infrastructure sector in Rwanda.

1.3 Methodology

1.3.1 Study Delimitation

This study is a mini-analysis that has no ambition whatsoever to reflect the reality on monitoring practices of public procurement contracts in the infrastructure sector. Instead, it should inspire a bigger project that could include, among other activities, a national study on the same subject. The research was conducted in five districts out of 30 in Rwanda,

namely Bugesera, Huye, Kicukiro, Musanze and Rubavu. As some districts have very few contracts in the infrastructure sector, the selection of these districts was purposive.

1.3.2 Approach

The objective of this study, as mentioned above, was to provide a snapshot of the situation on existing practices of contract monitoring in the field of infrastructure at the district level. The study focused on a limited number of districts (5 out of 30) and used a qualitative approach only.

The qualitative approach aims to provide insight into people’s behaviour and perceptions and allows to study their views on a particular topic in greater depth than in a survey. It generates ideas and hypotheses that can help understand how an issue is perceived by the target population and to define or identify the options for this question.

Qualitative research is based on semi-structured or even unstructured interviews in which the moderator or interviewer works with a discussion guide and an interview guide developed according to the subject and target of the study. Qualitative research is based on an approach that aims to describe and analyze culture and behaviour of humans and their groups from the perspective of those studied. Therefore, it emphasises the complete or ‘holistic’ knowledge of the social context in which the research is conducted. Qualitative research is based on a flexible and interactive research strategy.

1.3.3 Research Techniques and Choice of Informants

The qualitative nature of this analysis and the sensitivity of the topic have imposed the use of two techniques for information gathering: document analysis and interviews.

- **The document analysis**

This technique allowed us to exploit various laws and regulations related both to corruption and to public procurement. Research reports, scientific papers and specialized reports as well as the district development plans were also read.

The documents analysed include:

- Law No. 12/2007 of 29/03/2007 on Public Procurement in Rwanda;
- The Ministerial Order no 002/10/10/TC of 25/06/2010 on public procurement and tender document types;

⁹These organisations are Transparency International Rwanda (TI-Rw), Rwandese Association of Local Governments Authorities (RALGA), Private Sector Federation (PSF), Association des Entrepreneurs du Batiment et Travaux Publics (AEBTP), Rwanda Public Procurement Authority (RPPA), Rwanda Association of Architects (RAA) and Rwanda Governance Board (RGB).

- The Ministerial Order No. 001/11/10/TC of 24/01/2011 establishing the professional code of ethics governing civil servants involved in procurement
- Law No. 23/2003 of 07/08/2003 relating to the prevention and repression of corruption and related offences in Rwanda.

Analysis of these laws has allowed us to understand what is expected in the fight against corruption in public procurement and in terms of quality of works in this field. Understanding these documents has also helped us to develop an interview guide which was used to conduct face to face interviews.

- **Interviews.**

Understanding the practices linked to procurement and to contract monitoring requires reaching out a number of people with a specific knowledge in the field. The choice of these resource people was done in a rational manner and we targeted persons with in-depth knowledge of procurement and the monitoring of contracts once the contracts have been awarded.

These people who are also ‘privileged witnesses’ were selected for their expertise, experience and level of daily contact with the topic of the study. Therefore, various categories of people involved in awarding and / or monitoring of contracts in the field of infrastructure at the district level took part in the study.

Thus, the following categories were involved:

- 3 current procurement officers and two former procurement officers still employed by the district;
- A chair of a district tender committee;
- Two members of District Councils;
- A representative of Rwanda Public Procurement Authority;
- A representative of Rwanda Housing Authority;
- 7 construction contractors;
- 5 contractors involved in construction supervision at the project and district level;
- 5 representatives of development partners or cooperation agencies with projects in the infrastructure sector including the Belgian Technical Cooperation,

the European Union, the World Bank and the African Development Bank.

These persons were identified in collaboration with Transparency International Rwanda and some other coalition members. The number of interviews to be conducted was not determined in advance as the researcher chose to observe the principle of saturation or redundancy of responses; this principle shows the researcher that all aspects of the study have been covered and that there is no new elements.

Redundancy was reached, but for the sake of representation of various stakeholders, additional interviews were conducted. The priority topics discussed in the various meetings can be found in the annex 2.

Another technique, which is rather secondary, was used to develop the action plan of the coalition in contract monitoring in the field of infrastructure for the next three years¹⁰. This was a **consultative meeting**. This meeting was held in order to gather comments from coalition members on this report and to provide inputs on the content of the action plan.



In Rwanda, efforts to fight against corruption have been acknowledged at the international level and significant progress has been made. Nevertheless, these advances do not mean that corruption has disappeared. Recent studies carried out by national and international bodies clearly show that corruption exists in Rwanda. One of the sectors perceived as particularly prone to corruption is that of procurement. As a reminder, this area comes in fourth position of those seen as “the most corrupt” in the eyes of the Rwandan population.



¹⁰1 day workshop held on 15th June in Gashora (Bugesera District)

CONTRACT
MONITORING IN THE
INFRASTRUCTURE
SECTOR

II

CONTRACT MONITORING IN THE INFRASTRUCTURE SECTOR

This chapter, actually the most important of all, presents the research findings. It reflects the views of various people interviewed in this study. Therefore, the chapter may, sometimes, show contradictions in relation to procurement law and practices and the monitoring of awarded contracts depending on the type of actor involved.

2.1 Regulatory Framework Governing Public Procurement

The law on public procurement in Rwanda is not a problem in itself according to most neutral observers that we have interviewed¹¹. If improvement of the law is a process everywhere, our informants consider the Rwandan law on public procurement as “largely good”. Although described as “one-sided” in favor of the State by a good number of the entrepreneurs we interviewed, the analysis of the law does not lead to such a conclusion. Many times, entrepreneurs are described as “vulnerable” in front of the procuring entity (district) whose “power” in the contract is perceived as “disproportionately superior”.

If the law itself does not appear to pose major problems in terms of its content, its application instead does pose many problems. And almost all entrepreneurs interviewed agree on this. Thus, several cases of non compliance were identified including:

- The Circular from Rwanda Public Procurement Authority indicating that budding entrepreneurs cannot be required to provide references for contracts of less than Rwf 50 million whose objective is to encourage the spirit of local entrepreneurship is not respected everywhere;
- Article 119 of the Law on Public Procurement provides for daily monitoring of the works, but such monitoring is not routinely done;
- The same law, Article 116 stipulates that the Bidding Documents shall fix the time during which “additional instructions must be given” to the customer/bidder and that otherwise the contracting entity sends these instructions within 30 days from the date on which such instructions are requested. In general, according to our informants, this provision is not respected. If it is not

the Tender Document which is silent on this subject, it is the contracting entity which is silent or giving these instructions several days after the legally official deadline has expired. And it is this particular case which reveals the “vulnerability” of the customer /bidder before the procurement entity, the district in this case.

Even when the client sees his/her rights not respected as he/she receives additional instructions after the legal deadline, he/she does not feel to “have the necessary bargaining power” vis-à-vis the procuring entity in order not to “offend the powerful partner” (gukoma rutenderi). Negotiations between the contracting entity and the consultant certainly exist in accordance with Article 66 of the Law on public procurement, but they are to focus on financial aspects.

The law on public procurement is certainly seen as giving the most to the contracting entities, but it is especially the “disorder” observed in the field of construction, to use the words of an architect, which irritates the most. Indeed, there is no legislation in Rwanda, to date, establishing the conditions for the qualifications required in construction works. This lack of regulation, observed an architect, “promotes the entry of inexperienced or unskilled people to the construction market. This gives room to corruption and further complicates the monitoring of works in the infrastructure sector”.

2.2 Contract monitoring in the infrastructure sector: the texts

The Rwandan legislator knew that this sector is sensitive and provided a mechanism for contract monitoring. Section 8 of the Law is about **contract execution** and provided a major role to **monitoring the works**. Precisely for this monitoring, section 115 provides the schedule of activities that the contractor proposes to follow in the contract execution.

This schedule must include, among other things, the deadlines for submission for approval of plans, samples and possible models specified in the Invitation for Bids. With the same goal, Article 119 provides a daily monitoring of works that can be carried out by a supervising staff representing the contracting entity, a firm or an individual hired for this purpose depending on the nature of the works. The Law, with the same objective of work quality assurance, specifies a site

¹¹The representatives of the EU, the Belgian Technical Cooperation and the World Bank that we have interviewed are generally satisfied with the quality of the law and other regulatory instruments governing public procurement in Rwanda.

¹²Interview of 18 April 2012, in Kigali

diary (art. 121), a daily report of activities (s. 122) and approval of building materials (section 125) among other things.

Article 22 of the Public Procurement Law determines the functions of the Procurement Unit. It specifies in paragraph 7 that the unit monitors the contract execution in collaboration with the beneficiary entity. The organizational structure of the districts established by the Ministry in charge of Public Service and Labor stipulates that the Secretary of this unit is the contract manager. This means that at least two employees of the district are involved in the activities of contract execution monitoring. In addition to these employees, there is an independent consultant or a firm hired for the same thing.

2.3. Contract monitoring in the infrastructure sector: practices

These provisions are not exhaustive but are enough to show the legislature's concern, and rightly so, to facilitate effective monitoring of contracts/ works. However, the context and practices are different, sometimes significantly, from the spirit of the law.

2.4. Inefficient Work Monitoring

Due to the fact that the employees are often perceived as "overburdened" at the district level, as well as due to budget and logistic constraints, the daily monitoring to be performed by the supervising official and / or monitoring firm or the individual hired for this purpose and the related daily report are not made regularly. To believe our informants, weeks can pass before a single official from the District would show up on the site.

This situation, where this is the case, gives all the freedom to the supervisor hired by the district and to the contractor who has been awarded the contract and would entail a lot of consequences on the quality of monitoring and / or works including:

- To lead to a "corrupt agreement", supposed or real, between the two parties on the work site, especially regarding the approval of building materials used or to be used;
- To cause sometimes difficult relationship between the supervising consultant/firm and the contractor when reaching this "agreement" is not possible between them, thus transforming the role of coach expected from the supervisor in that of a police officer behind the construction company;

- To open up a big loophole leading to "requiring" or "accepting" bribes from the district official or agents responsible for monitoring the works when they pretend to reject the works done without their knowing questioning in particular the quality of materials used or pretending to do so;
- To delay the works when it is late discovered of use of materials that are inappropriate or presented as such. This delay penalizes mainly the contractor whose payments are generally made after approval of the works done by the monitoring consultant/firm and the representative(s) of the district;
- To lead to penalties for delays prescribed by the law when the contractor cannot comply with the implementation plan of activities;
- Districts sometimes do not attend the site meetings required by the law and this affects the quality of monitoring and makes progress in the works very difficult.¹³

2.5. Quality of Tender Documents

The quality of supervision of contract works is partly related to the quality of the Tender Documents. As required by the law, the technical specifications must be sufficiently clear to prevent conflicts between supervisors and builders on the one hand, and the contracting entity and the builders and/or the supervisor, on the other. Overall, this issue was resolved. Indeed, the tender documents are prepared by the district engineers in collaboration with the tender committee and the law allows the recruitment of experts when necessary. If this is considered as a minor issue by the majority of our respondents, it still has an impact on the smooth running of activities, especially when the contracting entity gives instructions not included in the bidding documents to the builder later during the execution of works.

It should also be noted that some district engineers themselves are either inexperienced or caught up in other activities. Additional to this situation is the fact that the majority of the tender committee members have other primary responsibilities within their respective districts. Indeed, to date, the district has only two officials whose primary responsibility is procurement. However, as we have seen, the workload is heavy. On average, we have learned, each district awards more than 100 contracts per year.

If this workload reflects reality, it would mean that procurement officials are indeed overloaded, which

¹³ The case of Rulindo has been mentioned by one of the informants.

consequently affects the quality of the Tender Documents to prepare. In order to overcome this problem and help contract monitoring, some of our respondents wish an independent procurement unit to be established at the district level. Our informants are convinced that this change would surely have a positive impact on the contract monitoring of works.

As for us, we believe that a boomerang effect is not impossible either. While corruption exists in the infrastructure sector, it is not only the result of the interactions among procurement staff and various partners involved; it is rather the result of moral laxity and greed for unfair enrichment or the desire for easy money as already shown in the studies mentioned above. On the contrary, increasing the number of procurement officers involved in contract management is likely to expand the ranks of “the corrupt” or extend the “corruption chain”.

However, it goes without saying that the increase of the number of these officials would leave more time to monitor fieldworks. But they would need to be provided with the logistical means necessary to accomplish their mission. This increase would also improve the quality of Tender Documents if multidisciplinary teams are favored.

2.6. Corruption risks in infrastructures

Corruption appears to be cross-cutting through the various phases of the procurement process, from the identification of a company to the payment of the final invoice. However there are some elements which are particularly conducive to corruption and related practices

2.6.1 Interference of the budget administrator

Whereas the law formally forbids the budget administrator – the Executive Secretary in the case of the District – to be part of the procurement committee¹⁴, it is not uncommon for the latter to be tempted to interfere with the committee’s decisions. In most cases this intrusion is not due to the intention to ensure the quality of the procedure but is rather aimed at favouring a friend, a relative or an influential individual who is part of the competition.

In a country where the culture of respect for the “boss”, even when his interventions are against the law, still partly exists, such behaviour by a district Executive Secretary is likely to influence the decisions to be taken by the members of the management committee, of which he is the administrative and technical head. Allegations of interference by the budget administrator were mentioned by certain district officials, members of procurement committees and confirmed by

entrepreneurs. This influence has two main objectives:

- Allow a friend, relative or influential person to be awarded a contract without benefitting directly from it;
- Personally receive a “thank you fee”, in other words a bribe, from the winning entrepreneur who feels obliged to “acknowledge” the efforts of a friend who has done “anything he could” to help him win a tender or simply to keep the promise of paying him in case his bid would succeed.

If interference by the budget administrators was acknowledged by several interviewees, interference by politicians was also mentioned, though less frequently. Mayors or vice mayors would discretely ask procurement officers to favour a friend or relative in a tender; but this interference was presented as uncommon or little visible, which leads to think that technicians tend to indulge in corruption more than politicians at district level.

2.6.2 Suspicious delays in payment

Delays in payment and other delays were repeatedly mentioned as a feature of procurement. Delays which would in some cases lead to “ukwibwiriza”, or a promise made to the person who tries to “speed up” the process. Delays in payment have reached such a big extent in some institutions that some entrepreneurs no longer submit their bids. The most striking example is a construction enterprise which concluded its works in 2003 and whose last instalment has not been paid yet!¹⁵

If some delays are justified for example by the release of funds by various district partners, sometimes they may instead be deliberate in order to encourage a person to indulge in corruption. Indeed, according to our informants, corruption in infrastructures is not uncommon, to the extent that some entrepreneurs, constructors and supervisors, as well as district officials involved in contract management, have developed the habit of proposing or demanding “something”. Such categories can therefore be involved in either active or passive corruption.

According to an informant with an in-depth knowledge of public contracts, and whose arguments were alarming, this practice has been normalised to the extent that he talked about “you get what you give” situations. Almost all entrepreneurs who were interviewed do acknowledge the existence of such practices and some of them even said that 10% of the total amount is to be paid to the district procurement official or the president of the procurement committee or to any member of it in order to win a tender.

¹⁴ Article 6 of the Ministerial Order n° 001/08/10MIN of 16/01/2008 concerning the regulation of procurement and tender document types.

¹⁵ Interview with an architect, Kigali, 14/05/2012.

2.6.3 Instructions which are complementary to tender documents

It is worth reminding that the infrastructure field is highly technical and thus requires in-depth technical knowledge. Such skills are not only necessary in order to draft high-quality tender documents but also to monitor and evaluate the work once the contract is awarded. In this framework, the study shows that the country still does not have enough skilled staff in this field even though there has been progress. One of the consequences of this situation is that the tendering authority, through its procurement committee, drafts tender documents which are incomplete or vague or inappropriate. If the intervention of the district engineer in this domain has allowed to mitigate the problem, challenges remain.

On several occasions our informants have flagged the issue of tender documents which are revised or completed late during the works implementation as a way for corruption to creep in. The tender document is indeed one of the key reference documents for contract management. When it is completed with this kind of instructions after the legal deadline, it introduces additional activities or requirements which imply additional costs in terms of time and money for the entrepreneur. With a view to find an agreement among parties, the latter may therefore use illegal ways, including bribes given to one or more members of the procurement committee, to district authorities or to supervisors. This practice aims at persuading the procurement authority or other actors involved to drop or reduce the new requirements.

2.6.4 Emergence of unregulated companies

Some unregulated companies have appeared in the construction market and this encourages the increase of corruption in the infrastructure field. These companies, of which nobody knows the exact number, make contract monitoring particularly difficult.

With the only aim of surviving, some people establish their construction companies – some even more than one – without having any necessary skill. Thus legal officers, managers or sociologists establish this kind of enterprises. For an entrepreneur, such situation is not a problem as such, but the issue is that some of these companies do not feel the need to recruit skilled staff, such as civil engineers, able to provide quality products. The lack of regulations setting standards in this technical field encourages such phenomenon.

As a consequence, some of these enterprises are created but die shortly after or change their name in order to avoid controls by the Rwandan Public Procurement Authority. The

number of blacklisted enterprises shows the extent of the problem: up to May 2012, 73 companies had been blacklisted by RPPA, of which 56 due to fraud! These include curriculums vitae (CVs) used without the owner's authorisation, fake CVs or CVs belonging to people who had died long ago.

Such companies can only survive thanks to corruption and related practices, including because all efforts to create a network of construction actors have so far failed. These enterprises do not have any trust on themselves and thus their financial offers are largely underestimated, as experts in the field know. On top of this there is the principle according to which, among competitors whose offers are evaluated at the same level in technical and administrative terms, the contract is awarded to the one with the smallest budget. Indeed, due to fear of audits, procurement committees tend to award contracts to the cheapest bidder even when they believe their offer is too small to be realistic. Hence the habit of amendments (culture d'avenants): according to some of our informants, amendment are customary in public works. One of the key informants estimates that 7-8 public construction contracts out of 10 involve amendments.

All these elements mean that corruption in public works is perceived to be permanent and generalised. An in-depth study based on a more representative sample could allow to measure the extent of the problem in this specific sector.

2.7. Lack of a contract monitoring and evaluation plan

According to the law on public procurement, each procurement entity must draft an annual procurement plan indicating the objectives to be achieved (art. 6). Article 9 of the same law envisages auditing of public procurement and contract execution by the RPPA whose objective is to “ensure that such operations comply with the legal framework regulating procurement”. Moreover, article 10 of the Ministerial order 001/08/10MIN of 16/01/2008 concerning the regulation of procurement and tender document types specifies that “each tendering entity provides RPPA with a detailed monthly report. This report should indicate the progress in the execution of the procurement plan”. The legal framework includes other rules aimed at easing the monitoring of procurement processes.

However the analysis of this framework shows that the focus is on planning and execution of contracts by tendering authorities. These authorities, according to our informers, do not have any monitoring and evaluation plan in the field once the contract is awarded. They only have execution plans proposed by contractors.

This legal vacuum shows to which extent procurement entities do not pay enough attention to monitoring and evaluation of activities. Thus in the infrastructure sector most or all activities are carried out with no supervision by procurement officers. This implies negative consequences on the quality of works and could also leave room for corruption. Indeed, the lack of a monitoring plan drafted by the procurement authority, in this case the district, leaves room to “agreements” among the various actors involved. Obviously, a contract monitoring and evaluation plan could contribute to reducing corruption risks and thus increase the quality of infrastructures.

2.8. Overburdened staff in need of technical capacity building

The research shows that districts have two permanent officials in charge of procurement. The other members of procurement committees have other priorities. However, as mentioned above, each district awards 100 tenders per year on average. This is a huge task for a team of two officials. And the fact that most other members of procurement committees have other priorities have negative consequences including:

- The quality of tender documents is still an issue as the members of the procurement committee do not allocate enough time to them;
- Huge delays in the analysis of proposals and signature of contracts which affects the whole process and makes matching deadlines very challenging.

On top of this heavy work load, the study has shown an issue of technical capacity affecting the various officials involved in procurement. While the problem of incomplete technical specifications in tender documents had already been mentioned, other sectors in which some staff involved in procurement and contract management need training include:

- Contract monitoring and evaluation;
- Laws and other documents governing procurement;
- Procurement procedures;
- Negotiation.

2.9. Disproportionate bargaining power

Another common element in contract management is a disproportionate bargaining or negotiating power between the procurement authority and the consultant in favour of the first. Several of our entrepreneur informers said that they are vulnerable vis-à-vis the contract manager representing the district. This imbalance is not established by the law but is a consequence of the fact that most consultants are overly cautious in order not to annoy their clients. The example that was most often mentioned is the imposition of penalties provided for by the law when the contractor is not able to finalise the work within the deadline set by the law, even if the procurement authority is responsible for such delay. Indeed, given the limited financial capacity of most construction companies, the payment of the performance security, which is mandatory in most tenders, implies that the company has to request a credit from a bank.

It may happen that the company is not able to pay back the bank due to a delay in payment. In this case, interests grow and represent a burden only for the company. Some entrepreneurs now include these kind of issues in the contracts with the districts, but most of them prefer to avoid any action which might worsen the relationship with their powerful partner, i.e. the district. As a consequence, even the most blatant cases are not revealed, to the benefit of the district.

This imbalance and the fear to report malpractices of the procurement authority are a form of corruption. Indeed, this silence is not due to a certain conciliatory spirit, but it rather aims at flattering the client in order to “protect” the relationship between the two parties. With this attitude, constructors or other entrepreneurs do not comply with the law and envisage their future interests. They “corrupt” by omission and not by action.

This situation suggests that consultant constructors need to be sensitised in order for them to realise that a contract they have been awarded is by no means a favour but it is rather a right. And that law enforcement must be equitable on the two parties.

CONCLUSION

III

CONCLUSION

Public tenders represent a key economic activity that generates important financial transactions in public administrations. These transactions are more significant in the infrastructure sector. Due partly to their volume and complexity, public tenders and more particularly procurement processes in the infrastructure sector are most exposed to corruption risks. This is valid at both national and international levels. For this reason, contracts monitoring and evaluation in the infrastructure sector is of paramount importance to enhance transparency and fight against corruption in this juicy domain.

The present study has covered a limited number of districts and therefore its results cannot statistically aim at reflecting the national situation. However, since the contractors we have met are involved in various tenders in different districts, these results are highly indicative of monitoring practices and corruption risks in the infrastructure sector. The study shows the following key results:

- The legal framework that governs procurement is highly hostile to corruption and similar practices;
- The law is usually respected in matters related to procurement procedures mostly due to fear of future audits;
- The respect of the law is still problematic as far as contract implementation is concerned. The respect of the contract itself is also a challenge;
- There is an imbalance in bargaining power between the procuring entity and the successful bidder in favor of the former. This imbalance nurtures corruption;
- The daily works supervision provided for by the law is not necessarily done;
- Due to logistical and budget constraints, the supervising officials from the district spend days without visiting the works;
- Corruption in the infrastructure sector is not uncommon;
- The involvement of different people in the supervision of the works sometimes favors the “chain of corruption”;
- The supervision of the works is sometimes done by people who do not have the necessary technical capacity to approve the works;
- There are excessive payment delays. While some of them are justified, others are not and thus considered to be suspect. In this case, delays in payment may be intended to leave room for corruption;
- At the district level, technicians are perceived to indulge more in corruption than politicians;
- Due to insufficient technical capacity, some tender documents lack the necessary technical specifications;
- It is acknowledged that the quality of tender documents has progressively improved. However, additional instructions provided after the legal deadline to complement the tender documents are still reported;
- There is a proliferation of unskilled construction companies. This increases corruption in the infrastructure sector;
- To date, there are no standards for the qualification of construction companies, which contributes to creating disorder in this sector.

Recommendations related to these results are formulated in terms of future actions in the action plan (annex 1).

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IV

KEY REFERENCES

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Ministerial Order n° 001/08/10/MIN of 16/01/2008 establishing regulations on public procurement and standard bidding documents

CONTRACT MONITORING IN THE INFRASTRUCTURE SECTOR AT THE DISTRICT LEVEL

Annex 1: ACTION PLAN 2013-2015

Objective 1. To improve the capacity of the procurement stakeholders

| Key gaps/constraints identified | Possible actions | Lead institution | Target in time |
|---|---|---------------------------|----------------|
| Incompetent construction companies | <ul style="list-style-type: none"> Construction companies networking & coordination: regulatory body Networking Advocacy to practitioners & the public; Code of conduct for construction practitioners | Constructors' association | 2013 |
| Insufficient technical knowledge of people involved in contract management | <ul style="list-style-type: none"> Capacity needs assessment Coaching & mentoring sessions | RPPA | 2013-2014 |
| Insufficient knowledge of the laws by contractors | <ul style="list-style-type: none"> Help desk on procurement and contractual legal advice Training on relevant laws (Coalition members & contractors); Production and distribution of a user friendly manual on procurement and contract monitoring procedures & issues | RPPA | 2013-2015 |
| Insufficient technical specifications in the tender documents | <ul style="list-style-type: none"> Advocacy for the involvement of professionals in the preparation of tender documents and validation of these documents in an experts meeting before their publication (involving the coalition members) | TI Rwanda | 2013-2014 |
| Additional instructions provided after the legal deadline is expired to complement the tender documents | <ul style="list-style-type: none"> Idem | TI Rwanda | 2013-2014 |
| Limited financial capacity of construction companies | <ul style="list-style-type: none"> Not in the capacity of the coalition | N/A | N/A |
| Most members of tender committees have other priority responsibilities | <ul style="list-style-type: none"> Advocacy for a directorate of procurement at the district | RALGA | 2013 |
| A heavy work load for contract managers (in charge of procurement officers) | <ul style="list-style-type: none"> Idem Advocacy for work load reduction for the members of the Internal Tender Committee | RALGA | 2013 |

Objective 2. To strengthen the legal and institutional framework for contract management

| Key gaps/constraints identified | Possible actions | Lead institution | Target in time |
|---|---|---------------------------|----------------|
| Lack of standards and legal requirements for construction companies qualification | <ul style="list-style-type: none"> • Advocacy for companies classification based on their capacity (technical, financial, skills and experience); • Sensitization campaigns on the importance of classification/ categorization of construction companies | Constructors' association | 2013 |
| Lack of reporting mechanism for corruption risks and practices | <ul style="list-style-type: none"> • Suggestion boxes • Toll free numbers • Sensitization campaigns on ALAC presence in districts | TI Rwanda | 2013-2014 |

Objective 3: To fight corruption risks and practices in procurement procedures and contract management

| Key gaps/constraints identified | Possible actions | Lead institution | Target in time |
|---|---|------------------|----------------|
| Interference of the district authorities in the process of contract awarding and management | <ul style="list-style-type: none"> • Law enforcement advocacy campaign; • Monitoring through Integrity Pact | TI Rwanda | 2013 |
| Normalization or acceptance of the presence of corruption in the infrastructure sector | <ul style="list-style-type: none"> • Sensitization sessions for contractors & procurement officers; • Increase transparency in public contracts through the Integrity Pact tool | TI Rwanda | 2013-2015 |
| Delays in payment | <ul style="list-style-type: none"> • Encouraging dialogue between the district, funding institutions & contractors; • Advocacy for a balanced contract | RPPA & TI Rwanda | 2013 |

Objective 4: To improve the quality of contract management at the district level

| Key gaps/constraints identified | Possible actions | Lead institution | Target in time |
|---|--|--|----------------|
| Lack of a comprehensive baseline information on corruption and contract management in the infrastructure sector | <ul style="list-style-type: none"> • Conducting a full baseline survey on procurement practices and contract monitoring in the infrastructure sector | RPPA & TI Rwanda | 2012 |
| Poor contract supervision | <ul style="list-style-type: none"> • Training workshop on best practices at international level on contract supervision in the infrastructure sector | Constructors' association | 2013-2014 |
| Lack of a contract monitoring tool at the district level | <ul style="list-style-type: none"> • Development of a contract monitoring tool | Districts, Coalition members & Contractors | 2013 |
| Imbalance of bargaining power between the procuring entity and the contractor | <ul style="list-style-type: none"> • Advocacy for a balanced contract | TI Rwanda | 2013-2015 |
| Delays | <ul style="list-style-type: none"> • Encouraging dialogue between the district, funding institutions & contractors; • Advocacy for a balanced contract | RPPA & TI Rwanda | 2013 |
| Irregular visits of works by the procuring entity | <ul style="list-style-type: none"> • Advocacy for more logistical and financial facilities for procurement services | RALGA | 2013-2015 |

Annex 2: INTERVIEW AND CONSULTATIVE MEETINGS' GUIDE

The coalition, under the leadership of Transparency International Rwanda, is conducting a situation analysis study of the current status of contracting and contract monitoring in the infrastructure sector in Rwanda. For this purpose, and in addition to information from desk review and administrative records, individual and group discussions will cover the following key themes:

- Understanding of the procedures and legal provisions on procurement;
- Assessment of the capacity to prepare tender documents by procurement officers;
- Extent to which tender documents and information are accessible;
- Importance of cases appeal related to contracts in the infrastructures sector;
- Compliance of contracts practice with existing laws and instruments in the infrastructures sector;
- Level of respect of procedures in the infrastructures sector;
- Respect of provisions of contracts in the infrastructures sector;
- Phases with more loopholes throughout the contract process;
- Identification of weaknesses in existing laws and regulations on procurement;
- Risks of corruption in the infrastructure sector;
- Obstacles to effective contracts monitoring in the infrastructure sector;
- Suggestions to improve the quality of contract management in the infrastructure sector.



PICTORIAL OF THE QUICK WIN PROJECT



From Right to Left: Mr. Gatsinzi Justine, 1st Vice Chairman, TI-RW, Mr. Karake Théogène, Secretary General, RALGA & Mr. Apollinaire Mupiganyi, Executive Director, TI-RW during the opening remarks in the launching event of the report.



Dr. Aggée Shyaka Mugabe, presenting the findings of the research - Situation analysis in contract monitoring in the Infrastructure sector at the district level in Rwanda.



From Right to Left: Engineer Eudes Kayumba, RAA representative, Mr. Gerard Mukubu, PSF representative and Mr. Théoneste Hitimana, representative of RPPA, discussing with the participants on the challenges highlighted in the report.



Mr. Paul Mubiligi, Chairman of AEBTP giving his opinion on the challenges and recommendations of the report.



Participants from the private sector and civil society organizations listening to the presentation of the research findings.



Participants from the private sector and civil society organizations listening to the presentation of the research findings.

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