

Compliance with Record-keeping Regulatory Standards in Public Procurement in Uganda: Performance Challenges and Strategic Measures for Improvement

Fred Alinda and Geoffrey Mugisa
Uganda Management Institute, Kampala Uganda

Abstract

Record-keeping is widely underscored for its crucial role in enhancing transparency, accountability, fostering procurement audits, identifying performance gaps and ultimately improving the delivery of public services. In Uganda, record-keeping in public procurements is highly emphasized and institutionalized. The Public Procurement and Disposal of Assets (PPDA) Act of 2003 and the Local Government Procurement and Disposal of Assets Regulations of 2006 define a regulatory framework for public procurements with the PPDA Authority providing regulatory oversight. The target is to realize 100 percent compliance with record-keeping standards. The accounting officers and the PPDA Authority are charged with the responsibility of ensuring that this target is met. Capacity building has been instituted and continues to be implemented as a key strategic measure to enhance compliance. The Authority conducts periodic compliance assessments to ascertain compliance with the desired regulatory standards inclusive of record-keeping. Availability and completeness of records indicates transparency in public procurements and also determines performance on other indicators that detect adherence to procurement principles of accountability and value for money. Drawing from literature, this article presents an overview on the trend of compliance with record-keeping standards, vis-a-vis the measures implemented to enhance compliance. From this, the authors establish a persistent and deteriorating state of non-compliance with record-keeping regulatory standards in public procurements over the 2009-2012 period. Non-compliance persists despite the remarkable efforts to build capacity for compliance in the Procurement and Disposing Entities (PDEs). It raises concern over the relevance and quality of training provided to stakeholders. Drawing insights from the Human Capital, Principal Agent and Institutional theories, the authors provide a theoretical perspective in an attempt to account for this persistent non-compliance. Based on the theoretical underpinnings, the study opens insight into critical factors which can be further investigated in an attempt to create a precise account of non-compliance with procurement regulations, particularly with regard to record-keeping standards that are worst affected.

Key words: Record keeping, Regulatory standards, Compliance, Public procurements

Introduction

Record-keeping is widely underscored for its crucial role in enhancing transparency, accountability, fostering procurement audits, identifying performance gaps and ultimately improving the delivery of public services. In Uganda, though record-keeping in public procurements is highly emphasized and institutionalized, compliance with the regulatory standards remains low. This article establishes the prevailing gaps in non-compliance with record-keeping regulatory standards and identifies a way forward to enhance compliance.

The article is based on a review of relevant documents including the Public Procurement and Disposal of Assets Act (2003) and Regulations of Uganda, Compliance assessment reports for the period between 2008 and 2012 and scholarly articles on record management, particularly those providing insights into the record management challenges and factors at play.

In this section, we first present a brief highlight on the relevance of keeping records of public procurements and highlight the regulatory framework for record-keeping in public procurements in Uganda. In section two, we present the prevailing status of non-compliance with record-keeping regulatory standards in the 2009-2012 period. We compare the status with that in other public service or government departments in Uganda, drawing from available literature. We also present a brief highlight on PPDA's progress with capacity building as a key measure to enhance compliance with procurement regulatory standards. In section three, we explore various theoretical underpinnings, opening insights into factors likely to influence compliance with regulatory standards in public procurements. The last section presents conclusions and recommendations.

The relevance of record-keeping in delivery of public services

Record-management entails creation, preservation and maintenance to disposal of records (Venter, 2004). Record-keeping has been underscored for its huge relevance in management, ensuring transparency and accountability in public procurements that contributes magnificently to improved delivery of public services. Michael (2009) considers records quite essential for preserving the history and activities of an organization necessary for decision-making in the management of service delivery. De Wet and DuToit (2000) consider record-keeping as a strategic management function to all procurement entities. According to Ngoepe (2008) and Lowell (1994), effective procurement record management enables assessment of public procurement performance for improved decision-making and delivery of services in an accountable and transparent manner. Consistently, Fust and Graf (2002) consider record management as the foundation for ensuring accountability in the delivery of public services.

Regulatory framework for record-keeping in public procurements in Uganda

With strong government commitment to improving the delivery of public services, record-keeping has not only been institutionalized in Uganda's public procurements but also attracted political attention. The PPDA Act requires all public procurement be conducted in accordance with the principles of transparency, accountability and fairness and in a manner that maximizes competition and achieves value for money. The Act and respective Regulations (Section 56 of this Act, Regulations 90–91 of PPDA regulation, Regulation 46 of the Local Government PPDA Regulations and Guidelines 8-10 of the Local Government PPDA Guidelines, 2008) underscore the need to keep records to desired standards in a bid to enhance transparency in public procurements (PPDA, 2003). The target is to realize 100 percent compliance with record-keeping regulatory standards (PPDA, 2008; PPDA, 2012). This target and overall commitment to record-keeping has been recently emphasized by the former Prime Minister, Mr. Amama Mbabazi, while officiating at the public procurement symposium organized by PPDA in 2012.

Mr Amama Mbabazi observed that records have been a basis for identifying that; only 27% of the public procurements in Uganda are executed in full adherence to the Law, 48% of the contracts are not completed on time while a competitive tender is completed in 11 months than the desired 5months (PPDA, 2012).

All documents relating to the procurement and disposal activities are required to be kept using standard formats provided by the authority (PPDA). The documents expected on record for any public disposal entity (PDE) are: evaluation reports and contracts management including local purchasing orders, contracts implementation plans, delivery notes and payment receipts. The entire approach to record-keeping and evaluating performance on this aspect is embedded in the Procurement Performance Measurement system (PPMS) that was institutionalized in 2008 as a key performance measurement and management tool used for internal and external assessment procurement performance in PDEs. The PPS tool gathers information to ascertain the performance of the public procurement system in Uganda and to facilitate the preparation of reports to various stakeholders upon which actions and funding can be targeted towards the key areas identified deficient or necessitating additional support. Accounting officers and the PPDA Authority are charged with the responsibility of ensuring that this target is met, while PPDA is expected to provide overall compliance oversight (PPDA, 2008).

Status on compliance with record-keeping regulatory standards

Records tend to be kept in a substandard manner, i.e. in violation of the set regulatory standards despite institutionalization of regulatory standards and compliance enhancement measures. Statistics evidence that poor record-keeping has remained persistent since 2008, estimated at an average of 24 percent over the period 2008-2012 (PPDA, 2012) as evidenced in figure 1.

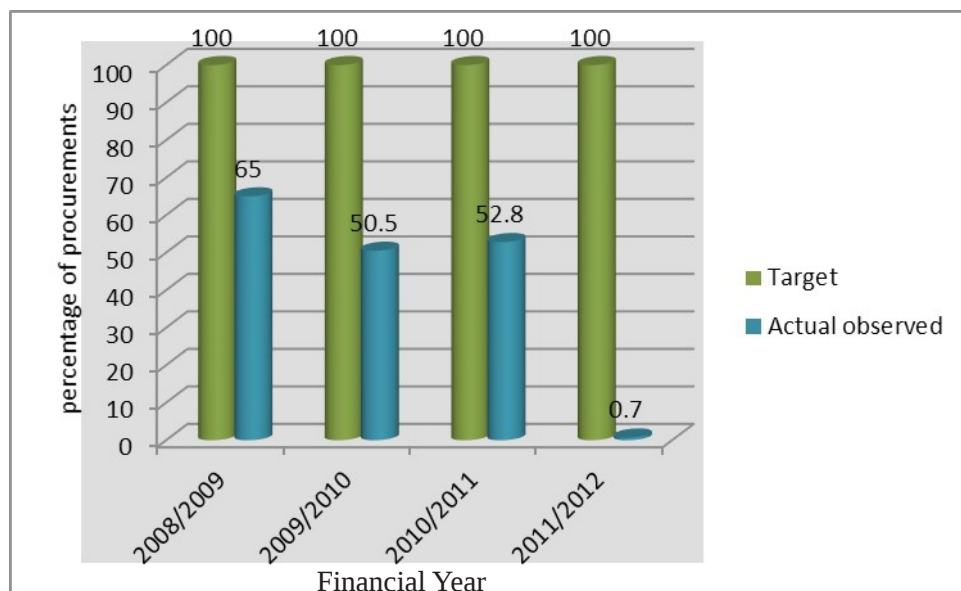


Figure 1: Procurement performance on record-keeping between the period 2008-2012
Source (PPDA Compliance Assessment Reports, 2008-2012).

Generally, the trend in the performance of PDEs with regard to record-keeping indicates a remarkable decline over the 2009-2012 period. Notably, no attempt has been made to investigate such poor performance. We attempted to scan deeper into this poor state of record-keeping.

Procurements amounting to Ugs 114 billion (28.5%) of the sampled procurement files had incomplete procurement files. 51% did not have record of bid receipt and bid opening, 48% lacked and approved evaluation report, 52% lacked record of Contracts Committee award decision, 57% lacked record of the contract document and 68% lacked record of Contract Implementation Plan (PPDA, 2010).

Records observed to be missing quite often include: records of evaluation reports and contracts management including local purchasing orders, contracts implementation plans, delivery notes and payment receipts. In many cases, records are either scattered on separate files or are kept in different departments of the Procurement and Disposal Entities (PDEs) other than the Procurement and Disposal Units (PDUs). Quite often too, Entities do not use the standard procurement reference numbers provided in Local Government Guideline (PPDA, 2009; 2010; 2011; 2012).

It is worth noting that this state of poor performance in recording has remained as is while performance of public procurements has generally increased by 11 percent in Local Government PDEs and has remained remarkably higher in other performance aspects in the period between 2009 and 2012. Lack of records ideally implies that irregularities particularly in evaluation methodology, award and management of contracts cannot be traced. For example, the assessment of procurement compliance for the FY 2009/2010, established that compliance with the prescribed evaluation methodology and the disclosed evaluation criteria was low; only 60 percent of the sampled contracts applied the prescribed evaluation methodology and 50 percent applied the disclosed evaluation criteria implying a low level of transparency and competition. The record-keeping challenge in Uganda calls for innovative measures to be addressed which should, however, be informed by a clear understanding of barriers to effective record-keeping in specific contexts.

Strategic measures by PPDA towards enhancing compliance with record-keeping regulatory standards

As a strategic measure to enhance compliance, Government sets to reward good procurement performance and sanction poor performance. Innovations such as e-procurement are called for to address the challenges likely to impede the achievement of procurement results (PPDA, 2012). In addition, periodic capacity building has been and continues to be implemented in all PDEs as mandated under section 9 of the PPDA Act 2003 and guided by the capacity building strategy (PPDA, 2004). Figure 2 presents a summary of progress made in training procurement stakeholders over the 2007-2012 period.

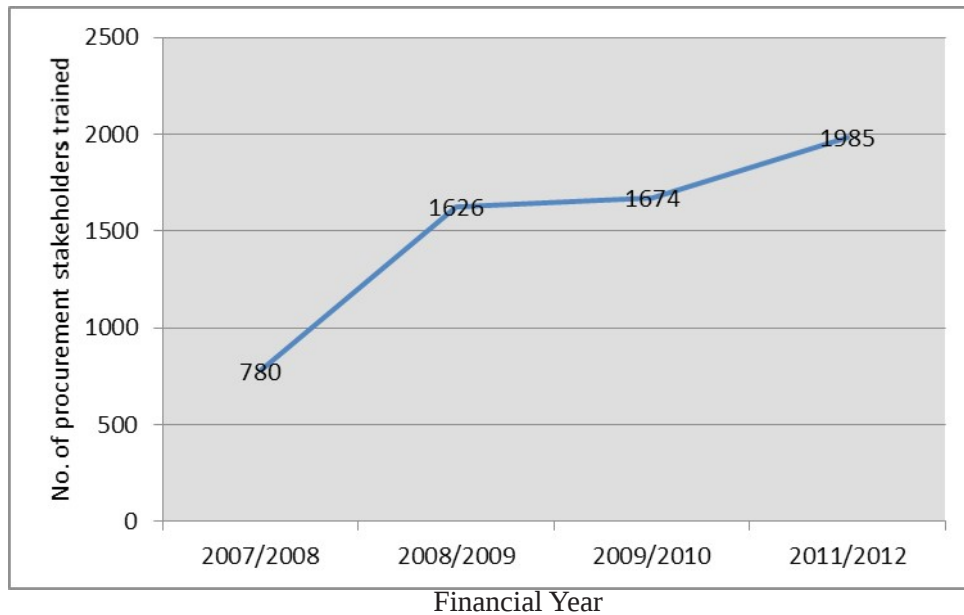


Figure 2: Training to procurement stakeholders over the period 2007-2012
Source: (PPDA Compliance Assessment Reports, 2008-2012)

As indicated in the Figure 2 above, the training of procurement stakeholders more than doubled between 2007 and 2012. This, however, has not translated into improved compliance with record-keeping regulatory standards in public procurements. The next section evidences the prevailing state of record-keeping irregularities in public procurements.

This state of record-keeping in public procurements compares consistently with the state in many other public service or government departments, including the judiciary, police and lands reported by Tumusiime (2003) and Musonye (2011). Poor record-keeping was observed in these departments featuring missing documents, lack of filing systems for some categories of documents and scattered records. In the police, for example, records were observed being kept in a sack. In an attempt to account for this poor record-keeping, the challenges of limited storage facilities and lack of computerized filing system (Olupot, 2003) were reported. In the Lands Department, many land documents were in a tattered condition which caused disappearance of land information. Musonye (2011) considers such state of poor record-keeping practices a key impediment to transparency and accountability in Uganda.

Poor record-keeping has also consistently been condemned as a key challenge to enhancing transparency and accountability in other countries. For example, Venter (2004) established the status of record-keeping in government departments in South Africa to be poor limiting conduct of audit trials, accountability and transparency. In Kenya, Patrick (2010) observed that records in all the provinces were in disarray, a potential cause of delays in public service delivery (PPOA, 2010). Similar challenges were identified in public procurement records management in Kenya's National Treasury (Lusuli & Gladys, 2014). Consistently, the World Bank holds poor public procurement record-keeping systems partly responsible for corruption practices and lack of accountability (OECD, 2005).

Theoretical framework for understanding non-compliance with procurement regulations

It is apparent that the training provided by PPDA has not yielded the needed results in as far as compliance with record-keeping regulatory standards is concerned. This raises a big concern on the relevancy and quality of training provided to stakeholders. In the latter case, the biggest question is whether training is relevant to improving compliance with regulatory standards in public procurements. In this section, we provide the theoretical perspectives in an attempt to answer this question. We I also look at the other side of the coin. Relevance of the training can further be explored from the perspectives of the primary training beneficiaries. The quality of training can be explored in this manner too. On the other hand, we consider alternative theories that open insight into the understanding of possible compliance factors. These include the Human Resources Capacity theory, The Principal Agent Theory and the Institutional Theory.

To answer this question, we explore the relevance of training in improving compliance with the procurement regulatory standards. We employ the human capital theory by Becker (1962) who views training as an investment that raises expected future productivity but at a cost. Armstrong (2008) considers continuous employee training quite essential for the improvement of the level of the employee's competence which is a standard requirement for an individual to properly perform a specific job. Competence includes a combination of skills, knowledge and behaviour used to improve performance. Basheka and Mugabira (2008) consider the need to improve the limited professionalism in public procurements in Uganda. Millerson (1964) characterizes professionalism by skill base, theoretical knowledge and level of integrity. These determine the ability to perform some specific behavioural task or the ability to perform some specific cognitive process that is related to some particular task (Peterson and Van Fleet, 2004). This theory opens insight into the relevance of adequate capacity (staff competence) in enhancing compliance with procurement regulatory standards and suggests the need to invest in training to build employee competence and performance. In support of this theory, training would boost professionalism in public procurements which, according to Basheka and Mugabira (2008) is quite essential but limited in Uganda's public procurements. In another dimension but also a quite similar perspective, competence building is bound to raise stakeholders' familiarity with the regulations, which as previous studies (e.g. De Boer and Telgen, 2006; Eyaa and Nagitta, 2011) suggest, enhances compliance with procurement regulations.

Thinking through alternative theories that could explain non-compliance with record-keeping regulatory standards, we consider the "principal agent theory" by Health and Norman (2004) and the "institutional theory" (Lowell, 1994). The first theory developed by economists deals with situations in which the principal is in a position to induce the agent to perform some tasks in the principal's interest, but not necessarily in the agent's interest (Health & Norman, 2004). Donahue (1989) explains that procurement managers including all public servants concerned with public procurement must play the agent role. As cited by Krawiec (2003), compliance may represent a principal-agent problem. When compliance is forced, dissonance is created between their cognition (Festinger, 1957. This theory suggests that compliance with procurement regulatory standards, including contract award and management, may not appear in the interests of the concerned stakeholders. This may be due to either negative attitudes or

perceptions about the regulations per se or the tasks they engage in with a view to complying. If this is proven so, it would necessitate building positive attitudes and perceptions of the stakeholders with regard to compliance with the regulatory standards.

The institutional theory emphasizes the rule of law and sanctions as potential enforcement mechanism while recognizing the potential effect of cultural norms and values to enhance compliance with record-keeping in public procurements. According to Scott (2003), institutions are composed of cultural-cognitive and regulative elements that together with associated activities and resources give meaning to life. The author explains the three pillars of institutions as regulatory (policy), normative and cultural cognitive. The regulatory (policy) pillar emphasizes the use of rules, laws and sanctions as an enforcement mechanism with emphasis on compliance. The normative pillar refers to norms, i.e. how things should be done and the values preferred. The cultural pillar rests on shared understanding. Deriving from the three pillars explaining non-compliance with record-keeping regulatory standards will necessitate testing; (i) the extent of implementation and effectiveness of compliance performance incentives or sanctions and; (ii) the agents' culture, i.e. attitudes, values and perceptions towards compliance with the regulatory standards vis-a-vis the desired standard culture on performance in the procurement entities.

Conclusion and recommendations

Records play a crucial role in the operations of any organization since they enhance transparency and accountability which is mostly lacking yet required in public entities. In Uganda, poor record-keeping has remained persistent in public procurements since 2008, estimated at only 24 percent over the 2008-2012 period. The presentation evidences persistent poor record-keeping in public procurements, a state similar to record-keeping experiences in other government departments in Uganda as well other countries. Poor record-keeping generally features careless handling of recorded information, inadequate filing system and missing records, data and documentation relating to some procurement. These findings not only evidence the challenge of poor record-keeping in government departments but also emphasize its negative impact on transparency, accountability and service delivery. This anomaly compromises accountability, transparency and public service delivery in Uganda, and has also been observed in other countries.

The status of non-compliance with record-keeping regulatory standards prevails despite the existing measures to enhance compliance. The measures include the huge political commitment, existence of regulatory standards, monitoring and capacity building support to PDEs. Further research is needed to create a precise understanding of the factors contributing to non-compliance with procurement regulations particularly in the area of record-keeping standards that is worst affected. The "principal agent theory" and the "institutional theory" provide useful insights which can be applied to further understand the challenges. Focus should be on capacity factors as well as institutional challenges which are theoretically proven to affect non-compliance with regulatory standards in public procurements. Findings could subsequently inform measures to enhance compliance with desired record-keeping standards in public procurements that is quite paramount to enhance transparency, foster procurement audits, identify performance gaps and, ultimately, improve delivery of public services in Uganda.

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