

UNABCEC – UACE JOINT STATEMENT ON FAIR BUSINESS PRACTICES IN PUBLIC INFRASTRUCTURE PROCUREMENT

INTRODUCTION

The private sector of the Construction Industry consists of two sub-sectors:

1. **The Physical Construction** comprised of **Contractors** represented by **Uganda National Association of Building and Civil Engineering Contractors (UNABCEC)**
2. **Engineering design and Supervision services** comprised of **Consulting Engineers** represented by **Uganda Association of Consulting Engineers (UACE)**

Uganda National Association of Building and Civil Engineering Contractors (UNABCEC) is a 28-year-old non-profit, non-political, member-driven Association that brings together over **356 genuine** players in the Ugandan Construction Contracting Sector.

UNABCEC represents her members' interests through Lobbying, Policy Advocacy & Representation; Education and Training; Networking and Collaborations; Promoting fair and ethical business practices; and running Construction Development Programs.

Uganda Association of Consulting Engineers (UACE) is an umbrella body bringing together practitioners in the consulting engineering sector which forms part of the broader construction industry in Uganda. The UACE prides on a membership of 35 entities composed of both consulting firms and individuals. UACE Members are engaged and have specialized in various consulting engineering disciplines in the construction sector including:

- Civil Engineering,
- Environmental Engineering,
- Mechanical Engineering,
- Electrical Engineering,
- Energy, and
- Agricultural Engineering

Globally, UACE represents the International Federation of Consulting Engineers (FIDIC) in Uganda. UACE is also a member of FIDIC-Africa, a regional FIDIC grouping of national member associations in Africa. The mission of UACE is "To develop and promote the local consulting engineering industry in Uganda to internationally accepted standards."

UACE runs pieces of training, seminars and luncheons with guest speakers covering topics of interest to its members and the general public, networks with other national associations of consulting engineers in Africa and worldwide and lobbies government, international lending agencies, donors, FIDIC, and the private sector on matters of interest to the industry.

LIMITATIONS OF PRIVATE SECTOR PARTICIPATION IN PUBLIC INFRASTRUCTURE PROCUREMENT

Over the last 25 years when the development and maintenance of the national road network has been a shared responsibility of the public (in form of funding) and private sector (in form of execution), the Local Construction Industry has been and continues to be dominated by foreign firms. This has seen all the profits accruing from the construction projects being repatriated at the expense local investments.

100% of all development contracts and 99% of rehabilitation projects where more than 80% of the sector's budget is allocated are executed by foreign providers.

In 2017, Guidelines on Preference and Reservation Schemes were issued to place priority on employment of Ugandans, procurement of Ugandan Companies and use of local goods in undertakings where public funds are being used. The same guidelines granted priority of subcontracting a portion of the contract won by a foreign company to a suitably Ugandan company. Whereas the government is desirous at boosting private sector participation in public procurement through such initiatives, astonishingly after close to four (4) years, it still is very hard for someone to recount how successful the policy has been in realising its intended objective.

Among the factors that have kept the local private sector participation in public infrastructure procurement at undesirable levels and far from being realised include;

1. Lack of robust guidelines for effective implementation of local content policy

Whereas every policy requires guidelines to operationalize it, the current guidelines are still not robust enough to effectively guide its implementation and evaluation;

- i. The guidelines on reservation and preference schemes passed in March 2017, introduced a mandatory subcontracting requirement on all public works to national providers. With its amendment in February 2018 (before its implementation) that introduced a Resident Provider- a foreign firm incorporated in Uganda for a period of two (2) years, it effectively watered-down the effort of the local content policy. With the amended guideline as is, national contractors are left to compete with Resident Providers with high financial strength and technical capabilities owing to the support from their countries of origin.

- ii. The reservation guideline on 30% subcontracting was left to be interpreted by different Procurement and Disposal Entities (PDEs) nor are there existing frameworks to monitor its implementation. No clear guideline notes exist in the standard bidding documents to guide its implementation. For instance, in the Employer's requirements, there is no mention on the type of works to be carried out by subcontractors, and no clear guideline on selection criteria of subcontractors. Thus, the construction industry continues to be heavily polarized with all development projects gravitating to the foreign providers leaving inconsequential assignments to the national providers. This has significant and far reaching implications to the country's retention capacity that has been seen to remain in low levels.

- iii. Construction Contractors, particularly the national providers continue to face a dilemma in complying with the bid requirements that require annual turnover and works of similar nature that is twice/ or thrice the works being procured as it is being practiced by most PDEs. The guideline on preference and reservation schemes sets a threshold on road works of below 45 Billion and 10Billion for other works to be reserved for local providers. We have however witnessed PDEs align the bid qualifications requirements for the works below this set threshold to favour foreign or indigenized providers. Such a scenario continues to retard the development of national providers and only promotes foreign and/or "Indigenized Foreign Firms", briefcase companies and forgeries in the industry.

In addition, the threshold of 1Billion Uganda shillings provided for is very low for Consultancies in the Construction Sector. This creates an

unfair competition ground with foreign companies for services that Local Consultants can ably perform and deliver.

Team requirements for consulting engineers are too high which in turn disqualifies most National Providers. The required experience of 15years plus for Resident Engineer, Measurement Engineer, Soils/Materials Engineer should be adjusted accordingly.

2. High cost on financing. Credit lines for local firms are expensive (due to high interest rates on borrowing) which makes it difficult for them to favourably compete with foreign providers whose governments provide subsidies and other forms of support. Consequently, the country is unable to develop a minimum threshold of competent national expertise for construction, operation and maintenance of the national infrastructure. Due to such capacity limitations, over 80% of civil works contracts in Uganda are still undertaken by foreign road construction companies and a big portion of the road construction requirements are imported. In the FY2019/20 (UNRA Report), only 17% of the value of all works contracts were allocated to both national and resident providers.

3. Lack of comprehensive programs for Contractors' development; There is lack of comprehensive programs and tools to assist in contractors' development in terms of, inter alia, assessments, trainings and mentoring. Despite government efforts to grow domestic capacities in the industry, the Law remains "convenient" to large foreign contractors. Although the recent amendments to the Procurement law have recognized the need for application of margin of preference for national contractors, the limited requisite capacities of national contractors in terms of equipment resources, personnel/management resources, financial resources and the reluctance of

procuring entities to package their procurement requirements to match with the small capacities of national contractors have rendered the provisions of the law redundant and unexploited.

4. **Lengthy procurement cycle** from Expression of Interest to the signing of the contract. This results in fluctuations of currency, especially if the contract is in Uganda Shillings. Creates difficulty in keeping project teams intact and exclusive.
5. **Delayed payments** for services rendered. This has been a major challenge by most of our members involved in Government projects. Some companies have not been paid up to 12 months. This can potentially run a firm into bankruptcy. As these payments delay most companies are faced with the accumulation of tax penalties.

THE ROLE OF GOVERNMENT

It's therefore important for government to urgently address a number of shortcomings in order to introduce and run effective national provider development programs that promote sustainable construction industry including;

1. Entrench the national reservation scheme with exclusive thresholds in procurement of works; Shs15 billion for all roads and bridge works and Shs10 billion for all other works be given to national providers, Shs15 billion to Shs45 billion for all road and bridge works and Shs10 billion to Shs15 billion for all other works be given to both national and resident providers. We propose that the threshold for Consultancy services in construction be increased to Shs15 Billion.
2. Establish a construction industry development fund at Uganda Development Bank. The cost of financing capital currently is over 20%. This is neither

affordable nor sustainable for local content policy. Local service providers accessing financing at such a cost cannot compete with foreign providers who access similar financing at a low cost from their countries of origin. Government should establish a Construction Industry Development Fund in Uganda Development Bank that would offer fair and affordable financing at interest rate of say 7 – 12% P.a. The fund should be dedicated towards the development of the local construction industry and support the economic empowerment of national providers undertaking government projects.

3. The regulatory body (PPDA) should issue guidelines to all Procuring and Disposal Entities (PDEs) on fair determination of bid qualification requirements of average annual turnover and works of similar nature on previously executed projects (under the reservation threshold). Our proposal is that this should be at minimum 0.5 (half) and at maximum not exceeding the estimated value of works being procured.

We also propose that the requirement of team experience be revised from 15 to 8 years; this will help build experience for most of the qualified Engineering Consultants. Focus can be made on competence and not necessarily age.

4. Public Procurement and Disposal of Public Assets Authority (PPDA) should come clear and guide on the definition of a “National Provider & Resident Provider”. A Nation Provider should mean a provider/ company wholly owned by Ugandan Citizen(s) and a Resident Provider should mean a provider-owned or controlled by non-citizens of Uganda who have residence status in Uganda with prerequisite permission to work in Uganda. A resident provider may be a company, joint venture, partnership, association or consortium not wholly-owned by Ugandan citizens but incorporated in Uganda and has been operational in Uganda for at least ten years at the time of submission of a bid,

with demonstrated evidence of doing business and complying with relevant statutory obligations including taxes, NSSF, licencing and compliance with standards.

5. Government should develop a specific National Contractors Development Plan to improve the national provider performance in the identified development areas which allocates resources and monitors progress in relation to improved performance; For instance, Initiation of a 10-year strategic programme with total of 1,850km as an Affirmative Road Development Pilot Projects to deliberately address the critical need for national paved roads construction providers, and impact to stimulate further investment in equipment and human resource assets for national contractors or Initiate Four batch of roads totalling to 600km to be executed by using the concept of technology transfer by management contracting Ugandan citizen companies as they build their capacities.
6. As it is now there is no entity responsible for local content monitoring. We urge government through the Ministry of Finance, Planning and Economic Development or Public Procurement and Disposal of Public Assets Authority (PPDA) to take charge and provide guidelines or elect an entity or department within the Ministry/Authority that will be in charge of monitoring and evaluating the implementation of Local content
7. We request for provision of charging interest on delayed payments in all contracts as this will help curb this vice that has greatly affected our business.
8. It is also important that government establishes mandatory placement of graduate interns to enable transfer of skills to Ugandan youth by all construction companies operating in Uganda.

CONCLUSION

With increased domestic participation in the Public Procurement and in particular construction industry, we believe this will go a long way in ensuring potential turnaround of the Uganda's economy. We consider that this is not a focus against foreigners, nor xenophobic tendencies. Promoting domestic construction participation should be seriously considered as a truly rewarding economic measure, meant to help develop the local economy through employment creation and foreign exchange retention.

Signed

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