



OPENNESS 4 COVID-19 RESPONSE AND RECOVERY

TOOLKIT FOR INVESTIGATIVE JOURNALISTS
REPORTING ON PUBLIC PROCUREMENT IN KENYA



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1

BACKGROUND

Transparency International Kenya (TI-Kenya) is implementing an Investigative Journalism Grant under the Openness 4 Covid-19 Response and Recovery Project supported by Hivos. The project seeks to enhance journalists understanding of their investigation and reporting on procurement related corruption in the allocation and utilisation of COVID-19 funds through a gender lens.

Media is a public watchdog and provides information on how the government delivers its mandate to the public and use of public resources. As such, it is important that they not only understand the role and workings of government, but also have at their disposal knowledge on the important role of public procurement processes in enabling accountable use of public resources.

As a journalist or media professional, it is important to understand public procurement in Kenya to effectively report on issues related to government spending, accountability, and transparency. This toolkit aims to provide journalists and media professionals with the knowledge and resources needed to report accurately and comprehensively on public procurement in Kenya. It provides guidance on understanding key concepts, accessing relevant information, conducting investigative research, and producing high-quality reports backed by evidence, that promote transparency and accountability. By using this toolkit, journalists can contribute to informed public discourse and hold public officials accountable for the management of public funds.

Public Procurement means the acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other contractual means of any type of works, assets, services or goods and includes advisory, planning and processing in the supply chain system, by procuring entities using public funds. A procuring entity is a public institution making an acquisition or asset disposal.

Journalists like many others are always working with incomplete information that comes from disconnected databases. Know your procurement to know what to ask for/investigate.

2.1 PROCUREMENT LAWS AND REGULATIONS IN KENYA

Kenya's legal framework on public procurement, inter alia, includes:

- Constitution of Kenya (2010)¹ – Chapter 12 with provisions on the principles of public finance. Article 227 providing for procurement of public goods and services with a requirement for public entity engaging in procurement to do so in accordance with a system that is fair equitable, transparent, competitive and cost-effective;
- The Public Procurement and Asset Disposal Act, 2015 (PPAD Act)² - Provides procedures for efficient public procurement and assets disposal by public entities. The Act defines the persons to perform specific roles in relation to procurement (who), how the roles are exercised (process/procedure) and the timelines for various steps in the process (when).

¹ <http://kenyalaw.org/lex/actview.xql?actid=Const2010>

² <https://ppra.go.ke/ppda/>

- The Public Procurement and Asset Disposal Regulations, 2020³ - The purpose of the Regulations is to operationalize the Public Procurement and Asset Disposal Act, 2015, on the coordination of procurement and disposal procedures by procuring entities.
- National Public Procurement and Asset Disposal Policy⁴ – The policy spells out guidelines to govern the Public Procurement and Asset Disposal system in areas of procurement planning, procurement processing, inventory and asset management, disposal of assets and contract management geared towards achieving value for money and promote good governance in the public procurement system.
- Public Private Partnership Act, 2021⁵- provides for among other objects, the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships.
- Public Finance Management Act 2012⁶ - It is the main legislation giving guidance on public finance management in Kenya. It gives guidance on various budget-making process from formulation, approval, implementation (including procurement) and evaluation.
- Executive Order No. 2 of 2018⁷ - Requires all public entities to continuously update and publicize procurement information.

³ <https://ppra.go.ke/download/the-public-procurement-and-asset-disposal-regulations-2020/>

⁴ <https://www.treasury.go.ke/wp-content/uploads/2021/12/NATIONAL-PUBLIC-PROCUREMENT-AND-ASSET-DISPOSAL-POLICY-2020.pdf>

⁵ <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2014%20of%202021>

⁶ <https://www.treasury.go.ke/wp-content/uploads/2020/11/Public-Finance-Management-Act-2012.pdf>

⁷ <https://ppra.go.ke/download/executive-order-2-of-2018/>

2.2 COMMON PROCUREMENT TERMS

- **Procuring Entity** - a public institution making an acquisition or asset disposal. A public entity can include the National Government, County Government, ministry, state department/ state corporations, the Judiciary, a public school, public university/college, a pension fund for a public entity and any other establishments that use public money for purposes of procurement.
- **Accounting Officer** – is responsible for the management of finances in the public entity such as a Principal Secretary in the Ministry or a Chief Officer in a County Department. This officer approves and signs all contracts.
- **Tender** – is an offer in writing by a person to supply goods, services or works at a price or to acquire or dispose of equipment/assets. This is in response to an invitation to tender by a public entity.
- **Tenderer**- is the person who submits a tender pursuant to an invitation by a public entity.
- **Tender Security** – is a guarantee required from tenderers by the procuring entity to secure the fulfilment of any obligation in the tender process e.g. cash deposits, promissory notes or other guarantees from institutions as may be prescribed.
- **Contract Period** – is the number of days between contract start date and end date as outlined in the contract.
- **Price schedule or bills of quantities** – a list giving a breakdown of the item(s) to be procured and the prices as submitted by the tenderer
- **Pre-qualified suppliers** – are providers who have undergone a prequalification procedure and are shortlisted as tenderers in a procurement process.

- **E-procurement** – is an automated business process which includes procurement planning, management of suppliers, requisitions, quotations, contracts and receipts are set to be shifted to a more effective and cost efficient online transaction.
- **Preference and Reservations** – is the right to select a tenderer from an identified target group mostly to increase their chances of participating in procurement e.g. Women, Youth and Persons Living with Disabilities reservations. An example is the Access to Government Procurement Opportunities (AGPO) that reserves at least 30% of procurement budget for youth, women and persons with disability.
- **Procurement professional** - a person who has professional qualifications in procurement or supply chain management from a recognised institution and is a member of the Kenya Institute of Supplies Management or any other procurement or supply chain professional body recognised in Kenya.
- **Public Private Partnership** - a contractual agreement between a contracting authority and a private party, where the private party performs a public function or service, receives benefits from public funds, charges or fees, is generally liable for risks, and transfers the facility to the contracting authority.
- **Urgent need** - means the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable.

3 PUBLIC PROCUREMENT AND ASSET DISPOSAL INSTITUTIONAL FRAMEWORK

Institution	Responsibilities with respect to Public Procurement and Asset Disposal
The Parliament/ County Assemblies	<ul style="list-style-type: none"> • Enact and amend procurement and asset disposal laws and regulations in line with the Constitution; • Provide oversight in the implementation of the procurement and asset disposal laws and regulations through review of statutory reports; • Approve and appropriate budgets to facilitate procurement of goods, works and services;
The Cabinet	<ul style="list-style-type: none"> • Approve public procurement and asset disposal policy; • Set government strategic priorities in public procurement and asset disposal; • Approve public procurement and asset disposal legislative proposals before submission to parliament; • Approve budget proposals before submission to parliament;
The National Treasury	<ul style="list-style-type: none"> • Public procurement and asset disposal policy formulation; • Design and prescribe an efficient procurement and asset disposal management system for both national and county governments; • Budget formulation; • Training and capacity building for procurement and supply chain management at the national level and support at the county level. • In collaboration with PPRA maintain and provide technical support to the Public Procurement and Information Portal (PPIP) (tenders.go.ke)
The Cabinet Secretary Responsible for Finance	<ul style="list-style-type: none"> • Prescribe regulations and guidelines on implementation of public procurement and asset disposal policies in accordance with procurement law; • Submit proposed budget estimates to parliament for approval; • Regular briefing to cabinet and parliament on implementation of public procurement and asset disposal policies, rules and procedures.
Cabinet Secretaries	<ul style="list-style-type: none"> • The responsibility of Cabinet Secretaries with respect to Public Procurement and Asset Disposal is to oversee implementation of public procurement and asset disposal policies to facilitate delivery of their mandates.

Accounting Officers	<ul style="list-style-type: none"> • Implementation of public procurement and asset disposal policies, rules and procedures; • Capacity building of Supply Chain Management Officers in their respective procuring entities;
Public Procurement Regulatory Authority	<ul style="list-style-type: none"> • Regulate the public procurement and asset disposal system, monitor and report on its functioning; • Enforce compliance with the public procurement and asset disposal law and provide technical support to procuring entities. • to investigate and act on complaints received on procurement and asset disposal proceedings from procuring entities, tenderers, contractors or the general public that are not subject of administrative review • develop and manage the State portal on procurement and asset disposal and ensure that it is available and easily accessible; This is the Public Procurement and Information Portal(PPIP) (tenders.go.ke)
Public Procurement Regulatory board(also known as the board)	<ul style="list-style-type: none"> • The board is charged with ensuring proper and effective performance of the functions of the Authority including among others, ratifying and • Another key function of the board includes debarment. The Board shall debar a person from participating in procurement or asset disposal proceedings for a period of not less than three years. The debarment can be done on several grounds including; being guilty of corrupt or fraudulent practices; has breached a contract for a procurement by a public entity including poor performance among others
Public Procurement Administrative Review Board(also known as review board)	<ul style="list-style-type: none"> • The responsibilities of Public Procurement Administrative Review Board with respect to Public Procurement and Asset Disposal is to review, hear and determine public procurement and asset disposal disputes at both levels of government.
Public Private Partnerships Unit	<ul style="list-style-type: none"> • The PPP Unit is a Specialized Unit within the National Treasury established under Section 8 of the PPP Act 2013. The PPPU is responsible for the systematic coordination of all the PPP projects review and approval process, and to assist each contracting authority to identify, select, appraise, approve, negotiate and monitor PPP projects throughout their life cycle.

Kenya Institute of Supplies Management	<ul style="list-style-type: none"> • Establish, monitor, improve and publish the professional standards for supplies practitioners; • Register procurement professionals and take such disciplinary measures as may be necessary to maintain proper standard of conduct among such persons; • Oversee professional examination standards and certification.
The Attorney General	<ul style="list-style-type: none"> • Provide legal advice to public entities on public procurement and asset disposal matters; • Drafting of legislation pertaining to public procurement and asset disposal; • Represent procuring entities in judicial proceedings involving public procurement and asset disposal matters.
County Treasuries	<ul style="list-style-type: none"> • Implementation of Public Procurement and Asset Disposal policy, laws and regulations at county level; • Formulation of county Budget.
County Executive Member Responsible for Finance	<ul style="list-style-type: none"> • Oversee the implementation of public procurement and asset disposal policy in the county government; • Submit proposed budget estimates to county assembly; • Regular briefing to county executive committee and county assembly on implementation of public procurement and asset disposal policies, rules and procedures;
Judiciary	<ul style="list-style-type: none"> • The responsibility of the Judiciary with respect to Public Procurement and Asset Disposal is to review, hear and determine public procurement and asset disposal disputes.

4

PROCUREMENT METHODS

- I. Open Tender – It is the most common type of procurement in Kenya and involves national advertising.
- II. Two stage tendering – in the first stage of the two-stage tendering proceedings, initial tenders containing their proposals without a tender price and the second stage, the procuring entity shall invite tenderers whose tenders were retained to submit final tenders with prices with respect to a single set of specifications and in formulating those specifications, the procuring entity may modify any aspect, originally set forth in the tendering document.
- III. Design competition – means a procurement procedure for obtaining competitive tenders for services which are creative in nature and which require that part of the services be carried as part of the tender to facilitate evaluation of the tenders and such services may include architecture, landscaping, engineering, urban design projects, urban and regional planning, fine arts, interior design, marketing, advertising and graphic designs;
- IV. Restricted Tendering – involves direct invitation to a shortlist of pre-qualified, pre-registered or known contractors, and is subject to a specific prior approval by the accounting officer. Usually used when it is a case of a specialized nature or has requirements of public safety, or public security which make an open tender impossible.
- V. Direct Procurement – A method of procurement in which the procuring entity determines not to use competitive procurement on the grounds of urgency or some other legal principle and negotiates a contract with a single supplier or contractor. Usually, when the item or expertise can only be provided by one source.

- VI. Request for Quotations (RFQs) – A procuring entity may use a request for quotations from the register of suppliers. The procuring entity determines which contractors, suppliers or service providers to request quotations from as long as a minimum of three suppliers are invited. The successful quotation shall be the quotation with the lowest price with the highest standards.
- VII. Low value procurement method - refers to a procurement method used for relatively small-scale purchases or acquisitions that have a lower financial value compared to larger procurement processes. It is typically employed for items or services with lower monetary thresholds that do not require complex bidding procedures. The exact definition and threshold for low value procurement may vary depending on the specific regulations and guidelines of an organization or jurisdiction.
- VIII. Force account - refers to a procurement approach where goods, works, or services are directly procured by the procuring entity through its own workforce or resources, rather than through a formal bidding process or contracting with external suppliers or contractors. It allows the procuring entity to carry out the procurement using its own personnel, equipment, and facilities to complete the required works or deliver the necessary goods or services.
- IX. Electronic reverse auction - an online real-time purchasing technique utilized by the procuring entity to select the successful submission, which involves the presentation by tenderers, suppliers or contractors of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;
- X. Framework Agreement - means a pact between a procuring entity and a selected supplier (or suppliers) or contractor (or contractors) identified for a definite term to supply goods works or service whose quantities and delivery schedules are not definable or determinable at the beginning;





- XI. Community participation method - a public procuring entity may involve the beneficiary community to participate in the delivery of works/services if the project provides value for money, gives a better assurance for the project's sustainability and enhances the socio-economic objectives of the government.
- XII. Request for Proposals (RFPs) – A procurement method for services or a combination of goods and services; and the services to be procured are advisory or otherwise of a predominately intellectual nature.

The procurement method to be adopted by a public procuring entity is also determined by the maximum/minimum threshold allowed for use for each method under the Threshold Matrix⁸ under the Second Schedule to the Regulations.

<8 file:///Users/titusgitonga/Downloads/New%20Threshold%20Matrix.pdf>

5 PROCUREMENT CYCLE

How corruption may happen at different stages of procurement:

Process	Planning	Tender	Award	Contract	Implementation
Entails	Budgets Project plans Procurement plans Market studies Public hearing info	Tender notices Specifications Line items Values Enquiries	Details of award Bidder information Bid evaluation Values	Final details Signed contract Amendments Values	Payments Progress updates Location Extensions Amendments Completion or termination info
Enabling	Strategic planning Market research Setting priorities Access to market	Competitive tendering Cross-border procurement Red flag analysis Transparent feedback mechanisms	Efficient supplier management Efficient complaints mechanism Links to beneficial ownership data Red flag analysis Trade / cross border analysis	Cost analysis Understanding what government buys Trade / cross border procurement analysis	Results based contracting Implementation monitoring Transparent contract management Red flag analysis
Corruption Risks/Red Flags					
	Key planning documents not provided	Non-public bid opening	High number of contract awards to one bidder	Large difference between contract award and final contract amount	Modify contracts after contract award on line item requirements
	Eligibility criteria for which companies can bid for a contract set too narrowly	Use of direct awards/ exceptions/ emergency procedures	Supplier address <ul style="list-style-type: none"> • P.O.Box • Similarities btwn suppliers 	Supplier receives multiple single source contracts	Change orders to increase prize substantially
		Vague description of supply terms	Company has no history in providing service or product	Final prize is higher than industry average	Payment without delivery of service
		Issue of tender at an inconvenient time	Cover pricing: Colluding to drive up prices artificially		Shoddy implementation

Source: Open Contracting Partnership

5.1 TYPES OF CONTRACTS:

- Framework Agreements: Long-term agreements with one or more suppliers to establish terms and conditions for future purchases.
- Service Contracts: Contracts for the provision of services, such as consulting, maintenance, or repair work.
- Supply Contracts: Contracts for the procurement of goods or materials.
- Construction Contracts: Contracts for the construction, renovation, or infrastructure projects.

6

SOURCES OF INFORMATION ON PUBLIC PROCUREMENT IN KENYA

When reporting on public procurement in Kenya, journalists can gather information from various sources to ensure comprehensive and accurate coverage. Here are some key sources of information on public procurement in Kenya:

Information to access	Reference (where to be found)
About Public Procurement in Kenya from the regulating body	https://ppra.go.ke/
The Public Procurement Information Portal is an online platform provided by Public Procurement Regulatory Authority (PPRA) for publication of contract awards and tender notices by Procuring Entities.	https://tenders.go.ke/
Market Price Index	https://ppra.go.ke/market-price-index/
Public-Private-Partnerships Unit Portal	http://portal.pppunit.go.ke/project-info/stage/Procurement
Administrative Review Board Decisions & Cause List	https://ppra.go.ke/arb-decisions/ https://ppra.go.ke/category/live-hearings/
Debarred Firms	https://ppra.go.ke/debarred-firms/
Access to Government Opportunities (AGPO)	https://agpo.go.ke/
Parliamentary Committee Reports	National Assembly Committees - http://www.parliament.go.ke/index.php/the-national-assembly/committees (click on specific Committee then click Reports) Senate Committees - http://www.parliament.go.ke/index.php/the-senate/committees/senate-committees (click on specific Committee then click Reports)
National Budget	http://www.parliament.go.ke/the-national-assembly/budget-office/about-PBO

National and County Budget
Implementation Reports

[National Government - https://cob.go.ke/reports/national-government-budget-implementation-review-reports/](https://cob.go.ke/reports/national-government-budget-implementation-review-reports/)

[County Governments - https://cob.go.ke/reports/consolidated-county-budget-implementation-review-reports/](https://cob.go.ke/reports/consolidated-county-budget-implementation-review-reports/)

Audit Reports

<http://www.parliament.go.ke/the-national-assembly/house-business/auditors-general-reports#>

It is important for journalists to cross-reference information from multiple sources and conduct fact-checking to ensure accuracy and reliability. Additionally, protecting the confidentiality of sources and adhering to ethical reporting standards is crucial throughout the information gathering and reporting process.

INVESTIGATIVE REPORTING TECHNIQUES

- I. **Research and data collection:** Get information from reliable sources to access procurement records, analyzing public procurement data, and conducting interviews with key stakeholders.
- II. **Data analysis:** Analyze and interpret public procurement data to identify trends, anomalies, or potential cases of corruption.
- III. **Cross-checking information:** Verify information from multiple sources and fact-check before publishing any reports.
- IV. **Protection of sources/whistleblowers:** Protect sources and encourage whistleblowers to come forward with information related to public procurement irregularities or corruption.

7.1 KEY FOCUS AREAS FOR REPORTING

When reporting on corruption in public procurement, journalists can focus on several key areas to shed light on irregularities, promote accountability, and drive positive change. Here are some key focus areas for reporting on corruption in public procurement:

1. **Bid Rigging and Collusion:** Investigate and report on instances of bid rigging, collusion, or cartels formed by suppliers or contractors to manipulate the procurement process. Expose any practices that restrict fair competition and result in inflated prices, substandard quality, or favoritism.
2. **Misuse of Procurement Procedures:** Highlight cases where procurement procedures are manipulated or bypassed, such as direct procurement without justification, splitting contracts to avoid competitive bidding, or emergency procurements used for non-urgent situations. Examine the consequences of such practices and their impact on public funds and service delivery.
3. **Conflict of Interest:** Investigate potential conflicts of interest among public officials or decision-makers involved in the

procurement process. Identify instances where officials may have personal or financial relationships with bidders, contractors, or suppliers, leading to biased decisions or favoritism. The PPIP is a good source of such information

4. **Transparency and Accountability:** Assess the level of transparency and accountability in public procurement processes. Analyze the accessibility of procurement information, including tender notices, bid evaluation reports, and contract award information. Highlight instances where transparency is lacking and advocate for reforms to enhance openness and public participation. The PPIP should form the primary source of this data
5. **Monitoring and Oversight Mechanisms:** Examine the effectiveness of monitoring and oversight mechanisms in place to prevent corruption in public procurement. Investigate the roles and performance of oversight bodies such as the Public Procurement Regulatory Authority, Office of the Auditor General, and parliamentary committees responsible for scrutinizing procurement activities.
6. **Protection of sources/whistleblowers and Reporting Mechanisms:** Create awareness to sources/whistleblowers on the need to be vigilant on their personal protection and reporting mechanisms available to individuals who wish to report corruption in public procurement. Encourage whistleblowers to come forward and provide information while ensuring their confidentiality and safety.
7. **Impact on Service Delivery:** Investigate how corrupt practices in public procurement affect the delivery of public services and infrastructure projects. Highlight instances where corruption leads to delays, substandard quality, or the non-delivery of essential services. Engage with affected communities to amplify their voices and experiences.

8. **Legal and Regulatory Framework:** Analyze the effectiveness of existing laws, regulations, and policies governing public procurement. Identify gaps, loopholes, or areas of weak enforcement that allow corruption to thrive. Advocate for legal reforms and stronger enforcement mechanisms to address these shortcomings.
9. **International Best Practices and Lessons Learned:** Draw lessons from successful anti-corruption measures and best practices implemented in other countries or regions. Highlight innovative approaches, technologies, or strategies that can enhance transparency, accountability, and integrity in public procurement.
10. **Positive Initiatives and Success Stories:** Showcase positive initiatives, success stories, and examples of good practices in public procurement. Highlight cases where transparency, accountability, and anti-corruption measures have been effectively implemented, leading to improved procurement outcomes.

By focusing on these key areas, journalists can play a crucial role in exposing corruption, promoting accountability, and advocating for reforms that ensure transparency and integrity in public procurement processes as well as encouraging positive change.

Investigative journalism played a critical role in exposing irregularities, corruption, and mismanagement in emergency procurement processes during the COVID-19 pandemic.

8.1 OPEN CONTRACTING DATA STANDARD (OCDS)

Open Contracting Data Standard (OCDS) is a set standard that enables disclosure of data and documents at all stages of the contracting process. It was created to support procuring entities to increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users.⁹

8.1.1 INTERESTING AND MUST DO:



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<https://mythbusting.open-contracting.org>



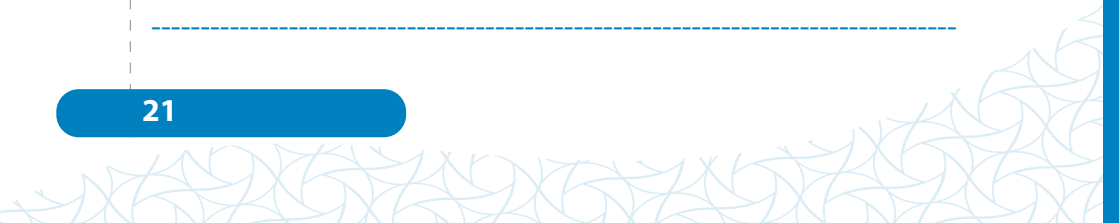
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the Idot's Guide to Looting Public Procurement to Get Rich Quick

<https://www.open-contracting.org/wp-content/uploads/2018/10/OCPI8-IdiotsGuide-n.pdf>

⁹ <https://standard.open-contracting.org/latest/en/primer/what/>



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