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KENYAN SECTION | Since 1959

Fact Sheet on Open Contracting



A. What is Open Contracting ?

Open contracting is the publication of government contracts. It includes information from the awarding process, to the monitoring and evaluation of contract implementation. It requires the pro-active disclosure of contract information with open access to the public.

Open contracting in Kenya is anchored on the constitutional values of openness, transparency and accountability as provided under Article 10 and underscored by Article 35 on Access to Information and Chapter 12 on Public Finance Management. Specifically, Article 227 emphasizes the principles of public procurement which include fairness, equity, transparency, competitiveness and cost effectiveness.

Kenya became part of the Open Government Partnership (OGP) in 2011. The OGP is a partnership of government and civil society advocates to promote accountable, responsive and inclusive governance. One of Kenya's key commitments in the current action plan that will lapse in 2020 is open contracting. Kenya committed to implement the Open Contracting Data Standard (OCDS) to improve transparency and reduce opportunities for corruption by enhancing openness and accessibility of the Public Procurement Information Portal.

On 1st July 2018, the President also issued Executive Order 2¹, that directed that all public Procuring Entities shall maintain and continuously update and publicize complete information of all tenders awarded (*through the website of the Procuring Entity, e-Citizen, Public Procurement Regulatory Authority platforms, public notice boards and/or official government publications*).

B. Why is Open Contracting Important?

Open contracting is about promoting transparency and accountability by making data and documents on the whole public contracting process available and accessible to the public. It is important because it improves public procurement through three important elements:

- Public disclosure of open data and information about the planning, procurement, and management of public contracts;
- Participation and use of contracting data by non-state actors at appropriate points in the planning, tendering, awarding, contracting and monitoring of contracts. Participation involves appropriate communication, consultation, and collaboration to make sure increased information is used to create changes and also involves input into policy to make sure that contracting follows a set of clean, widely understood rules;
- Accountability and redress by government agencies or contractors acting on the feedback that they receive from civil society and companies, leading to real fixes on the ground, i.e. better public goods, services, institutions or policies.



Open Contracting in Kenya is anchored on the values of openness, transparency & accountability.”



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¹ Available on <http://ppra.go.ke/download/executive-order-2-of-2018/>



“...Government entities are required to timely publicize enough information about the formation, award, execution, performance and completion of public contracts”

C. Stages of Open Contracting

Public contracting should be conducted in a transparent and equitable manner. It should be done in accordance with publicly disclosed rules that explain the functioning of the process, including policies regarding disclosure.

Government entities are required to timely publicize comprehensive information about the formation, award, execution, performance and completion of public contracts. This will enable the public, including media and civil society, to understand and monitor as a safeguard against inefficient, ineffective or corrupt use of public resources.



D. What is the Role of Civil Society in Open Contracting?

Civil Society is the public watchdog. They oversee government deals and monitor the procurement processes. Thus, they can successfully advocate for reforms in the policies, practices and procedures for awarding government contracts. This can also inform their interventions such as advocacy and strategic litigation to ensure that public contracting becomes more transparent, fair, accountable and efficient.

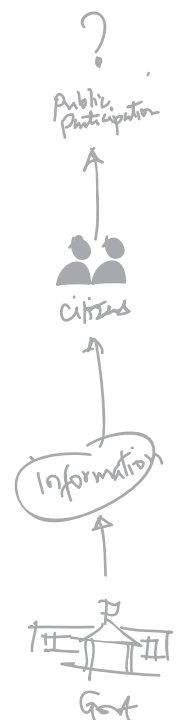


“... Civil Societies act as watchdogs.”

E. What is the Role of the Citizens in Open Contracting?

Through open contracting, citizens gain and obtain information. They become informed and are made aware of how the government uses their taxes in service delivery. With these details, they can engage and participate in the open contracting processes and push for better quality goods and services that result from more transparent and competitive contracting processes.

Open contracting also enables citizens to be vigilant and bold to exercise their rights to public participation and access to information, which are anchored in the Constitution of Kenya 2010.



“... citizens gain information and are made aware of how the government uses their taxes on the essential goods and services they need.”

F. What are the Benefits of Open Contracting?

Open contracting helps the government to achieve the following:

1. Save taxpayer money;
2. Better utilization of public resources;
3. Better delivery of essential public goods and services;
4. Inspire integrity;
5. Curb fraud and corruption; and
6. It also creates an environment with equal opportunities for businesses as it promotes fair competition, growth, innovation and improves the general investment attitude and atmosphere.



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