

Open Contracting in KENYA

At a glance



Open contracting can transform public procurement through better data, analysis and engagement with businesses and civil society. It involves (1) disclosure of open data and documents about the planning, procurement, and management of public contracts; and (2) engagement with civic and business users of information, leading to improved accountability and redress by government agencies or contractors through acting on the feedback received.

COUNTRY FACTS

Uses e-procurement system	YES
Implements Open Contracting Data Standard	NO
Active open contracting infomediaries	NO

COUNTRY HIGHLIGHTS

Kenya has one of the world's first open data portals

Seen as a frontrunner on transparency issues in East Africa

Committed to open contracting in OGP action plan

OPEN CONTRACTING OPPORTUNITIES IN KENYA

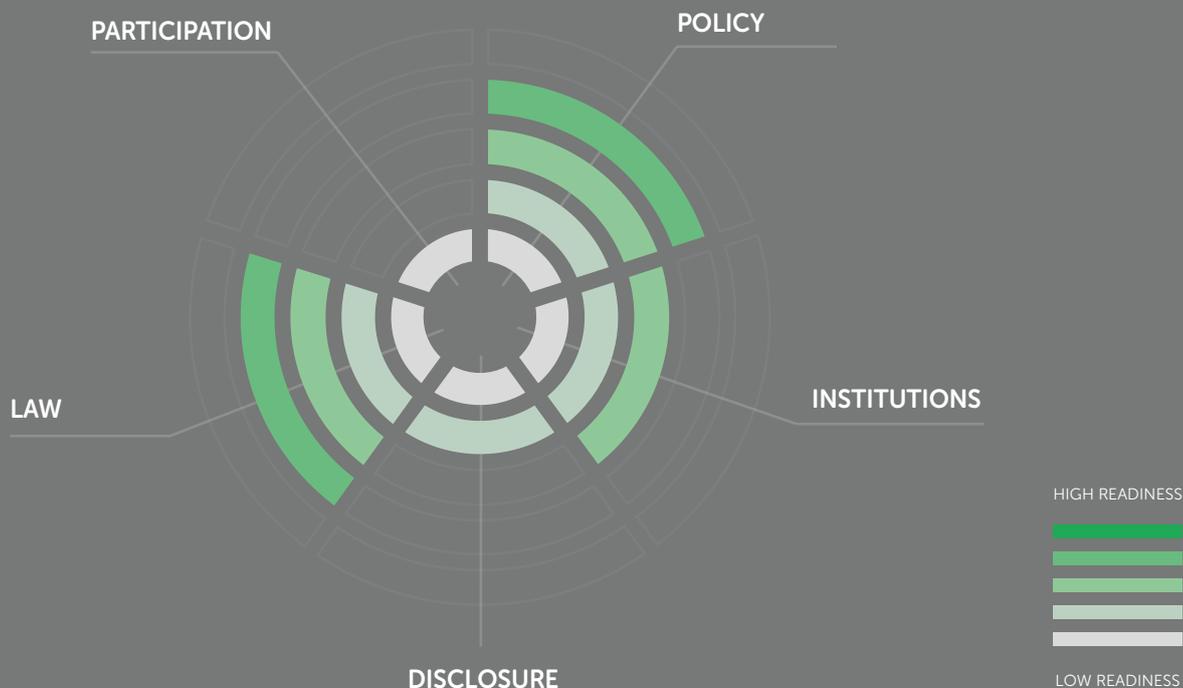
It is important to improve public servants' capacity to give useful, timely information to citizens to help enhance transparency in public contracting. This process can be led by the Public Procurement Oversight Authority (PPOA) and the Ethics and Anti-Corruption Commission (EACC). Strengthening links between public agencies may help to ensure they each have appropriate monitoring and enforcement capabilities.

The government can engage with existing active social accountability movements to help advance open contracting. There is huge potential to empower grassroots collectives through the Access to Government Procurement Opportunities program, which allows 30 percent of contracts to be given to youth, women, and people with disabilities without having to compete with established firms.

Civil society and other non-state actors must support the government in meeting its open contracting commitments. Possible ways to do this include mapping existing data against the OCDS to inform the design of an Open Data Policy, redesigning the Suppliers Portal in line with the OCDS, establishing a public-private partnership to use contracting information to fight corruption, developing a portal for citizens to monitor procurement projects, providing feedback that can enhance accountability in government initiatives, and creating a beneficial ownership registry.

Capacity building for the media – one of Kenya's most trusted institutions on anticorruption and whistleblowing – can help to enhance their understanding of laws regulating transparency and procurement, and how to accurately report on public procurement issues and irregularities.

Continuous research should be conducted to monitor enforcement of legal provisions on transparency and accountability in procurement, and how various institutions are implementing open contracting.



EVALUATION OF OPEN CONTRACTING READINESS IN KENYA

LAW:

In Kenya, the right of citizens to access information is enshrined in the constitution, anti-corruption legislation, and other key laws that have implications for public procurement. Kenya was the first country in the world to sign and ratify the United Nations Convention against Corruption (UNCAC) in 2003. An access to information bill, signed into law in September 2016, is designed to provide clearer guidance on what information public entities must proactively publish. The laws explicitly support citizen participation in governance, especially in service delivery and public finance management.

POLICY:

Kenya's 2016-2018 OGP national action plan contains four commitments that are relevant to public contracting: (a) on open contracting – create transparent public procurement process, public oversight of expenditure and ensure value-for-money towards citizen priorities; (b) on access to information – enhance right to information by strengthening records management and access to information; (c) on beneficial ownership – ensure greater transparency around bids and contracts by individuals and companies in Kenya; and (d) on anti-corruption – enhancing preventive and punitive mechanisms in the fight against corruption and unethical practices.

INSTITUTIONS:

The main institutions responsible for open contracting in Kenya are the National Treasury, which formulates public policy on public procurement and asset disposal, and county treasuries; the Public Procurement Regulatory Authority, which oversees public procurement procedures; and the Public Procurement Administrative Review Board, an independent body that ensures all procuring entities observe laws that relate to an open tender system in the public sector.

DISCLOSURE:

Procurement information from all public entities is released through a centralized portal run by the Integrated Financial Management Information System (IFMIS). Although the portal offers only a snapshot, rather than a full overview of the entire procurement cycle. The portal provides information on the type of tender (open or direct); the winning company's name; key dates such as advertising, notification, contract signing, and completion; and the number of bids. Crucial information is omitted, such as reasons for awarding to a certain bidder, details of unsuccessful bidders, and information about the owners of bidding companies.

PARTICIPATION:

The government has not started many specific initiatives to engage citizens and the private sector in open contracting. Citizen participation is one of the key performance indicators for public entities and state-owned companies under their service charters. The Code of Governance requires each state-owned company to publish its procurement policy, but in practice, public entities have not developed specific guidelines on citizen engagement in open contracting. According to a senior official at the Auditor General's office, public entities are not adequately equipped with human and financial resources to effectively engage with the public and other stakeholders. There are also no notable instances of citizens reusing public contracting data.