

Transparent Public Procurement Rating



Kenya

Public Procurement Legislation Assessment

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Introduction

The TPPR Methodology is envisioned to be a universal methodology for assessing public procurement legislations (PPLs) with the ultimate goal of identifying the strengths and weaknesses of legal frameworks and their enforcement around the globe.

Structure and Logic

The Methodology is composed of 64 indicators, each of which holds a similar degree of importance. A number of these indicators are further broken down into scoring components.

The Methodology covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems.

The selection of indicators for the Methodology was largely based on international best practice, international standards and aspects of other existing methodologies in the sphere of public procurement, such as:

- EBRD Methodology and Standard
- GPA Standard (WTO)
- OECD Methodology and Principles
- EU Standard (**Directive 2014/24/EU**)
- Open Contracting Data Standard (OCDS)

Several indicators have been directly taken from one of the sources listed above as examples of best international practice. All of these indicators have been properly referenced.

During the indicator selection and elaboration process, an effort was made to ensure that the Methodology can be used to assess many different kinds of public procurement systems, but at the same time set high standards.

The indicators are separated into 5 groups (benchmark indicators) that represent the key characteristics (values) of a well-functioning, transparent and accountable public procurement system:

1. **Uniformity of the Legislative Framework** – 14 indicators
2. **Efficiency** – 10 indicators
3. **Transparency** – 18 indicators
4. **Accountability and Integrity** – 7 indicators
5. **Competitiveness and Impartiality** – 10 indicators

The methodology also includes 5 indicators that are used to assess legal components **that are not directly part** of the public procurement legislation but are crucial in terms of creating a transparent environment necessary for a proper functioning of any public procurement system. These indicators are grouped separately under '**Transparency Environment**'.

Indicators are also arranged according to the procurement process:

1. **Pre-tendering Phase** – procurement processes leading up to the publication of a notice of intended procurement.
2. **Tendering Phase** – procurement processes between publication of a notice of intended procurement and selection of a tender winner.
3. **Post-tendering Phase** – procurement processes after the selection of a tender winner.

These two arrangements allow for both process and value-based assessments of public procurement legislations.

Limitations

Public procurement systems vary significantly by country. The TPR Methodology is intended to be applicable on a global scale, meaning that the indicators cannot be too specific and cannot cover all the possible variations and exceptions.

For the same reason, the TPPR Methodology can only be used to assess public procurement legislations on the national level, and it does not include indicators for any industry specific rules.

Scoring System

Each indicator included in the TPPR Methodology is granted equal weight and receives a maximum of 1 point. With a total of 64 indicators, public procurement legislations are rated on the scale of **0 to 64** (converted to percentages for easier understanding and visualization).

Indicators that are further broken down into scoring components are nevertheless worth 1 point. Each scoring component is evaluated separately.

The Methodology uses two ways to distribute points among scoring components of an indicator:

1. **'Scoring method'** is used when scoring components of an indicator overlap (meaning they do not add up as points) or have an unequal distribution of points.
2. **'Point distribution'** is used when each scoring component of an indicator is given an equal share of the overall point granted to that indicator.

This scoring system and the structure of the Methodology allow for the results to be presented in three ways:

1. **Country Overall Results and Rating** – country overall results on the scale of 0-64 are converted into and presented using percentages (0-100%). Countries are then ranked by their overall results.
2. **Results by Benchmark Indicators** – results for benchmark indicators are presented only through percentages, since benchmark indicators include an unequal number of indicators (and, therefore, unequal number of maximum points).
3. **Results by Procurement Process** – results for different phases of the procurement process are presented only through percentages, due to unequal number of indicators included in each phase.

Countries are also ranked and compared by their results for each benchmark indicator.

Visualization

Visualizing the results of the assessment is crucial to the goal of the methodology. For this purpose, the overall points received by each country shall be shown graphically using the scale of 0-100%, divided into 4 quarters of a specific color:

- Low compliance with TPPR Standards – 0% to 25% (red)
- Average compliance with TPPR Standards – 26% to 50% (orange)
- Good compliance with TPPR Standards – 51% to 75% (yellow)
- Excellent compliance with TPPR Standards – 76% to 100% (green)

Visualizations will also include spider graphs depicting country results by benchmark indicators and the procurement process, and multi-colored bar graphs for comparing country results in these categories.

Terminology

This methodology uses universally accepted procurement terminology as well as a few terms of its own design, in order to make key distinctions easier.

Acceptance act – A document signed by parties through which they agree on the terms by which a bargain is concluded.

Bid – Price offered by a tender participant during the bidding procedure.

Bid Security – A refundable amount of money paid by tender candidates validating their participation in a tender.

Coordination – Providing assistance to economic operators and procuring entities to engage in procuring activities.

Day – In the context of this methodology a day implies a calendar day.

Economic Operator – business or other organization which supplies goods, works or services.

Legal entity of public law (LEPL) (Public Legal Entity) – Organization created by the government or a government body, but separated from state management, and performing public authority independent of state control.

Machine-readable – A data format that can be processed (i.e. extract, transform and process) by a computer.

Monitoring – Data collection and analysis.

State non-commercial legal entity – A body governed by public law, having legal personality, not having an industrial or commercial character, and funded or managed, for the most part, by state entities.

Non-competitive procedure (direct procurement) – A type of public procurement procedure that does not involve prior publication of a notice of intended procurement.

Notice of intended procurement – A call for participation in an open tender issued by procuring entities.

Open tender – A type of tender, in which any economic operator can request participation.

Post-tendering phase – procurement processes after the selection of a tender winner.

Pre-tendering phase – procurement processes leading up to the publication of a notice of intended procurement.

Procurement regulatory body – a state body responsible for managing the public procurement system without necessarily incorporating lawmaking and law enforcement functions.

Procuring entity – A state budget and local government entity (including their respective LEPLs and state owned companies).

Public procurement annual plan – A document issued by procuring entities that contains information about all procurements planned within a fiscal year.

Tender – A type of public procurement procedure that involves bidding.

Tender application – An economic operator's official request to participate in a tender that includes all the documents requested by the procuring entity.

Tender candidate – An economic operator willing to participate in a tender.

Tender commission – A group of persons within a procuring entity responsible for conducting procurement (this function can also be performed by a single person).

Tender documentation – A collection of documents containing full information about the procurement, such as its subject-matter, technical requirements/specification, eligibility and evaluation criteria, draft contract conditions etc.

Tender participant – An economic operator that has been allowed to participate in a tender.

Tendering phase – procurement processes between publication of a notice of intended procurement and selection of a tender winner.

TPPR Methodology Indicators

Transparency Environment			
#	Indicator	Score	Relevant Article and Law (if applicable)
1.	Business registry is publicly available. – [1 point]	1	THE COMPANIES ACT (No. of 2015) Article 14. (1) a
2.	Budgets of all public procuring entities are publicly available. – [1 point]	1	Access to information Act No. 31 of 2016 Article 4. (3)
3.	Public officials are required by law to file asset declarations. – [1 point]	1	The Public Finance Management Act, 2012 Article 68. (2b)
4.	The country has adopted legal provisions ensuring the right to request public information. – [1 point]	1	Access To Information Act No. 31 Of 2016 Article 4. (1)
5.	Legislation includes provisions regulating whistleblower protection. – [1 point]	1	Anti-Corruption And Economic Crimes Act No. 3 Of 2003

Indicators by Procurement Process

General Characteristics of the Procurement System

#	Indicator	Score	Relevant Article and Law (if applicable)
1.	<p>Public Procurement Legislation (PPL), which may include primary and secondary legislation, lays out the basic principles and general framework of the procurement process, makes it operational and indicates how the law must be applied to specific circumstances. – [1 point]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015 Article 4 (1)</p> <p>This Act applies to all State organs and public entities with respect to — Application of the Act. (a) procurement planning; (b) procurement processing; (c) inventory and asset management; (d) disposal of assets; and (e) contract management.</p> <p>(2) For avoidance of doubt, the following are not procurements or asset disposals with respect to which this Act applies — (a) the retaining of the services of an individual for a limited term if, in providing those services, the individual works primarily as though he or she were an employee, but this shall not apply to persons who are under a contract of service; (b) the transfer of assets being disposed off by one state organ or public entity to another state organ or public entity without financial consideration; (c) acquiring of services provided by government or government department; (d) acquisition and sale of shares or securities, fiscal agency by a public</p>

			entity, investments such as shares purchased by cooperative societies, state corporations or other public entities;
2.	<p>PPL (including primary and secondary legislation) is available in a single and accessible place. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>	1	<p>Constitution of Kenya, 2010 Article 35</p> <p>35. Access to information (1) Every citizen has the right of access to— (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom. (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person. (3) The State shall publish and publicise any important information affecting the nation.</p>
3.	<p>PPL applies to all state budget and local government entities (including their respective Legal Entities of Public Law (LEPLs), state owned companies and non-commercial legal entities) and all exempted entities are clearly indicated. – [1 point]</p> <p>Point Distribution</p> <ol style="list-style-type: none"> a) All state budget entities – [0.2] b) Local government entities – [0.2] c) Legal Entities of Public Law (LEPL) – [0.2] d) State owned companies – [0.2] e) State non-commercial legal entities – [0.2] 	<p>Overall: 1</p> <p>Components:</p> <ol style="list-style-type: none"> a) 0.2 b) 0.2 c) 0.2 d) 0.2 e) 0.2 	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>PART I —PRELIMINARY (2)</p>

	<i>Uniformity of the Legislative Framework</i>		
4.	<p>The scope of coverage of PPL includes all sectors of the economy where competition is possible and exemptions are clearly listed in the PPL. – [1 point]</p> <p>Point Distribution</p> <p>a) The scope of coverage of PPL includes all sectors of the economy where competition is possible. – [0.5]</p> <p>b) PPL clearly lists or refers to all exemptions. – [0.5]</p> <p><i>Uniformity of the Legislative Framework</i></p>	<p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>PART I —PRELIMINARY (2)</p> <p>Article 4 (2)</p>
5.	<p>PPL determines a separate state body (procurement regulatory body) responsible for managing public procurement or assigns this function to a subordinate public body(ies). – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • PPL determines a separate state body responsible for managing public procurement which is authorized to have income in addition to state funding. – [1] • PPL determines a separate state body responsible for managing public procurement. – [0.75] • PPL assigns this function to a subordinated public body(ies). – [0.5] • There is no responsible state body. – [0] <p><i>Uniformity of the Legislative Framework</i></p>	<p>1</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Articles 7 and 8</p>

6.	<p>PPL stipulates that the procurement regulatory body is responsible for at least coordination and monitoring (i.e. data collection and analysis as opposed to regulation and control) of public procurement activities. – [1 point]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 9. (1) The functions of the Authority shall be to— Functions of Authority. (a) monitor, assess and review the public procurement and asset disposal system to ensure that they respect the national values and other provisions of the Constitution, including Article 227 and make recommendations for improvements; (b) monitor the public procurement system and report on the overall functioning of it and present to the Cabinet Secretary and the county executive member for finance in each county, such other reports and recommendations for improvements; (c) enforce any standards developed under this Act; (d) monitor classified procurement information, including that of specific items of security organs and make recommendations to the Cabinet Secretary; (e) monitor the implementation of the preference and reservation schemes by procuring entities; (f) prepare, issue and publicise standard public procurement and asset disposal documents and formats to be used by public entities and other stakeholders; (g) provide advice and technical support upon request; (h) 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; Public Procurement and Asset Disposal 2015</p>
7.	<p>Legislation provides for a mechanism of consultation with the private and civil society sectors that is aimed at receiving feedback and identifying problems in the</p>	<p>Overall: 0.75</p> <p>Components:</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p>

	<p>procurement system. PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – [1 point]</p> <p>Point Distribution</p> <p>a) Legislation provides for a mechanism of consultation with the private sector. – [0.25]</p> <p>b) Legislation provides for a mechanism of consultation with the civil society sector. – [0.25]</p> <p>c) PPL obligates the entity responsible for managing public procurement to use this mechanism on a regular basis. – [0.5]</p> <p style="text-align: right;"><i>Accountability and Integrity</i></p>	<p>a) 0.25</p> <p>b) 0</p> <p>c) 0.5</p>	<p>PART XVII — POLICY OPERATIONALIZATION AND REVIEW 179. (1)</p> <p>The National Treasury shall convene meetings at least annually for the purpose of consulting with persons in the public and private sectors who have an interest in the proper functioning of the public procurement and asset disposal system.</p>
8.	<p>PPL stipulates that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants. – [1 point]</p> <p>Point Distribution</p> <p>a) PPL stipulates that electronic means is the primary method of conducting public procurement. – [0.5]</p> <p>b) PPL stipulates that electronic means is the primary method of communication between procuring entities and tender participants. – [0.5]</p> <p style="text-align: right;"><i>Efficiency</i></p>	<p>Overall: 0.5</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0</p>	<p>Executive Order No.2 of 2018.</p> <p>IV. That the National Treasury shall:</p> <p>B. Ensure that by the 1st of January 2019 all Public Procurement Entities undertake all their procurement through the e-procurement module.</p>
9.	<p>PPL establishes a single official point of access (i.e. an online portal) for all procedures and information related to public procurement. – [1 point]</p>	<p>0</p>	

	<i>Efficiency</i>		
10.	<p>Legislation requires that software used for electronic procurement and related communication shall be non-discriminatory, free to use and interoperable with the ICT products in general use and shall not restrict economic operators' access to the procurement procedure. – [1 point]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i> <i>Source: EU Standard</i></p>	0	
11.	<p>PPL ensures that tender candidates must be given equal treatment, without regard to nationality, residency or political affiliation: – [1 point]</p> <p>Point Distribution</p> <ul style="list-style-type: none"> a) PPL should not allow domestic preferences. – [1/5] b) Participation of any candidate or group of candidates is based on qualification. – [1/5] c) Ensures that registration if required does not constitute a barrier to participation in tenders. – [1/5] d) State owned companies are not given any preference. – [1/5] e) Time-periods, including any extension of the time-periods, shall be the same for all interested or participating candidates.– [1/5] <p style="text-align: right;"><i>Competitiveness and Impartiality</i> Source: GPA Standard</p>	<p>Overall: 0.6</p> <p>Components:</p> <ul style="list-style-type: none"> a) 0 b) 0.2 c) 0 d) 0.2 e) 0.2 	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) Article 3. Public procurement and asset disposal by State organs and public entities shall be guided by the following values and principles of the Constitution and relevant legislation— Guiding principles. (a) the national values and principles provided for under Article 10; (b) the equality and freedom from discrimination provided for under Article 27; (c) affirmative action programmes provided for under Articles 55 and 56; Article 33. (d) principles of integrity under the Leadership and Integrity Act, 2012;</p> <p>(e) the principles of public finance under Article 201; (f) the values and principles of public service as provided for under Article 232; (g) principles governing the procurement profession, international norms; (h) maximisation of value for money; (i) promotion of local</p>

			<p>industry, sustainable development and protection of the environment; and (j) promotion of citizen contractor.</p> <p>All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.</p> <p>b) The Public Procurement and Asset Disposal Act, 2015 – Article 106 (2) Candidates shall participate in procurement proceedings without discrimination except where participation is limited in accordance with this Act and the regulations.</p>
12.	<p>PPL stipulates that a procuring entity shall, consistent with its own reasonable needs, provide sufficient time (based on the GPA standard - Article XI) for candidates to prepare and submit tender application. – [1 point]</p> <p style="text-align: center;"><i>Competitiveness and Impartiality</i></p>	1	The Public Procurement and Asset Disposal Act, 2015
13.	<p>PPL stipulates that each procuring entity has a staff member(s) responsible for conducting procurement activities. – [1 point]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 44. (1) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.</p>
14.	PPL references sanctions for violations of the PPL. – [1 point]	1	The Public Procurement and Asset Disposal Act, 2015

	<i>Accountability and Integrity</i>		Article 176. (2) (2) A person who contravenes the provisions of subsection (1) of this section, commits an offence and shall be liable upon conviction— (a) if the person is a natural person, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years, or to both; (b) if the person is a body corporate, to a fine not exceeding ten million shillings. (3) In addition to the penalty under subsection (2), a state or public officer involved shall be subject to internal disciplinary action while any other person who is not a state or public officer shall be debarred.
15.	<p>Legislation explicitly defines fraud and corruption / abuse of public office and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption. – [1 point]</p> <p style="text-align: center;"><i>Accountability and Integrity</i> Source: OECD Methodology</p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 41. (1) h “fraudulent practice” includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition; The Board shall debar a person from participating in procurement or asset disposal proceedings on the ground that the person</p> <p>Also, Section 2 of the Anti-Corruption and Economic Crimes Act 2003</p>

16.	<p>PPL ensures the right to review (complaints), for all interested parties, including general public, tender participants and potential suppliers. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • PPL ensures the right to review, for general public, tender participants and potential suppliers. – [1] • PPL ensures the right to review, for tender participants and potential suppliers. – [0.75] • PPL ensures the right to review, for tender participants. – [0.25] • No one has the right to review. – [0] <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>	0.75	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 167 (1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal process as in such manner as may be prescribed</p>
17.	<p>PPL ensures the right to review throughout the procurement process. – [1 point]</p> <p>Point Distribution</p> <ol style="list-style-type: none"> Complaints can be filed at any time during the procurement process up until the signing of the contract. – [1/3] A procurement contract cannot be awarded with a pending complaint. – [1/3] A reasonable amount of time should be left between publication of the contract award decision and the signing of the contract, in order to give any stakeholder the opportunity to challenge the award decision. – [1/3] <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>	<p>Overall: 1/3</p> <p>Components:</p> <ol style="list-style-type: none"> 1/3 0 0 	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) Article 167 (1) Subject to the provisions of this Part, a candidate or a tenderer, who claims to have suffered or to risk suffering, loss or damage due to the breach of a duty imposed on a procuring entity by this Act or the Regulations, may seek administrative review within fourteen days of notification of award or date of occurrence of the alleged breach at any stage of the procurement process, or disposal or asset disposal proceedings shall give the Authority a written report on the termination within fourteen days.</p> <p>b) and c) Article 171 (2) In no case shall any appeal under this Act stay or delay the procurement process beyond the time stipulated in this Act or the Regulations made thereunder</p>

18.	<p>PPL ensures the existence of an independent (from parties involved in a procurement dispute) review body with the authority to review complaints and grant remedies. – [1 point]</p> <p>Point Distribution</p> <p>a) PPL ensures the existence of an independent review body. – [0.7]</p> <p>b) The review body includes civil society members. – [0.3]</p> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>	<p>Overall: 0.7</p> <p>Components:</p> <p>a) 0.7</p> <p>b) 0</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 27 (1) There shall be a central independent procurement appeals review board to be known as the Public Procurement Administrative Review Board as an unincorporated Board.</p>
19.	<p>PPL ensures electronic, machine-readable and free of charge access to submitted complaints, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	<p style="text-align: center;">0</p>	
20.	<p>PPL ensures electronic, machine-readable and free of charge access to dispute resolutions (of the independent review body), either the full text or key information contained in these documents. – [1 point]</p>	<p style="text-align: center;">0</p>	

	<p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>		
Pre-tendering Phase			
#	Indicator	Score	Relevant Article and Law (if applicable)
1.	<p>PPL obligates procuring entities to publish as early as possible in each fiscal year a notice regarding their future procurement plans - "public procurement annual plan". The annual plan must include at least: – [1 point]</p> <p>Point Distribution</p> <ul style="list-style-type: none"> a) Subject-matters (CPV- or other similar classificatory system) of planned procurements. – [0.25] b) Planned dates (a range of week/month/quarter) of publication of the notices of intended procurement. – [0.25] c) Estimated value of procurements. – [0.25] 	<p>Overall: 1</p> <p>Components:</p> <ul style="list-style-type: none"> a) 0.25 b) 0.25 c) 0.25 d) 0.25 	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 44. (2)(1)c (2) In the performance of the responsibility under subsection (1), an accounting officer shall—(c) ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury; 158. (1) The procuring entities shall integrate preferences and reservations in their procurement plans.</p>

	<p>d) Source of funding. – [0.25]</p> <p style="text-align: right;"><i>Efficiency</i></p>		<p>Procurement plans and monitoring compliance.</p> <p>(2) The procuring entity shall submit to the Authority the part in its procurement plan demonstrating application of preference and reservation schemes in relation to procurement budget within sixty days after commencement of the financial year.</p> <p>http://www.ppoa.go.ke/2015-08-24-14-47-43/manuals</p>
2.	<p>PPL ensures electronic, machine-readable and free of charge access to public procurement annual plans of all procuring entities or key information included in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	
3.	<p>Legislation stipulates that the planning of procurement and estimation of associated expenditures are part of the state budget formulation process in a fiscal year. – [1 point]</p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 44. (2)(1)c (2) In the performance of the responsibility under subsection (1), an accounting officer shall—(c) ensure procurement</p>

	<p style="text-align: right;"><i>Efficiency</i></p> <p style="text-align: center;">Source: OECD Methodology</p>		plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;
4.	<p>PPL stipulates that procurement process should not normally be initiated until the appropriate financial resources have been identified. – [1 point]</p> <p style="text-align: right;"><i>Accountability and Integrity</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 53 (8) Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.</p>
5.	<p>PPL defines the composition, powers, responsibilities and decision-making procedures of the body (tender commission or a person) responsible for conducting tender within the procuring entity. – [1 point]</p> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 46. (1) An Accounting officer shall ensure that an ad hoc evaluation committee is established in accordance with this Act and Regulations made thereunder and from within the members of staff, with the relevant expertise.</p>
6.	<p>Minimum monetary thresholds exist for different types of procurement. – [1 point]</p> <p style="text-align: right;"><i>Efficiency</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) 91. (1) Open tendering shall be the preferred procurement method for procurement of goods, works and services.</p>

			<p>Choice of Procurement procedure.</p> <p>(2) The procuring entity may use an alternative procurement procedure only if that procedure is allowed and satisfies the conditions under this Act for use of that method.</p> <p>(3) Despite sub-sections (1) and (2) open tendering shall be adopted for procurement of goods, works and services for the threshold prescribed in the respective national and county Regulations</p>
7.	<p>PPL stipulates that open tender is the default procedure for any public procurement, and all exceptions are clearly listed by the PPL. – [1 point]</p> <p>Point Distribution</p> <p>a) Open tender is the default procedure for any public procurement. – [0.5]</p> <p>b) All exceptions are clearly listed by the PPL. – [0.5]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>	<p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) 91. (1) Open tendering shall be the preferred procurement method for procurement of goods, works and services.</p> <p>Choice of Procurement procedure.</p> <p>(2) The procuring entity may use an alternative procurement procedure only if that procedure is allowed and satisfies the conditions under this Act for use of that method.</p> <p>(3) Despite sub-sections (1) and (2) open tendering shall be adopted for procurement of goods, works and services for the threshold prescribed in the respective national and county Regulations</p> <p>b) 92. Subject to this Act and prescribed provisions, an accounting officer of a procuring entity shall procure goods, works or services by a method which may include any of the following — Methods of</p>

			<p>procurement. (a) open tender; (b) two-stage tendering; (c) design competition;</p> <p>2015 Public Procurement and Asset Disposal</p> <p>2023 No. 33 (d) restricted tendering; (e) direct procurement; (f) request for quotations; (g) electronic reverse auction; (h) low value procurement; (i) force account; (j) competitive negotiations; (k) request for proposals; (l) framework agreements; and (m) any other procurement method and procedure as prescribed in regulations and described in the tender documents.</p>
8.	<p>PPL stipulates that justification for using a non-competitive procedure must be made public by the procuring entity. – [1 point]</p> <p style="text-align: right;"><i>Accountability and Integrity</i></p>	0	
9.	<p>PPL stipulates that provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against foreign suppliers or protects domestic suppliers, a procuring entity may use non-competitive procedure (direct procurement) when: – [1 point]</p> <p>a) Where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist.</p> <p>b) For additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services cannot be made for economic or</p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>E– Direct Procurement</p> <p>103. (1) A procuring entity may use direct procurement as allowed under sub-section (2) as long as the purpose is not to avoid competition.</p> <p>When direct procurement may be used.</p>

	<p>technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; or would cause significant inconvenience or substantial duplication of costs for the procuring entity.</p> <p>c) Insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering.</p> <p>d) Where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development.</p> <p>e) For purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers. – [1]</p> <p>Scoring Method</p> <p>In case of any additional exceptions – [0.5]</p> <p style="text-align: right;"><i>Uniformity of the Legislative Framework</i> Source: GPA Standard</p>	<p>(2) A procuring entity may use direct procurement if any of the following are satisfied — (a) the goods, works or services are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; (b) due to war, invasion, disorder, natural disaster or there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part; (c) owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods; (d) the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original Public Procurement and Asset Disposal 2015</p>
<p>Tendering Phase</p>		

#	Indicator	Score	Relevant Article and Law (if applicable)
1.	<p>PPL stipulates that the notice of intended procurement / tender documentation must include at least: – [1 point]</p> <p>Point Distribution</p> <ul style="list-style-type: none"> a) Name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any. – [1/8] b) A description of the procurement, including the nature and the quantity of the goods or services (including construction) to be procured or, where the quantity is not known, the estimated quantity. – [1/8] c) CPV codes (or other classificatory system of a similar nature). – [1/8] d) Estimated value of the goods or services to be procured. – [1/8] e) The time-frame for delivery of goods or services or the duration of the contract. – [1/8] f) The procurement method that will be used. – [1/8] g) The address (where applicable) and any final date for the submission of requests for participation in the procurement. – [1/8] h) A list and brief description of any conditions (eligibility criteria) for participation of candidates, including any requirements for specific documents or certifications to be provided by candidates in connection therewith. – [1/8] <p style="text-align: right;"><i>Competitiveness and Impartiality</i> Source: GPA Standard</p>	<p>Overall: 6/8</p> <p>Components:</p> <ul style="list-style-type: none"> a) 1/8 b) 1/8 c) 0 d) 0 e) 1/8 f) 1/8 g) 1/8 h) 1/8 	<p>The Public Procurement and Asset Disposal Act, 2015</p> <ul style="list-style-type: none"> a) 74. (1) The accounting officer shall ensure the preparation of an invitation to tender that sets out the following— (a) the name and address of the procuring entity; b) 74. (1) (c) a brief description of the goods, works or services being procured including the time limit for delivery or completion; e) Article 70. (1) (c) g) 74. (1) The accounting officer shall ensure the preparation of an invitation to tender that sets out the following— Invitation to tender. (a) the name and address of the procuring entity; h) 74. (1) (d) an explanation of how to obtain the tender documents, including the amount of any fee, if any; (e) an explanation of where and when tenders shall be submitted and where and when the tenders shall be opened; (f) a statement that those submitting tenders or their representatives may attend the opening of tenders; (g) applicable preferences and reservations pursuant to this Act; (h) a declaration that the tender is only open to those who meet the requirements for eligibility; (i) requirement of serialisation of pages by the bidder for each bid submitted; and (j) any other requirement as may be prescribed. (2) All tender

			documents shall be sent out to eligible bidders by recorded delivery.
2.	<p>PPL stipulates that the notice of intended procurement / tender documentation must include: – [1 point]</p> <p>Point Distribution</p> <ul style="list-style-type: none"> a) Payment conditions – [0.2] b) Information about bid security (if required) – [0.2] c) Source of funding – [0.2] d) Payment information for multi-year contracts – [0.2] e) Draft of contract – [0.2] <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>	<p>Overall: 0</p> <p>Components:</p> <ul style="list-style-type: none"> a) 0 b) 0 c) 0 d) 0 e) 0 	
3.	<p>PPL defines all eligibility criteria for participation in tender that must include at least: – [1 point]</p> <p>Point Distribution</p> <ul style="list-style-type: none"> a) Capabilities with the respect to personnel, equipment, and construction or manufacturing facilities. – [1/3] b) Financial position. – [1/3] c) Grounds of restriction for participation. – [1/3] <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>	<p>Overall: 2/3</p> <p>Components:</p> <ul style="list-style-type: none"> a) 0 b) 1/3 c) 1/3 	<p>The Public Procurement and Asset Disposal Act, 2015</p> <ul style="list-style-type: none"> b) 55. (1) (b) the person is not insolvent, in receivership, bankrupt or in the process of being wound up; c) 55 (2) A person or consortium shall be considered ineligible to bid, where in case of a corporation, private company, partnership or other body, the person or consortium, their spouse, child or sub-contractor has substantial or controlling interest and is found to be

	Source: EBRD Methodology		in contravention of the provisions of subsection (1) (e), (f), (g) and (h).
4.	<p>PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement (drafting of tender documentation) from independent experts or market participants. In such cases, these experts or market participants may not take part or benefit from tenders they helped plan unless it can be demonstrated that there is no conflict of interest (as defined by the national legislation). – [1 point]</p> <p>Point Distribution</p> <p>a) PPL stipulates that procuring entities may seek consultations for the purpose of planning procurement from independent experts or market participants. – [0.5]</p> <p>b) PPL prohibits these experts or market participants from taking part or benefiting from tenders they helped plan, unless it can be demonstrated that there is no conflict of interest (as defined by the national legislation). – [0.5]</p> <p style="text-align: right;"><i>Efficiency</i> Source: EU Standard</p>	<p>Overall: 0</p> <p>Components:</p> <p>a) 0</p> <p>b) 0</p>	
5.	<p>PPL ensures electronic, machine-readable and free of charge access to notices of intended procurement (including tender documentation), either the full text or key information contained in these documents. – [1 point]</p>	1	<p>Executive Order No.2 of 2018.</p> <p>IV. That the National Treasury shall:</p>

	<p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>		<p>B. Ensure that by the 1st of January 2019 all Public Procurement Entities undertake all their procurement through the e-procurement module.</p> <p>https://www.tenders.go.ke/website</p>
6.	<p>PPL ensures electronic, machine-readable and free of charge access to tender documentation amendments, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	
7.	<p>PPL ensures electronic, machine-readable and free of charge access to tender candidate applications (all documents needed for the request to participate in a tender), either the full text or key information contained in these documents. – [1 point]</p>	0	

	<p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>		
8.	<p>PPL ensures electronic, machine-readable and free of charge access to information about the bids offered by tender participant. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	
9.	<p>PPL ensures electronic, machine-readable and free of charge access to decisions of the tender commission, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] 	0	

	<ul style="list-style-type: none"> • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>		
10.	<p>Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterizes the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products. – [1 point]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i> Source: EU Standard</p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>60 (4) The technical requirements shall not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless — (a) there is no other sufficiently precise or intelligible way of describing the requirements; and (b) the requirements allow equivalents to what is referred to.</p>
11.	<p>PPL stipulates that procuring entities may require tender candidates to confirm the validity of their bid with a bid security that is refunded once the procedure is completed. – [1 point]</p> <p style="text-align: right;"><i>Efficiency</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>61. (1) An accounting officer of a procuring entity may require that tender security be provided with tenders, subject to such requirements or limits as may be prescribed. Tender security.</p> <p>(2) The form of tender security in subsection (1) shall be— (a) as prescribed in the Regulations; (b) stated as an absolute value; (c) an amount of not more than two percent of the tender as valued by the procuring entity.</p>

12.	<p>Legislation explicitly defines conflict of interest and includes mechanisms for its prevention: – [1 point]</p> <p>Point Distribution</p> <p>a) The concept of conflicts of interest covers at least any situation where staff members of the procuring entity or of a procurement service provider acting on behalf of the procuring entity who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure, have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure. – [1/3]</p> <p>b) PPL stipulates that persons responsible for procurement decision-making in procuring entities must declare in writing any conflict of interest with tender participants. – [1/3]</p> <p>c) The legislative framework prohibits the participation of active public officials and former public officials for a reasonable period of time after leaving office in public procurement procedures in ways that benefit them, their relatives, and business or political associates financially or otherwise. – [1/3]</p> <p style="text-align: right;"><i>Accountability and Integrity</i> Source for a): EU Standard Source for b): OECD Methodology</p>	<p>Overall: 1</p> <p>Components:</p> <p>a) 1/3</p> <p>b) 1/3</p> <p>c) 1/3</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) 66 (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement — (a) shall not take part in the procurement proceedings; (b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and (c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.</p> <p>b) 12. (4) Where the involvement of a Board member in a decision of the Board is likely to result in conflict of interest, the Board member shall disclose such potential conflict of interest and the Board member shall not take part in such decisions.</p> <p>c) 59. (1) A State Organ or public entity shall not enter into a contract for a procurement with— (a) a public officer or state officer or a member of a committee or Board of that State organ or public entity; or (b) an officer of that public entity or state organ.</p>
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13.	<p>PPL stipulates that award decisions must be made solely on the basis of evaluation criteria that have been precisely specified in advance in the tender documentation. – [1 point]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>80. (2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding</p>
14.	<p>PPL stipulates that upon modification of any criteria and requirements set out in tender documentation prior to the completion of tender application submission period, a procuring entity shall transmit in writing all such modifications: – [1 point]</p> <p>Point Distribution</p> <p>a) To all tender candidates; and – [0.5]</p> <p>b) Give additional adequate time (either by extending or restarting the time) to allow such candidates to modify and re-submit amended tender application. – [0.5]</p> <p style="text-align: right;"><i>Competitiveness and Impartiality</i></p>	<p>Overall: 1</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0.5</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) 99 (3) In 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. (4) Any such modification or addition shall be communicated to tenderers in the invitation to submit final tenders and a tenderer not wishing to submit a final tender may withdraw from the tendering proceedings without forfeiting any tender security that they may have been required to provide.</p> <p>b) 75 (5) If the tender documents are amended when the time remaining before the deadline for submitting tenders is less than one third of the time allowed for the preparation of tenders, or the time remaining is less than the period indicated in instructions to tenderers, the accounting officer of a procuring entity shall extend the deadline as necessary to allow the amendment of the tender</p>

			documents to be taken into account in the preparation or amendment of tenders.
15.	<p>PPL stipulates that procuring entities shall inform each tender participant of the decision reached about the winner of the tender, including failure to do so, as soon as it is made, but no later than the end of the following working day. – [1 point]</p> <p style="text-align: right;"><i>Transparency</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>87. (1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall notify in writing the person submitting the successful tender that his tender has been accepted.</p> <p>Notification of intention to enter into a contract.</p> <p>(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.</p> <p>(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.</p>
16.	<p>PPL ensures that on request from the tender participant the procuring entity shall as quickly as possible inform: – [1 point]</p> <p>Point Distribution</p>	<p>Overall: 1</p> <p>Components:</p> <p>a) n/a</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>87. (1) Before the expiry of the period during which tenders must remain valid, the accounting officer of the procuring entity shall</p>

	<p>a) Any unsuccessful tender candidate of the reasons for the rejection of its request to participate (if such approval is required). – [0.5] ***</p> <p>b) Any unsuccessful tender participant of the reasons for the rejection of its bid. – [0.5]</p> <p>*** If a) is not applicable, b) equals [1 point].</p> <p style="text-align: right;"><i>Transparency</i> Source: EU Standard</p>	<p>b) 1</p>	<p>notify in writing the person submitting the successful tender that his tender has been accepted.</p> <p>Notification of intention to enter into a contract.</p> <p>(2) The successful bidder shall signify in writing the acceptance of the award within the time frame specified in the notification of award.</p> <p>(3) When a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.</p>
<p>17.</p>	<p>PPL stipulates that in cases when evaluation criteria include both price and quality, the winner shall be chosen using a cost-effectiveness approach, such as: – [1 point]</p> <p>Point Distribution</p> <p>a) Life-cycle cost – [1/3]</p> <p>b) Best price-quality ratio – [1/3]</p> <p>c) Environmental and/or social costs – [1/3]</p> <p style="text-align: right;"><i>Efficiency</i> Source: EU Standard</p>	<p>Overall: 1</p> <p>Components:</p> <p>a) 1/3</p> <p>b) 1/3</p> <p>c) 1/3</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) and b)</p> <p>Article 60 (3)</p> <p>As well as</p> <p>86. (1) The successful tender shall be the one who meets any one of the following as specified in the tender document— (a) the tender with the lowest evaluated price;(b) the responsive proposal with the highest score determined by the procuring entity by combining, for each proposal, in accordance with the procedures and criteria</p>

			<p>set out in the request for proposals, the scores assigned to the technical and financial proposals where Request for Proposals method is used; (c) the tender with the lowest evaluated total cost of ownership; or</p> <p>80. (3) The following requirements shall apply with respect to the procedures and criteria referred to in subsection (2) —(a) the criteria shall, to the extent possible, be objective and quantifiable;</p> <p>(b) each criterion shall be expressed so that it is applied, in accordance with the procedures, taking into consideration price, quality, time and service for the purpose of evaluation; and</p> <p>c) 3. Public procurement and asset disposal by State organs and public entities shall be guided by the following values and principles of the Constitution and relevant legislation— (a) the national values and principles provided for under Article 10;(i) promotion of local industry, sustainable development and protection of the environment; and</p>
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Post-tendering Phase

#	Indicator	Score	Relevant Article and Law (if applicable)
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<p>1.</p>	<p>PPL stipulates that upon successful conclusion of tender (upon choosing and announcing of the winner) the following information must be made public as soon as it is available: – [1 point]</p> <p>Point Distribution</p> <ul style="list-style-type: none"> a) Name, type, identification number, address, telephone, fax number (where applicable), email and internet address of the procuring entity and, where different, of the service from which additional information may be obtained. – [0.1] b) Subject of procurement. – [0.1] c) CPV codes (or other classificatory system of similar nature). – [0.1] d) Description of the procurement: nature, extent, quantity or value of goods, works and services. Where the contract is divided into lots, this information shall be provided for each lot. – [0.1] e) Type of award procedure; in the case of negotiated procedure without prior publication, justification. – [0.1] f) Date of the signing of contract(s) or of framework agreement(s). – [0.1] g) Duration of the contract. – [0.1] h) Number of bids and their respective amounts received. – [0.1] i) Name, address, telephone, fax number (where applicable), email address and internet address of the successful tender participant(s) including: information whether the contract was awarded to a group of economic operators (joint venture, consortium or other) (where applicable). – [0.1] j) Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, 	<p>Overall: 0.6</p> <p>Components:</p> <ul style="list-style-type: none"> a) 0.1 b) 0.1 c) 0 d) 0.1 e) 0 f) 0.1 g) 0.1 h) 0 i) 0.1 j) 0 	<p>Executive Order No. 2 of 2018.</p> <p>I. That effective the 1st of July 2018, all Procuring Entities shall maintain and continuously update and publicize:</p> <p>A. Complete information of all tenders awarded, including but not limited to:</p> <ul style="list-style-type: none"> i. Full Particulars of the awarded Bidder (Supplier, Contractor or Consultant); ii. Specification of goods and services, scope and schedule of works and contract value; iii. Technical and financial capacity of the awarded bidder and summary of reasons for the award; iv. Award Date and Contract Period; v. Current market price of the specific goods, works or services; <p>...</p>
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	<p>telephone number, fax number (where applicable) and email address of the service from which this information may be obtained. – [0.1]</p> <p style="text-align: right;"><i>Transparency</i> Source: EU Standard</p>		
2.	<p>PPL stipulates that the information on subcontractors must be made public upon successful conclusion of tender (upon choosing and announcing of the winner). – [1 point]</p> <p>Point Distribution</p> <p>a) Procurement contracts include information on what proportion of the contract can be subcontracted to third parties. – [0.5]</p> <p>b) Information on subcontractor/s (if any): name, address, ID, contact information, is made public as soon as this information is available. – [0.5]</p> <p style="text-align: right;"><i>Transparency</i></p>	<p>Overall: 0</p> <p>Components:</p> <p>a) 0</p> <p>b) 0</p>	<p>a) The Public Procurement and Asset Disposal Act, 2015</p> <p>149. (1) If the tender documents do not prohibit subcontracting, the successful tenderer may subcontract part of the tender but only if the person to be subcontracted has not been debarred from procurement proceedings in accordance with this Act or has participated in the procurement of goods, works or services related to that contract.</p> <p>(2) The successful tenderer shall be responsible towards the procuring entity for the obligations of the subcontractor.</p> <p>b) The Public Procurement and Asset Disposal Act, 2015</p> <p>70. (6) The tender documents shall set out the following —(k) a provision for providing details of subcontractors for the bidder, where applicable, and a declaration that the sub-contractors have complied with this Act; and</p>

3.	<p>PPL ensures electronic, machine-readable and free of charge access to procurement contracts, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	
4.	<p>PPL ensures electronic, machine-readable and free of charge access to contract amendments, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	

5.	<p>PPL ensures electronic, machine-readable and free of charge access to contract performance information (acceptance act and milestone reports), either the full text or key information included in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	
6.	<p>PPL ensures electronic, machine-readable and free of charge access to payment receipts, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>	0	

<p>7.</p>	<p>PPL clearly defines the procedures for inspection and quality control procedures: – [1 point]</p> <p>Point Distribution</p> <p>a) Quality control (QC) procedures for goods, works and services are well defined in the draft contracts/documents or in the regulations. – [0.5]</p> <p>b) Inspection of civil works is carried out by independent engineering firms or qualified government supervisors and inspectors. – [0.5]</p> <p style="text-align: right;"><i>Efficiency</i></p> <p style="text-align: right;">Source: OECD Methodology</p>	<p>Overall: 0.5</p> <p>Components:</p> <p>a) 0.5</p> <p>b) 0</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>48. (1) An accounting officer of a procuring entity may establish an ad hoc committee known as the inspection and acceptance committee. Inspection and Acceptance committee.</p> <p>(2) The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.</p> <p>(3) The inspection and acceptance committee shall immediately after the delivery of the goods, works or services—</p> <p>(a) inspect and where necessary, test the goods received;</p> <p>(b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and</p> <p>(c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.</p>
<p>8.</p>	<p>PPL ensures electronic, machine-readable and free of charge access to any inspection and quality control reports, either the full text or key information contained in these documents. – [1 point]</p> <p>Scoring Method</p>	<p>0</p>	

	<ul style="list-style-type: none"> • Electronic, machine-readable, free of charge – [1] • Electronic, machine-readable, not free of charge – [0.75] • Electronic, non-machine-readable – [0.5] • Only on paper – [0.25] • None – [0] <p style="text-align: right;"><i>Transparency</i></p>		
9.	<p>Procedures for acceptance of final products and processing of final payments are clearly defined by the PPL or contract law and are incorporated as standard clauses in contracts. – [1 point]</p> <p style="text-align: right;"><i>Efficiency</i> Source: OECD Methodology</p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>146. No works, goods or services contract shall be paid for before they are executed or delivered and accepted by the accounting officer of a procuring entity or an officer authorized by him or her in writing except where so specified in the tender documents and contract agreement. Such an advance payment shall not be paid before the contract is signed.</p> <p>147. (1) Under exceptional circumstances advance payment may be granted and shall not exceed twenty per cent (20 %) of the price of the tender and shall be paid upon submission by the successful tenderer to the procuring entity of an advance payment security equivalent to the advance itself and that security shall be given by a reputable bank or any authorized financial institution issued by a corresponding bank in Kenya recognized by the Central Bank of Kenya, in case the successful tenderer is a foreigner.</p>

10.	<p>PPL defines specific procedures for modifying contracts. – [1 point]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>	1	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>139. (1) An amendment or a variation to a contract resulting from a procurement proceeding is effective only if — (a) the variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity; and (b) any contract variations or amendments for goods, works and services shall be as prescribed. [continued]</p>
11.	<p>PPL stipulates that procurement contract must include dispute resolution procedures. – [1 point]</p> <p style="text-align: center;"><i>Uniformity of the Legislative Framework</i></p>	0	
12.	<p>PPL stipulates that all procurement related documentation must be maintained: – [1 point]</p> <p>Scoring Method</p> <ul style="list-style-type: none"> • In electronic form for a period of at least 10 years. – [1] • In paper form for a period of at least 3 years. – [0.5] <p style="text-align: right;"><i>Transparency</i></p>	0.5	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>Article 68 (1) An accounting officer of a procuring entity shall keep records for each procurement for at least six years after the resulting contract has been completed or, if no contract resulted, after the procurement proceedings were terminated</p>

13.	<p>PPL stipulates that public procurement operations must be subject to internal and external audit conducted by qualified specialists. – [1 point]</p> <p>Point Distribution</p> <p>a) PPL stipulates that public procurement operations must be subject to internal audit conducted by qualified specialists. – [0.5]</p> <p>b) PPL stipulates that public procurement operations must be subject to external audit conducted by qualified specialists. – [0.5]</p> <p style="text-align: right;"><i>Accountability and Integrity</i></p>	<p>Overall: 1</p> <p>Components:</p> <p>a) 0</p> <p>b) 0.5</p>	<p>The Public Procurement and Asset Disposal Act, 2015</p> <p>a) Article 150. (1) An accounting officer or his or her appointed representative shall be responsible for ensuring that the goods, works and services are of the right quality and quantity.</p> <p>(2) The head of the procurement function shall be responsible for assisting the accounting officer to confirm the right quality and quantity of goods, works and services have been delivered to the procuring entity and shall issue a certificate of acceptance to the accounting officer except where technical specifications are from another technical department or professionals engaged to work on behalf of the accounting officer.</p> <p>(3) Where goods, works and services under subsection (2), are of technical nature and the specifications were provided by a technical department or professionals engaged to work on behalf of the accounting officer, that technical department or professionals engaged to work on behalf of the accounting officer shall be responsible for confirming the right quality and quantity of goods, works or services have been delivered and issue a certificate to the recipient accounting officer.</p> <p>b) The Public Procurement and Asset Disposal Act, 2015 Article 43(1) The Authority, or anyone authorised by the Authority, may inspect, assess, review or audit at any reasonable time, the records and accounts of the procuring entity and contractor relating to the procurement or disposal proceeding or contract and the procuring</p>
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