

# Assessing Public Procurement Practice in Kenya - 2017

## General Description of the Public Procurement System<sup>4</sup>

### X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

*Please provide the answer in a maximum of 5-10 sentences.*

Comment:

- Yes
- The Act establishes the Public Procurement Regulatory Authority among other functions, to monitor, assess and review the public procurement and Asset Disposal system to ensure they respect the National values and other provisions including Article 227 of the constitution on public procurement.
- Public Procurement Administrative Review Board is an independent body
- Source: <http://ppra.go.ke/>

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

The Government's Procurement system was originally contained in the Supplies Manual of 1978, which was supplemented by circulars that were issued from time to time by the Treasury. Due to institutional challenges that existed there was established the Exchequer and Audit (Public Procurement) Regulations 2001 which created the Public Procurement Directorate (PPD) and the Public Procurement Complaints, Review and Appeals Board (PPCRAB). The directorate suffered impartiality challenges, this led to formation of a legally backed oversight authority. The Public Procurement and Disposal Act, 2005 created the Public Procurement Oversight Authority (PPOA), the Public Procurement Advisory Board (PPAB) and the continuance of the Public Procurement Complaints, Review and Appeals Board as the Public Procurement Administrative Review Board (PPARB). The PPAB and PPARB are autonomous bodies.

The PPOA is mandated with the responsibility of:

1. Ensuring that procurement procedures established under the Act are complied with;
2. Monitoring the procurement system and reporting on its overall functioning
3. Initiating public procurement policy
4. Assisting in the implementation and operation of the public procurement system by:
  - preparing and distributing manuals and standard tender documents,

- providing advice and assistance to procuring entities, and
- develop, promote and support training and professional development of staff involved in procurement

The PPOA Act 2005 has since been amended to PPOA Act 2015

<http://ppoa.go.ke/2015-08-24-14-48-29/general-information>

#### **GOVERNMENT PROCUREMENT IS NOW ONLINE**

Effort has been made to develop, IFMIS system, This has ushered in a new era of a fully automated procurement process, from requisition, tendering, contract award, to payment. The shift from manual to e-procurement makes public procurement more efficient and effective. It also enhances visibility and accountability at all levels of the procurement process, for the benefit of all Kenyans.

[https://supplier.treasury.go.ke:8060/OA\\_HTML/RF.jsp?function\\_id=28804&resp\\_id=-1&resp\\_appl\\_id=-1&security\\_group\\_id=0&lang\\_code=US&params=Td73d5DBUkqwhmuV5Jvif2Pn1l7l4Dx2Yl6-BjjO2K4&oas=rbWFXNgSpoCtLKzbuQkDeg](https://supplier.treasury.go.ke:8060/OA_HTML/RF.jsp?function_id=28804&resp_id=-1&resp_appl_id=-1&security_group_id=0&lang_code=US&params=Td73d5DBUkqwhmuV5Jvif2Pn1l7l4Dx2Yl6-BjjO2K4&oas=rbWFXNgSpoCtLKzbuQkDeg)

**X.** Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

*Please provide the answer in a maximum of 3-4 sentences.*

Comment:

I. Are tenders electronic or paper based?

Tenders must be in writing according to the law. They can be in electronic or print.

*The Public Procurement and Asset Disposal Act, 2015 article 64. (1)*

The Presidential Directive of March 2018 states that all public tenders shall be electronic

<https://openinstitute.com/wp-content/uploads/2018/07/Executive-Order-No.-2-of-2018-Procurement.pdf>

II. In cases when tenders are solely electronic, are there cases of paper-based tendering?

Yes

III. Is there insufficient enforcement of PPL?

Following the executive directive, the public entities have continued to update the Public Procurement Information Portal

<https://www.tenders.go.ke/website>

But generally, there has been insufficient enforcement of the PPL

**X.** Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

*Please provide the answer in a maximum of 3-4 sentences.*

Comment:

- I. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement?  
No  
It is conducted by respective public entities.  
The public entities then submit a list of awarded contracts on the Public Procurement Information Portal
- II. Is its/their use mandatory or voluntary?  
It is mandatory for the procuring entity to publish the information on procurement e.g. award and tender notices. But it is not mandatory to place it the website

X. If there is a register of suppliers, what is the number of registered suppliers in it?

*If possible, please provide a comparison with several (at least 5) previous years?*

Comment:

- I. is a register of suppliers  
Yes
- II. what is the number of registered suppliers in it?

"2018-01-01" to "2018-12-31" N = 362

"2017-01-01" to "2017-12-31" N = 649

"2016-01-01" to "2016-12-31" N = 572

"2015-01-01" to "2015-12-31" N = 764

"2014-01-01" to "2014-12-31" N = 801

"2013-01-01" to "2013-12-31" N = 626

Source: Author's compilation from: <https://www.tenders.go.ke/website/contracts/suppliers>

X. What is the total number of competitive procedures?

"2019-01-01" to "2019-02-06" N = 858

Procurement Method	Value	Share (%)
Design Competition	1	0
Expression of Interest	6	1
Framework Agreement	19	2
Open Tender	805	94
Request for Proposal	27	3

"2018-01-01" to "2018-12-31" N = 4079

Procurement Method	Value	Share (%)
Competitive Negotiations	1	0
Design Competition	2	0
Expression of Interest	53	1
Framework Agreement	239	6
Open Tender	3689	90
Request for Proposal	94	2
Two Stage Tendering	1	0

"2017-01-01" to "2017-12-31" N = 321

Procurement Method	Value	Share (%)
Expression of Interest	4	1
Framework Agreement	17	5
Open Tender	296	92
Request for Proposal	3	1
Two Stage Tendering	1	0

"2016-01-01" to "2016-12-31" N = 98

Procurement Method	Value	Share (%)
Expression of Interest	8	8
Framework Agreement	1	1
Open Tender	89	91

Source: Author's compilation from ::

[https://www.tenders.go.ke/website/tenders/getSelectedResults/closed?entity\\_type=&tab=closed&entity\\_name=&tender\\_category=&tender\\_type=](https://www.tenders.go.ke/website/tenders/getSelectedResults/closed?entity_type=&tab=closed&entity_name=&tender_category=&tender_type=)

*If possible, please provide a comparison with several (at least 5) previous years.*

Comment: Majority of the tenders are by open tender (above 90%)

**X.** What is share of public procurement in the country's GDP?

Comment:

Procurement spend constitutes about 45% of the budgets of Ministries, Departments and Agencies (MDA's)

Source: PPOA Annual report 2015 [<http://ppoa.go.ke/images/downloads/ppoa-annual->

[reports/PPOA2015%20Report.pdf](#) ]

Total value of procurement is: Ksh 1023.81 Billion [45% of Ksh 2,275.13 Billion]

Share of public procurement to GDP is: 16% [ Ksh 1023.81 Billion / Ksh 6,284.2 Billion]

Source: Controller of Budget, Kenya National Bureau of Statistics (KNBS) | Economic Survey 2017

X. What are the monetary thresholds for single source procurement (works, goods, services)?

\_\_None\_\_

*Is the monetary threshold acceptable? Why or why not?*

Comment: N/A

Section 124 (12) of the Public Procurement and Disposal Act 2015 does not provide for monetary thresholds as one of the requirements

## Public Procurement Scope and Spending Breakdown

X. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? \_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:

2019: Total value of procurement = Ksh 0.4 Bn [ *Note: the statistic is for the first 2 months*]

2019: Procurement (Open tender) = Ksh 0.4 Bn

2019: % Value of Open tender to total = 100%

2018: Total value of procurement = Ksh 43 Bn

2018: Procurement (Open tender) = Ksh 36 Bn

2018: % Value of Open tender to total = 83%

2017: Total value of procurement = Ksh 13 Bn

2017: Procurement (Open tender) = Ksh 12.8 Bn

2017: % Value of Open tender to total = 98%

2016: Total value of procurement = Ksh 13 Bn  
2016: Procurement (Open tender) = Ksh 13 Bn  
2016: % Value of Open tender to total = 100%

Source: Author's calculation from: <https://www.tenders.go.ke/website/contracts/suppliers>

Source: Author's calculation from:

[https://www.tenders.go.ke/website/tenders/getSelectedResults/closed?entity\\_type=&tab=closed&entity\\_name=&tender\\_category=&tender\\_type=](https://www.tenders.go.ke/website/tenders/getSelectedResults/closed?entity_type=&tab=closed&entity_name=&tender_category=&tender_type=)

**X.** What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? \_\_\_\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).*

Comment:

2019:: Total value of procurement = Ksh 363 Mn

**X.** What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? \_\_\_\_\_

*Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).*

Comment:

**X.** If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : \_\_\_\_ share: \_\_\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment: N/A

**X.** What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: \_\_\_\_\_ share: \_\_\_\_\_

*Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:

## **Competitiveness**

X. What is the average number of bidders? \_\_\_\_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.*

Comment:

X. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? \_\_\_\_\_

*If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.*

Comment:

X. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? \_\_\_\_\_

*If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.*

Comment:

X. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? \_\_\_\_\_

*Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?*

Comment:

53% (Ksh 5,128,258,448/Ksh 9,001,936,844) ----- 2015/16

37% (Ksh 5,128,258,448/Ksh 9,001,936,844) ----- 2014/15

46% (Ksh 5,128,258,448/Ksh 9,001,936,844) ----- 2013/14

Source: PPOA reports (various publications)

X. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? \_\_\_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:

X. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? \_\_\_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:

## Efficiency

X. What is the share (%) of failed tenders in the total number of tenders?\_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.*

Comment:

2019:: 1 - 112/858 = 13%

2018:: 1 - 1991/4079 = 49%

2017:: 1 - 105/321 = 33%

Source: <https://www.tenders.go.ke/website/tenders/Index>

X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? \_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? \_\_\_\_

*If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.*

X. What is the share (%) of non-executed contracts in the total number of contracts? \_\_\_\_

*If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.*

Comment:

## Accountability

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

Comment:

- **the dispute settlement mechanism in public procurement**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**  
The Public Procurement Administrative Review Board (Review Board) is established under Section 25 of the Public Procurement and Disposal Act, 2005.  
<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 15
- **its composition**  
The Review Board comprises of six members nominated by the specified institutions/bodies and three other members appointed by the Minister, one of whom is the Chairman. The Secretary to the Review Board is appointed by the Director-General from amongst the staff of the Authority.  
<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 15
- **Authority**  
The Review Board objectives are to hear and determine disputes arising from candidates who claim to have suffered loss or damage due to the breach of a duty imposed on a

Procuring Entity by the Public Procurement and Disposal Act, 2005 and/or the Public Procurement and Disposal Regulations, 2006. The Board was established to promote and uphold fairness in the Public Procurement System through judicious and impartial adjudication of matters arising from disputed procurement proceedings in order to increase transparency, accountability and public confidence. The Board also adjudicates the Director – General’s decisions made against procuring entities on investigations and debarment of suppliers.

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 15

- **Board Independence, Separation of Roles and Responsibilities**

A clear division of responsibility exists between the Chairman who is non-executive, the non-executive Board members and the Director General. Each of the responsibilities are clearly set out in writing.

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 15

**(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.**

*Public Procurement and Disposal Regulations, 2015/16 Article 12(4)*

<http://ppoa.go.ke/images/downloads/Public%20Procurement%20and%20Asset%20Disposal%20Act%202015.pdf>

**(2) In performance of its functions under subsection (1)(a) of this section, the Review Board shall have powers to develop rules and procedures to be gazetted by the Cabinet Secretary.**

*Public Procurement and Disposal Regulations, 2015/16 Article 28(2)*

<http://ppoa.go.ke/images/downloads/Public%20Procurement%20and%20Asset%20Disposal%20Act%202015.pdf>

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)? \_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:  
2015/16 - 80 cases  
2014/15 - 63 cases  
2013/14 - 56 cases

X. What is the share (%) of disputed tenders in the total number of tenders? \_\_\_\_

*If possible, please provide an analysis of this data point in 2-3 sentences.*

Comment:

X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? \_\_\_\_

*If possible, please provide an analysis of this data point in 2-3 sentences.*

Comment:

53% (42/80) ----- 2015/16

37% (23/63) ----- 2014/15

46% (26/56) ----- 2013/14

Source: PPOA reports (various publications)

X. What share of decisions of the Dispute Resolution Board have been taken to courts? \_\_\_\_

*If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.*

Comment:

15% (12/80) ----- 2015/16

6.3% (4/63) ----- 2014/15

21% (12/56) ----- 2013/14

Source: PPOA reports (various publications)

While the general trend shows that while the total number of cases have steadily increased; 56 to 80 over the three years, in terms of the cases that were lodged for the judicial review, the period has witnessed mixed performance, from 12 cases in 2013/14 to 4 cases in 2014/15 and finally to 12 cases in 2015/16.

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? \_\_\_\_

*If possible, please provide an analysis of this data point in 2-3 sentences.*

Comment:

X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? \_\_\_\_

*If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?*

Comment:

## Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

Yes  
<https://tenders.go.ke/website/tenders/Index>  
<https://tenders.go.ke/website/contracts/Index>  
<https://agpo.go.ke/pages/tenders>  
<http://5.196.68.29/>

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

Yes  
 PPRA Internal Procurement Policy The Advisory Board approved the PPRA Procurement Policy and Procedures manual in September 2015. The policy to entrench best practice in the Authority's internal procurement system and improve efficiency, ensure compliance to the procurement law as well as enhance internal quality service delivery and make the Authority's procurement function a centre of excellence which other institutions can emulate

X. Please fill the Data Transparency Table below by indicating either "Yes", "No" or "N/A" in each empty slot:

Data Transparency Table - Access to Public Procurement Related Documents							
Type of document	Is this information required to be public by law?	Is this information publicly available?	Is the database complete?	Electronic	Machine-readable *	Free of charge	Exact format
PPL documents	Yes	Yes	Yes	No	No	Yes	Online:: <a href="http://ppoa.go.ke/images/downloads/Public%20Procure">http://ppoa.go.ke/images/downloads/Public%20Procure</a>

							ment%20and%20Asset%20Disposal%20Act%202015.pdf
Annual public procurement plans	Yes	Yes	No	No	No	Yes	Online:: <a href="http://www.ppoa.go.ke/images/downloads/procurement-journal/PPOA%20Strategic%20Plan.pdf">http://www.ppoa.go.ke/images/downloads/procurement-journal/PPOA%20Strategic%20Plan.pdf</a>
Notices of intended procurement	Yes	Yes	No	No	No	Yes	Online:: <a href="http://www.treasury.go.ke/tenders.html">http://www.treasury.go.ke/tenders.html</a>
Amendments to tender documentation	Yes	Yes	No	No	No	Yes	Online:: <a href="http://www.treasury.go.ke/tenders/Tender%20No.17%20addendum%20air%20con.pdf">http://www.treasury.go.ke/tenders/Tender%20No.17%20addendum%20air%20con.pdf</a>
Tender candidate applications	Yes	No	No	No	No	No	

Bids	Yes	Yes	No	Yes	Yes	Yes	Online:: <a href="https://tenders.gov.ke/website/Contracts/Details/WJKDYQAX">https://tenders.gov.ke/website/Contracts/Details/WJKDYQAX</a>
Tender commission decisions	Yes	Yes	No	No	No	Yes	Online:: <a href="https://tenders.gov.ke/website/Contracts/Details/WJKDYQAX">https://tenders.gov.ke/website/Contracts/Details/WJKDYQAX</a>
Information on subcontractors	Yes	Yes	Yes	Yes	Yes	Yes	Online:: <a href="https://tenders.gov.ke/website/Contracts/Details/WJKDYQAX">https://tenders.gov.ke/website/Contracts/Details/WJKDYQAX</a>
Procurement contracts	Yes	Yes	Yes	Yes	Yes	Yes	Online:: <a href="https://tenders.gov.ke/website/contracts/index">https://tenders.gov.ke/website/contracts/index</a>
Contract amendments	Yes	No	No	No	No	No	<a href="https://tenders.gov.ke/website/contracts/index">https://tenders.gov.ke/website/contracts/index</a>
Contract performance	Yes	Yes	No	Yes	Yes	Yes	<a href="https://www.oag">https://www.oag</a>

information							<a href="http://kenya.go.ke/index.php/reports/doc_download/1723-report-summary-2015-2016">kenya.go.ke/index.php/reports/doc_download/1723-report-summary-2015-2016</a>  See page 91 & 157 ...Supply of Desktop Computers to Schools & ...Irregular Procurement Practices
Payment receipts	Yes	No [Note this may differ on case by case, however, Office of the Auditor General (OAG) report shows that the receipts are mostly not made available	No [Receipts that are available are mostly in hard copies and are not online]	No	No	No [Cost charges such as printing apply]	<a href="http://www.oagkenya.go.ke/index.php/reports/doc_download/1723-report-summary-2015-2016">http://www.oagkenya.go.ke/index.php/reports/doc_download/1723-report-summary-2015-2016</a>  See page 93 & 157 ...Expired contract & ...Irregular Procurement Practices
Inspection and	Yes	Yes	No	Yes	Yes	Yes	

quality control reports							
Complaints	Yes (PPOA Act 9.(1)(h) and (m))	No	No	No	No	No	N/A
Dispute resolutions	No (PPOA Act 28. (1))	N/A	N/A	N/A	N/A	N/A	N/A
Internal and external audit reports	Yes (PPOA Act 20.(1)(h))	Yes	Yes	No	No	Yes	<a href="http://www.ppoa.go.ke/2015-08-24-14-48-29/annual-reports">http://www.ppoa.go.ke/2015-08-24-14-48-29/annual-reports</a>

\* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

*In the comment box below, please elaborate on any irregularities or important details related to the above table.*

Comment:
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**X.** In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

- |   |
|---|
| <ul style="list-style-type: none"> <li>- Not all public entities upload the procurement documents such as required by the law. In some cases that uploaded documents do not contain sufficient data. This has resulted in the reduced transparency</li> <li>- Most of the uploaded documents are not in the readable format such as JSON or XML. Most documents are uploaded in PDF format which renders a challenge in the analysis</li> <li>- Though the Public Participation Act grants the right to the public citizen to access the public documents; most of the key documents such as tenders, and decision for awarding the winner is not easily accessed even on request.</li> </ul> |
|---|

## Major Strengths and Weaknesses

X. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: Weak restrictions of "restricted tendering and direct procurement methods" thus leading to abuses

According to PPOA Annual Report 2016, common areas of weaknesses of the procurement processes include use of alternative procurement methods, mainly restricted tender and requests for quotations without fulfilling the conditions for use of such methods.

Recommendation: The National Treasury and the Authority should build capacity of the PEs on effective development of objective specifications and evaluation of tenders amongst other areas of the procurement process

2.

Gap: Inflation of costs for procured goods and services and Procurement processes that are contrary to the Procurement Plan

For instance, the Report of the Auditor-General on the Financial Statements for National Government for the Year 2015/2016 highlights the following irregular payment in the State Department of Interior:-

**75. Irregular Procurement of Footwear – Kshs.267,876,000.00**

**75.1 Excess Purchase of Footwear**

Examination of the approved Procurement Plan for the 2014/2015 financial year show that 26,500 pairs of footwear were approved for purchase. However, details disclosed on payment vouchers show that 78,000 pairs of footwear valued at Kshs.267,876,000 were supplied and paid for.

It is therefore evident that 51,500 pairs of footwear valued at Kshs.175,893,000 were purchased and paid in excess of the approved quantity contrary to Section 51(3) of the Public Finance Management (National Government) Regulations, 2015 which requires commitments of expenditures to be consistent with approved procurement plan for the entity.

Further, the State Department has explained that the procurement of additional pairs of shoes was necessitated by recruitment of 10,000 police trainees. However, verifications show that 4,000 trainees were at Kenya Police Training College in Kiganjo and 2,000 trainees were at General Service Unit (GSU) while the procurement of additional 4,000 footwear for the Administration Police officers was undertaken and paid for separately.

Recommendation:

- Enhance effective periodical review of market price index for common user items. This is pursuant to section 9(m)(iii) of PPOA ACT 2015
- Promote competition and ensure that competitors are treated fairly;
- Appropriate sanctions as per the provisions of the Act should be constituted against the officers, PEs and the bidders

3.

Gap: Non disaggregation of data on awards to Youth, Women and Persons with Disability.

Recommendation: Enforce implementation of Article 157 (13) (b) of PPOA 2015 which requires that The procuring entities at the national and county level shall make a report after every six months to the Authority. A report provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and services have been procured by the procuring entity.

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge:

**I. Procurement Process**

Most PEs have procurement plans with appropriate procurement method(s) to be used.

Among the key weaknesses identified included:

- i. Bid documents do not contain adequate specifications of requirements.
- ii. Non adherence to evaluation criteria / use of criteria not specified in tender document.
- iii. Use of alternative procurement methods, mainly restricted tender and requests for quotations without fulfilling the conditions for use of such methods.
- iv. Unsuccessful bidders not notified / not given reasons for being unsuccessful in the tender.
- v. Delays in payment of suppliers.

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 29

Recommendation:

**I. Procurement Process**

The National Treasury and the Authority should build capacity of the PEs on effective development of objective specifications and evaluation of tenders amongst other areas of the procurement process

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 29

2.

Challenge:

I. Institutional Structures

Most of the Procuring Entities (PEs) assessed and reviewed have their institutional arrangements in place except for the public schools. The major challenge is on the functioning and composition of the Institutions.

i. The National Treasury should develop guidelines on setting up procurement institutional arrangements for public schools

ii. The National Treasury should build capacity of the PEs on effective functioning of the set procurement institutions.

iii. The PEs with the guidance of the National Treasury and the Authority should ensure that the institutions are set up as required by the Law.

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Recommendation:

i. The National Treasury should develop guidelines on setting up procurement institutional arrangements for public schools

ii. The National Treasury should build capacity of the PEs on effective functioning of the set procurement institutions.

iii. The PEs with the guidance of the National Treasury and the Authority should ensure that the institutions are set up as required by the Law.

3.

Challenge:

Record Keeping, Record Keeping and Inventory Management

- Most PEs-Procuring Entity assessed and reviewed prepared relevant procurement records. However, the major challenge was on creating and maintaining a complete procurement and contract file.
- Majority of the reports submitted are from National Government, with most reports received from State Corporation. The major weaknesses are reporting using inappropriate format and submitting the reports after lapse of the stipulated timelines.
- Most PEs have store facility and relevant store records. The major challenges identified were updating store records, security of store and failure to conduct regular stock taking. Assets Registers- PEs have maintained Assets Registers. It was noted that the Assets Registers were not up to date.

Recommendation:

Record Keeping, Record Keeping and Inventory Management

- The PEs should ensure they prepare and maintained prerequisite procurement records.
- The National Treasury and the Authority should build capacity of the PEs on effective procurement records management.
- The Authority should enforce compliance with reporting timelines and formats by rejecting non-compliant reports.
- The PEs should ensure compliance with the requirements on stores and inventory control & management.
- PEs should ensure that the Assets Registers are regularly updated.

X. What are the 3 major strengths / successes of the country's public procurement system as a whole?

Please provide a brief description of each in a maximum of 4-5 sentences.

1.

- The implementation of the Constitution of Kenya 2010, introduced a system of checks and balances that provides for more transparency in the management of public resources and subject to increased accountability.

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2.

- As part of the Government reform agenda, the need to strengthen and streamline the procurement process has continued to be given prominence. This therefore, led to the enactment of the Public Procurement and Asset Disposal Act, 2015 (the Act) in January 2016.

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 1

3.

- The new Act (Public Procurement and Asset Disposal Act, 2015 ) addresses governance in accordance with the international best practice. Section 27 of the Act establishes the Public Procurement Administrative Review Board as a central independent procurement appeals board to review, hear and determine tendering and asset disposal disputes; and other related sections.

Legal Framework It is worth noting that, the enactment of the Public Procurement and Asset Disposal Act, 2015 (the Act) in January 2016 massively changed the mandate of the Public Procurement Oversight Authority (PPOA) as it largely assumed the regulatory function which then transited to Public DIRECTOR GENERAL'S STATEMENT PPOA Annual Report 2015 - 2016 ppoa.go.ke 3 Procurement Regulatory Authority (PPRA).

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 1&2

4.

- In performance of its activities, the Board has enhanced efficiency in handling applications for review as well as increased the access to its services through provision of relevant reference materials.

<http://www.ppoa.go.ke/images/downloads/ppoa-annual-reports/PPOA%20Annual%20Report%202016.pdf> ....Page 1

- This has further been enhanced by the executive order that all public entities report report and continuously update and publicise the required information. This was done with the aim of fostering coherence and uniformity in the reporting style and framework.

As an example the presidency publishes the tenders its websites

<http://www.president.go.ke/2018/02/26/tender-no-sh0172017-2019-for-supply-of-black-diesel/>

<https://openinstitute.com/wp-content/uploads/2018/07/Executive-Order-No.-2-of-2018-Procurement.pdf>