

Uraia

Kenya's National Civic Education Programme

BECAUSE
KENYANS HAVE
RIGHTS AND
RESPONSIBILITIES



OPEN CONTRACTING

Ensuring Public Money for Goods
and Services is Used Properly



The government uses the money that you pay to it as a tax and therefore it is important for you as a citizen to know and interrogate how the money is being used.

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What is Open Contracting?

- This refers to the process where there is effective disclosure and participation of citizens when the government engages contractors and service providers to implement or undertake public projects.
- Open contracting is an aspect of Open Government that specifically looks at how government get into formal agreement with different service providers to undertake public development projects, how contracting is undertaken and how projects are developed and implemented.
- It also refers to norms and practices for increased sharing of information and participation in public contracting. It encompasses all public contracting, including contracts funded by combinations of public, private and donor sources.

What is Open Government?

- Open Government refers to transparent, effective, and accountable governments with institutions that empower citizens and addresses citizens needs and requirements.

Why is it important for the citizens to understand how government contracts are managed?

- As a citizens we need to understand that the government works on our behalf and therefore all the developmental projects that they implement are undertaken on our behalf.
- Ordinarily when the government wants to undertake a project be it building a road, a school, a hospital, a hydroelectric dam, a bore hole, an agricultural center, universities etc. they usually identify a service provider and enter into a formal agreement where they sign a contract. It is therefore in our interest to know what those contracts say and whether the goods and services are the same as what has been indicated in the contract.

What is a government contract?

- It is a legal and binding agreement that outlines the terms and conditions that guides the engagement and it usually includes the outline of the tasks to be provided and the quality of these services.

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- This therefore means that public contracts are your contracts as a citizen and that you are bound by them, so it is important to know what the government is signing on your behalf!.
- The government uses the money that you pay to it as a tax for paying for these goods and services, and therefore it is important for you as a citizen to know and interrogate how that money is being used.






Understanding the Nature of Contracts

- Contracts can be single documents and/ or they can be made up of multiple documents including annexes and addendums
- Contracts should also be understood to include any later agreements of the parties that change the terms of the initial contract (amendments)

When dealing with open contracting we do not only ask to be shown the contracts but also related documents to have the whole picture.

Related documents include (documents not part of the contract but closely related to the contract and are to be attached as part of contract.) These will vary depending on the nature of the project, the sector to which the project will be undertaken and the circumstances under which it was negotiated.

Related documents could include the following:

 bidding documents or requests for proposals	 award notices
 evaluation reports	 social and environmental impact assessments reports
 monitoring or auditing documents	

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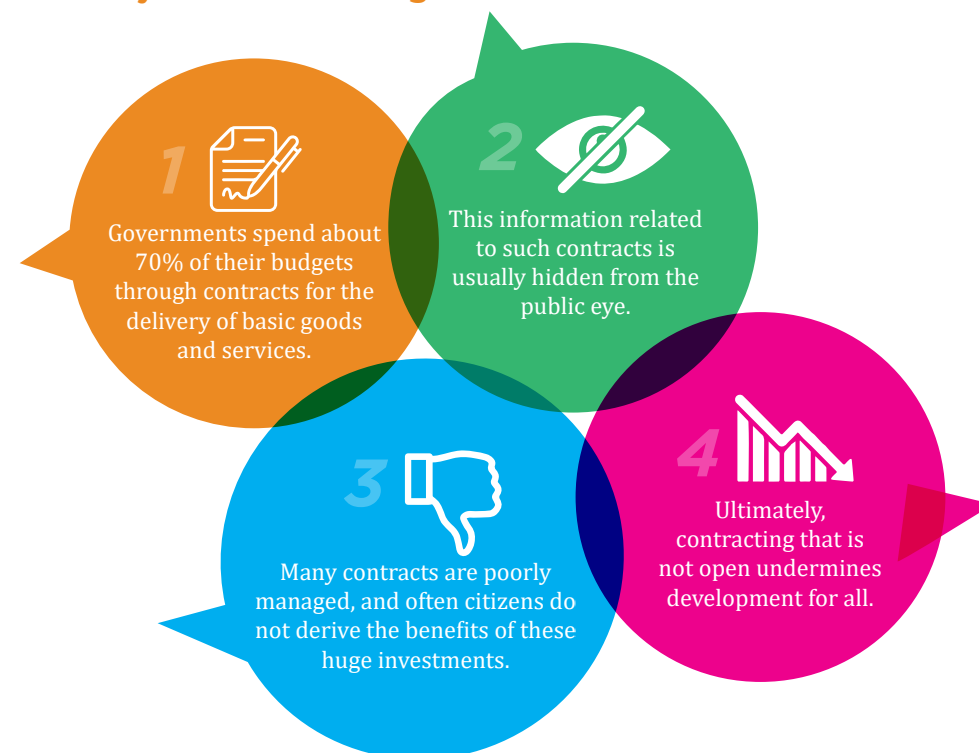
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Why it is important for the citizens to be involved in Open contracting?

A government's commercial relationships is one of the most valuable datasets that it possesses: it's where the money and the power are in government and therefore opening it leads to the following:

- **For the government:** better outcomes including more insight, analysis, and efficiency
- **For business** - fairer competition, ability to research the market, and fostering entrepreneurship
- **For civil society:** improved integrity, better monitoring, and tracking of service delivery.

Why does contracting matter?



In order to avoid a situation where public money is wasted and to ensure that public contracting benefits the citizens there needs to be more open information sharing and meaningful public participation.

When disclosure and participation is applied to the entire contracting process from planning to execution and contract closure it strengthens accountability and trust among the various actors involved in the process and ultimately contribute to better contract performance and improved development outcomes for everyone.

What is the contracting process?

These are the steps that are followed from the start of a contract to the end of the contract. It consist of the following 4 key steps:

1. Planning 2. Tendering 3. Contract Execution 4. Contract Closure

1 PLANNING

a) The process:

The planning stage must ensure that the contract is in line with the government's action plan and with the mission of the public entity that will oversee it. In the planning stage the need must be identified and narrowed down, along with the associated risks and the budget must be allocated.

Documents such as annual procurement plans should guide the process at this stage.

b) Role of the citizen:

Citizens can review different documents associated with the planning stage. they should also advocate for consultations so that decisions are made on the basis of needs that have been expressed by the people who are to benefit on the project including having a say on the options available

2 TENDERING

Once the contract has been planned, the entity is ready to open the tendering process.

This is usually done by inviting interested suppliers to submit bids that will be evaluated according to specific procedures and evaluation criteria set in the bidding documents.

ROLE OF CITIZENS:

- o To be allowed to comment on the requirements and procedures before the bids are submitted. Once the "winner" is chosen and before the contract is signed, the losing bidders should be allowed to file complaints if they find that the process has not properly followed the established rules.
- o To ask and access the report on the evaluation decision and to have an opportunity to interrogate (ask for answers) once the decision has been made

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3. CONTRACT EXECUTION

1



After the contract is awarded, the contract is signed, and the necessary guarantees are in place, the execution of the contract starts.

2



Here the contractor must comply with the legal requirements as well as with what was stated in the contract.

3

The public entity is accountable to ensure that the contract is being executed in a proper and timely manner and must also comply with what was agreed, particularly in regards to payments.



ROLE OF CITIZENS

To Find out:

- o whether the targets that have been set are being met regarding costs and times.
- o Whether the parties are meeting the commitments that were put in the contract.
- o If there are any amendments and the reasons for these amendments,
- o The quality of the final product- has the contractor/service delivered what was agreed?



4. CLOSING

The contract must be closed once the obligations have been fulfilled. It is important to state that it is possible for contract obligations to exceed the contract term.

For example, guarantees may be enforced even after the last payment has occurred. For instance, if a road that is built and paid for but is ruined several months later, citizens should have a say on this.

ROLE OF THE CITIZENS

To establish whether

- o the contractor was according to the contract supposed to pick up any left waste materials
- o the community was affected as a result of the contract's work.



Important point to note: Answers to questions like these can drive positive changes, making a contractor assume responsibility and establishing a fresh ground for government to improve future contract planning.

WHAT COULD WE EXPECT FROM THE CONTRACTING PROCESS?

- We should expect value for money, which is the benefit that we get from a contract where resources are spent.
- It addresses the balance on usage of money, the means that were used to implement the project and the practice of implementing projects within the agreed timelines and by adhering to the agreed terms of reference
- This is important because public resources collected from the taxpayers must be used by governments in a way that guarantees the best return for the money spent, in terms of **effectiveness**, **efficiency** and **economy** when they are undertaking their mandate of delivering goods and services to the citizens
- Citizens should ask whether the result of the contracting process has been achieved by interrogating the following three issues

i) Effectiveness

Public contracting should be effective. This means that the specified need is satisfied or solved through the contract.

In several situations, mainly due to poor planning, government institutions can end up with contracts that do not meet expectations.

e.g. roads that lead to nowhere, or electronic devices bought for places with no electric power. This has a direct effect on the population, as goods and services are not well delivered.

ROLE OF THE CITIZEN:

They should ask whether the results of the contracting process have been achieved or not

ii) Efficiency

Efficient contracting means that the government has minimized the resources it has used during the contracting process. That is, spending the lowest costs possible while still obtaining a good result, in terms of time, money invested, and energy used.

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ROLE OF THE CITIZEN:

Citizens to analyze the amount of resources spent and compare it with the results achieved to assess whether the process was efficient.

Proper monitoring can lead to reduced contract management costs, thus increasing overall efficiency.



iii) Economy

Economy relates to obtaining a proper price and taking into account every cost throughout the lifespan of the goods or service procured or the project undertaken.

It also involves establishing how the contractor is accessing raw materials and labor, by evaluating the following broad aspects outlined below:

- o Is the contractor sourcing for materials within the locality or from outside? even though the materials are available in the project area?
- o is the contractor making use of available labor within the project area or they are importing labor?
- o Are the required materials within the project area of the required quality and standard?
- o Are there qualified personnel and labor force within the area and are they engaged by the contractor?
- o Are the local resources of the required quality and are they competitively priced etc.?

It has been established that when the contractor has decided to go for labor and materials outside the project area yet they are available, and are of the required quality and standards and are also competitively priced, then further interrogation needs to be undertaken because chances are that the project will have costed much higher and not benefit the local economy and there will be no value for money.

CONCLUSION

Contracts involving taxpayers' money are a public good, and as a citizen you can play your active role of ensuring that public funds are well utilized by being actively engaged in the process and engaging the right stakeholders.



In order to avoid a situation where public money is wasted and to ensure that public contracting benefits the citizens there need to be disclosure and participation

RESOURCES:

Open Government – The global context and the way forward 2016.
Open Contracting- A guide for practitioners by practitioners 2015.
The Constitution of Kenya 2010.
PFMA - The Public Finance Management Act 2015.
The Public Procurement and Asset Disposal Act 2015.
Access to Information Act 2016.
Uraia Citizen Handbook 2012.
www.opencontracting.org
www.proact.org.

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