

RECOMMENDATIONS FOR THE PUBLIC PROCUREMENT SYSTEM OF THE REPUBLIC OF TANZANIA



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Introduction

The following brief and its recommendations were prepared by the [Institute for Development of Freedom of Information](#) (IDFI), together with [Wajibu](#) - Institute of Public Accountability, based on the assessment of the Public Procurement Law (PPL) of Tanzania, its sub-legal acts and other legal texts. The assessment itself is based on the Transparent Public Procurement Rating (TPPR) [Methodology](#), a tool created by a multinational alliance of CSOs, aiming at identifying strengths and weaknesses of PPLs around the globe.

The Methodology is largely based on best international standards from organizations, such as the EBRD, WTO, OECD, EU and OCDS, and 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 assessment covers the following key characteristics (values) of a well-functioning public procurement system: **Efficiency, Transparency, Accountability and Competitiveness**.

The aim of this document is to offer insight into areas of potential improvement for Tanzania's public procurement system considering the experience and best practices [identified](#) by the TPPR Project in 18 countries in the Eurasian region. The final results of the quantitative evaluation of Tanzania's public procurement legislation will be made available on the TPPR [website](#) in January 2019.

Overview

Public procurement in Tanzania is regulated by the Public Procurement Act, 2011 (PPA) and its amendment act of 2016 (PPAA), which serves as an addendum to the act of 2011. The legislative framework of Tanzania also includes sub-legal and sector specific acts, which spell out the rules and procedures of public procurement activities in Tanzania. Among them most important sub-legal texts are:

- Public Procurement Regulations 2013 (PR);
- Public Procurement (Amendments) Regulations 2016 (PRA);
- Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310R.E 2002 (LRA);
- Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules 2014 (JR Rules);
- Public Private Partnership Act 2010 (PPP);
- Public Private Partnership Regulations 2011 (PPR);
- Public Procurement Appeals Rules 2014 (PPAA Rules).

In Tanzania, the public procurement law applies to any ministry, department or agency of the government, in addition to any corporate or statutory body or authority established by the government. Public procurement law also covers state-owned companies and local government authorities. Public

procurement system in Tanzania is decentralized, meaning that all entities covered by the law conduct public procurement activities individually through means available in the country. Centralized procurement is also allowed via the framework agreements. A contracting authority is permitted to enter into a framework agreement, provided that the agreement is arranged by the Government Procurement Services Agency for procurement of common use items and services, provided that the contract is valid only between one and three years.

Tanzania has a national electronic public procurement system. [TANePS \(Tanzanian National e-Procurement System\)](#) is an e-portal created to facilitate public procurement processes in Tanzania. According to the Public Procurement Regulations of 2013, section 3, TANePS or the Tenders Portal is a web portal containing all information relating to public tenders. Since the TANePS is a relatively new electronic platform, currently it is piloted in only 100 selected procuring entities on procurement of common use items, medicines and medical supplies, consistent with Regulation 342(1) of GN No. 446. Additionally, TANePS allows conventional access to public procurement data, meaning that information can be viewed online, but cannot be downloaded as bulk for analytical purposes.

Public Procurement Regulations of 2013, sect. 342 (1) states that electronic procurement shall be implemented by all procuring entities in full or partially in parallel with the conventional manual procedures. Therefore, despite having an electronic public procurement system, Tanzania has what is referred to as a dual system, which gives equal importance to electronic and paper-based public procurement procedures.

The [Public Procurement Regulatory Authority \(PPRA\)](#) is the body charged with regulatory functions and responsible for implementation of the PPL in Tanzania. PPRA has oversight powers on all public procurement activities carried by every procuring entity in the country. The main objectives of PPRA are to ensure the application of fair, competitive and transparent procurement standards and practices, to enhance the public procurement system and provide guidance to relevant stakeholders on how to properly engage in public procurement activities. At the same time, the Ministry of Finance is responsible for drafting legislative proposals amending the public procurement legal framework.

One of the most important functions of the PPRA is managing the Procurement Management Information System (PMIS). PMIS is a tool to facilitate exchange of information between PPRA and Procuring Entities. PMIS support the System for Checking and Monitoring of Procurement activities by enabling online submission of Annual Procurement Plans (APP), monthly reports and Checklist forms. However, the information system is only for the use of the procuring entities and not for the general public or the economic operators participating in procurement.

With the recent introduction of electronic procurement in Tanzania and an overhaul of the legal framework in 2016, the public procurement law essentially guarantees efficient and transparent public procurement procedures. The TANePS system is relatively new and incorporates functions such as e-Tendering, e-Purchasing, system of e-Auction, provision of e-Payment and e-Contract management. Nevertheless, the PPL of Tanzania still can be improved to ensure maximum transparency, machine-readability of data, efficiency of procedures and competitive environment in public procurement. Tanzania's new TANePS has the potential to comply with best international practice and adopt open contracting standards to allow unhindered access to public procurement data in machine-readable formats.

Considering the above-mentioned and based on the TPR Methodology, IDFI would like to offer the following recommendations for Tanzania.

Transparency

Machine-readability of data - The Tanzanian PPL ensures access to information on annual public procurement plans, tender announcements and awarded contracts through its online portal TANEPS if procedures are conducted electronically. The information made available by the PPL on these aspects of public procurement are comprehensive, however, TANEPS does not provide full access to this information. For example, the [contracts section](#) of the portal only shows tender description, procuring entity name, supplier name, award date, award amount and lot name, whereas other legally accessible information is missing, such as date of signing the contract, contract duration, more details on the procurer and supplier, procured goods, services and works, etc.

Additionally, the datasets are not available in machine-readable formats such as CSV or JSON. Only, general procurement notices are available for download on the TANEPS and in excel format. Having individual sets of information is useful for case-by-case analysis, but to conduct a full scale monitoring of the procurement system, access to information in bulk is necessary. Despite the fact that the online portal is still new and requires time to be fully operational, machine-readability of data and public access in such formats should be considered in advance. There are different examples and modalities in this regard. A good case of machine-readable procurement data is Ukraine, where the public procurement portal [ProZorro](#) has a default possibility to gain access to machine readable data. Same approach was duplicated and used in Moldova with the portal [achizitii.md](#). Georgia on the other hand created a portal for machine-readable access (JSON format) to tender related information - [opendata.spa.ge](#), where information on annual procurement plans, tenders and direct procurement is ensured. The examples of these countries could be used and applied in Tanzania. Providing legal guarantees in the PPL and then practical access to machine-readable data on public procurement is necessary if Tanzania desires to modernize its public procurement system. The foundation for this process exists in the form of TANEPS and the PMIS.

Access to submitted complaints and dispute resolutions – Dispute settlement is a crucial element of any public procurement system. It is the most direct means of seeking justice for economic operators or members of the public when unlawful or faulty decisions harm the public interest. In this regard, Tanzania has comprehensive dispute settlement procedures. The PPL defines a three tier complaint mechanism. The first authority that may rule on reviewing the decision of the tender commission is the accounting officer within the procuring entity. Additionally, the accounting officer may constitute an independent review panel from within or outside the contracting authority to advise on the appropriate actions to be taken. The decision of the accounting officer may be appealed to the Appeals Authority, a second tier dispute settlement mechanism in Tanzania, established on the basis of section 88 of the PPL. One of the most positive aspects of this body is that besides the representatives of the public authority five other members take part in the dispute settlement. At least two of them must be from the private sector with professional knowledge and experience in public procurement, construction industry, business administration, finance or law. Hence, public engagement in dispute settlement is ensured by the PPL. If an economic operator deems the decision of the Appeals Authority to be unsatisfactory, that

decision may be subjected to a judicial review at the High Court. A decision of the High Court may also be appealed to the Court of Appeal.

Therefore, Tanzania has the full package of dispute settlement procedures and levels. Nevertheless, the PPL lacks guarantees for the transparency of the appeal texts as well as the decisions reached on them and there is an evident mismatch between the legal guarantees and what happens in practice.

Despite the fact that the PPL does not indicate anywhere that the decisions should be made public, (neither in the PPA 2011, the Public Procurement Regulations of 2013, the appeals rules nor its amendments), in practice the dispute settlement decisions are published on the website of the [Appeals Authority](#). It seems that this step is a pro-active effort of the Appeals Authority to ensure maximum transparency of dispute settlement. It is recommended that legal guarantees for the transparency of dispute settlement results are spelled out in the PPL and public procurement regulations, so that the good practice of the Appeals Authority is sustainable.

Access to tender candidate applications and bids – Tanzania’s PPL does not ensure access to tender candidate applications and bids submitted by them. As according to the PPL, sect. 61 (3) *“A list of tenderers who submitted tenders and the prices tendered, as read out at the time of opening the tenders in public, **may be made available** to tenderers and to the general public.”* The word may implies that it is an option and not a mandatory act, therefore publicity of the bids and applications (documents proving eligibility, technical and financial criteria) depends on the good will of the procuring entity.

The most common question and concern about publicity of these documents or information is that it may harm commercial secrecy and interests of the economic operators, discouraging competition. As [demonstrated](#) by the Open Contracting Partnership as well as practical experience from countries that offer full transparency of bid contents (e.g. Albania, Ukraine, Georgia, Belarus, Kyrgyzstan and Romania), disclosure of bids and related documentation does not harm commercial interests. When competitors know each other’s capabilities, opening of tender proposals further encourages competition as it brings certainty to the transparency of the process. Disclosure of all bidding document serves as an invitation to interested parties to monitor the public procurement process and potentially identify cases of collusion, corruption or inefficiency, price-fixing and other possible violations of the law.

Access to information on subcontractors – Subcontracting in Tanzania is possible and encouraged by the PPA of 2011, article 54 (4). Subcontracting is one of the tools used to involve small and medium enterprises into the procurement process and is an essential element of the public procurement process. Nevertheless, subcontracting can be misused for corrupt practices. Tanzania’s legal framework does not ensure access to subcontracting related information, which is essential for a full monitoring of the public procurement process. General information on subcontractors such as – name of the subcontractor, Identification Number, Portion of the contract to be performed by the subcontractor, timeframe for performing duties, payment conditions should be made public.

Access to contract amendments – Even though Tanzanian PPL determines procedures for changing public procurement contracts, there are no guarantees on access to those changes for the general public. The procurement process does not end with signing the contract and frequent contract changes may be a sign of improper or corrupt practice. Not having access to the frequency and content of changes to the contracts is limiting the possibility for the general public, CSOs and economic operators

to effectively monitor the performance of public procurement contracts. It is essential that this information is public, guaranteed by the legislative framework of Tanzania.

Access to contract performance information - In Tanzania, substantial part of the post-tendering information relevant to monitoring the efficiency of public procurement system is beyond the reach of economic operators, civil society sector and the general public. PPL does not guarantee access to public procurement performance related documents - acts of delivery and acceptance, performance reports, quality check reports, transactions made to contractors. Making this information transparent is useful for analyzing the implementation of contracts and procurement performance in general.

This information is accessible to the PPRA and the procuring entities through the PMIS, a tool to facilitate exchange of information between PPRA and Procuring Entities. Efforts can be made by Tanzanian authorities to grant access to PMIS database to any member of the public. This would require simple legislative changes to the PPA act of 2011 and its sub-legal acts. Such changes would ensure that information on the full procurement cycle is available to the public, rendering the public procurement system fully transparent.

Efficiency

Electronic means is the primary method of conducting public procurement – As mentioned in the overview of this document, Tanzania has a dual system whereby paper-based and electronic procurement are both available. It is recommended for maximum efficiency to transition to 100% electronic procurement. Despite the fact that many aspects should be considered in this process, most of all levels of internet access and penetration in the country, fully-fledged electronic systems are more efficient, transparent and competitive than the ones with dual systems.

A quick transitioning is possible as proved by countries like Georgia and Ukraine. Georgia turned to 100% electronic procedures in 2011 and has made significant strides towards efficiency and more transparency since then. The decision was rapid, but sufficient time was left for economic providers to get acquainted with the system and the new set-up. Since Tanzania already has an electronic portal TANEPS, it is recommended that paper-based public procurement procedures are made obsolete.

Accountability

Consultation with the private and civil society sectors – Currently, Tanzania's PPL does not incorporate possibilities for consultations with the civil society organizations and the private sector. Such mechanism is useful for understanding the needs and concerns of the stakeholders vis-à-vis the public procurement system. Such mechanism can be mandatory or voluntary and frequency for such consultations can be defined by law. This mechanism can prove to be useful to understand what type of public procurement information should be made public in addition to what is available currently in Tanzania. Such approach creates an environment of common ownership and builds trust towards the public procurement system, which may be beneficial for popularizing the TANEPS system, which is still relatively new and not widely used.

Justification for using a non-competitive procedure – Tanzanian PPL does not obligate procuring entities to disclose the basis for using a non-competitive procedure to the public, they only have to indicate the type of procedure. Section 159 of the Public Procurement Regulations of 2013 regulates the cases when single source procurement can be used. Cases include standard prerequisites such as - when the goods or services are available only from a particular tenderer who has exclusive rights in respect of the goods or services, and no reasonable alternative; Or when there is an urgent need for the goods 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. In total, there are 9 types of such possibilities and each of them requires an approval of the tender board. Nevertheless, there are no guarantees for the publicity of this request and the logic justifying such procurement.

It may seem that indicating the section and its sub-section from the PPL would suffice, however, frequent use of single source procurement (or direct procurement) can be a fertile ground for corrupt practices. Guaranteeing full transparency of the process and public access to justifications of the choice of procedure will ward off any doubt related to misconduct or improper use of procedures. Detailed indication of the grounds for choice of such procedure may also have an analytical purpose, to verify what types of single source procurement clauses are used more often. Existence of such measures and guarantees in the PPL once again serve the purpose of increasing the trust towards the public procurement system and the procuring entities.