



## Open Contracting and Inclusion

### Access to Procurement Opportunities

#### Kenya

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*This case-study is part of a larger study that explores the possible benefits of open contracting for marginalized communities. Research was done by Francois van Schalkwyk & Miko Cañares. The complete study and results are found [here](#).*

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The Kenyan Government has 'intervened' in the public procurement system to create greater equity in the distribution of public contracts to communities previously excluded from participation.

## Context

The Kenyan economy is confronted with the challenge of providing employment opportunities for the large numbers of young people entering the labor market annually. Based on UN estimates, the country's youth population is made up of over 9.5 million people, more than 20% of all Kenyans (Samuel Hall 2017). According to World Bank estimates, 500 000 young people enter the labor market each year (Hivos East Africa 2018). Kenya has experienced volatile yet comparably high economic growth rates in the last two decades. However, this generally positive macro-economic development has not translated into benefits for all citizens.

While annual GDP growth of more than 5% cent has been recorded, Kenya's youth unemployment rate has shown little to no positive development, and stood at 26.2% in 2017 for those aged 15 to 24 (UNDP 2018: Table 11). The most recent official statistics from Kenya's statistics agency is the 2015/16 Basic Labor Force report released in March 2018 estimates that there were 1.22 million unemployed Kenyans aged 15 to 34 from September 2015 to August 2016. This puts the official youth unemployment rate at 11.4% (KNBS 2018).

Young women in rural locations constitute the largest share of unemployed Kenyan youth (in absolute numbers), while their counterparts in urban areas are most likely to be unemployed (in relative terms). The participation rate in the labor market for women older than 15 years of age is 62.4%, while for men it is 68.5% (UNDP 2018: Table 5). Gender and living location are defining factors (Samuel Hall 2017).

## The 'open contracting' initiative

Affirmative action in government procurement through the Access to Government Procurement Opportunities (AGPO)<sup>1</sup> initiative launched by the Kenyan government in 2013 seeks to empower women, youth and persons with disabilities by including them in public procurement opportunities. The mechanism for doing so is along the same lines as in South Africa, that is, by

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<sup>1</sup> <https://www.agpo.go.ke/pages/about-agpo>

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awarding these targeted groups 30% of all public procurement expenditure. However, whereas in South Africa 30% of the value of public contracts above a certain threshold must be subcontracted to marginalized communities, in the case of Kenya, all government procuring entities are required to allocate at least 30% of their procurement spend for the purposes of procuring goods, works and services from micro- and small- enterprises owned by youth, women and persons with disabilities.

The AGPO program is founded on several pieces of Kenyan legislation: (1) the Constitution of Kenya, 2010 Article 227 which prescribes the fair equitable, transparent and cost-effective public procurement of goods and services; (2) the Constitution of Kenya, 2010 Article 55 on affirmative action; and (3) the Public Procurement and Asset Disposal Act, 2015, which is the specific piece of legislation which requires all procuring government entities to allocate 30% of their procurement spend for the purposes of procuring goods, works and services from SMEs owned by youth, women and persons with disabilities.

Definitions of each of the intended beneficiaries of AGPO are provided. 'Woman' means a person of the female gender who is 18 years' old and includes a company, association or body of persons, corporate or unincorporated in which at least 70% of the shareholders, members or persons and a majority of its directors are female. 'Youth' refers to young people between the ages of 18 years and 35 years. A youth-owned enterprise refers to a legally registered business in the form of a sole proprietorship, partnership or limited company. For both partnerships and limited companies, at least 70% of the capital invested or shares owned should be held by the youth. 'Disability' means physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation. All persons with disabilities seeking preference in government procurement must provide their National Council for Persons with Disabilities (NCPWD) registration number.

Tenders are advertised on the AGPO's open contracting portal.<sup>2</sup> Tenders can be filtered by 'tender category', 'tender type', and 'procuring entity'. The following information is listed for each tender on the main page: title, number, procuring entity, published date, closing date, tender status. It is not possible to sort tenders by field thus making it impossible to group open tenders

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<sup>2</sup> <https://www.agpo.go.ke/pages/tenders>

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or tenders recently published. Additional information is listed on each tender's page under two tabs, 'Tender details' and 'Tender documents', The 'Tender details' page provides additional information to what is displayed in the list of tenders, including the tender reference number, application fee, tender opening venue and 'other details'. In addition, the 'Tender documents' page contains no additional documents or information.

A quick enumeration of the portal on 5 December 2019 found only 4 open tenders, although this may be because the bulk of the tenders close in August. Of the 520 tenders listed (both open and closed), none were for consultancy or non-consultancy services, one was for goods/services and 187 tenders were for the supply of goods. The remaining tenders were not categorized by 'tender category'.

Information about public tenders is also available from a variety of other sources, including:

1. The Public Procurement Information Portal (PPIP)<sup>3</sup>
2. AGPO Facebook page<sup>4</sup>
3. Newspapers
4. Individual websites of national government ministries, departments and agencies
5. County government websites
6. Notice boards at government institutions and
7. Supply chain departments of government institutions

The Public Procurement Information Portal (PPIP) lists a much larger number of tenders (25 991 as of 4 December 2019) than the AGPO portal (520 tenders as of 5 December 2019) because it is not limited only to tenders that fall within the 30% allocated to women, youth and persons with disabilities under its affirmative action program. It is not, however, clear why at 2%, the proportion of tenders on the AGPO portal is well below 30%. This could be explained by differences in the criteria for tenders being listed on the two portals (e.g. the AGPO portal only lists more recent

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<sup>3</sup> [www.tenders.go.ke](http://www.tenders.go.ke)

<sup>4</sup> <https://www.facebook.com/AGPOKenya/?ref=bookmarks>

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tenders). The PPIP portal includes a database of suppliers which provides information on the company name, business registration number, business type, physical address, VAT registration status, company directors (full name, partial passport number, nationality), and contracts awarded. However, the supplier database does not indicate whether suppliers qualify under the AGPO program.

In general, the PPIP is a comprehensive portal with detailed information about open tenders, contracts awarded, procuring entities and suppliers. For example, for awarded contracts, information about each contract, the tender, the awarded company, bidders, evaluators and inspection/evaluation is published (although information is not always complete). However, from the perspective of communities that qualify under the AGPO program, the PPIP provides little by way of information relevant to those communities.

The limited amount of useful data published on the portals is supported by research that 50% of AGPO applicants accessed information about public tender opportunities from newspapers, 9% from friends and only 17% from the AGPO website (Hivos East Africa 2018).

## Outcomes

A 2015 study found that almost all government procuring entities subjected AGPO participants to additional pre-qualification requirements when their AGPO certificates should have served as sufficient for participation in the public tenders advertised (Addushakur 2015 in TISA 2017). A more recent study found that only 20% of respondents were in possession of AGPO certificates (TISA 2017).

A 2018 study by Hivos East Africa sought to evaluate Kenya's efforts to empower women, youth and persons with disabilities through AGPO. The report found that the AGPO initiative had contributed to an 82% increase in the number of youth-owned enterprises in the country. There was general agreement (80%) among those interviewed that there had been a significant increase in the number of enterprises owned by youth, women and people with disabilities. Of the 544 firms interviewed, 36% reported that they had successfully won a public tender which, in turn, resulted in an increase in annual revenue for 71% of those firms. However, only 172 out of 2 232 (7.7%) public tenders between 2013 and 2016 were awarded under the AGPO initiative which falls well short of the 30% target.

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Only a fraction of the monetary value of contracts was awarded to marginalized communities. Of the KES 183.5 billion total value of public tenders issued, only KES 7.0 billion (4.1%) was awarded to AGPO registered firms.

Mostly, companies based in Nairobi benefited from AGPO raising questions about its inclusivity in terms of communities located outside of the capital.

Other concerns noted by the report were that marginalized communities lacked the capital to execute tender opportunities; that there was a mismatch between what marginalized communities have to offer (mainly services) and what tenders require (mainly construction); that applicants from marginalized communities experienced challenges accessing bidding information and documents; that unsuccessful bidders received no feedback on why their bids were unsuccessful or when they queried the outcomes of certain awards; and that the AGPO created new opportunities for corrupt practices. For example, ineligible public servants registering their own firms, window dressing and on-selling of tenders. These concerns echo those of an earlier study (TISA 2017).

The Hivos East Africa report concludes that AGPO has contributed to an increase in the number of youth-, women- and persons with disabilities-owned companies and in the earning of those companies but that for the reasons outlined above, the gains for the companies owned by these communities has been marginal.

## **Case analysis**

The AGPO program is an example of one type of network seeking to disrupt another network. That is, the political network which sees value in introducing programs that support growing constituencies of voters (e.g. youth and women) introduces rules that disrupt the functioning of the economic/financial network of larger, established suppliers of goods, services and works. The disruption shows limited signs of success to the extent that there has been an increase in the participation rate of small businesses in the economic network. The increase is, however, marginal and suggests that it has only reached levels that are still tolerable to the economic network and pose no threat to its central program of capital accumulation, in this case from state tenders.

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That the initiative has been largely unsuccessful in increasing the participation of communities outside of Nairobi, the economic hub of Kenya, may further indicate that those who are benefitting from AGPO are those who may well have been successful in gaining access to the economic network had the intervention not been introduced.