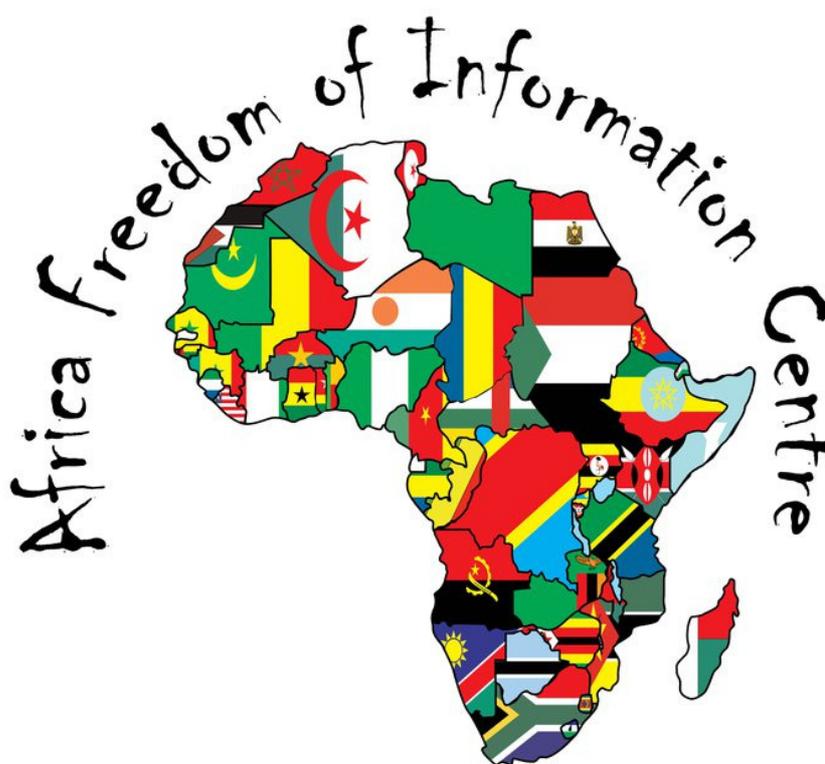


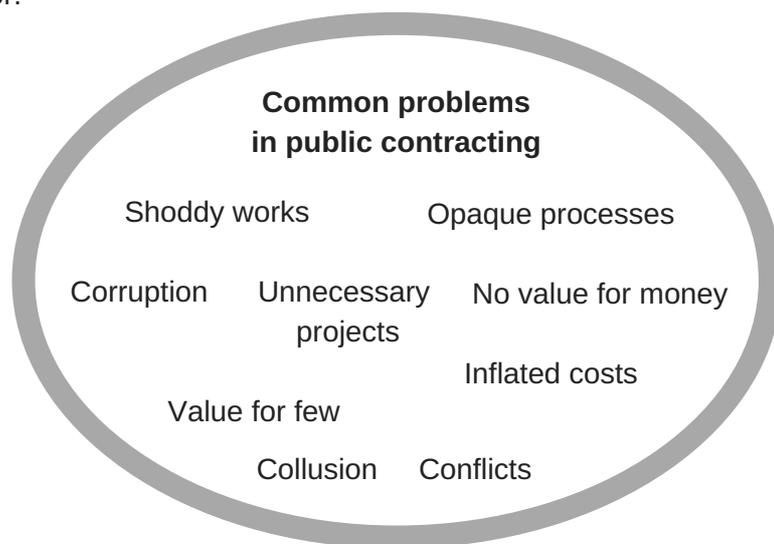
Enhancing Performance and Accountability of Social Service Contracts in Uganda Project

Monitoring contracts on Health and Education Works in Uganda



Public procurement is defined as the purchasing, hiring or obtaining by any other contractual means of goods, construction works and services by the public sector from the open market. Instead of a government agency using its employees and facilities to produce services, the agency can purchase the same service from a company in the private sector.

Public procurement affects a substantial share of the global trade. Governments spend over 9,500,000,000,000 US dollars each year, and estimate of 16 % of the global GDP, on contracts with companies to provide goods and services and to maintain and build infrastructure. Public procurement is not “just” procuring services and goods, but can also serve as a way to reach for positive changes in our societies and promote efficiency in the use of tax collected from us. Social objectives can also be advanced by preferences for specific groups or communities.



Africa Freedom of Information Centre's (AFIC), Transparency International Uganda's and Uganda Contracts Monitoring Coalition's project Enhancing Performance and Accountability of Social Service Contracts in Uganda aims to enhance transparency and accountability of public contracting in health and education sectors at district level in Uganda. The project's overarching objective is to increase availability and use of contracting information, improve public participation in contracting processes, and foster collaborative engagement between government and civil society.

The project will also provide information to the public sector enhancing fact-based decision-making in public contracting and planning of future procurement.

Accessing contract information

Uganda's procurement regime is governed by the Public Procurement and Disposal of Public Assets (PPDA) Act and by the Public Finance Management Act. In 2003 the Public Procurement and Disposal of Public Assets (PPDA) Act abolished the Central Tender Board establishing the PPDA as a national regulatory body for public procurement. In 2006 the Local Government Act harmonized local government procurement with national standards. Despite creating a more efficient institutional framework for successful procurement processes and oversight mechanisms, Uganda still faces challenges related to government procurement.

The PPDA has stated that challenges relating to the authority's role limited enforcement powers and limited punitive measures limit compliance with procurement regulations. The challenges also include political interference with procurement process especially at local government level, poor contract management due to poor specifications and capacity, and lack of clear record keeping leading to uncertainty of representativeness of available data. Opaque public contracting is misconduct per se in the light of the current Ugandan legal framework, and lack of information prevents from assessing the basic principles (competition, equal treatment, non-discrimination and transparency) that should guide the use of public funds in public procurement.

Contracting information such as procurement plans, evaluation reports, awards, contracts and performance reports fall within the ambit of disclosure under Uganda's Access to Information Act. This information ought to be disclosed proactively or in reasonable time when requested to facilitate citizen exercise their right to participation guaranteed under Article 38 of the Constitution and paragraph 1.7 of the PPDA strategic plan

Furthermore, the PPDA Act includes a principle of publicity: information is public by default if not otherwise defined based on section 47 of the PPDA Act. The section provides that “A procuring and disposing entity shall not, except when required to do so by an order of court, disclose any information where the disclosure would (a) amount to a breach of the law; (b) impede law enforcement; (c) prejudice legitimate commercial interests of the parties; (d) inhibit fair competition; or (e) in any way not be in the public interests, until the successful bidder is notified of the award.

Basing on transparency, public scrutiny promotes integrity and efficiency in the public procurement process, and to achieve public scrutiny adequate public access to procurement is required. To achieve this proactive disclosure of information is required. The Ugandan Access to Information (ATI) Act together with the PPDA Act provides the legal basis for contract transparency. The PPDA Act requires procuring entities to proactively disclose procurement plans, procurement notices, best evaluated bidder notices and contract award notices. On the other hand the Access to Information Act empowers Ugandan citizens to request and receive information held by public agencies to allow for them to scrutinize and hold officials to account. Section 8 of the ATI Act also provides for proactive disclosure of certain records.

Despite the legal framework access to information by citizens remains a challenge. AFIC staff have experienced cases where receiving requested contract information took more than 8 months. By 25th of July 2017 AFIC had received 29 contracts with contract information for financial years 2014-2015, 2015-2016 and 2016-2017 from the districts of Nebbi, Ntungamo and Nakaseke. 8 procurement plans were received from the local governments of Nebbi, Ntungamo, Mityana and Mubende. Obtaining the information often took longer than provided under the ATI Act, and in the majority of cases information was provided in piecemeal.

Procurement plans and contract information - Connecting the dots

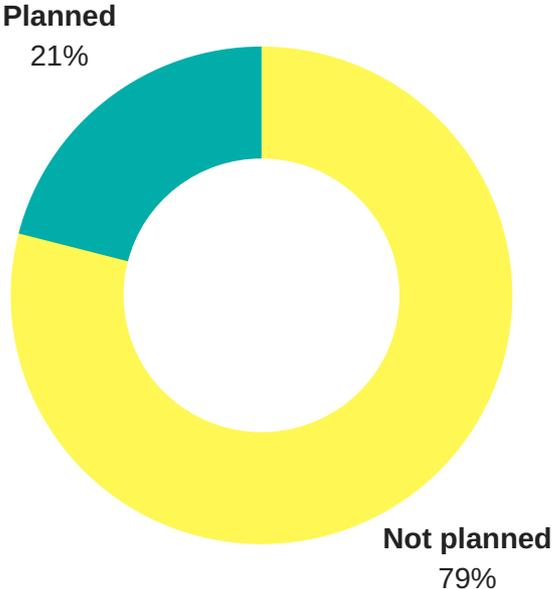


Figure 1. Distribution of received contracts included and not included in the procurement plans.

AFIC analyzed information on contracts and procurement plans from the received 29 contracts and 8 procurement plans for the financial years 2014-2015, 2015-2016 and 2016-2017. Contracts were received from the districts of Nebbi, Ntungamo, Nakaseke, and procurement plans from Mityana, Nebbi, Ntungamo and Mubende. For Nebbi district AFIC received two procurement plans for the financial year 2016-2017. A supplementary procurement plan for Nebbi district was provided in addition to the principal procurement plan. AFIC did not receive information regarding reasons for the need on a supplementary procurement plan.

AFIC’s analysis of contracts against procurement plans reveals that 79% of the signed and accessed contracts were not planned (i.e. of the 29 contracts received, only six contracts are reflected in the procurement plans): three contracts from Nebbi district from financial year 2015-2016, and three contracts from the same district from financial year 2016-2017. In the case of the other contracts that AFIC was able obtain, none are reflected in the procurement plans. The finding would imply to contracts being awarded without planning process required under the PPDA Act and executed without approval which can amount to diversion of funds.

It was also noted that some issued and running contracts did not exist in the procurement plans of the financial years of implementation. Example in point is the contraction of a 3 classroom block of Rwembogo Primary School in Ntungamo district. Community monitors on the ground have been tasked to verify the status of implementation on the ground

Analysis of the procurement method shows how the use of selective bidding process is the preferred procurement method in Ntungamo, Mityana and Nebbi districts. Figure 1 (page 4) shows the percentages on use of open bidding, selective bidding, micro procurement and direct procurement in these districts.

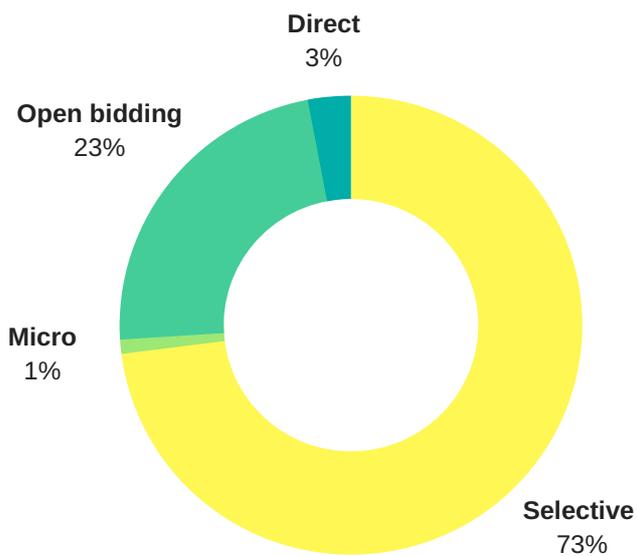


Figure 1. Use of procurement methods in Ntungamo, Mityana and Nebbi districts; percentages.

The provision can create risks of abuse, which would undermine value for money. Large contracts can be split into several smaller contracts, hence being exempt from open bidding process making the procurement process less transparent.

The arrangement makes use of “shell” or “ghost” companies possible: bids are submitted by several companies, but in reality the work is conducted by, and the beneficiaries are those of one company. For example, instead of contracting for construction of several school buildings, the construction contract can be split into several smaller-value lots, and acquired through a restricted procurement process, avoiding an open tender process.

Open bidding can, however, be used as the procurement method also in cases where the threshold requiring for an open bidding process is not exceeded. With technological advances, a more open bidding process is possible without creating additional costs in the procurement process. Section 46 of the PPDA Act also provides an argument for wider use of open bidding.

The section states that all procurement and disposal shall be conducted in a manner to maximize competition; and from section 48 which states that all procurement shall be carried out in a manner which promotes economy, efficiency and value for money.

Figure 2 (page 5) shows the distribution of costs for planned works between procurement methods in Nebbi, Ntungamo and Mityana districts.

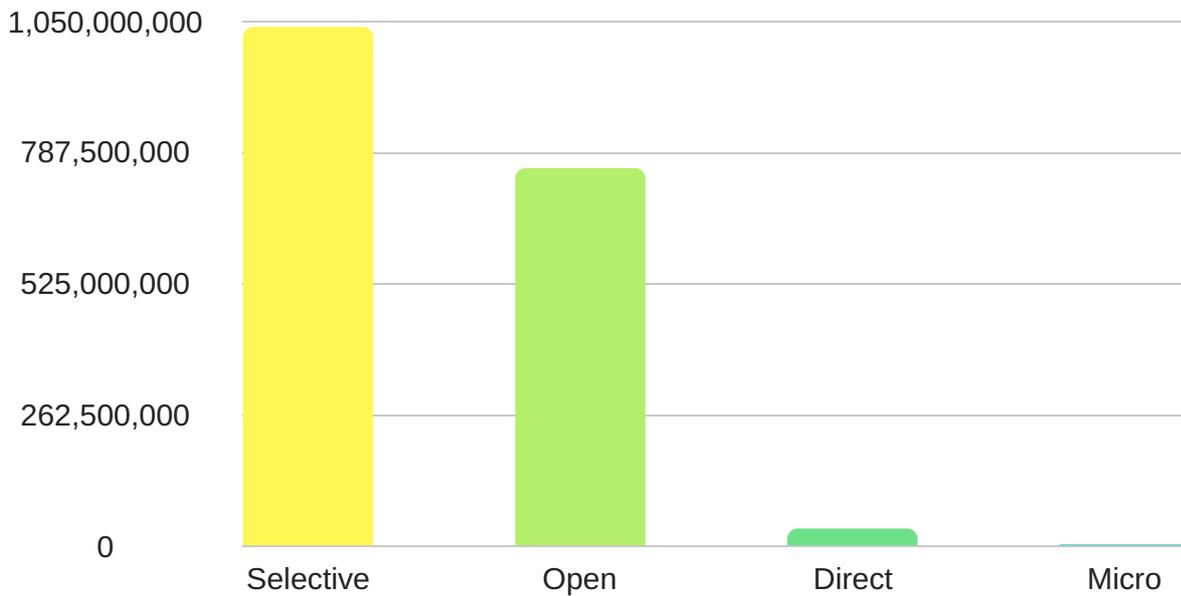


Figure 2. Total costs of planned works on health and education sectors in Nebbi, Ntungamo and Mityana districts; UGX.

Estimated costs and contract prices

Figure 3 shows the estimated costs on constructing a similar size structure, four-stance latrine in Nebbi and Ntungamo districts in financial year 2016-2017, and figure 4 shows the estimated costs for a two-stance latrine in the same districts.

The figures show variances between the two districts, as well as the highest and lowest estimated cost for the construction work, and the average estimated price for both districts for building the same-size structure.

The analysis of procurement plans shows that estimated costs for the construction of similar-sized structures vary notably according to the funding source, and also within and between districts.

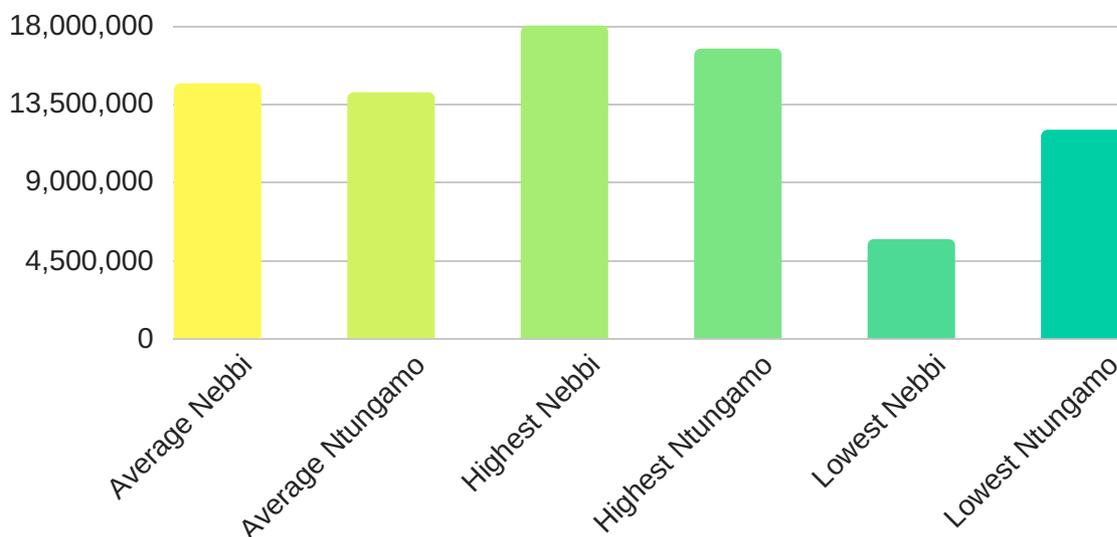


Figure 3. Construction of four-stance latrines in Nebbi and Ntungamo, financial year 2016-2017.

The analysis shows that in Nebbi district the lowest estimated cost on construction of two- and four-stance latrines is 600,000 Ugandan shillings apart. Microeconomic explanations, such as the economies of scale, how proportionate savings in costs can be gained when increasing the level of production, can explain how the construction of four-stance latrines is more cost-effective

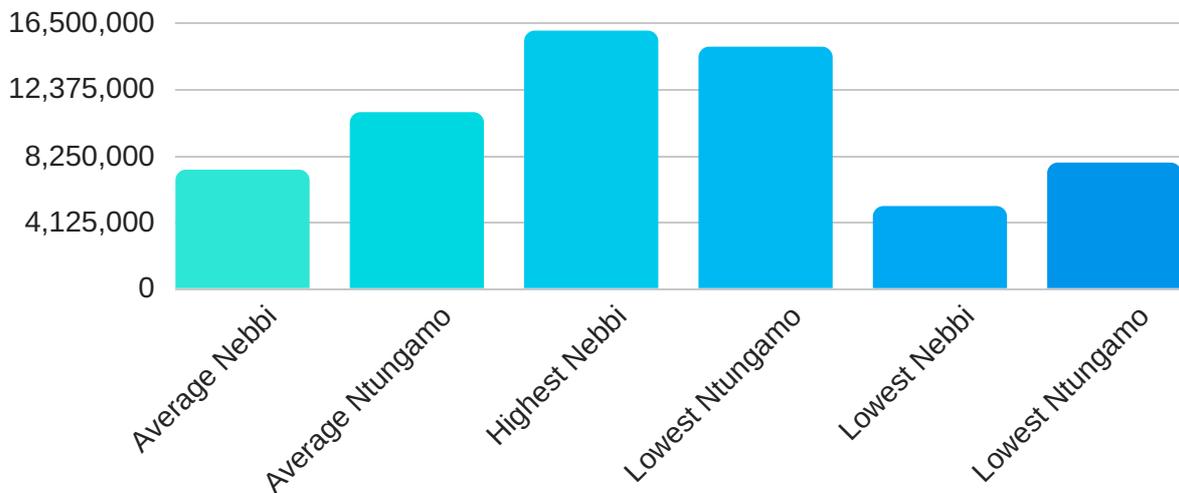


Figure 4. Construction of two-stance latrines in Nebbi and Ntungamo, financial year 2016-2017.

However, the scale benefit in Nebbi districts in the case of constructing latrines would seem exaggerated and unreachable through a legitimate market mechanism, *ceteris paribus*.

Analyses shows also that in financial year 2016-2017 DDEG provides higher costs for similar construction project compared to other funding sources. Furthermore, as demonstrated in figure 5, estimated costs under DDEG vary between 7 million and 16 million for the construction of a two-stance latrine when estimated costs for each contract under the three other funding sources are identical.

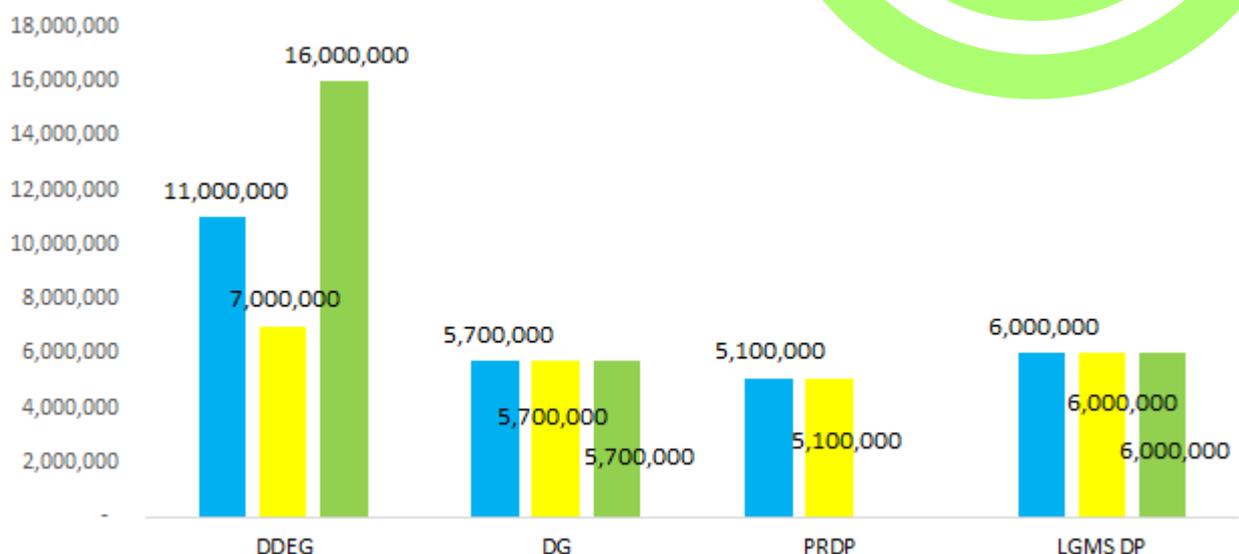
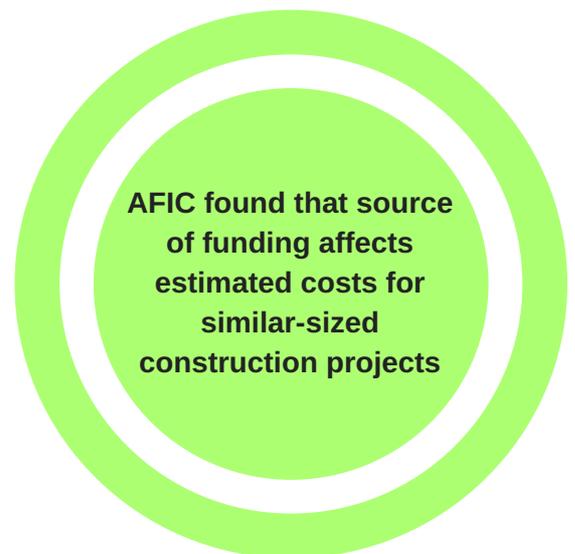


Figure 5. Estimated costs on construction of two-stance latrine by funding source in Nebbi district, financial year 2016-2017

1. Disclosure and legal amendments

- All procurement entities proactively disclose procurement plans and information on GPP for easy and quick access, preferably in computer readable form. Align GPP with Open Contracting Data Standard (OCDS) and train procurement entity staff on the data standard and benefits of open data.
- Response to requests on contracting information should be done in timely manner, not later than 21 days provided for under the Ugandan Access to Information Act.
- Amendments to PPDA Act should be considered to provide for proactive disclosure based on OCDS.

2. Capacity

- PPDA should urgently organize training for procurement entities, especially in districts, in procurement planning.
- PPDA in collaboration with procurement entities should invest in strengthening the capacity of staff member responsible for public procurement. This should include training, provision of equipment, and adequate access to internet to facilitate proper planning and disclosure of information.
- MFPED should allocate adequate resources to PPDA and procurement entities to ensure adequate capacity for execution of procurement plans.

3. Audits and Follow-up

- PPDA should follow-up on the mismatch between procurement plans and contracts as many contracts are not reflected in procurement plans.
- Districts and PPDA should examine contracts that appear to have been over-priced in respective to procurement plans.
- PPDA should examine areas where risks for collusion and fraud have been identified.
- Budget allocation and procurement planning should be based on need and solution design rather than source of funding. PPDA and procurement entities should re-examine current practices where allocation is based on funding source. PPDA should pay attention to this in procurement audits and capacity-building efforts.

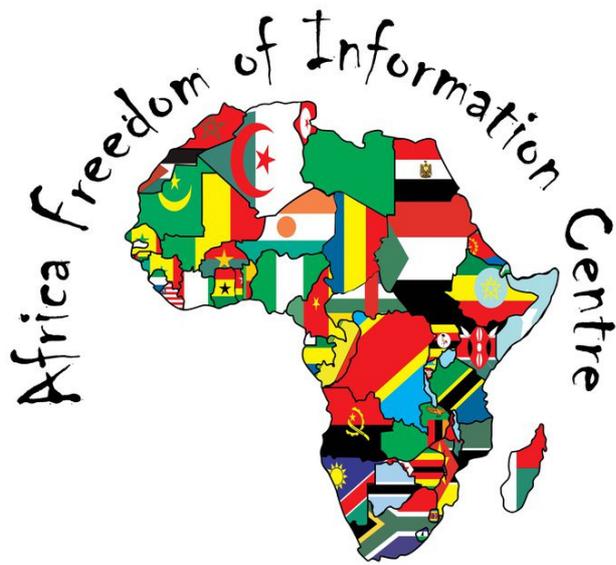
4. Citizen engagement and public participation

- Promotes access to information
- Create spaces for citizen engagement, for example wider use of participatory budgeting in small-scale procurement.

Policy reform and learning

- PPDA should explore possibilities of learning from other countries, such as Kenya and Zambia, on best practices in preparing bids, submission and evaluation of awards and execution.

Draft findings were validated with district governments of Ntungamo, Nebbi and Mityana.



www.africafoicentre.org

info@africafoicentre.org

+256 414 533554

Plot 436/437 Mawanda Road, Suite A4,
Corner House, Kamwokya, Kampala, Uganda