REPUBLIC OF KENYA

MINISTRY OF HEALTH

Assessing TB Contracting Prospects in Nascent Health Service Contracting Environments

A Guide Informed by Implementation Lessons from an Assessment in Kenya

February 2024

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NATIONAL TUBERCULOSIS, LEPROSY AND LUNG DISEASE PROGRAM

This product is made possible by the generous support of American people through the US Agency for International Development (USAID) under contract award 7200AA18D00025, Task Order 7200AA20F00009. The contents are the responsibility of Management Sciences for Health (MSH) and do not necessarily reflect the views of USAID or the US Government.

ABOUT HS4TB

The USAID Health Systems for Tuberculosis (HS4TB) project seeks to transform the way country leaders and health system managers understand and work toward TB control and elimination. HS4TB is a five-year USAID contract focusing on health systems priorities that most directly support achievement of TB outcomes, with a focus on health financing and governance in the USAID TB priority countries. The project helps countries increase domestic financing, use key TB resources more efficiently, build in-country technical and managerial competence and leadership, and support policy formation and dissemination. HS4TB is led by Management Sciences for Health (MSH) in partnership with Nathan Associates and Open Development.

The National Tuberculosis, Leprosy and Lung Disease Program's (NTLD-P) would like to express its gratitude to USAID for its financial support for the development of this document. NTLD-P would also like to thank Wawira Munyi, Andrew Carlson, Maeve Conlin, and Hanna Peterson, from the USAID-funded Health Systems for Tuberculosis (HS4TB) project for their technical assistance in preparing the document.

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Submission

Submission Date: February, 2024

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BACKGROUND

Contracting is a fundamental tool for health system governance based on its potential to improve the quality, efficiency, and accessibility of health services[1]. In many lower-income countries, health service contracts are predominately managed and funded by donors. Once these countries attain middle-income status, this support is slated to eventually decline. Many such countries wish to shift the management of and funding responsibility for health service contracts to government institutions, but do not always know where to start.

In 2023, Kenya's National Tuberculosis, Leprosy, and Lung Disease Program (NTLD-P) assessed prospects to scale government-managed TB service contracting in the country. Through this assessment, NTLD-P successfully generated the information required to eventually develop a costed TB service contracting action plan and a TB service contracting capacity building plan.

The purpose of this document is to draw from NTLD-P's experiences in assessing the country's health service contracting landscape to provide guidance to other low and middle-income countries. The intended users of this document are health financing and health systems generalists familiar with broad contracting concepts and basic research methods.

STEP 1: SELECTING APPROPRIATE ASSESSMENT OBJECTIVES

Table 1 below summarizes the six objectives established for NTLD-P's contracting assessment in Kenya, along with the rationale for selecting each objective. These objectives are suggested starting points for other low- and middle-income countries interested in conducting a TB service contracting landscape assessment.

Table 1: Recommended TB Service Contracting Assessment Objectives

Objective	Rationale
1. Assess the legal, regulatory, and political environment for contracting, including laws, regulations, policies, and operational guidelines in place related to contracting.	It is important for the assessment team to determine whether revisions to any legal or regulatory texts are required before scaling government-managed TB service contracting. Influential actors – like regulatory authorities and Ministry of Health – are also part of this legal and regulatory mapping. Some of these actors could inhibit or prohibit the expansion of government-managed TB service contracting. It is important to identify who these actors may be during key informant interviews.

[1] A contract is an agreement between two or more parties, including a purchaser and at least one contractor, that requires the latter to provide goods, works, or services over a predetermined period at a prescribed cost. In the context of global health, contracting typically involves purchasing health services, goods, or equipment from public or private contractors by government or donors[11].

2. Uncover any issues that purchasers and contractors previously involved in government-managed health service contracting have had with existing legal and regulatory tools.	As was the case in Kenya, there may be a number of legal and regulatory texts relating to contracting, which purchasers and contractors may apply in different situations. The purpose of this objective is to understand which set of texts is commonly used in TB service contracting, and identify issues purchasers and contractors may have experienced in applying them.
3. Reveal any other implementation challenges faced by purchasers and contractors previously involved in government-managed health service contracting that would be relevant for the TB Contracting Costed Action Plan.	This objective helps reveal the nature of capacity building support and other technical assistance that may be required to advance TB service contracting, such as in the timeliness of payments, fairness of bidder selection criteria, and clarity and appropriateness of contract implementation periods and output specifications.
4. Establish government institutions' capacity to contract TB services.	In many low- and middle-income countries, national TB programs and subnational health departments have been focusing primarily on publicly delivered health services for years and may not have much or any experience in outsourcing this work via contracts with private sector organizations. Most of their procurement experience is often in goods procurement, which has very different scope, evaluation, payment, and monitoring issues.
5. Understand the capacity of contractors previously involved in government-managed health service contracting to implement such contracts for TB services.	Introduction of government-managed TB service contracting should adopt a gradual, phased approach, and should leverage the knowledge of experienced implementers. If there are organizations that have already implemented government-managed health service contracts, it is important to understand in which areas previous contractors' capacity should be strengthened.
6. Evaluate donor-managed TB service contract implementers' interest in engaging in government-managed TB service contracting.	In some countries, there may have been no or very few health service contracts. Donor-managed TB service contract implementers may be equipped to deliver services under government-managed TB service contracts, but they may have negative perceptions about restrictive government policies or governments' ability to pay which could dissuade these contractors from engaging. They may also be unfamiliar with the various processes that will differ between donor and domestic contracting.

STEP 2: REVIEW PROCUREMENT LAWS, STANDARD TENDER DOCUMENTS, AND OTHER RELEVANT TEXTS

The purpose of this step is to identify legal and regulatory provisions and classify them as

- *Prohibitive provisions* which are likely to prevent government-run TB service contracting from being scaled to a meaningful level and should be revised;
- *Potentially or partially prohibitive provisions* which are open to interpretation, may prevent certain organizations from implementing government-run TB service contracts, may prevent certain TB

services from being contracted, or may require high level political actors and political will to advance progress despite ambiguity; and
- *Enabling provisions* which should favor the expansion of government-run TB service contracting.

Prohibitive provisions should be characterized as such with caution. This is because revising legislative and regulatory documents can often be a long, expensive process and provisions potentially labeled in this way can often be partially overcome with no change in language but rather just sensitization and capacity building. Therefore, misclassifying *potentially or partially prohibitive provisions* as *prohibitive provisions* can unnecessarily inhibit the expansion of government-managed TB service contracting.

Procurement legislation and standard tender documents are often cumbersome and jargon heavy. It can be difficult for stakeholders without significant expertise in health service contracting to extrapolate prohibitive and enabling provisions from these texts. Table 2 below provides some examples of prohibitive and enabling provisions to give stakeholders a sense of what to look for.

Table 2. Examples of Enabling and Prohibitive Provisions to Government-managed TB Service Contracting

Enablers	Potentially or partially prohibitive provisions	Prohibitive provisions
Health services are explicitly listed as services permitted for government-managed contracting.[2] Nongovernmental organizations (NGOs) are explicitly listed as organizations that can bid for government-managed contracting. Regulations stipulate that an upfront down-payment to contractors must be included in contracts. This provision helps ensure that contracted organizations have sufficient funds to conduct work from the beginning of the contract until the first contract payment is made, and levels the playing field for smaller, community-based organizations.[2]	A tenderer (the organization bidding on government contracts) is described as "a firm that is a private entity, a state-owned entity", or a combination thereof. The explicit mention of "firm" and absence of language pertaining to NGOs may dissuade certain purchasers from accepting bids from NGOs. However, the language does not explicitly *exclude* NGOs for eligibility.[2] Bidders are required to provide securities (a financial guarantee) as part of submitting their proposal and to sign the contract. Depending on the size of these securities, NGOs and smaller organizations wishing to engage in TB service contracting may not have the funds available to cover both securities, depending on the size of the financial amounts involved.[2]	NGOs are explicitly excluded from the list of permitted tenderers on government-managed contracts, or the requirements to respond to tenders (e.g., cash-on-hand requirements) cannot be met by non-profit organizations.

[2] Some examples in this Table are from other countries, but this example is from Kenya, specifically: Public Procurement Regulatory Authority. 2021. *Standard Tender Document for Procurement of Non-consulting Services*. Nairobi. Available: https://ppra.go.ke/standard-tender-documents/

STEP 3: CATEGORIZE AND DISTRIBUTE QUESTIONS ACROSS PURCHASER AND CONTRACTOR RESPONDENTS

The next step stakeholders should take is to develop sets of key informant interview (KII) questions specific to each assessment objective, and distribute these question sets across different respondent types (see Table 3 for an example for how this can be done). As will be discussed in step #5, public contracting is a sensitive topic and respondents will be hesitant to make themselves available for long interview rounds, if at all. Therefore, stakeholders should plan for one hour of interview time per respondent, with ample time upfront for describing the objectives of the assessment and providing plenty of reassurance to the respondent that their views on this very sensitive topic will be kept strictly confidential. This entails taking steps to avoid associating any individual answers with not only the name of the respondent, but also with the name of the organization, level of government, contract budget and period, or specific disease(s) addressed by the services provided.

Possible KII templates are available in the annexes of the Kenya contracting assessment[3]. With limited time to pose questions, the questions for each objective should be distributed strategically to ensure that each question is asked, and priority questions should be highlighted. To shorten the total number of questions, some questions can be converted into 'probes', which the interviewer can ask if the interview is moving faster than predicted.

For a respondent's views on past experiences with health service contracting to be useful, they themselves must have been directly involved in the procurement or contract management stages of the process. This was a point that needed to be reiterated throughout the KII process in Kenya, as certain respondents were selected who did not meet these criteria, and they needed to be recategorized.

Table 3 is included below to illustrate how the Kenya assessment team distributed questions across respondent types and ensured that its respondent selection criteria was sufficiently specific.

[3] NTLD-P. 2024. *Prospects for Scaling Government-managed TB Service Contracting in Kenya: Assessment Report*. Nairobi: Kenya.

Table 3. Summary of Key Informant Interview Respondent Sample

Respondent Type	Eligibility Criteria	Assessment Objectives Addressed	Number of Respondents in Kenya Assessment
Government purchaser	Individual who (a) was directly involved in the procurement and/or management of a government-managed health service contract and (b) represents the government institution responsible for the contracting	2, 3, 4	3
Government-managed contract implementer (GMCI)	Individual who (a) was directly involved in the implementation of a government-managed health service contract and (b) represents the private organization responsible for implementing the contract	2, 3, 5	4
Donor-managed contract implementer (DMCI)	Individual who (a) has been directly involved in the implementation of donor-managed health service contracts and (b) whose organization does not have experience implementing government-managed health service contracts	1, 6	4
Non-purchaser non-contractor (NPNC)	Individual who does not meet the eligibility criteria for the above three respondent types, but who could provide valuable insights on the prospects for government-managed TB service contracting in the country. In Kenya, this included prospective government purchasers (NTLD-P) and experts.	1, 4	5

STEP 4: IDENTIFICATION AND RECRUITMENT OF PURCHASERS AND CONTRACTORS

JUDGING THE RELEVANCE OF GOVERNMENT-MANAGED CONTRACTS

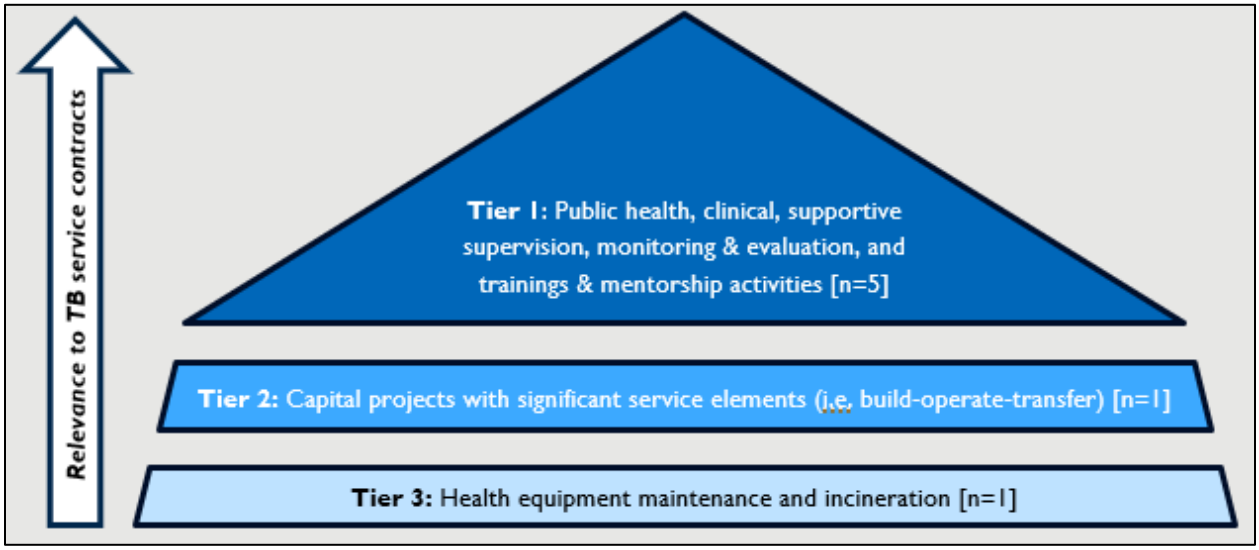
The assessment team met its target number of DMCIs and NPNCs (described in Table 3) interviewed by following common respondent identification and recruitment approaches which will not be covered here. On the other hand, the process of identifying and recruiting enough government purchasers and contractors (GMCIs) posed unique challenges which required creative approaches to address. This step therefore focuses on the procedures stakeholders should follow in identifying and recruiting government purchasers and GMCIs.

A foundational question the assessment team should answer before embarking on identifying and recruiting government purchasers and GMCIs is: "which types of health service contracts are more or less relevant to TB service contracting?" Answering this question early will help the assessment team to

waste less time interviewing the purchasers and contractors involved in the less relevant contracts and instead spend time striving to identify and recruit those involved in more relevant contracts.

To approach this, the Kenya assessment team organized the health service contracts it uncovered into three tiers, sequenced in order of relevance to TB service contracting. Figure 1 below shows the types of services included in each of these tiers. The figure also lists the number of government-managed contracts, by tier, that were ultimately explored via the KIIs. Contracts involving public health, clinical, supportive supervision, monitoring and evaluation, and trainings and mentorship activities are in the top relevance tier as these are services commonly implemented by national TB programs in Kenya and globally. Capital projects with significant service elements (i.e. build-operate-transfer) were considered in the second relevance tier because, although these contracts are typically larger-scale and have many elements not found in a typical TB service contract, they also have budget for service provision and therefore some important areas of thematic overlap. Finally, health equipment maintenance and incineration contracts have little to do with disease control outcomes, with less potential overlap in procurement procedures, and were therefore considered in the third relevance tier.

Figure 1. Health Contract Types by TB Service Contract Relevance Tier



METHODS FOR FINDING GOVERNMENT PURCHASERS AND GOVERNMENT-MANAGED CONTRACT IMPLEMENTERS

In many low- and middle-income countries, including Kenya, government-managed service contracting in the health sector is at a nascent stage. In these contexts, health sector actors wishing to learn about the experiences and capacity of purchasers and contractors previously involved in government-managed health service contracting will have few such contracts to examine. Compounding the challenge, it is likely that few health sector stakeholders will be aware of these contracts and be able to point the assessment team to appropriate purchasers and contractors.

In response to these challenges, the Kenya assessment team followed and recommends a three-pronged approach to identifying previous government-run health service contracts and the purchasers and

contractors involved: (1) informally asking stakeholders, (2) asking respondents from key informant interviews (i.e., snowball sampling[4]), and (3) scanning public procurement information databases. All three of these approaches should be implemented in a TB service contracting assessment. The following passages describe how the Kenya assessment team applied these approaches, which is depicted in Figure 2 at the end of this section.

Informally Asking Stakeholders

Kenya Experience	
Modest Effort	Modest Respondent Yield

This approach involved asking stakeholders thought to be knowledgeable of government-managed health service contracts in the county (but who aren't identified as NPNCs as asking NPNCs falls under *snowballing sampling* discussed next). The team identified **three** potential government-managed service contracts using this approach and interviewed one government purchaser and one GMCI identified through the approach. Of note, stakeholders should be probed about the nature of the contracts they reference to confirm that the contract in question meets the tier 1, 2, or 3 criteria summarized in Figure 1. A lot of stakeholders recommended large capital projects without service elements, commodity procurements, or contracting to empaneled providers under health insurance schemes, all of which are not relevant for TB service contracting.

Snowball sampling

Kenya Experience	
Modest Effort	Modest Respondent Yield

'Snowball sampling' is a common practice employed in KII processes which involves identifying subsequent respondents during a given KII. The Kenya assessment team interviewed DMCIs and NPNCs early in the process with hopes of snowballing government purchasers and GMCIs, but this yielded no relevant contracts. The team then attempted to snowball additional respondents through interviews with the government purchasers and GMCIs and surfaced **one** government purchaser through the approach. Overall, respondents referred the team to some potential government purchasers and GMCIs, but respondents typically did not provide sufficient information to indicate whether the referred organizations and individuals met the eligibility criteria to be interviewed.

Scanning Public Procurement Databases

Kenya Experience	
Higher Effort	Higher Respondent Yield

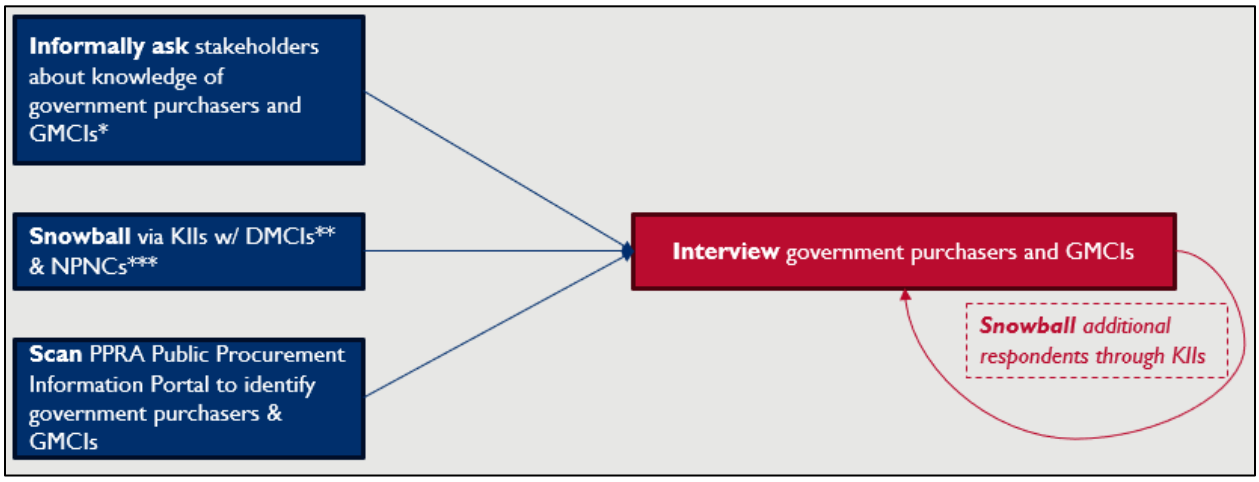
Many countries have national regulatory authorities for public procurements who maintain publicly accessible databases of open and closed tenders. In Kenya, this is the Public Procurement Regulatory Authority (PPRA). The PPRA maintains two databases: the 'Tenders' tab on their web page and the

[4] Snowball sampling is a recruitment technique in which research participants are asked to assist researchers in identifying other potential subjects.

Public Procurement Information Portal (PPIP).[5] The Tenders tab has relatively few tenders while the PPIP has thousands of government contracts dating back nearly a decade. Because many other countries will have a PPIP equivalent, this passage discusses the methods the Kenya assessment team used to scan these databases.

An initial scan of the PPRA website's Tenders tab and a keyword search of about 50 terms in the PPIP was not very fruitful. Therefore, one team member conducted a full manual scan of the titles of the roughly 8,000 contracts on the PPIP. This second phase was very time-intensive but marks where the team had their breakthrough: the second phase generated most of the roughly **40** relevant government-run health service contracts identified. The names of the purchasers and contractor organizations involved in these contracts are also available in the PPIP.

Figure 2: Recommended Methods for Finding Government Purchasers and GMCIs



**Government-managed health service contract implementers*
***Donor-managed health service contract implementers*
****Non-purchaser non-contractors*

STEP 5: SECURING INTERVIEWS WITH GOVERNMENT PURCHASERS AND CONTRACTORS

In public procurement systems, corruption, scandal, and procedural breakdowns can be common in both tendering and contract management processes. These affect the willingness of potential respondents to be interviewed. In Box 1 are a few such examples uncovered during the Kenya assessment team's respondent recruitment efforts and the KIIs themselves.

[5] See https://ppra.go.ke/category/tenders/ and https://tenders.go.ke/, respectively.

Box 1. Government Contract Experiences Impacting Respondents' Willingness to Be Interviewed in Kenya

One purchaser was under investigation for having paid the contractor in full before contract implementation and services were not completed 10 years later.

Another purchaser did not fulfill the legislatively mandated conditions for direct procurement and ignited a political scandal.

Contract payment delays are very common, with one contractor having gone two years without being paid.

Potential respondents approached by the Kenya assessment team regularly cited the 'sensitive nature' of the government contract in question as the reason for their unwillingness to be interviewed. Based on the Kenya experience, assessment teams in other contexts should expect an unusually high degree of respondent attrition, both at first contact with the respondent and importantly, after first contact. Potential respondents would initially commit to be interviewed, then check for internal clearance (such as with their organization's legal department) and then decline the interview or become unresponsive.

Learning from the experiences in Kenya, stakeholders assessing the TB service contracting landscape in other contexts should take the following measures during this step:

1. In reassuring prospective respondents in the government purchaser and GMCI categories that their responses will be kept strictly confidential, be specific about what details will be omitted from all publicly accessible documents. This entails anonymizing the name of the respondent, name of the organization, level of government, contract budget and period, and specific disease(s) addressed by the services provided.

2. Provide a three-week buffer in the KII process timeline to account for government purchasers and GMCIs who need to secure internal clearance to be interviewed, given the sensitive nature of government contracting.

3. Assume a 50 percent attrition rate (between respondent identification and holding the interview) among government purchasers and GMCIs when estimating the number of such respondents who need to be identified.

SUMMARY OF RECOMMENDATIONS

Stakeholders wishing to assess the TB contracting landscape in a low or middle-income country with nascent health service contracting should take particular note of the following key recommendations covered in this guidance document:

1. Formulate assessment objectives that are designed to generate sufficient knowledge of previous and potential purchasers' and contractors' capacity and willingness to contract (***step 1***).

2. Distinguish *potentially or partially prohibitive provisions* from *prohibitive provisions* when analyzing legal and regulatory texts to avoid unnecessarily inhibiting the expansion of government-managed TB service contracting (***step 2***).

3. Distribute KII questions across respondent categories under the assumption that interviewers will have access to the respondent for one hour maximum, a good portion of which will be spent providing reassurances around confidentiality (***step 3***).

4. Prioritize evaluating contracts involving [a] public health, clinical, supportive supervision, monitoring and evaluation, and trainings and mentorship activities over [b] capital projects with significant service elements, or [c] health equipment maintenance and incineration contracts (***step 4***).

5. Use a combination of scanning public procurement databases, snowballing, and informally asking stakeholders to identify a healthy set of government purchasers and GMCIs (***step 4***).

6. Be specific with government purchasers and GMCIs about what details shared during KIIs will be omitted from all publicly accessible documentation stemming from the assessment (***step 5***).

7. Provide a three-week buffer in the KII process to account for government purchasers and GMCIs to secure internal clearance to be interviewed, given the sensitive nature of government contracting (***step 5***)

8. Assume a 50 percent attrition rate (between respondent identification and holding the interview) among government purchasers and GMCIs when estimating the number of such respondents that need to be identified (***step 5***).

CONCLUSION

This guide provides a practical process that other stakeholders can follow to generate information sufficient to (a) design a roadmap for expanding TB service contracting and (b) articulate a clear plan to strengthen prospective purchasers' and contractors' capacities. If other assessment teams follow these steps, it may smooth the pathway to a successful health service contracting landscape assessment, which is a critical starting point for countries wishing to pilot and scale up government-managed contracting of TB services.

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