Prospects for Scaling Government-managed TB Service Contracting in Kenya: Assessment Report

February 2024

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 Open Development.

ACKNOWLEDGEMENTS

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, Njeri Gitau, Andrew Carlson, Sara Wilhelmsen, Hanna Peterson, Mac Carlson, and Maeve Conlin from the USAID-funded Health Systems for Tuberculosis (HS4TB) project for their technical assistance in preparing the document, William Wells (USAID) for his guidance and Saba Waseem (HS4TB) for her technical oversight.

Contact Information

For more information on the HS4TB project, contact:

Kamiar Khajavi
Project Director, HS4TB
kkhajavi@msh.org

Submission

Submission Date: February, 2024

USAID TOCOR: Eric Baranick
ebaranick@usaid.gov

ACRONYMS AND ABBREVIATIONS

ARC	Accelerated Response and Care
CAP	Costed Action Plan
CBOs	Community-based Organizations
CEC	County Executive Committee
CSOs	Civil Society Organizations
DMCI	Donor-managed Contract Implementer
FTT	Financing Task Team
GMCI	Government-managed Contract Implementer
GOK	Government of Kenya
HENNET	Health Non-governmental Organization Network
HS4TB	Health Systems for Tuberculosis
KANCO	Kenya AIDS NGOs Consortium
KIC-TB	Kenya Innovation Challenge Tuberculosis Fund
KII	Key informant interview
MOH	Ministry of Health
NGO	Non-governmental Organization
NGOCA	Non-Governmental Organizations Coordination Act

NSP	National Strategic Plan
NPNC	Non-purchaser Non-contractor
PPADA	Public Procurement and Asset Disposal Act
PPRA	Public Procurement Regulatory Authority
PPM	Public-private Mix
PPPA	Public Private Partnerships Act
NTLD-P	National Tuberculosis, Leprosy and Lung Disease Program
SPA	Special Purpose Account
STD	Standard tender document
TB	Tuberculosis
USAID	United States Agency for International Development

TABLE OF CONTENTS

About HS4TB i

Acknowledgements i

Acronyms and Abbreviations ii

Executive Summary 1

Introduction 3

Assessment Objectives 4

Methods 5

Results 6

Political, Legal, and Regulatory Environment 6

Desk Review Results 6

Key Informant Interview Results 12

Past Experiences with Government-managed Health Service Contracting 13

Contracting Capacity of Government Purchasers 14

Contracting Capacity of Government-managed Health Service Contract Implementers 16

Donor-managed Health Service Contractors' Interest in Implementing Government-managed TB Service Contracts 16

Recommendations 17

References 21

Annex A: Government Purchaser Questionnaire 23

Annex B: Government-managed Contract Implementer Questionnaire 25

Annex C: Donor-managed Contract Implementer Questionnaire 28

Annex D: Non-purchaser Non-contractor Questionnaire 31

EXECUTIVE SUMMARY

Introduction. The National Tuberculosis, Leprosy, and Lung Disease Program's (NTLD-P) National Strategic Plan 2023/24-2027/28, and its accompanying TB Financing Roadmap, both provide for scaling up government-managed tuberculosis (TB) service contracting. However, the NTLD-P and county governments have not yet contracted TB services to non-government or private organizations. To guide the scale-up of this type of contracting, information is required on the legal and regulatory environment, previous health service contracting experiences, capacity gaps among current and prospective purchasers and contractors, and willingness of contractors to engage in government-managed TB service contracts.

Assessment Objectives. To address the information needs expressed in the Introduction, the objectives of this assessment are as follows.

1. Assess the political, legal, and regulatory environment for contracting, including laws, regulations, policies, and operational guidelines in place relating to contracting.
2. Uncover any issues that purchasers and contractors previously involved in government-managed health service contracting have had with existing legal and regulatory tools.
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.
4. Establish NTLD-P's and county governments' capacity to issue and manage TB service contracts.
5. Understand the capacity of contractors previously involved in government-managed health service contracting to implement such contracts for TB services.
6. Evaluate donor-managed TB service contract implementers' interest in engaging in government-managed TB service contracting.

Methods. Following a desk review, 16 key informants were interviewed across the following categories.

- Government purchaser (n=3): a past purchaser of contracted health services.
- Government-managed contract implementer (n=4): a past private sector (for-profit or not-for-profit) implementer of such a contract in the health sector.
- Donor-managed contract implementer (n=4): a private sector organization responsible for implementing such contracts in the health sector.
- Non-purchaser non-contractor (n=5): an individual who does not fall into the categories above but who could provide valuable insights regarding the national contracting landscape.

Results. The desk review and key informant interviews generated the key findings summarized below.

- *Political, Legal, and Regulatory Environment.* Existing legal, regulatory, policy, and operational documents constitute a solid foundation for expanding government-managed health and TB service contracting with the private sector in Kenya. A relevant act, regulations, and standard tender document all exist and contain language that is open to health services contracting. According to interview respondents, there is expected to be at least some support from public, private, and educational sectors for government-managed TB service contracting. Respondents cited several potential barriers to government-managed TB service contracting, of which a few

can be directly addressed by the health sector. Six of the seven government purchasers and government-managed contract implementers interviewed agreed that the Public Procurement and Asset Disposal Act is the appropriate governing document for government-managed health service contracts.

- *Past Experiences with Government-managed Health Service Contracting*. For the most part, open tendering —the preferred procurement method under the Public Procurement and Assets Disposal Act —has been followed in the government-managed health service contracts examined. Besides some contract payment issues, experiences with government-managed health service contracting were reported as generally positive in Kenya.
- *Contracting Capacity of Government Purchasers*. According to the respondents interviewed, the capacity of both NTLD-P and county governments should be strengthened in most of the contracting areas discussed, including an enhanced understanding of the legal and regulatory framework underpinning this type of contracting.
- *Contracting Capacity of Government-managed health Service Contract Implementers*. Among the three capacity areas examined, submitting compelling proposals is where capacity strengthening is most needed.
- *Donor-managed Health Service Contractors' Interest in Implementing Government-managed TB Service Contracts*. All such contractors stated that they would be interested in implementing government-managed TB service contracts. In addition, all four of these respondents agreed that implementing donor-managed health service contracts has prepared them to implement government-managed health service contracts.

Recommendations. In view of the report findings, the assessment recommends that the following measures be taken to test and scale government-managed TB service contracting in Kenya.

1. Develop a costed action plan for government-managed TB service contracting.
2. Build political will and promote broad awareness of the benefits of government-managed TB service contracting by developing and disseminating a TB contracting policy brief and advocacy materials.
3. Strengthen NTLD-P's, county governments', and for-profit and not-for-profit organizations' capacity to engage in government-managed TB service contracting.
4. Pilot TB service contracting at national and county government levels.
5. Address contract payment challenges by shifting funding responsibility for county government-managed TB service contracts from discretionary budgets to special purpose accounts and an accompanying co-financing arrangement.
6. Conduct a contract payment turnaround time analysis to diagnose causes for delayed payment.

INTRODUCTION

To realize Kenya's vision for a TB-free future, the country has adopted the World Health Organization (WHO) END TB targets, setting the goal of reducing TB incidence by 80 percent (compared to 2015), TB mortality by 90 percent (compared to 2015), and eliminating catastrophic costs for TB-affected households by 2035. Kenya has already made impressive strides towards these targets. In 2021, Kenya surpassed interim milestones, achieving a 32 percent reduction in TB incidence compared to 2015, against a target of 20 percent, and a 44 percent reduction in TB deaths compared to 2015, against a target of 35 percent (WHO 2022).

This progress is attributed, in part, to the important roles played by nongovernmental organizations (NGOs) and other private organizations in the national TB response. Under donor funding primarily from the Global Fund and the United States Agency for International Development (USAID), these organizations contribute to TB activities that include active case finding, intensified case finding, contact investigation, and contributing to supportive activities such as supply chain management, development and maintenance of TB information systems, and quality improvement efforts.

The following are some examples of private organizations funded by donors to support the Kenya TB program:

- The Kenya Innovation Challenge Tuberculosis Fund (KIC-TB) is funded by the Global Fund and led by the NTLD-P, in partnerships with Amref Health Africa and nine local sub-recipients[1]. With funding from KIC-TB, 275,303, 44,592, and 23,356 people have been screened for TB, tested, and diagnosed, respectively.
- USAID TB Accelerated Response and Care (ARC) II contracted Population Services Kenya and engaged informal service providers through the Kenya AIDS NGO Consortium (KANCO) to lead TB case finding efforts; promote access to treatment; improve TB service delivery platforms; and stimulate TB research and innovation.
- The USAID-funded Kenya Conference of Catholic Bishops' Komesha initiative supports 143 faith-based organizations and private health facilities in 9 western Kenyan counties to conduct screening and advocacy activities, among others. These efforts have resulted in notable progress towards TB control targets (MOH & NTLD-P 2022, USAID 2019).

Having attained lower-middle income status in 2014, Kenya's gross national income (GNI) per capita is on the rise, increasing from $1,730 to $2,170 over 2018-2022 (World Bank 2023). Kenya's increasing GNI/capita has been accompanied by growing government health budgets at national and county levels (which, in sum, rose from KES 78 billion in 2013/14 to KES 247 billion in 2020/21) (GOK & MOH 2022, HP+ 2021). As domestic resource mobilization for health continues to increase, it will be important for national and county governments to begin funding and managing health service contracts, including for TB. In recognition of this need to begin funding TB service contracting, Major Action 6.6.6. in Kenya's National Strategic Plan (NSP) for Tuberculosis, Leprosy, and Lung Health 2023/24-2027/28 is to: *[e]xplore and mobilize social enterprise and contracting opportunities at national and county levels e.g.…sustainable transitioning and scaling up from heavily donor funded activities, taking advantage of the comparative advantage of NGOs, community, and private sector to provide certain services more efficiently and*

---

[1] ReSoK, Community Support Platform, Resources Oriented Development Initiative, North Star Alliance, Partnership for a HIV Free Generation, TAC Health Africa, Heroes Oasis Counselling Center, Sema Limited, and Nais Healthcare Ltd.

effectively (NTLD-P 2023a). Further, in Kenya's TB Financing Roadmap, the accompanying operational framework for mobilizing sufficient financial resources for the NSP 2023/24-2027/28, Strategic Initiative (SI) 5 is to *[i]ncrease efficiency of government TB expenditures through contracting of selected services to private organizations* (NTLD-P 2024).

However, NTLD-P and county governments have not yet contracted TB services to private organizations. Therefore, a costed action plan is required to operationalize this type of contracting and realize the NSP Major Action 6.6.6. and TB Financing Roadmap SI 5. To ensure the costed action plan is comprehensive, an assessment is required which considers the legal and regulatory environment, previous health service contracting experiences, capacity gaps among current and prospective purchasers and contractors, and willingness of contractors to engage in government-managed TB service contracts.

Box 1. Contracting in Healthcare

Contracting has attracted increased attention in recent years for its potential to improve the quality, efficiency, and accessibility of health services. 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 (Sanderson et al 2019, Mbau et al 2018).

ASSESSMENT OBJECTIVES

To address the information needs expressed above, the objectives of this assessment are:

1. Assess the political, legal, and regulatory environment for contracting, including laws, regulations, policies, and operational guidelines in place relating to contracting.

2. Uncover any qualitative issues that purchasers and contractors previously involved in government-managed health service contracting have had with existing legal and regulatory tools.

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.

4. Establish NTLD-P's and county governments' capacity to contract TB services.

5. Understand the capacity of contractors previously involved in government-managed health service contracting to implement such contracts for TB services.

6. Evaluate donor-managed TB service contract implementers' interest in engaging in government-managed TB service contracting.

METHODS

A desk review of laws, regulations, policies, and operational guidelines relevant for government-managed TB service contracting was conducted (see Box 2 in the following section for details about these documents and how they relate to each other). Following the desk review, NTLD-P developed four standardized key informant interview (KII) questionnaires with support from the USAID's Health Systems for Tuberculosis (HS4TB) project, captured in the annexes to this report. Each questionnaire was tailored and administered to a different respondent type, summarized in Table 1 below.

Table 1. Summary of Key Informant Interview Respondent Sample

Respondent Type	Eligibility Criteria	Assessment Objectives Addressed	Number of Respondents
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 Kenya	1, 4	5

RESULTS

POLITICAL, LEGAL, AND REGULATORY ENVIRONMENT

The findings summarized in this section are distributed across two sub-sections: desk review results and KII results. The purpose of the desk review portion of this section is to address assessment objective #1: assess the legal and regulatory environment for contracting, including laws, regulations, policies, and operational guidelines in place relating to contracting. The KII results sub-section reveals stakeholder perspectives on assessment objective #1 and addresses assessment objective #2: uncover any qualitative issues that purchasers and contractors previously involved in government-managed health service contracting have had with existing legal and regulatory tools.

Desk Review Results

Relationship Between Government and NGOs in the Health Sector

According to the Kenya Health NGO Network (HENNET), there are approximately 112 NGOs working in the health sector. It has not been established whether this figure includes the numerous smaller civil society organizations (CSOs) and community-based organizations (CBOs) that are subcontracted by these larger NGOs. No list of these smaller CSOs and CBOs working in the health sector could be located as part of this assessment (HENNET n.d.).

There is strong collaboration between NGOs and government in Kenya's health sector. Common areas of such collaboration include: service delivery to underserved areas; delivery of specialized HIV, maternal and child health, and nutrition services; capacity building of human resources for health; advocacy to government decision-makers; program implementation (especially in disease prevention and control, immunization campaigns, health education and awareness, and community-based health interventions); and resource mobilization efforts targeting external donors, philanthropic foundations, and private sector entities. These forms of collaboration are primarily funded by donors, though there are cases of government funded public-private partnerships and collaborations.

Health Sector Policy Environment

Existing legal, regulatory, policy, and operational documents constitute a solid foundation for expanding government-managed health and TB service contracting with the private sector in Kenya. These documents are summarized in Box 2 below.

Box 2. Foundational Documents for Government-managed Health and TB Service Contracting in Kenya

Kenya Constitution of 2010. The Constitution establishes that public sector entities must contract in a "fair, equitable, transparent, competitive, and cost-effective" manner, which provides some degree of protection for prospective private sector contractors (GOK 2010).

County Government Act of 2012. The Act provides detailed responsibilities for newly formed county governments as part of the country's shift to devolved governance. Article 6 stipulates that, "[t]o ensure efficiency in the delivery of service or carrying out of a function for which the county

government is responsible, the county government may…contract any person, company, firm, or other body for the delivery of a particular service or carrying on a particular function". The inclusion of "company, firm, or any other body" provides clear legislative backing for the contracting of private sector entities (GOK 2012).

Kenya Health Act of 2017. The Act sets out the rights and duties of different actors in the health system, and establishes important health sector bodies like the Inter-governmental Consultative Forum and the Kenya Health Human Resource Advisory Council. Article 92 permits the Cabinet Secretary and County Governors to engage in "partnership agreements with companies operating in the private sector in order to develop specific services or facilities that will serve the needs of public health". The Act therefore explicitly covers service contracting in the health sector (GOK 2017).

Public Private Partnerships Act (PPPA) of 2013 (revised 2021). The Act stipulates appropriate processes covering the full contracting life cycle, including project identification, feasibility studies, selecting a procurement method, submitting and evaluating bids, negotiating terms with the successful bidder, executing project agreements, and project management. Article 69 of the Act requires that the government purchaser and successful bidder jointly establish a project company pursuant to the Companies Act, 2015 to undertake the project. Registering a short-term company in Kenya is a cumbersome process and doing so for the sole purpose of a fixed-term contract would typically be an unattractive prospect for government purchasers and private sectors wishing to engage in health and TB service contracting. Such a requirement was likely included in the PPPA with the intention that the Act would guide large capital projects and not the type of smaller-scale, fixed term service contracting assignments which this current assessment is exploring. Therefore, the Public Procurement and Asset Disposal Act (described next in this box) should be followed for health and TB service contracting in the place of the PPPA. The PPPA is included in this list because it is frequently described in other documentation regarding health service contracting and the distinction must be made regarding its suitability for capital vs. service contracts (GOK 2021).

Public Procurement and Asset Disposal Act (PPADA) of 2015 (revised 2022). Article 227 of the Kenya Constitution of 2010 established that "[a]n Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented", which is the purpose of the Public Procurement and Asset Disposal Act. The Act outlines processes for drafting and publishing solicitations, evaluating bids, preparing contracts, and contract management. The Act provides definitions for goods, works, services, and consultancy services (see Box 3), but does not stipulate which procurement methods are appropriate for each of these categories. The Act defines "citizen contractor" as "a person or a firm wholly owned and controlled by persons who are citizens of Kenya", making it clear that private sector entities are eligible bidders on government contracts. Article 3 states that public procurement and asset disposal should favor the promotion of citizen contractors (GOK 2022).

Public Procurement and Asset Disposal Regulations (PPADR), ***2020***. The PPADR were developed to operationalize the PPADA Article 36 states that sector-specific procuring and disposal agencies may be established to assist public sector entities within that sector with procurements. Health is named as one of the five sectors for which such an agency may be established, unless the Cabinet Secretary approves the establishment of procuring and disposal agencies for other sectors. The

PPADR provides for the creation of 42 standard tender documents (STDs). This list includes an STD for procurement of non-consulting services, which is the relevant STD for health service contracting (GOK 2020).

Standard Tender Document for Procurement of Non-consulting Services. This document is the relevant STD for health service contracting, as no STD exists specific to contracting health services. More details on this document are provided in the 'Kenya's Procurement System' section of this document (PPRA 2021).

Kenya Health Public Private Collaboration Strategy 2020. Among the five strategic objectives in the strategy is to "[g]uide contracting authorities on identifying and prioritizing projects that have the potential to deliver better value through collaboration with the private health sector". Specifically, the Strategy calls for improved guidance on identifying needs, assessing options, and establishing project pipelines for contracting to the private health sector (MOH 2020a).

Public Private Collaboration Resource Guide for Health 2020. This guide outlines a step-by-step process for government purchasers to design and implement government-managed health contracts with the private sector. The steps include conducting a needs assessment, preparing the contract, selecting a procurement method, prequalifying the contractor, managing the tendering process, evaluating proposals from bidders, negotiating contract terms, and contract management (including forming a management team, conducting regular project reviews, and preventing and managing disputes with the contractor). The guide directs readers to appropriate sections of the PPADA at these different steps. The document also states that the PPADA may be better suited for "short-duration, low-risk arrangements" while "longer-duration capital-heavy projects may require full compliance with the PPP Act". However, the guide does not provide any rationale behind these assertions. Finally, the guide does not reference any standard tender documents (MOH 2020b).

National Strategic Plan (NSP) for Tuberculosis, Leprosy, and Lung Health, 2023/24-2027/28. The NSP sets forth a blueprint for sustaining progress towards reducing TB incidence, TB mortality, and eliminating catastrophic costs by increasing TB treatment coverage and success, strengthening provision of integrated TB/HIV services, and strengthening program management, coordination, and accountability of TB services. Major Action 6.6.6. in the NSP is to *[e]xplore and mobilize social enterprise and contracting opportunities at national and county levels e.g.…sustainable transitioning and scaling up from heavily donor funded activities, taking advantage of the comparative advantage of NGOs, community, and private sector to provide certain services more efficiently and effectively* (NTLD-P 2023a).

Kenya TB Financing Roadmap FY2023/24-FY2027/28. The Roadmap is a companion document to the NSP and is intended to (i) summarize the approaches to be employed to mobilize additional domestic funds towards the NSP 2023/24-2027/28 cost requirement, and (ii) capture interventions designed to spend these funds in a more efficient manner with a view to reducing the amount of financial resources needed to implement the NSP. SI 5 of the Roadmap is to *Increase Efficiency of Government TB Expenditures through Contracting of Selected TB Services to Private Organizations*. SI 5 will be achieved through (a) formulating a plan to build the capacity of the Ministry of Health (MOH) and county governments, as well as its own capacity, to conduct TB service contracting and (b) developing

and implementing a costed action plan to pilot and scale government-managed TB service contracting (NTLD-P 2024).

NTLD-P Public Private Mix (PPM) 2021-2023 Action Plan. The Action Plan charts a roadmap for scaling up TB public-private mix approaches and new, innovative models for PPM service delivery. Note that most of this Action Plan is focused on how to engage with individual private clinical providers, in order to enhance clinical service delivery, rather than on large-scale contracts with organizations. While the PPM Action Plan does also highlight the need for "contract-based financing to NGOs" as an example of a funding model to enhance PPM activities, it does not set out activities to establish and manage these arrangements (MOH & NTLD-P 2022).

Kenya's Procurement System

Kenya's procurement system is governed by the PPPA and the PPADA. Each Act introduces its own procurement procedures for government-managed contracts, yet the two Acts do not set clear boundaries for which Act applies in which situation. TB service contracts, especially with NGOs, are likely more suitable for procedures under the PPADA, as the PPPA was designed for major capital projects involving substantial transaction costs.

The PPADA notes that the National Treasury is responsible for public procurement and asset disposal policy formulation; the PPADA also establishes the Public Procurement Regulatory Authority (PPRA; https://ppra.go.ke/) to regulate government procurement processes and ensure compliance with the PPADA. Box 3 summarizes the types of procurements covered in the PPADA. Health services such as TB would fall under "services", but this is not explicit in the Act. The Act authorizes procurers to engage in: open tenders; two-stage tenders; design competitions; restricted tendering; direct procurements; requests for quotations; electronic reverse auctions; low value procurements; force accounts; competitive negotiations; requests for proposals; framework agreements and others covered in relevant legislation. The PPADA establishes that open tenders are preferred for all procurement types, and alternative procurement methods must meet specific conditions enumerated in the Act (GOK 2022).

Box 3. Types of Procurements in the Public Procurement and Asset Disposal Act

Goods. *Raw materials, products, equipment, commodities in solid, liquid or gaseous form, electricity and services that are incidental to the supply of the goods, works, and services.*

Works. *A combination of goods and services for the construction, repair, renovation, extension, alteration, dismantling, or demolition of buildings, roads, or other structures, and includes (a) the designing, building, installation, testing, commissioning, and setting up of equipment and plant; (b) site preparation; and (c) other incidental services.*

Services*. Any objects of procurement or disposal other than works and goods and includes professional, consultancy services, technical services, non-professional and commercial types of services as well as good and works which are incidental to but not exceeding the value of those services.*

Consultancy Services*. Services of predominately an intellectual, technical, or advisory nature, and includes services offered by all professionals.*

Source: GOK 2022

Developed by the PPRA, the STD for non-consulting services is the relevant STD for health service contracting. Table 2 below summarizes enablers and potential barriers for government-managed TB service contracting that emerge from the terms of this STD for non-consulting services.

Table 2. Enablers and Potential Barriers in the Standard Tender Document for Non-consulting Services

Enablers for TB Service Contracting	Potential Barriers for TB Service Contracting
• Contracts must indicate that contractors will receive an upfront payment and payments on a milestone basis. This provision helps ensure that contracted organizations have sufficient funds to initiate and continue work over the life of the contract. • In the contract, the purchaser must specify the amounts associated with these payments and the maximum turnaround time between receiving the invoice from the contractor and when payment will be sent. This provision helps prevent contracted organizations from going long periods without funds to carry out activities. • 'Healthcare' is listed as one of the 33 examples of non-consulting services.	• A tenderer is defined 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 STD does not explicitly *exclude* NGOs for eligibility. • Bidders are required to provide securities to purchasers. The STD mandates that the bidder provides a Tender Security (in the form of cash or a financial guarantee from a financial institution or insurance company) as part of their application. Once the successful bidder is selected and signs the contract, the bidder receives their Tender Security in full, in exchange for the Performance Security. The Performance Security can be provided in the form of a bank guarantee or bond and is returned to the contractor following the successful completion of the contract. NGOs and smaller organizations wishing to engage in TB service contracting may not have the funds available to cover both of these securities, depending on the size of the financial amounts involved. • Once bidders submit their proposals to the purchaser, the STD requires that the lowest-cost bid is selected, as long as the proposal is "substantially responsive" to the solicitation. The lack of due consideration for technical merit in the bid evaluation process can result in low quality of services delivered.

Source: PPRA 2021

Registration and Regulation of NGOs

The Non-Governmental Organizations Coordination Act (NGOCA) of 1990, revised in 2013, governs the registration, regulation, and supervision of NGOs operating in Kenya. Organizations must register with the NGO Coordination Board to be officially recognized as an NGO. To remain compliant with the NGOCA, NGOs must have a constitution or memorandum and articles of association, as well as submit annual reports and financial statements to the NGO Coordination Board (GOK 1990).

Eligibility of Organizations for Bidding

The PPADA sets out the eligibility and ineligibility requirements for "persons" to bid on government-managed contracts. According to PPADA, the definition of "person" in this context follows Article 260 of the Constitution, which defines a person as "a company, association, or other body of persons whether incorporated or unincorporated", which implies the inclusion of for-profit and not-for-profit

organizations. The eligibility and ineligibility criteria for organizations seeking to bid on government-managed contracts do not entail any significant barriers to nor enablers for contracting with private sector providers (GOK 2022, GOK 2010).

Key Informant Interview Results

There is expected to be at least some support from public, private, and educational sectors for government-managed TB service contracting. Respondents felt that many organizations would be supportive of this type of contracting: MOH, county governments (without mention of any specific officials), higher learning institutions, Kenya Medical Research Institute, Respiratory Society of Kenya, World Bank, and development partners involved in TB control. However, a respondent shared that certain government stakeholders perceive that privately delivered services are more expensive than publicly delivered ones. Finally, it should be noted that County Executive Committee (CEC) Members for Health were not identified as being supportive nor unsupportive. Because CEC Members for Health have ultimate decision-making power over whether a given health service is contracted out vs. publicly delivered, it will be important for NTLD-P to uncover these senior officials' attitudes around government-managed TB service contracting as it is scaled up at the county level.

Respondents cited several potential barriers to government-managed TB service contracting, of which a few can be directly addressed by the health sector. According to respondents, barriers to government-managed health service contracting include:

- Potential political interference in the tendering process
- The possibility of corruption (either actual or perceived)
- Limited resources
- Inadequate information on potential contractors
- Insufficient capacity in NTLD-P and other organizations to contract

The Recommendations section of this document includes strategies to overcome the latter three challenges.

Six of the seven purchasers and GMCIs (implementers) interviewed agreed that the PPADA is the appropriate governing document for government-managed health service contracts. The remaining respondent within this group believed both the PPPA and the PPADA to be relevant. Purchasers and GMCIs did not point to specific contents of the PPPA or the PPADA to explain their response. GMCIs felt that the PPADA contains enough detail for them to engage in government-managed health service contracting. For the most part, respondents who have not been directly involved in government-managed health service contracting — prospective contractors and NPNCs — believed that the PPADA is more appropriate for this type of contracting. Within the county department of health (CDOH), the chief officer for health or county executive committee member for health are responsible for determining which legislation applies to a given contract with the private sector. A national-level purchaser in the health sector stated that the head of procurement in their institution has this responsibility.

PAST EXPERIENCES WITH GOVERNMENT-MANAGED HEALTH SERVICE CONTRACTING

During the KIIs with the four purchasers and three GMCIs, each respondent was asked a series of questions regarding their experiences on a single health service contract, to address assessment objective #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. The services provided under these seven contracts (four at national level; three at county level) are summarized in Table 3[2], and the results from this line of inquiry are summarized in the following paragraphs.

Table 3. Health Services Provided under Contracts Examined during Key Informant Interviews with Government Purchasers and Government-managed Contract Implementers

Disease prevention
Quality assurance
Health management information system rollout
Emergency medical rescue services (two separate contracts examined)
Laboratory services
Refurbishment and operation of laboratory equipment

GMCIs cited several key challenges with contract payments. Three of the four GMCIs interviewed noted that ***payment delays*** were a main issue during the implementation of these contracts. One of the GMCIs expressed that they worked for two years without payment. Another area of difficulty was with ***upfront payments*** at the beginning of the contract period. When speaking generally about government-managed service contracting, one GMCI shared that it is common for purchasers not to provide a down-payment to enable contractors to start the work. This contrasts with the STD for non-consulting services, which stipulates that contracts must provide for such payments. A final key payment issue which surfaced during the interviews was with ***delayed contract renewal***. One GMCI was working under a rolling contract, renewable annually. In at least one instance, the purchaser did not promptly renew the contract once the period had expired, and the GMCI was ineligible to receive payments in the interim. Despite this, the GMCI was expected to continue to provide services. According to the GMCIs, payment terms included in these contracts seemed generally consistent with the stipulation in the STD for non-consulting services that payments be made contingent on the attainment of certain milestones. Despite the generic concerns among KIIs about possible corruption

[2] Specific details (such as the disease areas involved) are omitted from the table to protect respondents' identities.

(see previous section), none of the purchasers or GMCIs interviewed cited payments being made outside of the agreed payment terms.

For the most part, open tendering — the preferred procurement method under the PPADA — has been followed in the government-managed health service contracts examined. The PPADA allows for other procurement methods as long as certain conditions are satisfied. In one case, direct procurement was used. The explanation for the selection of direct procurement did not satisfy any of the PPADA's conditions for using this method. In another case, restricted tendering was used, and it is unclear if any of the PPADA's conditions were satisfied.

Besides the contract payment issues mentioned earlier, experiences with government-managed health service contracting have been generally positive. Respondents found the criteria used to select the successful bidder to be fair and these criteria were followed in practice. Contract negotiation processes went well. Performance metrics were generally reached, except in cases where payment delays affected the ability of GMCIs to satisfy them. The period of contract implementation and output specifications were clear in the contracts. Indicators and requirements for supervision, monitoring, and performance evaluation were included in four of the six contracts examined.

CONTRACTING CAPACITY OF GOVERNMENT PURCHASERS

This section draws from the KII findings to address assessment objective #4: establish NTLD-P's and county governments' capacity to contract TB services.

Table 4 summarizes respondents' perspectives on areas for capacity strengthening within (a) NTLD-P and (b) county governments with existing experience in health service contracting. Each individual column represents a different respondent from either NTLD-P or county governments – two respondents per category were asked this set of questions.

Table 4. Contracting Capacity Matrix: Government Purchasers

Legend				
Respondent expressed that capacity strengthening is not needed in this area				
Respondent felt that capacity should be strengthened in this area				
No opinion provided from respondent regarding capacity strengthening for this area				
Capacity Area	**NTLD-P**		**County Governments**	
Carrying out a needs assessment				
Identifying contract objectives				
Developing a statement of work				
Selecting the appropriate contract type and mode of payment				
Releasing a solicitation				
Reviewing proposals				
Awarding, negotiating, and designing the contract				
Monitoring contract implementation				
Evaluating contract performance				

According to the respondents interviewed, NTLD-P's capacity should be strengthened in most of the contracting areas discussed. Respondents felt that NTLD-P's capacities should be strengthened in carrying out needs assessments; identifying contract objectives; developing a statement of work; reviewing proposals; awarding, negotiating, and designing the contract; monitoring contract implementation; and evaluating contract performance. NTLD-P respondents shared that additional capacity in mobilizing sufficient resources for needs assessments is required. In strengthening NTLD-P's capacity to identify appropriate contract objectives, officials would need support in aligning contract objectives with NSP priorities, according to respondents. Finally, assistance with developing appropriate key performance indicators was identified as a specific area of need that would help NTLD-P effectively monitor contract implementation and evaluate contract performance.

Similarly, respondents expressed that capacity should be strengthened in most areas among county governments with experience in health service contracting. Selecting the appropriate contract type and mode of payment; releasing a solicitation; reviewing proposals; awarding, negotiating, and designing contracts; and evaluating contract performance were all areas where such county government representatives felt that capacity should be strengthened. One respondent specifically called out 'selecting the appropriate contract type and mode of payment' as one of the top areas where capacity should be strengthened.

County government representatives with experience in health service contracting and NTLD-P officials agreed that enhanced understanding of the legal and regulatory framework underpinning this type of contracting is required among government purchasers. NTLD-P respondents shared that there is hesitancy to engage in health service contracting

within the program due to concerns that the program could unknowingly violate a mandatory legislative provision and face litigation.

CONTRACTING CAPACITY OF GOVERNMENT-MANAGED HEALTH SERVICE CONTRACT IMPLEMENTERS

The KII findings addressing assessment objective #5 — understand the capacity of contractors previously involved in government-managed health service contracting to implement such contracts for TB services — are summarized in this section.

All four GMCIs interviewed were asked for their opinions about where contracting capacity should be strengthened. The results from this line of inquiry are captured in Table 5. Again, each column represents each individual GMCI respondent.

Table 5. Contracting Capacity Matrix: Government-managed Health Service Contract Implementers

Legend				
Respondent expressed that capacity strengthening is not needed in this area				
Respondent felt that capacity should be strengthened in this area				
No opinion provided from respondent regarding capacity strengthening for this area				
Capacity Area	**GMCI**			
Submitting compelling proposals				
Negotiating contract terms				
Contract management				

Among the three capacity areas examined, submitting compelling proposals is where capacity strengthening is most needed. All three GMCIs who provided opinions on this area agreed that this is an area for improvement in their organization. Two GMCIs expressed that they lack dedicated proposal writers. Another GMCI shared that a greater understanding of legal and regulatory compliance requirements would improve the strength of their proposals. One respondent shared that capacity strengthening is needed in negotiating contract terms, while none felt that such strengthening was needed in contract management.

DONOR-MANAGED HEALTH SERVICE CONTRACTORS' INTEREST IN IMPLEMENTING GOVERNMENT-MANAGED TB SERVICE CONTRACTS

This section draws from the KII findings to address assessment objective #6: evaluate the interest of implementers of donor-managed TB service contracts to engage in government-managed TB service contracting.

All four DMCIs stated that they would be interested in implementing government-managed TB service contracts. Under government-managed contracts, the interviewed DMCIs

noted an interest in implementing social behavior change, demand creation, and defaulter tracing activities. Two respondents stated that their organization would be interested in providing any services across the TB care cascade.

All four DMCIs agreed that implementing donor-managed health service contracts has prepared them to implement government-managed health service contracts. One DMCI mentioned that they must undergo a tender process to apply for such donor-managed contracts. At the end of such processes, according to the respondent, they receive feedback from the funder if they are not the successful bidder. The respondent felt that this feedback has prepared them for submitting proposals for government-managed health service contracts.

RECOMMENDATIONS

The prospects for piloting and scaling government-managed TB service contracts in Kenya are promising. A relevant act, regulations, and standard tender document all exist and contain language that is open to health services contracting. Experiences with government-managed health service contracts have been generally positive, and DMCIs are interested in pivoting to implement these contracts. There is likely to be at least some political support for government-managed TB service contracting. However, there is not a clear medium-term plan for piloting and scaling this type of contracting, notable contracting capacity gaps exist among purchasers and contractors, contracting capacity needs to be strengthened, and contract payments remain a pervasive challenge on government-run health service contracts. Therefore, the following measures are recommended in order to test and scale government-managed TB service contracting Kenya.

1. **Develop a costed action plan (CAP) for government-managed TB service contracting.** The CAP should operationalize the remaining recommendations in this section as well as other measures to pilot and bring government-managed TB service contracting to scale in Kenya. A financing task team (FTT) within the NSP Implementation Taskforce will be established to oversee implementation of the TB Financing Roadmap. As government-managed TB service contracting is covered under SI 5 of the Roadmap, the FTT is the appropriate body to steer the development and implementation of the CAP. Therefore, FTT membership should include technical partners specializing in health service contracting. Based on the findings of this assessment, the PPADA, PPADR, and STD for non-consulting services are the appropriate governing texts for government-managed TB service contracting. The only provision across these texts which merits possible revision is the requirement in the STD that the lowest-cost bid be selected as long as it is "substantially responsive" to the solicitation. The FTT should consult government purchasers and other stakeholders as needed to determine whether (a) the STD should be revised to allow for the consideration of quality as a selection criterion vs. (b) quality should be introduced into specific tenders on a case-by-case basis. Otherwise, as the PPADA, PPADR, and STD do not contain any other notable barriers that will prevent such contracting, the CAP should not include any measures to revise them.

2. **Build political will and promote broad awareness of the benefits of government-managed TB service contracting by developing and disseminating a TB contracting**

policy brief and advocacy materials. No notable sources of potential political resistance to government-managed TB service contracting were uncovered during the assessment. Instead, a number of stakeholders were cited as likely being supportive of this type of contracting. However, these areas of likely support are not broad-based. NTLD-P has ultimate decision-making power at the national level regarding whether a given TB service is contracted out vs. publicly delivered, and is supportive of government-managed TB service contracting. However, the results from this assessment provide no indication one way or the other regarding likely support from ultimate decision-makers at the county level (i.e. CEC members for health). Based on experiences in other low- and middle-income countries, the FTT should be prepared to allay concerns that may arise as stakeholders — especially CEC members for health — become more aware of the implications of contracting. To prepare itself for efforts to build political will, the FTT will develop a policy brief and advocacy materials. The policy brief should highlight the encouraging findings from the current assessment that would reassure potential detractors, namely:

- There was strong consensus that the PPADA is the appropriate governing legislation for government-managed TB service contracting and no challenges were cited in using the PPADA in such contracts;
- The STD for non-consulting services, the appropriate STD for TB service contracting, provides clear guidance and is generally conducive to this type of contracting; and
- Except for payment issues, both purchasers and GMCIs had positive experiences on these contracts.

Advocacy materials should prioritize messaging that is responsive to concerns shared by key informants, including the perception that privately delivered health services are more expensive than publicly delivered ones. Such messaging should include the following points:

- Through the procurement process, bidders must compete to provide services at a low cost and high quality. Such competition does not exist in the context of publicly delivered services.
- Given for-profit and not-for-profit organizations' comparative advantage in delivering certain TB services, they can often deliver these services more efficiently.

3. **Strengthen NTLD-P's, county governments', and for-profit and not-for-profit organizations' capacity to engage in government-managed TB service contracting.** Respondents identified gaps among government purchasers and GMCIs in most of the contracting areas examined. To address these gaps, the FTT should develop and implement a TB contracting capacity building plan targeting government purchasers and private organizations:
    a. ***Capacity strengthening of government purchasers***. At the county level, county directors of health, county chief officers for health, and CDOH directorates of procurement are responsible for health service contracting. The FTT should train NTLD-P and these county officials on the procurement and contract management steps covered in Kenya's *Public Private Collaboration Resource Guide for Health* and STD for non-consulting services, and orient them on the PPADA provisions relevant for TB service contracting. In these trainings, special attention should be given to the capacity gaps

identified in the assessment, especially in identifying contract objectives (for NTLD-P) and in selecting the appropriate contract type and mode of payment (for CDOH officials). In an effort to address some of the contract payment challenges which surfaced in the assessment, training materials will emphasize that the STD mandates upfront payments and a commitment to payment processing turnaround times, and will explore public financial management barriers and solutions related to delayed payments. Training materials will also clarify the PPADA conditions which must be met to use payment methods besides open tendering.

b. ***Capacity strengthening of private organizations (for-profit and not-for-profit)***. As mentioned in the Results section of this report, implementing organizations have experience from donor contracts that puts them in a relatively good position to bid on and implement government contracts. However, Kenya's *Public Private Collaboration Resource Guide for Health* does not provide guidance to contract implementers on appropriate domestic bidding and contract management practices. Therefore, the FTT should develop and deliver a separate training curriculum targeting contract implementers which focuses on activity-based costing, proposal writing, negotiating contract terms, and contract management. NGOs and for-profit organizations identified as interested in implementing government-managed TB service contracts should be the targeted trainees. The curriculum should provide substantial emphasis on proposal writing, as this was the capacity area where most GMCIs felt improvement is needed. GMCIs shared that the absence of dedicated proposal writers in their organizations was a key gap, but it is likely that hiring such dedicated staff is not a practical solution for resource-constrained NGOs wishing to bid on smaller-scale TB service contracts. Instead, CEOs, medical directors, etc. at these smaller organizations tend to be responsible for submitting proposals and managing government contracts. It is these individuals whose capacity should be strengthened in proposal writing and other areas. Finally, the training curriculum should include an orientation on the compliance requirements covered in the PPADA, PPADR, and STD for non-consulting services, with particular attention paid to tender securities in the STD.

4. **Pilot TB service contracting at national and county government levels**. One contract should be piloted at the national level and one contract at the county level. The national- and county-level contract should be managed by NTLD-P and a CDOH, respectively. These pilots will be a learning process for the various stakeholders, even after the capacity building mentioned above, so the value and scope of the initial contracts should be limited. The FTT should assist NTLD-P and the selected CDOH with choosing an appropriate service to contract, with special consideration given to the TB activities where existing DMCIs have experience and interest. NTLD-P and the CDOH should use the STD for non-consulting services to procure the service from an appropriate contract implementer. The FTT should use the lessons learned from the pilot to refine the capacity building plan.

5. **Address contract payment challenges by shifting funding responsibility for county government-managed TB service contracts from discretionary budgets to special purpose accounts and an accompanying co-financing arrangement**. Contract payment

challenges are likely caused, in part, by county treasuries' rationing behaviors during budget implementation. During the Government of Kenya (GOK) financial year, there are chronic delays in transfers of funds from the National Treasury to county treasuries. These intragovernmental transfers account for 78 percent of annual government-managed revenue available to counties (NTLD-P 2023b). The transfer delays cause county treasuries to direct limited funds towards higher-priority spending categories: namely, salaries and capital projects. These decisions routinely come at the expense of the county health activity budgets (including contracted services) which do not fall under any of these categories and are therefore rationed. SI 3 in NTLD-P's TB Financing Roadmap 2023/24-2027/28 calls for special purpose accounts (SPAs) to be established for transitioning disease programs including TB. SPAs differ from other general county government spending accounts (such as the CDOH operational account) in that they can receive funding from GOK and donors, and not just from the county treasury. Via a memorandum of understanding, a SPA can be designed to receive co-financing from the GOK contingent on the county treasury releasing a given volume of disbursements to the SPA. Stakeholders agree that if the SPAs established for transitioning disease programs including TB are designed with this contingent co-financing feature, then county treasuries will be motivated to disburse TB funds more promptly and fully during budget implementation. The Roadmap identifies 'TB public health activities' as one of the TB cost categories that should be covered by SPAs (NTLD-P 2024). Contracted TB public health activities should be explicitly included during this transition of funding responsibility. SPAs will likely mitigate, but not fully resolve, issues with (a) contract payment delays and (b) insufficient funds to provide sizeable upfront payments to contractors.

6. **Conduct a contract payment turnaround time (TAT) analysis to diagnose causes for payment delays**. The SPAs would be a medium-term and incomplete solution to contract payment delays. A TAT analysis conducted by HS4TB in India revealed that, even when government purchasers have sufficient funding to reimburse contractors for TB services, significant challenges in invoice submission, invoice verification and validation processes, and payment release are additional causes for delay (HS4TB 2024). The FTT should conduct a similar analysis of health service contracts managed by CDOHs to diagnose process bottlenecks and incorporate the findings into the TB contracting capacity building plan mentioned in recommendation #3.

REFERENCES

1. Government of Kenya. 2022. *The Public Procurement and Asset Disposal Act No. 33 of 2015 (revised 2022).* Nairobi: National Council for Law Reporting. Available: https://ppra.go.ke/ppda/#:~:text=An%20ACT%20of%20Parliament%20to,ENACTED%20by%20Parliament%20of%20Kenya

2. Government of Kenya. 2021. *The Public Private Partnerships Act No. 14 of 2021*. Nairobi: National Council for Law Reporting. Available: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2021/ThePublicPrivatePartnershipsAct_No.14of2021.pdfGovernment of Kenya. 2020. *Public Procurement and Asset Disposal Regulations 2020*. Nairobi. Available: https://www.treasury.go.ke/wp-content/uploads/2020/11/Public-Procurement-and-Asset-Disposal-Regulations-2020.pdf

3. Government of Kenya. 2017. *The Health Act, No. 21 of 2017*. Nairobi: National Council for Law Reporting. Available: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/HealthActNo.21of2017.pdfGovernment of Kenya. 2012. *County Governments Act No. 17 of 2012*. Nairobi: National Council for Law Reporting. Available: http://www.parliament.go.ke/sites/default/files/2017-05/CountyGovernmentsAct_No17of2012_1.pdf

4. Government of Kenya. 2010. *The Constitution of Kenya*. 2010. Nairobi: National Council for Law Reporting. Available: http://www.parliament.go.ke/sites/default/files/2017-05/The_Constitution_of_Kenya_2010.pdf

5. Government of Kenya. 1990. *Nongovernmental Organizations Co-ordination Act*. Nairobi: National Council for Law Reporting. Available: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Non-GovernmentalOrganizationsCo-ordinationAct__No19of1990_.pdf

6. Government of Kenya & Ministry of Health. 2022. National and County Budget Analysis FY 2020/21. Nairobi. Available: http://guidelines.health.go.ke:8000/media/National_and_County_Budget_Analysis_FY_2020-21_April_2022.pdf

7. Health NGOs Network. N.d. List of Members.

8. Health Policy Plus. 2021a. *Is Kenya Allocating Enough Funds for Healthcare? Findings and Recommendations from National and County Budget Analyses*. Washington, DC: Palladium, Health Policy Plus. Available: http://www.healthpolicyplus.com/ns/pubs/18441-18879_KenyaNCBABrief.pdf

9. Health Systems for Tuberculosis. 2024. *Post-Contracting Assessment Report: Root Cause Analysis*. India. https://pdf.usaid.gov/pdf_docs/PA021HG6.pdf

10. Mbau, Rahab et al. 2018. "A Critical Analysis of Health Care Purchasing Arrangements in Kenya: A Case Study of the County Departments of Health". *International Journal of Health Planning and Management*. 33(4). Available: https://onlinelibrary.wiley.com/doi/epdf/10.1002/hpm.2604

11. Ministry of Health. 2020a. *The Kenya Health Public Private Collaboration Strategy (2020)*. Nairobi. Accessible: http://guidelines.health.go.ke:8000/media/The_Kenya_Health_Public_Private_Collaboration_Strategy_2020.pdf

12. Ministry of Health 2020b. *A Resource Guide to Strengthen Collaborations between the Public and Private Health Sector in Kenya (2020)*. Nairobi. Available: https://www.scribd.com/document/575801577/PPC-resource-final-signed#

13. Ministry of Health & National Tuberculosis, Leprosy, and Lung Disease Program. 2022. *Public-Private Mix Action Plan 2021-2023*. Nairobi. Available: http://guidelines.health.go.ke:8000/media/Public-Private_Mix_Action_Plan_2021-2023_-_published_03_March_2022.pdf

14. National Tuberculosis, Leprosy, and Lung Disease Program. 2024. *Kenya TB Financing Roadmap*. Nairobi.

15. National Tuberculosis, Leprosy, and Lung Disease Program. 2023a. *National Strategic Plan for Tuberculosis, Leprosy, and Lung Health, 2023/24-2027/28*. Nairobi.

16. National Tuberculosis, Leprosy, and Lung Disease Program. 2023b. *Strengthening the Sustainability of Kenya's Tuberculosis Response: An Assessment of County-Level Engagement in Planning and Budgeting Processes*. Nairobi. Available: https://pdf.usaid.gov/pdf_docs/PA0219K3.pdf

17. Public Procurement Regulatory Authority. 2021. *Standard Tender Document for Procurement of Non-consulting Services*. Nairobi. Available: https://ppra.go.ke/standard-tender-documents/

18. Sanderson, Joe et al. 2019. "What's Needed to Develop Strategic Purchasing in Healthcare? Policy Lessons from A Realist Review". *International Journal of Health Policy and Management.* 8(1). Available: https://www.ijhpm.com/article_3551_07d2d4e4cf5503b12dd1172df36d7f5a.pdf

19. United States Agency for International Development. 2019. *Kenya Tuberculosis Accelerated Response and Care*. Available: https://2017-2020.usaid.gov/sites/default/files/documents/1860/TB_ARC_II_factsheet_2019.pdf

20. World Bank. 2023. World Development Indicators. Available: https ://databank.worldbank.org/source/world-development-indicators

21. World Health Organization. 2022. *Global Tuberculosis Report 2022*. Geneva: World Health Organization. Available: https://www.who.int/teams/global-tuberculosis-programme/tb-reports/global-tuberculosis-report-2022

ANNEX A: GOVERNMENT PURCHASER QUESTIONNAIRE

Legal, Regulatory, and Policy Environment

1. Between the Public Private Partnerships Act (PPPA) of 2013 and the Public Procurement and Asset Disposal Act (PPADA) of 2015, which is the governing document for government-managed health service contracts? (*Probe: Why?*)

2. Who within your agency is responsible for determining which legislation, including the PPPA and PPADA, is relevant to your agency's contracts to the private sector?

3. Do you think the requirements set out in the [Act selected in question 1] and its associated regulations serve as obstacles inhibiting your agency from being contracted by the government to provide health services? (*Probe with examples such as the licensing requirements or the PPPA being restrictive to service contracts, especially to privately initiated procurements for service providers)*

4. (If yes) Would amendments to the Act be required to sufficiently enable government entities to contract health services to the private sector?

Contracting Experiences and Capacities

5. What was the job title, unit, department, etc. of the staff person responsible for managing the contract during its implementation? (*Probes: Were they based at national vs. county level, did different staff handle different aspects of the process such as a health financing unit vs. a less technical unit, and were there any issues with these between-unit interactions?*)

6. Which of the following procurement methods did the government use for the contracts: open tenders, two-stage tenders, design competitions, restricted tendering, direct procurements, requests for quotations, electronic reverse auctions, low value procurements, force accounts, competitive negotiations, requests for proposals, framework agreements, or privately initiated proposals?

7. Why was this procurement method selected?

8. Based on what criteria did the government procuring authority select the successful organization? (*Probes: how fair was the selection process)*

9. To what degree was the successful organization selected based on these selection criteria vs. relationships or other factors?

10. How well did the contract negotiation process go? (*Probes: challenges or disagreements with the contractor on key elements of the contract, and if so, how these were resolved; if there was sufficient time allowed for contract negotiations*)

11. What was the contract type/vehicle - purchasing agreement, lease/concession contract, cost and volume contract, performance-based contract, and build-operate-transfer contract, or otherwise? (*Probe: What challenges, if any, did you face with regard to this contract type/vehicle?*)

12. Why was this contract type selected?

13. What mode of payment was used for the contract – input-based, output-based, hybrid, or otherwise? (*Probe: What mode of payment does your organization prefer on these types of contracts and why?*)

14. What health services did the organization provide under the contract and to which populations and geographies?

15. To what degree were payments made outside of the mode of payment? (*Probe: Why?*)

16. Has your unit/agency encountered any issues with regards to timely payments on the contract and/or the contractor meeting performance metrics on the contracts, and if so, how were these resolved?

17. Were the contract's output specifications (i.e., volume, type, and complexity of services to be offered); contract deliverables; and details on price setting, compensation, and payment procedure sufficiently clear? (*Probe: Did the contract include a clear and sufficient length of time for implementation?*)

18. Did the contract include specific indicators and requirements for supervision, monitoring, and performance evaluation? (*Probe: Did the contract stipulate requirements for information system requirements and record keeping for administrative, financial, and clinical information for audit and other purposes, and were they sufficiently clear?*)

19. Overall, what challenges have you experienced on the contract, and what went well? (*Probe: What barriers, if any, are there relating to the bidding process, getting shortlisted for competitive bids, negotiating contracts, and meeting performance requirements?*)

20. What do you see as your organization's top areas for improvement in carrying out a needs assessment?
    a. identifying contract objectives?
    b. developing a statement of work?
    c. selecting the appropriate contract type and mode of payment?
    d. releasing a solicitation (if competitive bidding)?
    e. reviewing proposals
    f. awarding, negotiating, and designing the contract?
    g. monitoring contract implementation?
    h. evaluating contract performance?

21. Do you know of any (a) Kenya-registered private sector contractors responsible for implementing government-managed health service contracts, (b) Kenya-registered private sector organizations who you feel might be qualified for and interested in implementing government-managed health service contracts, (c) government organizations responsible for overseeing health service contracts, and/or (d) health service contracting experts who you feel would be qualified to provide valuable, objective insights on government purchasers and private sector contractors currently involved in health service contracts?

22. (If yes) Could you please provide me with their contact information?

ANNEX B: GOVERNMENT-MANAGED CONTRACT IMPLEMENTER QUESTIONNAIRE

Legal, Regulatory, and Policy Environment

1. Between the Public Private Partnerships Act (PPPA) of 2013 and the Public Procurement and Asset Disposal Act (PPADA) of 2015, which do you find to be more relevant to government-managed health service contracts? (*Probe: Why?*)

2. Who within your organization is responsible for determining which legislation, including the PPPA and PPADA, is relevant to government-managed contracts for which your organization is or seeks to be the contractor?

3. Do you think the [Act selected in question 1] and its associated regulations contain enough detail for your organization to engage in government contracts for health services?

4. (If not) what additional information would be required? (*Probe: would amendments to the Act be required to provide this additional information?)*

5. Do you think the requirements set out in the [Act selected in question 1] and its associated regulations serve as obstacles inhibiting private organizations similar to yours from being contracted by the government to provide health services? (*Probes: Apart from the documents mentioned in Question 1, and the Public Procurement & Asset Disposal Regulations, do other texts specify additional requirements for contracting out to the private sector for health services? If so, what are they and what requirements do they establish?*))

6. (If yes) Would amendments to the Act be required to sufficiently enable private organizations similar to yours to meaningfully engage in health services contracting?

7. Have you encountered any challenges in using standard tender documents for contracting health services? (*Probe: What challenges have you encountered?*)

Contracting Experiences and Capacities

8. Does your organization have experience bidding for and/or implementing donor-managed health service contracts?

9. (If yes) To what extent do you think this has prepared you for bidding for and/or implementing government-managed health service contracts? (*Probe: Why?*)

10. Which of the following procurement methods did the government use for the contract: open tenders, two-stage tenders, design competitions, restricted tendering, direct procurements, requests for quotations, electronic reverse auctions, low value procurements, force accounts, competitive negotiations, requests for proposals, framework agreements, or privately initiated proposals? (*Probe: To your knowledge, how many other organizations besides yours submitted proposals for the contract?*)

11. Based on what criteria did the government procuring authority select the successful organization? (*Probes: how fair was the selection process?)*

12. To what degree was the successful organization selected based on these selection criteria vs. relationships or other factors? (*Probe: How fair was the selection process overall?*)

13. How well did the contract negotiation process go? (*Probes: challenges or disagreements with the government on key elements of the contract, and if so, how these were resolved; if there was sufficient time allowed for contract negotiations*)

14. What health services does your organization provide under the contract and to which population(s) and geographies?

15. What was the contract type/vehicle - purchasing agreement, lease/concession contract, cost and volume contract, performance-based contract, and build-operate-transfer contract, or otherwise? (*Probe: What challenges, if any, did you face with regards to this contract type/vehicle?*)

16. What mode of payment is used for the contract – input-based, output-based, hybrid, or otherwise? (*Probes: To what degree were payments made outside of the mode of payment, and why? What mode of payment does your organization prefer on these types of contracts and why?*)

17. To what degree were payments made outside of the mode of payment? (*Probe: Why?)*

18. Has your organization encountered any issues with regards to timely payments on the contract, and if so, how were these resolved?

19. Has your organization encountered any issues with meeting performance metrics on the contract, and if so, how were these resolved?

20. Were the contract's output specifications (i.e., volume, type, and complexity of services to be offered) and contract deliverables sufficiently clear?

21. Were the contract's details on price setting, compensation, and payment procedure sufficiently clear?

22. Did the contract include a clear and sufficient length of time for implementation?

23. Did the contract stipulate requirements for information system requirements and record keeping for administrative, financial, and clinical information for audit and other purposes, and were they sufficiently clear?

24. Did the contract include specific indicators and requirements for supervision, monitoring, and performance evaluation?

25. Overall, what challenges have you experienced on the contract, and what went well? (*Probe: What barriers, if any are there relating to the bidding process, getting shortlisted for competitive bids, negotiating contracts, and meeting performance requirements?*)

26. What do you see as your organization's top areas for improvement in submitting compelling proposals to the government for health service contracts?

27. What do you see as your organization's top areas for improvement in negotiating contract terms with the government on health service contracts?

28. What do you see as your organization's top areas for improvement in contract management, including submitting regular reports and financial statements to the government procuring authority?

29. Do you know of any (a) Kenya-registered private sector contractors responsible for implementing government-managed health service contracts, (b) Kenya-registered private sector organizations who you feel might be qualified for and interested in implementing government-managed health service contracts, (c) government organizations responsible for overseeing health service contracts, and/or (d) health service contracting experts who you feel would be qualified to provide valuable, objective insights on government purchasers and private sector contractors currently involved in health service contracts?

30. (If yes) Could you please provide me with their contact information?

ANNEX C: DONOR-MANAGED CONTRACT IMPLEMENTER QUESTIONNAIRE

Legal, Regulatory, and Policy Environment

1. What roles, if any, do private sector entities have in developing, advocating for, and monitoring national TB strategic documents and policies? (*Probe for specific responses on CSOs vs. NGOs vs. CBOs vs. FBOs vs. for-profit organizations*)

2. What is the role of these private sector entities in TB service provision? (*Prompt: awareness, screening, case detection, treatment. Probe for specific responses on CSOs vs. NGOs vs. CBOs vs. FBOs vs. for-profit organizations)*

3. Do you think the private sector should have a different role in these TB strategies and service provision and how should it change? (*Prompt: for example. Do you think their role is too minimal, too much, or just enough? Do they have the right roles? Etc.)*

4. What are some examples where the government is already contracting services in the health sector? (*Prompt with examples if necessary – many Government hospitals have outsourced catering and cleaning services, and logistics*)

5. Between the Public Private Partnerships Act (PPPA) of 2013 and the Public Procurement and Asset Disposal Act (PPADA) of 2015, which do you find to be more relevant to government-managed health service contracts?

6. Why?

7. Who within your organization is responsible for determining which legislation, including the PPPA and PPADA, would be relevant to government-managed contracts for which your organization would be, or would seek to be, the contractor?

8. Do you think the [Act selected in question 5] and its associated regulations contain enough detail for your organization to engage in government contracts for health services?

9. (If not) what additional information would be required? (*Probe: would amendments to the Act be required to provide this additional information?)*

10. Do you think the requirements set out in the [Act selected in question 5] and its associated regulations serve as obstacles inhibiting your organization from being contracted by the government to provide health services? (*Probe with examples such as the licensing requirements or the PPPA being restrictive to service contracts, especially to privately initiated procurements for service providers)*

11. (If yes) Would amendments to the Act be required to sufficiently enable your organization to engage in health services contracting?

12. To your knowledge, have government procuring entities and/or contracted private organizations encountered any challenges in using Standard Tender Documents for contracting health services?

13. (If so) what challenges have they encountered?

14. Apart from the PPPA, PPADA, and Public Procurement and Asset Disposal Regulations, do other texts specify additional requirements for contracting out to the private sector for health services? *(Probe with examples: quality standards & regulations, treatment guidelines, etc.)*

15. Which stakeholders would you expect to be supportive or unsupportive of contracting out the following services from the government to the private sector: community-based prevention; community-based case finding; treatment adherence and household support; diagnostic services; training, mentorship, and capacity development; research and development; outpatient clinical TB services; inpatient clinical services; or any other TB support services?

16. To the extent that political will has been generated for health service contracting from the government to the private sector, which domestic and international actors would you say are responsible for generating this political will?

17. How do you think the general public perceives the idea of the government contracting certain health-related services to private providers?

18. What are some weaknesses/constraints within the political environment for effective public contracting of health-related services? (*Prompt if necessary – for example, fear of privatization, lack of familiarity among health leadership with contracting processes, or strong unions*)

Assessment of Capacity and Interest to Contract

19. What health services, if any, is your organization currently providing, especially any TB services?

20. Contracting health services with the government often requires that you submit a proposal to contract, negotiate the contract terms, are regularly monitored on your performance, and submit regular reports and financial statements to the government, while potentially expanding the volume or range of services you offer to your clients. Given this, and what you know about contracting health services with the government, would you say your organization would be very uninterested, uninterested, open, interested, or very interested in taking on government-managed TB service contracts?

21. Why or why not? (*Probes: TB services not attractive to current clientele, uncertainty around liquidity of government funding, lack of capacity*)

22. (If respondent answered 'open', 'interested', or 'very interested' to Question 20, proceed with this question and the following questions) What do you see as your organization's top areas for improvement in submitting compelling proposals to the government for health service contracts?

23. What do you see as your organization's top areas for improvement in negotiating contract terms with the government on health service contracts?

24. What do you see as your organization's top areas for improvement in contract management, including submitting regular reports and financial statements to the government procuring authority?

25. Which TB services, if any, would you be interested in providing via a government health service contract?
26. Does your organization have experience implementing donor-managed health service contracts?
27. (If yes) To what extent do you think this has prepared you for implementing government-managed health service contracts?
28. (If the answer to question 26 was yes) Why?
29. Do you know of any (a) Kenya-registered private sector contractors responsible for implementing government-managed health service contracts, (b) Kenya-registered private sector organizations who you feel might be qualified for and interested in implementing government-managed health service contracts, (c) government organizations responsible for overseeing health service contracts, and/or (d) health service contracting experts who you feel would be qualified to provide valuable, objective insights on government purchasers and private sector contractors currently involved in health service contracts?
30. (If yes) Could you please provide me with their contact information?

ANNEX D: NON-PURCHASER NON-CONTRACTOR QUESTIONNAIRE

Legal, Regulatory, and Policy Environment

1. What are some examples where the government is already contracting services in the health sector? (*Prompt with examples if necessary – many Government hospitals have outsourced catering and cleaning services, and logistics*)

2. Between the Public Private Partnerships Act (PPPA) of 2013 and the Public Procurement and Asset Disposal Act (PPADA) of 2015, which do you find to be more relevant to government-managed health service contracts? (Probe: Why?)

3. Do you think the [Act selected in question 2] and its associated regulations contain enough detail for private organizations to engage in government contracts for health services?

4. (If not) what additional information would be required? (*Probe: would amendments to the Act be required to provide this additional information?)*

5. Do you think the requirements set out in the [Act selected in question 2] and its associated regulations serve as obstacles inhibiting private for-profit organizations from being contracted by the government to provide health services? (*Probe with examples such as the licensing requirements or the PPPA being restrictive to service contracts, especially to privately initiated procurements for service providers).*

6. (If yes) Would amendments to the Act be required to sufficiently enable such organizations to meaningfully engage in health services contracting?

7. Do you think the requirements set out in the [Act selected in question 2] and its associated regulations serve as obstacles inhibiting private not-for-profit organizations from being contracted by the government to provide health services? (*Probe with examples such as the licensing requirements or the PPPA being restrictive to service contracts, especially to privately initiated procurements for service providers).*

8. (If yes) Would amendments to the Act be required to sufficiently enable such organizations to meaningfully engage in health services contracting?

9. To your knowledge, have government procuring entities and/or contracted private organizations encountered any challenges in using standard tender documents for contracting health services? (*Probe: What challenges have they encountered?)*

10. Apart from the PPPA, PPADA, and Public Procurement and Asset Disposal Regulations, do other texts specify additional requirements for contracting out to the private sector for health services? *(Probe with examples: quality standards & regulations, treatment guidelines, etc.)*

11. Which stakeholders would you expect to be supportive or unsupportive of contracting out the following services from the government to the private sector: community-based prevention; community-based case finding; treatment adherence and household support; diagnostic services;

training, mentorship, and capacity development; research and development; outpatient clinical TB services; inpatient clinical services; or any other TB support services?

12. To the extent that political will has been generated for health service contracting from the government to the private sector, which domestic and international actors would you say are responsible for generating this political will?

13. What are some weaknesses/constraints within the political environment for effective public contracting of health-related services? (*Prompt if necessary: for example, fear of privatization, lack of familiarity among health leadership with contracting processes, or strong unions. Additional question, if time: How do you think the general public perceives the idea of the government contracting certain health-related services to private providers?*).

Assessment of Contractors' and Purchasers' Contracting Capacities

14. What do you see as current and prospective private sector contractors' top areas for improvement in submitting compelling proposals to the government for health service contracts?
    a. in negotiating contract terms with the government on health service contracts?
    b. in contract management, including submitting regular reports and financial statements to the government procuring authority?

15. I will now ask you a series of questions about your perceptions around the government's capacity to contract health services to private providers at a scale similar to that under the contract we've discussed. Between the MOH, NTLD-P, Nairobi County Government (CG), Mombasa CG, Busia CG, Turkana CG, or Tana River CG, with which of these purchasers do you feel most familiar to the extent that you could comment on their capacity to contract health services to the private sector? (*Note: if the respondent is from one of these institutions, then ask them about that institution*)

16. What do you see as the [selected purchaser's] top areas for improvement in carrying out a needs assessment?
    a. identifying contract objectives?
    b. developing a statement of work?
    c. selecting the appropriate contract type and mode of payment?
    d. releasing a solicitation (if competitive bidding)?
    e. reviewing proposals
    f. awarding, negotiating, and designing the contract?
    g. monitoring contract implementation?
    h. evaluating contract performance?

17. (If the respondent represents any of the institutions listed in question 17) Given the steps required to design and manage a health service contract with the private sector which I presented in the last several questions, do you feel that your institution would be very unwilling, unwilling, somewhat willing, willing, or very willing to engage in TB service contracting to the private sector?

18. Why, and what could be done about your reservations (if any) to be more willing? (*Probes: TB services not attractive to current clientele, uncertainty around liquidity of government funding, lack of capacity*)
19. Do you know of any (a) Kenya-registered private sector contractors responsible for implementing government-managed health service contracts, (b) Kenya-registered private sector organizations who you feel might be qualified for and interested in implementing government-managed health service contracts, (c) government organizations responsible for overseeing health service contracts, and/or (d) health service contracting experts who you feel would be qualified to provide valuable, objective insights on government purchasers and private sector contractors currently involved in health service contracts?
20. (If yes) Could you please provide me with their contact information?

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.