



11 March 2022

The Director General

Public Procurement Regulatory Authority

KISM Towers, 6th Floor, along Ngong Road.

P.O. Box 58535-00200

NAIROBI

Dear Madam/Sir,

RE: STAKEHOLDER COMMENTS ON PROPOSED AMENDMENT TO THE BENEFICIAL OWNERSHIP INFORMATION DISCLOSURE FORM INCLUDED IN THE STANDARD TENDER DOCUMENTS

This submission is made by the East African Tax and Governance Network (EATGN) on behalf of Open Ownership as part of an ongoing initiative to assist authorities in Kenya with technical guidance when it comes to connecting beneficial ownership and public procurement data.

More specifically, the project seeks to enhance the use of beneficial ownership data to advance public procurement objectives by: preventing fraud plus corruption; improve service delivery; verify supplier eligibility; enhance accountability; improve policy effectiveness; and improve procurement processes.

Open Ownership is a not-for-profit organisation which provides support and guidance on all aspects of beneficial ownership transparency reforms. Since 2017, Open Ownership has worked with over 40 countries to advance implementation of beneficial ownership reforms, as well as supporting the creation of over 15 new central and sectoral registers.

The East African Tax and Governance Network (EATGN) is a civil society collaborative initiative of individuals and non-state actor institutions in the East Africa Community (EAC) that share the understanding that taxation is fundamental in achieving social justice and development goals. EATGN champions for tax justice in governance, through public policy advocacy, research, and capacity building to create links between various constituencies in the region to improve tax policy while deepening democratic governance



In line with the PPRA's request for stakeholder comments, Open Ownership and EATGN have examined the revised draft of the Beneficial Ownership Information Form and consent form. We hereby provide comments that will help align the use of the forms and the data collected with other competent agencies such as the Business Registration Service (BRS) namely:

1. The Beneficial Ownership Disclosure Form should be updated to capture the company number for any firms submitting their beneficial ownership information. This will allow the PPRA to more easily link this data with the beneficial ownership data collected by the BRS and the open contracting data published via the Public Procurement Information Portal (comment 9).
2. To make it clear which personal data fields will and won't be published by the PPRA as part of the contracting award process and to give data subjects peace of mind in line with the 2019 Data Protection Act, we recommend marking the fields in the Beneficial Ownership Disclosure Form to clearly show which will be made public (comment 16).
3. Over the long term, the PPRA could use its new data sharing arrangement with the BRS set out in the Companies (Beneficial Ownership Information) (Amendment) Regulations 2022 to minimise the amount of duplicate beneficial ownership information collected via the Beneficial Ownership Disclosure Form and instead rely on collecting on company and personal identification details so that the PPRA can check the BRS database rather than maintaining their own beneficial ownership database (comment 8).

Thank you for your consideration.

Yours sincerely,

Leonard Wanyama, Coordinator, EATGN,

on behalf of Open Ownership.

Date: 11 March 2022

SUBMISSION OF COMMENTS BY STAKEHOLDERS ON THE PROPOSED AMENDMENT TO THE BENEFICIAL OWNERSHIP INFORMATION DISCLOSURE FORM INCLUDED IN THE STANDARD TENDER DOCUMENTS

Submitted by: [East African Tax and Governance Network](#) and [Open Ownership](#)

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S/No	Section/Part of the Form	Proposed Amendment(s)/ Comment(s)	Justification(s)/Rationale
1	Consent form - Adding new field	The draft consent form - ‘COMMITMENT TO PROVIDE BENEFICIAL OWNERSHIP INFORMATION’ - should ask the submitter for the company number as well as the company name.	<p>Collecting company identifiers from the representatives of companies filling out the beneficial ownership consent form will more easily allow the connection of this information to the beneficial ownership information collected by the Business Registration Service (BRS) which collects both company names and numbers.</p> <p>Specifically, the BOF1 form from the BRS collects ‘Name of company’ and ‘Number of company’. Aligning with the BOF1 form would improve data quality and ease of cross-referencing of data submitted to PPRA with BRS data and would be in line with data best practices as set out by the Open Contracting Data Standard team.</p>
2	Consent form - Name of Authorised Signatory and declaration name field	Guidance should be given to people submitting their names about what format to follow in order to improve the quality of the information collected. For example, people could be asked to submit First name / Last name to avoid people also submitting their titles or middle names.	<p>Receiving names in a standardised format will allow authorities to more easily check and cross-reference the names against other official sources of information like the beneficial ownership register data from the BRS. Open Ownership’s guidance on creating high-quality forms for gathering beneficial ownership information sets out some practices to follow in terms of guiding users to improve data quality.</p>

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3	Consent form - Introduction text	“Do hereby make a state” should be “do hereby make a statement”.	Correction of typo
4	Consent form - Insert tender title/description field	‘Insert tender title/description’ field is very small and submitters won’t have enough room to give the full tender title if they are filling in this form on paper.	Giving submitters more space to enter the relevant tender titles and details will help improve the data quality and the legibility of information entered especially if a paper form is submitted. This advice is in line with Open Ownership guidance on good form design for beneficial ownership data collection.
5	Consent form - ‘Advertised by ...’ field	‘Advertised by ...’ field is very small and submitters won’t have enough room to give the full tender title if they are filling in this form on paper.	Giving submitters more space to enter the relevant advertiser details will help improve the data quality and the legibility of information entered especially if a paper form is submitted. This advice is in line with Open Ownership guidance on good form design for beneficial ownership data collection.
6	Consent form - Postal address	Field is currently labelled as ‘Posta address’ on the draft form. This should be changed to ‘Postal address’.	Correction of typo.
7	Consent form - opening declaration	<p>The opening declaration of the consent form assumes that the Chief Executive Officer/Managing Director/Principal Officer/Director/ Authorized Officer filling in the consent form is a Kenyan citizen or resident. This will not be true in all cases.</p> <p>We recommend asking for the country of nationality for the authorised person from the tenderer as well as identification data such as a passport number or a scan of their passport, personal identification number or tax ID.</p>	<p>Firms with officials who are not Kenyan citizens or residents will be asked to submit this consent form so it is important to gather country and ID information which is not tied just to Kenya.</p> <p>Collecting this information would improve the quality of the beneficial ownership information that the PPRA is collecting as well as making it easier to carry out cross checks with other government data.</p> <p>Using globally unique identifiers is in line with the guidance from both Open Ownership and the Open</p>

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			<p>Contracting Partnership when it comes to collecting high-quality beneficial ownership and public procurement data.</p>
8	<p>Beneficial Ownership Disclosure Form</p>	<p>To avoid double reporting of beneficial ownership information to both the BRS and the PPRA, Open Ownership would recommend stripping down the Beneficial Ownership Disclosure Form to just collect the company name, company number, beneficial owners' names and beneficial owners' ID numbers from the tenderer.</p> <p>As legislated for by the Companies (Beneficial Ownership Information) (Amendment) Regulations 2022, the PPRA has the mandate to receive beneficial ownership information from the BRS and firms have the legal responsibility to make sure the beneficial ownership data held by the BRS is up-to-date.</p> <p>Once consent from the beneficial owners of the tenderer has been received via the PPRA consent form, collecting these company and personal identifiers would allow the PPRA to pull the necessary information from the BRS database rather than having to collect the information again in a separate PPRA database.</p>	<p>The PPRA's proposed Beneficial Ownership Disclosure Form very closely resembles the beneficial ownership information collected by the BRS via its BOF1 form which categories of Kenyan companies have to fill in according to the Companies (Beneficial Ownership Information) Regulations, 2020 and recent Companies (Beneficial Ownership Information) (Amendment) Regulations 2022.</p> <p>By collecting all of this information again at the PPRA, firms have to submit information twice and the PPRA will also assume the responsibilities of being a data controller for personal data in line with the Data Protection Act of 2019.</p> <p>Firms have no responsibility to the PPRA to update their beneficial ownership information with the PPRA as this responsibility only exists for the BRS. So, to avoid collecting beneficial ownership information which will become out of date, the PPRA should rely on the database of information collected by the BRS.</p>
9	<p>Beneficial Ownership Disclosure Form - Adding new company number field</p>	<p>The Beneficial Ownership Disclosure Form should ask the submitter for the company number as well as the company name.</p>	<p>Collecting company identifiers from the representatives of companies filling out the beneficial ownership disclosure form will more easily allow the connection of this information to the beneficial ownership information collected by the Business Registration</p>

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			<p>Service (BRS) which collects both company names and numbers.</p> <p>Specifically the BOF1 form from the BRS collects ‘Name of company’ and ‘Number of company’. Aligning with the BOF1 form would improve data quality and ease of cross-referencing of data submitted to PPRA with BRS data and would be in line with data best practices as set out by the Open Contracting Data Standard team.</p>
10	Beneficial Ownership Disclosure Form - Adding new company business licence or permit number field	Add a new field to allow submitters to provide company business licence or permit number.	Executive Order 2 of 2018 requires the collection of the business licence or permit number for companies taking part in public procurement processes in Kenya.
11	Beneficial Ownership Disclosure Form - Name of the Tender Title/Description field	The Name of the Tender Title/Description field on the draft form is very small and submitters won’t have enough room to give the full tender title if they are filling in this form on paper.	Giving submitters more space to enter the relevant tender titles and description will help improve the data quality and the legibility of information entered especially if a paper form is submitted. This advice is in line with Open Ownership guidance on good form design for beneficial ownership data collection.
12	Beneficial Ownership Disclosure Form - Full name field	Guidance should be given to people submitting their names about what format to follow in order to improve the quality of the information collected. For example, people could be asked to submit First name / Last name to avoid people also submitting their titles or middle names.	<p>Receiving names in a standardised format will allow authorities to more easily check and cross-reference the names against other official sources of information like the beneficial ownership register data from the BRS.</p> <p>Open Ownership’s guidance on creating high-quality forms for gathering beneficial ownership information sets out some practices to follow in terms of guiding users to improve data quality.</p>
13	Beneficial Ownership Disclosure Form - Insert	The Insert complete name of Procuring Entity field on the draft form is very small and submitters won’t have enough room to give the	Giving submitters more space to enter the relevant name of the procuring entities will help improve the data quality and the legibility of information entered

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	complete name of Procuring Entity field	full tender title if they are filling in this form on paper.	especially if a paper form is submitted. This advice is in line with Open Ownership guidance on good form design for beneficial ownership data collection.
14	Beneficial Ownership Disclosure Form - Details of all Beneficial Owners table	<p>We would recommend creating separate data fields for the information being collected in the Details of all Beneficial Owners table to improve data quality in line with the recommendations contained in the Beneficial Ownership Data Standard.</p> <p>Specifically, the ‘Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No) field should be separated into two fields:</p> <ol style="list-style-type: none"> 1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)? 2. Is this right held directly or indirectly? (Direct / indirect) 	<p>Separating this field into two fields will improve the quality of the data collected by the PPRA as well as aligning this form with the data collected via the BOF1 form used by the BRS.</p> <p>Furthermore, collecting this more granular data will improve overall beneficial ownership data quality and align the work of the PPRA with the recommendations contained in the Beneficial Ownership Data Standard.</p> <p>The Beneficial Ownership Data Standard is aligned with the Open Contracting Data Standard so following this guidance will more easily allow beneficial ownership and public procurement data to be linked.</p>
15	Beneficial Ownership Disclosure Form - Details of all Beneficial Owners table	<p>We would recommend creating separate data fields for the information being collected in the Details of all Beneficial Owners table to improve data quality in line with the recommendations contained in the Beneficial Ownership Data Standard.</p> <p>Specifically we’d recommend that instead of allowing people to enter ‘National identity card number or Passport number’ in one field, the PPRA should separate this request into two data fields called ‘National identity card number’</p>	<p>Separating this field into two fields will improve the quality of the data collected by the PPRA. It will more easily allow the PPRA to check/validate that the National identity card number or Passport number is the right number of characters, the right length and whether the number provided is a valid ID number.</p> <p>Furthermore, collecting this more granular data will improve overall beneficial ownership data quality and align the work of the PPRA with the recommendations contained in the Beneficial Ownership Data Standard.</p>

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		and 'Passport number' making it clear that one or the other should be filled in.	Collecting high-quality personal identifiers is highlighted as an important consideration for improving data quality and interoperability by both the Beneficial Ownership Data Standard and Open Contracting Data Standard teams.
16	Beneficial Ownership Disclosure Form - All personal data fields	<p>The Beneficial Ownership Disclosure Form collects a lot of personal data but does not make clear which fields will or won't be published by the PPRA as part of the open contracting data released via the Public Procurement Information Portal.</p> <p>The form should be amended to make it clear which information the PPRA will and won't publish.</p> <p>In line with Open Ownership's guidance on creating high-quality data collection forms, a note simply saying 'This will not be made public' could be added next to relevant fields or an asterisk could be added next to fields with a footnote saying 'This will not be made public'.</p>	<p>Submitters may be nervous about providing all of their personal details and compliance levels with beneficial ownership disclosure requirements could be low if everyone fears that all the personal information submitted to the PPRA will be made public.</p> <p>In its role as a data controller under the Data Protection Act of 2019, the PPRA has a responsibility to explain to data subjects/submitters how their personal data will be handled, protected and what will be published.</p> <p>Simple amendments to the Beneficial Ownership Disclosure Form will give data subjects more confidence that only certain personal details will eventually be published by the PPRA rather than all their details.</p>
17	Beneficial Ownership Disclosure Form - All fields	Fields in the Beneficial Ownership Disclosure Form should be annotated to make it clear which fields are mandatory and which are optional.	Data quality and compliance will improve if more information is added to the form about which fields the submitters have to fill in and which are optional. Improving the data quality will make it easier for the PPRA and other authorities to work with..
18	Beneficial Ownership Disclosure Form - Adding birth certificate number as acceptable form of ID	The BOF1 form used by the BRS to collect beneficial ownership information allows submitters to use a national identity card number, passport number, personal identification number or birth certificate number as acceptable forms of ID. The PPRA Beneficial	If a submitter uses their birth certificate number to submit beneficial ownership information to the BRS and cannot do so when filling in this form for the PPRA, then the PPRA will find it a lot harder to match the data they are collecting with the beneficial ownership data from the BRS.

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		<p>Ownership Disclosure Form does not currently allow submitters to give a birth certificate number.</p> <p>Birth certificate number should be added as an option for submitters' identification numbers to allow the PPRA data to be more easily matched to the BRS data.</p>	<p>Allowing people to submit their birth certificate number to the PPRA as a form of ID would stop this issue.</p>
19	<p>Beneficial Ownership Disclosure Form - Add field to collect data on when the beneficial owner became the BO for the company</p>	<p>In order to more easily cross-reference data collected by the PPRA with that collected by the BRS, the PPRA form should ask for the date on which the person became a beneficial owner of the company.</p>	<p>The Companies (Beneficial Ownership Information) Regulations, 2020 calls for companies to hold information on when their BOs became beneficial owners so they should have it to hand. At present, the PPRA form just states that tenderer must just submit current BO information.</p> <p>Collecting these dates will help improve the quality of the data collected by the PPRA and make it easier to compare with the data collected by the BRS.</p>
20	<p>Beneficial Ownership Disclosure Form - Nationality field</p>	<p>Submitters filling out the Beneficial Ownership Disclosure Form may have dual nationality. The nationality field should be amended to allow people to enter their Nationality or Nationalities</p>	
21	<p>Beneficial Ownership Disclosure Form - Add fields to collect data from partnerships and sole proprietorships rather than just companies</p>	<p>Submitters representing partnerships and sole proprietorships can bid for public tenders but the Beneficial Ownership Disclosure Form is geared towards collecting information from companies.</p> <p>Further fields should be added to allow for data collection about partnerships and sole proprietorships if the tender bid is being submitted by organisations using those structures.</p>	<p>Executive Order 2 of 2018 requires the capture of details of partnerships and sole proprietorships when those are involved in public procurement processes.</p> <p>The form does not allow for the collection of such data. There needs to be a section of the form that collects data from them including the names of the partners and their identification numbers.</p>

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22	Beneficial Ownership Disclosure Form - Add field to collect tax compliance status for companies	<p>Add in a field to gather tax compliance status data from submitters.</p> <p>This is important for both the firm that wins the tender and for the beneficial owners.</p>	<p>Executive Order 2 of 2018 requires the tax compliance status of companies to be collected when they take part in public procurement but this information is not collected in the form at present.</p> <p>This is important for both the firm that wins the tender and for the beneficial owners.</p>
23	Beneficial Ownership Disclosure Form - Updating fields to allow for international data capture	<p>Re-examine all form fields gathering identification numbers and nationalities to make sure they can capture data about beneficial owners and companies from jurisdictions other than Kenya.</p>	<p>Foreign-owned companies and entities may bid for public procurement tenders in Kenya and will need to fill out the Beneficial Ownership Disclosure Form.</p> <p>Any beneficial ownership data they submit will likely not be held by the BRS as foreign-owned companies are not covered by Kenya’s current beneficial ownership legislation.</p> <p>If the PPRA wishes to use the BO information submitted to carry out further beneficial ownership checks on the foreign-owned company, then they need to ensure the capturing of high-quality information including company name, company registration ID, beneficial owners’ names and IDs even if those documents are from a different jurisdiction.</p> <p>Collecting high-quality international identifiers is highlighted as an important consideration for improving data quality and interoperability by both the Beneficial Ownership Data Standard and Open Contracting Data Standard teams.</p>
24	Beneficial Ownership Disclosure Form - Instructions to tenderers	<p>There should be a reference to the thresholds i.e. holding 10% of the shares etc or reference to the reg 3(2) of the Companies (Beneficial Ownership Information) Regulations, 2020.</p>	

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25	<p>Beneficial Ownership Disclosure Form - Gathering BO data from public private partnerships</p>	<p>Update the Beneficial Ownership Disclosure Form to make it clear what information should be submitted or whether there is a separate form to fill out when the submitter represents a public private partnership.</p>	<p>In accordance with Reg 13.2A.B of Companies (Beneficial Ownership Information) Regulations, 2020 as amended by para 4 Companies (Beneficial Ownership Information) (Amendment) Regulations 2022, public private partnerships are meant to provide beneficial ownership information to the “contracting authority”.</p> <p>The contracting authority is defined as “a State department, agency, state corporation or county government which intends to have a function undertaken by it performed by a private party”. Does this mean that a different form will be required?</p>
26	<p>Beneficial Ownership Disclosure Form - Adding fields to collect jurisdiction and date of incorporation</p>	<p>Add new data collection fields for the jurisdiction and date of incorporation of the submitting company if the company is registered in Kenya</p>	<p>To allow the PPRA to more easily do background checks and compliance checks on companies submitting their beneficial ownership information by cross-referencing with other government databases, capturing the jurisdiction and date of incorporation of the submitting company could be useful information for validation and verification purposes.</p>