

EXECUTIVE SUMMARY

This report presents the findings of the procurement review of Ministry of Industrialization carried out from 21st June to 12th July 2013. The main objective of the exercise was to review the status of the PE's procurement, contracting and implementation processes and systems, in order to determine PE's level of compliance with the PPDA and the PPDR, circulars and directives issued by PPOA, and generally accepted principles of good practice. Consideration was also given to the relationship between procurement and overall service objectives of PE.

The period covered by this review was FY 2011-2012 focusing on the performance of procurement functions. The review procedures performed included the examination of selected samples of Open Tenders, Direct Procurement, Tender, and RFQ. The review also considered the disposal proceedings undertaken by the PE during the identified review period.

The scope of the review encompassed 27 key performance indicators of PE's procurement from planning to completion. The review projected the PE not to have reached a satisfactory level of compliance 60% with the requirements of the PPDA, PPDR and all directives issued by PPOA in their procurement, and contracting.

In order to ensure that the review examined all the pertinent controls and procedures in line with the PPDA, PPDR, guidelines and the PE's implementation of the same a thorough assessment of the control environment was first undertaken. The fieldwork that ensued then included an examination of the files and documents pertaining to Ministry of Industrialization procurement systems and processes and, where appropriate, was supplemented by discussions with the key persons involved in the functions related to procurement. The work was then finalized in consultation with the AO, members of standing committees, Head of PU and other persons involved in management and oversight of the procurement functions.

Key general findings and recommendations as they relate to each of the areas considered in this review are provided in Chapter 3 of the report. Specific findings are reflected in Chapter 4 of the report.

A proposed action plan to remedy areas of weaknesses identified is provided in Chapter 6 at the end of this report. The PPOA will review the implementation of the recommendations in the Action Plan as detailed in Chapter 6 at an appropriate time.

Satisfactory Compliant Practices

The review team noted the following satisfactorily compliant practices from the samples that were examined and from the general assessment of the procurement systems at the PE:

1. The procurement unit had been established in line to the Act (PPDA) section 26 (4).
2. Individual procurement plans were developed for significant procurement proceedings in line with section 22(5) of PPDR
3. There were very few procurement requiring advertisements. In those cases, advertisements indicated the closing date and time, with an invitation to bidders to attend the bid opening in accordance with section 54 (2) of the PPDR.
4. There is a secure tender box placed on the 23RD floor for the receipt of all tenders as

required by regulation 44 of the PPDR.

5. The PE used appropriate procurement methods in conformity with the threshold matrix in the First Schedule of the PPDR.
6. The PU maintained a consolidated annual standing list of registered tenderers required by the PE for the year under review as per regulation 8, 3 (a) of PPDR.
7. Inspection and acceptance committee was established in all cases in accordance with section 16(1) of the PPDR.
8. The PC is established in accordance with regulation 13(1) of the PPDR and Chapter 4.4(a) of the PPDGM.

Non-Compliance

The review team noted the following areas with non-compliances that need immediate attention of the PE:

1. The procuring entity did not maintain a comprehensive and individual file for each procurement and disposal, that contained all information, documents, and communications relating to that procurement or disposal proceeding as required by section 8(n) & 34 (3) of PPDR, Circular no. 1/2009 of PPOA and Chapter 7.9 of the PPDGM.
2. There was no standing list of registered suppliers for the period under review in line with section 8(3) (a).
3. All standard and ad hoc committee's were not established in all cases in line with the Act (PPDA) section 26 (4), (5).
4. The PE did not make use of standard tender documents in all cases as required in the Third Schedule of PPDA 2005
5. Though Tender Committee Minutes have been properly maintained in the standard format in line with regulation 12(6) of the PPDR., there was no evidence that its decisions were informed by actual evaluations as these were missing in many cases
6. In contract management, there was little evidence that the PE issued notification letters of award to the successful bidders as per section 8 (3) (j) of PPDR
7. The procurements reviewed were split to evade the appropriate procurement method. This is in breach of section 30 Of the PPDA.
8. There was no evidence that evaluation committees were appointed in each case. Evaluation committees did not prepare reports analyzing the tenders received and final ratings assigned to each tender and submitted to the tender committee in line with regulation 51 of the PPDR, Chap 4.6 of the PPDGM and sec 66 of the PPDA.
9. The PU does not ensure that the PC produces quarterly reports for the TC's review and does not review the awards made by the PC in accordance with Regulation 10(2) (n) of the PPDR.
10. Although there were letters of award were sent to a few successful bidders, the PU did not prepare and issue regret and debriefing letters to unsuccessful bidders as per regulation 8 (3) (l) of PPDR 2006 and section 67 of PPDA.
11. The PE did not APPLY preferences and reservations contracts as per section 39 (8) of PPDA.

Recommendations

We recommend that the PE puts in place remedial actions that will address all deviations identified in the report. Some of the Key recommendations include:

1. Review of procurement function, tasks, responsibilities, reporting structure, personnel, and job evaluation in the procurement department and a full-fledged department established according to section 8 of the Public Procurement Regulation 2006.
2. Procurement registry should be established and equipped with the state of the art facilities which include: information technology linking all user departments, procurement function and the Permanent Secretary. This will make the management of records more efficient and effective in accordance to the Public Procurement & Disposal General Manual.
3. Continuous review and suppliers rating be done regularly to ensure an up to date data bank of capable suppliers in accordance to section 23(1) of the Public Procurement Regulations 2006.
4. MOI should seek legal opinion on matters pertaining to procurement of high value items and ensure that a legal officer or an advocate of the High Court of Kenya is hired to approve all the transactions pertaining to the tendering process in accordance to the Public Procurement & Disposal General Manual.
5. Goods and services procured by the entity should be limited to the recommended threshold level in pursuant to section 88 of the Public Procurement and Disposal act of 2005.
6. Before an item is procured purchase requisition should be initiated by the user departments in accordance to section 22 of the Public Procurement and Disposal Regulations 2006.
7. The entity should develop manuals, guidelines and adapt the best practices in pursuant to section 30 of the Public Procurement Regulations 2006.

Conclusion

The review process was conducted by evaluating all the primary documents used in the procurement and disposal process such as original request for quotations, request for proposal and tender documents for the period under review, the team further analyzed all the documentations related to contract management and decisions taken by the various committees involved in the procurement and disposal process, in our general assessment based on individual ratings of the key performance indicators as reflected in the PPOA procurement review manual that reflect reasonable and attainable standards of performance, we established that performance of the entity is unsatisfactory and needs further improvement, we however recognized and appreciate the persistent effort put in place to improve the procurement function which has been a gradual process over the years.

As specified in the terms of reference, we used the sample of procurement and disposal proceedings to evaluate the level of compliance with the PPDA. In so doing, we carefully considered the implications and the significance of individual ratings of the Key Performance Indicators (KPI's). The review team utilized the Compliance Rating Indicators as reflected in the

PPOA Procurement Review Manual that reflect reasonable and attainable standards of performance. It is clear that some instances of Non compliance have greater significance than others. This factor has been considered in determining the final Compliance level.

The review process was conducted by evaluating all the primary documents used in the procurement and disposal process such as original request for quotations, request for proposal and tender documents for the period under review. The team further analyzed all the documentations related to contract management and decisions taken by the various committees involved in the procurement and disposal process. In our general assessment we established that the compliance level is 55.9% for the period reviewed with relevant PPDA, PPDR and guidelines in respect of sampled procurement proceedings. This is below the target 60% compliance test in the performance Monitoring Plan under RPPS 11. Thus, the overall performance of the PE in procurement and disposals are unsatisfactory and the Ministry should take deliberate steps to address the weaknesses identified.

Finally, we would like to take this opportunity to thank the Ministry of Industrialization staff starting with the SDS, H.O.D's and other key staff for their co-operation, assistance during the review.