

EXECUTIVE SUMMARY

This report presents the results of the procurement review of National Museums of Kenya (NMK) undertaken by Wachira Irungu & Associates on behalf of the Public Procurement Oversight Authority under Third Party Providers, which was carried out during the period April 2012 to May 2012. 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 NMK'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 NMK.

The period covered by this review was period 1st July 2011 to 30th June 2012, focusing on the performance of the procurement functions. The review procedures performed included the examination of selected samples of Open Tenders, RFQ, RFP, Restricted Tenders, Direct Procurement and Framework Contracts. The review also considered the disposal proceedings undertaken by NMK during the review period.

The scope of the review encompassed the key performance indicators of NMK's procurement and disposal from planning to completion. The review projected the PE to have reached a satisfactory level of compliance (60% and above) with the requirements of the PPDA, PPDR and all directives issued by PPOA in their procurement, disposal 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 included an examination of the files and documents pertaining to NMK's 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, Acting Head of PU and other persons involved in management and oversight of the procurement functions.

The team also reviewed the implementation of the findings and recommendations of past internal audit reports as well as the last report of the Controller and Auditor General.

The 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. An action plan for implementation of the recommendations is provided in Chapter 6 at the end of this report. PPOA will review the implementation of the recommendations in the action plan after a three-month period from the date of the final report.

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 NMK:

1. NMK's Procurement Unit has been established in line with Section 26(4) of the PPDA;

2. The PU is staffed with qualified key personnel in line with Section 26(7), (8) and (9). These key procurement staff hold Diplomas and Certificates in Procurement from recognized institutions and are members of Kenya Institute of Supplies Management (KISM);
3. All standing and specific committees have been established in line with Section 26(4), (5) PPDA and hold regular meetings in line with the PPDA and PPDR;
4. Minutes of the Tender, Procurement and Disposal Committees are maintained as appropriate;
5. The Procurement Committee partially carries its functions in accordance with Regulations 14 of the PPDR and Chapter 4.4 of the PPDGM;
6. The Review team noted with satisfaction that none of the appointed members of the evaluation committee served as members of the TC;
7. The evaluation committees have prepared reports analyzing the tenders received and final ratings assigned to each tender and submitted the reports to the TC;
8. In most cases NMK uses technical specifications that are objective and conform with the requirements of the PPDA and PPDR;
9. There was a standing list of prequalified and registered suppliers for the period under review;
10. A secure facility for the receipt of tenders has been provided by NMK and is located near the Administration Block;
11. Procurements reviewed were not split to evade the appropriate procurement method;
12. NMK does not have its own procurement manual, and currently uses the general procurement manual issued by PPOA. Consequently, there was no written system and procedures specific to the PE such as for handling bidders, enquiries and complaints.

Identified Areas of Non-compliance

The Review Team noted the following areas where the PE was not in compliance with the PPDA, the PPDR, circulars and directives issued by PPOA, and generally accepted principles of good practice, that need to be addressed immediately by the PE:

The Review Team observed that the AO has attempted to carry out his responsibilities under Section 27(2) of the PPDA. However, there are still major gaps as indicated below:

1. The Head of the Procurement Unit (PU) and key staff with procurement responsibilities have not been adequately trained on the PPDGM, other Manuals and Guidelines issued by PPOA;
2. NMK does not maintain a comprehensive individual file for each procurement and disposal proceeding, that would contain all information, documents, and communications relating to that procurement or disposal proceeding. Such files would need to be marked with the relevant procurement or disposal reference number. This means that the PE's record management is therefore not in accordance with, Regulations 8(n) & 34 (3), Circular no. 1/2009 of PPOA and Chapter 7.9 of the PPDGM;
3. Although the bid bond securities are documented in the evaluation reports, there was no evidence that the bonds are maintained in procurement files;
4. Although the PE has made some efforts at maximizing economy and efficiency and obtaining value for money in its procurements. NMK's choice of procurement method was found to be inappropriate as RFQs were used for purchases above the threshold of KES 1,000,000 for goods and KES 2,000,000 for works, i.e. high value goods and services were purchased through RFQs instead of ONT. In addition, no 'individual procurement plans' were developed for 'significant procurement proceedings (i.e. those above the threshold of the RFQ);
5. The PU does not advise the PE on aggregation of procurement to promote economies of scale in accordance with Regulation 8(3)(x), nor does it co-ordinate internal monitoring and evaluation of the supply chain function in accordance with Regulation 8(3)(y);
6. The PU does not ensure that the PC prepares quarterly reports for the TC's review, and as such the latter does not review the awards made by the PC in accordance with Regulation 10(2) (n);
7. The Procurement Committee was found to have deliberated on procurement proceedings that were above its threshold of Kshs.500,000 and hence not in accordance with Regulation 27 (2) and the First schedule of the Regulations;
8. The PU had not prepared the consolidated annual procurement plan for the period in accordance with Regulations 21 (b) & (g). In addition, there was no disposal plan for the period under review;
9. The initiation of procurement proceedings is sometimes done by use of memos, instead of official procurement requisitions as provided in Regulation 22 (1);
10. It was observed that some evaluations by the evaluation committee took more than the prescribed maximum 30 days, contrary to Regulation 46;
11. NMK did not notify PPOA of contracts over KES 5 million and of Direct Procurements over KES 500,000 during the financial year under review. In addition, Disposal of items

to NMK's members of staff were not reported to PPOA in accordance, with Section 46 of the PPDA 2005 and PPOA Circulars NO. 3/2008 and NO.4/2009.

12. Some weaknesses were identified in NMK's contract and inventory management systems;

Response by Procuring Entity on Identified areas of non-compliance

- (i) It has been noted that procurement staff were not well trained on the PPDGM, other manuals and the guidelines issued by the PPOA, the PU agreed appointed an officer who will be link to PPOA. This officer was to get all the current manuals, guidelines and the amended PPDGM from PPOA'S office for PU to study.*
- (ii) NMK filling system was arranged in departments. Departmental order forms are filled as per departments. Delivery notes for the deliveries made for each department are filled separately as well as the store issue notes while the third and fourth LPO copies remain in the LPO book. It's not possible to combine all DOFs together since NMK takes each department as a cost centre with unique accounting codes which are charged separately. It was however agreed that from the date of our departmental meeting of 28th July 2014, all DOFs will be filled together with the relevant yellow copy of the LPO, delivery note, and the stores issue note. This will reduce the search period if such procurement documents are ever required for references.*
- (iii) A bid bond register already exists in the PU where contractors' sign while collecting them back. Also a file has been opened where copies of bid bonds are filled for future reference.*
- (iv) NMK is a parastatal under A class category where by our threshold for tendering is six million (6M) and above which NMK has always observed.*
- (v) NMK receives no funds from National Treasury for procurement of goods and services but procures from the money generated internally. In view of the financial constraints that NMK is experiencing currently it's not possible to aggregate her procurements.*
- (vi) PC has initiated the process of preparing a quarterly report for the TC's review on all the awards.*
- (vii) PC only deliberates on procurements proceedings of up to Kshs. 500,000 of a single item as per the threshold.*
- (viii) PU always prepares a consolidated procurement plan and has also initiated the process of preparing a disposal plan.*
- (ix) All procurement proceedings are initiated by the user department who raises a departmental order form (DOF) which is equivalent to a purchase requisition.*
- (x) Some evaluations by evaluation committees took more than the prescribed maximum of 30 days due to complexity of the projects as we carried due diligence as well.*

(xi) PPOA was notified on all contracts of five millions (5M) and above in writing and even soft copies were provided. Some of our contracts have been published by PPOA in the past.

Recommendations

NMK should put in place remedial actions that will address all deviations identified in this report. Some of the key recommendations include:

1. The AO should ensure that all the identified weaknesses are addressed and proper documentation of administrative and policy guidelines are instituted;
2. NMK should develop a structured training strategy in best procurement practices as reflected in the PPDA, PPDR and PPDGM. Other PPOA manuals and circulars, for all key staff involved in procurement proceedings;
3. The PE should adopt proper records and filing management in line with the PPDA, PPDR, PPDGM and the PPRMPM;
4. NMK should enhance its procurement and disposal planning, including individual procurement and disposal plans;
5. NMK should endeavor to procure all high value goods and services (in excess of KShs. 1,000,000 for goods and KES 2,000,000 for works) through NOT;
6. NMK should always initiate all its of procurement proceedings using the official procurement requisition in accordance with Regulation 22 (1);
7. NMK should complete all evaluations within the prescribed 30 days period from the opening of the bids;
8. NMK should always notify PPOA of contracts over KES 5 million and of Direct Procurements over KES 500,000, in accordance with Section 46 of the PPDA 2005 and PPOA Circulars NO. 3/2008 and NO.4/2009.
9. NMK should undertake comprehensive contract and inventory management in line with the PPDA, PPDR and PPDGM.
10. In order to comply with Section 26 (6) of the PPDA, NMK should not commence any procurement proceedings prior to ensuring that it has sufficient funds and budgetary allocation to meet the obligations of the resulting contract or alternatively make use of framework contracting;

Response by Procuring Entity on the recommendations

- (i) A liaison officer has already been appointed to ensure that NMK gets all relevant manuals and guidelines issued by PPOA from time to time in good time.*
- (ii) Depending on the availability of funds, NMK will strive to initiative a training strategy on best procurement practices.*
- (iii) NMK is in the process of acquiring a bulky filing cabinet in order to put in place proper mechanism for recorded keeping.*
- (iv) Procurement plan has always been done in good time and disposal plan has also been put in place.*
- (v) Procurement of all high value goods and services has always been as per regulations and will continue doing the same.*
- (vi) NMK will ensure that all procurement proceedings are done using the departmental order forms.*
- (vii) NMK strives to complete evaluations within 30 days period from the opening of bids unless where the project is very complex requiring due diligence.*
- (viii) NMK has always notified PPOA of contracts over Kshs. 5 million and will continue to do so.*
- (ix) NMK undertakes comprehensive contract and inventory management.*
- (x) NMK has always initiated procurement proceedings within the budgetary provisions only that for development works there are instances where the parent ministry did not release funds in time.*

Taking into account the areas of deviation indicated above it is recommended that the PE take time and resources to liaise with the PPOA in the training of staff on the content of the various manuals that have been issued to support the implementation of the PPDA and PPDR. In addition, NMK should also ensure that all its procurement documents conform to the content of the manuals and circulars issued by PPOA, which are designed to expound the provisions of the PPDA and PPDR. Continuous consultation with the PPOA would also enable NMK to be updated on any other circulars, directives or guidelines that are being issued.

Conclusions

As specified in the terms of reference, the Review Team used the sample of procurement and disposal proceedings to evaluate the level of compliance with the PPDA and PPDR. In so doing, the Review Team carefully considered the implications and the significance of individual ratings of the key performance indicators. The Review Team utilized Compliance Rating Indicators as reflected in the PPOA Procurement Review Manual that reflect reasonable and attainable standards of performance. It is apparent that some instances of non-compliance have greater significance than others. This factor has been considered in determining the final compliance level.

The Review Team's overall assessment of the compliance level for NMK is computed to be 57.8% for the period reviewed with relevant PPDA, PPDR and guidelines in respect of sampled procurement transaction reviewed. This is below the compliance target of 60% assumed by the

Review Team in section 1.5 of this report. Therefore, the overall performance of NMK in procurement and disposal is not satisfactory. NMK is advised to urgently address the identified weaknesses and gaps so as to reflect exemplary performance amongst the various PE's and ensure that it assists the institution in attaining the high ideals espoused in its service and other charters.

Finally, we would like to take this opportunity to thank NMK staff starting with the AO and the key staff involved in procurement for their co-operation and assistance during this review.