



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

KENYA CIVIL AVIATION AUTHORITY

PROCUREMENT REVIEW REPORT

AUGUST 2015

REVIEW REPORT IN SUMMARY

This report contains the findings of a review of the procurement proceedings undertaken by KCAA for the period July 2011 to June 2012.

The overall objective of this procurement review was to review the status of KCAA's procurement, contracting, implementation processes and systems to determine the level of compliance with the procurement law, regulations, circulars and directives issued by PPOA.

The specific objectives of this procurement review are to examine and establish the degree of compliance to applicable procurement procedures and Public Procurement Disposal Act, 2005 and Regulations, 2006, Circulars and any of the directives issued by PPOA, and to propose recommendations for remedial measures against weaknesses identified, institutional arrangements, and/or irregularities in procurement practices, and capacity.

The review team expected that:

- i) KCAA to have implemented the PPDA, 2005, the PPDR, 2006, all directives and instructions of the PPOA in its procurement and disposal with a compliance rating of not less than 60%.
- ii) KCAA to have established adequate systems and procedures for implementation of (i) above.
- iii) KCAA to have adequate capacity in terms of numbers and training for the implementation of (i) above.
- iv) KCAA to have established effective communication with the PPOA for guidance and professional as well as proficiency training.

Areas of Satisfactory Compliance

The following were some of the areas of satisfactory compliance:

- Establishment of the various procurement committees as per Section 7 of the PPDR;
- The functions of the TC and PC as set out in PPDR 10 and 14 respectively are mostly complied with;
- Preparation of the Annual Corporate Procurement Plan was in place in accordance to Section 20 and 21 of PPDR;
- Contracts are signed in accordance with the 1st Schedule of PPDR;
- Prequalification of suppliers was done and a Prequalification list developed in accordance to regulation 23;
- Where tender advertisements have been issued, they indicate the closing date, time and invitation to attend bid opening;
- Notification of contract awards above Kshs5,000,000 was done to PPOA in accordance to PPOA Circular 4/2009 of 24th June;
- Notification of termination of tenders to suppliers who had applied is adequately done; and
- Direct procurements were adequately reported to PPOA;

Areas of Non Compliance

The following were some of the areas of non-compliance:

- The PU failure to maintain comprehensive procurement records in the procurement files as required under Chapter 9 of the PPDGM and thus it was not verifiable if the procurement process was in accordance with the PPDA and PPDR;
- Individual Procurement plans were lacking as set out in Chapter 6 subsection 6.5 of the PPDGM;
- The PU failed to consider aggregation and framework contracting particularly in procurement of toners, beef and milk to promote economies of scale the team observed unnecessary repeated procurement processes;
- There was no evidence that the PU carried out periodic market surveys to inform the placing of orders particularly of food items for EASA;
- The PU failed in their role to participate in negotiations where these were done, contrary to PPDR Regulation 8 (3) (i);
- There was no evidence that the TC invited observers for tender above 50 million;
- The PC gave their approval/rejection on the same committee paper presented to it and thereby failing to capture all matters that may have been considered in the adjudication;
- The Disposal Committee did not elect their chairman and the evidence was that the AO appointed the Chairman;
- The review team noted that the evaluation committees, routinely submitted their report to the DG for “guidance and direction” contrary to the requirement under PPDR section 16 (9) to submit their reports to the Tender Committee. The review team noted this as an unnecessary administrative procedure since the AO has no role prescribed by the Act or Regulations at this stage and resulted in delays to the process;
- There was no evidence that the IAC was documenting their proceedings;
- In many instances procurement documents were maintained in a scattered manner where their retrieval on request was time consuming;
- Individual procurement plans were not prepared;
- There was no evidence to show that procurement plan is updated to accommodate changes during the year;
- In a few procedures that were within the TC threshold, evaluation committees were not appointed as is required under PPDR Regulation 16(1);
- The PE failed to record in writing and obtain a written approval from the TC **before** use of alternative methods as required under PPDA 29 (3) (a) & (b);
- In using Restricted Tender, the procedure was not applied *mutatis mutandis* the procedure for Open Tendering as required under section 54 (1) in that it on numerous occasions failed to appoint opening team, evaluation team and failing to take opening minutes;
- The PE regularly and in error, gave justification for Direct Procurement as Section 4 (2) of the PPDA instead of under section 74 of PPDA;
- Failure by the TC to approve the names and the procedure for Restricted Tender Method whenever this was used; and
- Section 54 of the PPDR was not observed in the procedure for Restricted Method.

Summary of Recommendations

- i. The PU should appropriately prepare individual procurement plans as set out in chapter 6 sub-section 6.5 of the PPDGM.
- ii. The PU should lead and advise on aggregation and framework contracting particularly in procurement of toners, beef and milk to promote economies of scale the team observed unnecessary repeated procurement processes
- iii. PU should carry out market surveys to inform TC decisions;
- iv. The PU should take up their role to propose negotiation teams and participate in them as per PPDR 8 (3) (i);
 - v. To enhance transparency of the procurement process, the TC should invite observers when adjudicating tenders valued above 50 million in accordance with PPDR 12 (8);
 - vi. The PC should keep minutes in accordance to PPDR 19 (7);
 - vii. The Disposal Committee should elect their own chairman in accordance to PPDR Regulation 92 (2).
- viii. The Evaluation Committee should submit their report to the Tender Committee, specifically to the Secretary to the Tender Committee in accordance to the PPDR section 16 (9);
 - ix. The IAC should document and minute all its proceedings and as per PPDGM 4.7 (a);
 - x. KCAA should ensure that record keeping is in line with the requirements of Section 45 of the Act Chapter 9 of the PPDGM.
 - xi. The filling of procurement documents should be comprehensive and be in a systematic order.
- xii. Individual procurement plans should be prepared in accordance to Chapter 6.5 of PPDGM and Section 22 (5) of PPDR;
- xiii. The procurement plan should be updated to accommodate changes during the year in accordance to chapter 6.2 of PPDGM;
- xiv. In using Restricted Tender method, the procedure should be applied *mutatis mutandis* the same procedure for Open Tendering as required under section 54 (1);
 - xv. Evaluation Committees should be appointed for all procedures within the TC threshold as is required under PPDR Regulation 16(1);
 - xvi. PE should observe section 74 of the PPDA to determine when Direct Procurement method may be used;
 - xvii. The PE should record it reasons in writing and obtain a written approval from the TC **before** use of alternative methods as required under PPDA 29 (3) (a) & (b).
- xviii. TC should approve the names and the procedure for Restricted Method whenever these were used; and
- xix. PU should observed section 54 of the PPDR when RT is used.

Compliance Rating

The compliance rating is provided in details in Chapter 5 of the report. The compliance level of the KCAA procurement proceedings was rated at 70%.

Conclusion

The major challenges we found in KCAA were in the areas of record keeping so that it was difficult to establish if procurement vital procurement processes were sidestepped or that documents were simply not well filed.

We have included an action plan, which as discussed and agreed with the PE, for follow-up in our recommendations to ensure that the corrective measures are carried out in order to improve compliance, efficiency, and effectiveness in procurement management.

We are pleased that the KCAA's senior management welcomed the review exercise as a mechanism to identify and address any shortcomings and weaknesses in the compliance with Act and associated regulations. The management has committed to undertake remedial actions within the timeframe set out in the action plan.

Overall, KCAA has demonstrated a satisfactory level of compliance at 70% (against the minimum threshold of 60%) with relevant the Act, and the regulations and guidelines in respect of the sampled procurement transactions. The procuring entity should endeavour to improve their performance so that the PE will become compliant by organising training on various aspects of procurement law and regulations as pointed out in the report.