

**PUBLIC PROCUREMENT REGULATORY AUTHORITY**

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**KENYA POWER AND LIGHTING COMPANY LTD**

**PROCUREMENT REVIEW REPORT**

**JULY, 2016**

## **REVIEW REPORT IN SUMMARY**

This report details the findings and recommendations of the procurement review of the Kenya Power and Lighting Company Ltd (KPLC), carried out by the Public Procurement Oversight Authority (the Authority) team from 9<sup>th</sup> November to 20<sup>th</sup> November, 2015. The main objective of the exercise was to review the status of the KPLC's procurement, contracting and implementation processes and systems, in order to determine the level of compliance with the Public Procurement and Disposal Act, 2005 (the Act) and the Public Procurement and Disposal Regulations, 2006 (the Regulations), circulars and directives issued by the Public Procurement Oversight Authority (PPOA) and generally accepted principles of good practice. Consideration was also given to the relationship between procurement and overall service objectives of KPLC.

The review considered performance of procurement functions for the period 1<sup>st</sup> July, 2014 to 30<sup>th</sup> June, 2015. The scope of the review covered KPLC's procurement and disposal cycle from planning to completion, using 27 key performance indicators. The review also considered the disposal proceedings undertaken by KPLC during the period. The procedures performed during the review included discussions with the key persons involved in the functions related to procurement, examination of the files and documents pertaining to KPLC's procurement systems and processes, examination of open tender method and alternative procurement procedures such as restricted tenders, direct procurement and selected samples of request for quotations. The team also reviewed the implementation of the findings and recommendations of internal audit report carried out during the period under review.

The team used a sample of thirty (30) procurement proceedings to evaluate the level of compliance with the Act, associated regulations and directives issued by PPOA. In so doing, careful considerations were given to implications and the significance of individual ratings of the key performance indicators. It is clear that some instances of non-compliance have greater significance than others. This factor has been considered in determination of the final compliance level.

The overall assessment of the compliance level for KPLC was calculated to be 26.33% with reference to the Act, the Regulations and guidelines in respect of the sampled procurement transactions for the period under review. This is below the minimum acceptable level of compliance of 60% as set out in the Performance Monitoring Plan for Public Procurement System and indicates that the overall performance of KPLC in procurement and disposal is not satisfactory and has weaknesses that need to be addressed.

The report is divided into seven chapters. Chapter one is the introduction to the report. Chapter two looks at the organisation of the KPLC. The key general findings and recommendations as they relate to each of the areas considered in this review are provided in Chapter 3. The specific findings on the actual procurement proceedings examined are exemplified in Chapter 4. The compliance rating and scoring results are highlighted in Chapter 5 while an action plan for implementation of the recommendations is provided in Chapter 6 of

the report. The PPOA team will review the implementation of the recommendations in the action plan.

Finally, we take this opportunity to thank KPLC staff for their co-operation and assistance during this review.

### **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 KPLC

- i) The Company had Procurement Unit has been established in line with Section 26(4) of the PPDA;
- ii) 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);
- iii) A secure facility for the tender box has been provided by the Procuring Entity and is located on 3<sup>rd</sup> Floor of the Main Administration Block;
- iv) The AO had performed his obligations as provided in the procurement Law

### **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:

- i) The PEs procurement plan is not approved by the Tender Committee as required in Regulation 7 (a) of the Public Procurement and Disposal (Amendments) Regulations, 2013;
- ii) The PE used methods of procurements which are not defined in the Act such as selective tender and public tender;
- iii) The PE did not use open tender as the default method but excessively used restricted tender and direct methods of procurement without meeting the conditions provided in the Procurement Law;
- iv) The PE did not demonstrate to have a standing list of prequalified list of suppliers for the categories of some procurements undertaken using alternative procurement methods;

- v) The PE tender documents did not provide quantifiable and objective evaluation criteria: there was a mix between criteria for preliminary, technical and financial;
- vi) The PE's tender processing committees were noted in some instances to have introduced and waived evaluation criteria which appeared to favour certain bidders;
- vii) The PE did not adhere to the required timelines for tender preparation periods;
- viii) The PE did not prepare tender opening committee minutes as required in Section 60 (6) of the Act;
- ix) The PE did not prepare evaluation report that met the requirements of Section 66(5) of the Act and Regulation 51 of PPDR, 2006
- x) The PE does not keep complete procurement records as required in Section 45 of PPDA;
- xi) The head of the PU and key staff with procurement responsibilities have not been adequately trained in the PPDGM and other Manuals;
- xii) The PE in some instances accepted deliveries of goods before even before the tenders were awarded by the tender committee and purchase orders issued;
  - xiii) The PE had appointed various disposal committees in its various regions contrary to the provisions of Section 128 of PPDA and Regulation 92 of the PPDR;
  - xiv) Minutes of the Tender, Procurement and Disposal Committees are not in accordance with 12(6) of PPDR
- xv) PE did not maintain a comprehensive and individual file for each procurement and disposal, 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;
- xvi) In some cases, the PE did not demonstrate to have dispatched notification letters for unsuccessful bidders;
- xvii) The bid bond submitted by the bidders are never returned to the suppliers after the conclusion of the procurement process;
- xviii) The choice of the procurement methods was found to be inappropriate as "Selective tender" were used for purchases below the threshold of KES 2,000,000 for goods and services and KES 4,000,000 for works.
- xix) The PU did 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);
- xx) The PU did not ensure that the PC produced 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);
- xxi) Some initiation of procurement proceedings were not done through the use of an official procurement requisition in line with Regulation 22 (1);
- xxii) It was observed that some evaluations by the tender processing committee took more than the prescribed maximum 15 days contrary to Regulation 46 and there was no proof that there was an extension of the evaluation period by the Accounting officer;
- xxiii) The PE did not observe the threshold requirement for low value procurements of Kshs. 30,000 per item per year for goods and services and Kshs. 50,000 for works;

- xxiv) The Company 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.

## **Recommendations**

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

- i) The AO should ensure that all the identified weaknesses are addressed and proper documentation of administrative and policy guidelines are instituted;
- ii) KPLC 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;
- iii) The PE should adopt proper records and filing management in line with the PPDA, PPDR, PPDGM and the PPRMM;
- iv) KPLC should enhance its procurement and disposal planning, including individual procurement and disposal plans;
- v) KPLC should endeavour to procure all high value goods and services (in excess of Kshs. 2,000,000 for goods and KES 4,000,000 for works) through open or Restricted tenders;
- vi) KPLC should always initiate all its procurement proceedings using the official procurement requisition in accordance with Regulation 22 (1);
- vii) KPLC should complete all evaluations within the prescribed 15 days period from the opening of the bids and adhere to the evaluation criteria;
- viii) KPLC should undertake comprehensive contract and inventory management in line with the PPDA, PPDR and PPDGM.
- ix) In order to comply with Section 26 (6) of the PPDA, KPLC 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;

## **Conclusions**

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.