

PUBLIC PROCUREMENT REGULATORY AUTHORITY



KENYA ELECTRICITY GENERATING COMPANY
LIMITED (Kengen)

PROCUREMENT REVIEW REPORT

OCTOBER 2016

REVIEW REPORT IN SUMMARY

This report contains the findings of a review of the procurement proceedings undertaken by KenGen for the period July 2012 to June 2014.

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

Areas of Satisfactory Compliance

The following were some of the areas of satisfactory compliance:

- i. Establishment of a procurement unit as per Regulation 8 (1) of the PPDR, 2006;
- ii.** Establishment of the various procurement committees as per Regulation 7 of the PPDR,2006;
- iii. The functions of the TC and PC as set out in PPDR 10 and 14 respectively are mostly complied with;
- iv. Preparation of the Annual Consolidated Procurement Plan was in place in accordance with Regulation 20 and 21 of PPDR,2006;
- v. Contracts were largely signed in accordance with Section 68 (1) of PPDA, 2005;
- vi. Prequalification of suppliers was done and a Prequalification list developed in accordance with Regulation 23 of the PPDR,2006;
- vii. Where tender advertisements were issued, they indicated the closing date, time and invitation to attend bid opening as per Regulation 36 & 37 of PPDR, 2006;
- viii. TC awarded tenders or rejected the recommendations in accordance with thresholds prescribed in the First Schedule ;
- ix. TC prepared minutes of all its meetings as per Regulation 12 (6) of

- PPDR, 2006;
- x. Conducted periodic and annual stock take;
 - xi. The tender processing committee carried out the evaluations and selected bids as per Regulation 5 of Legal Notice 106;
 - xii. The threshold matrix was largely adhered to as set out in the First schedule of PPDR, 2006;
 - xiii. Open tendering was the preferred method of procurement as per Section 29 (1) of PPDA, 2005;
 - xiv. Users provided specifications pursuant to Section 34 (3) of the PPDA, 2005 and Regulation 9(i) of PPDR, 2006;
 - xv. Used appropriate standard tendering documents as prescribed in Section 29(4) of the PPDA, 2005 and Regulation 29(1) Third schedule of the PPDR, 2006;
 - xvi. Modifications were made in form of a clarification, such clarification formed an addendum to the tender document in accordance to Section 53 (4) of PPDA, 2005;
 - xvii. AO ensured there was a training plan for the PU staff and that the staff were trained in the relevant fields as recognized by the Authority as per Section 26(7) of PPDR, 2006;
 - xviii. Notifications were made to PPOA for direct procurements as per Regulation 62 (3) of PPDR, 2006.

Areas of Non Compliance

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

- i. The AO did not sign all the procurement contracts as set out in Regulation 7 (c) of PPDR, 2006;
- ii. Tender Opening Committees were not appointed as is required under Section 60(1) of PPDA, 2005;
- iii. The Tender Processing Committees were not appointed as provided by Regulation 5 of legal notice 106.
- iv. Procurement initiation was not evident in the samples reviewed as stipulated in Regulation 22 (1) of PPDR, 2006 and Chapter 6 (6.1) of PPDGM;
- v. The list of prequalification for certain categories used was expired contrary to Regulation 8 (3) (a) of PPDR, 2006;
- vi. The PU failed to maintain comprehensive procurement records in the files as required under Chapter 9 of the PPDGM;
- vii. The PU failed to maintain contract management files for implementation and monitoring;
- viii. TC did not always invite observers for tenders above Kshs. 50 million;
- ix. TC rarely signed confidentiality and declaration of interest & impartiality as per Regulation 12 (4) (6)(f) of PPDR, 2006;
- x. Each member of the technical evaluation committee did not conduct evaluation independently as required under Regulation 16 (6) of PPDR, 2006;
- xi. Most of the tender evaluations were not concluded within the stipulated time of 30 days in accordance with Regulation 46 of PPDR, Section 66 (6) of PPDA and chapter 3 (3.3) (f) (vi) of PPDGM;

- xii. The PE had not yet developed an Internal Procurement and Disposal policy Manual to guide the PU in the procurement processes as stipulated in Section 9(c)(i) of PPDA,2005 and Regulation 30 of PPDR,2006;
- xiii. There were no internal controls for handling of the tender/prequalification boxes' keys;
- xiv. Reports to PPOA of contract awards above KShs 5,000,000 and above was not done in accordance to PPOA Circular 4/2009 of 24th June and for termination of proceedings in accordance to Regulation 32 (1) (2) of PPDR , Section 36 of PPDA, 2005;
- xv. Copies of payment documents were not in the contract file making it difficult to establish whether suppliers were paid;
- xvi. The PU did not fully implement internal audit recommendations within the given timelines.

Summary of Recommendations

- i. Ensure that all the contracts of the PE are executed by the AO in accordance with Regulation 7 (c) of PPDR, 2006;
- ii. Ensure that all tender opening committees are appointed in accordance with Section 60(1 & 3) of PPDA and ensure they prepare relevant reports;
- iii. Ensure respective committees involved in Evaluation, Negotiation, Inspection and Acceptance execute there mandates appropriately and prepare minutes/reports of their proceedings as required by the regulations.
- iv. All procurements and disposals should be initiated according to the procurement plans as stipulated in Regulation 22 (1) of PPDR, 2006 and Chapter 6 Section 6.1 of PPDGM;
- v. Ensure that all the prequalification lists are updated as per Chapter 5 Section 5.6 of PPDGM and Section 8 (3) (a) of the PPDR, 2006:
- vi. PU should maintain and safeguard complete procurement and disposal records for all the procurement proceedings as required under chapter 9.2 of PPDGM and in accordance with chapter 6 (a) of PPDGM and Regulation 8 Section 3 (d) of PPDR, 2006;
- vii. The PU should maintain contract management files for implementation and monitoring as set out in Section 4 (b) of PPDA, 2005 and Chapter 9 (9.3) of the PPDGM;
- viii. Persons involved in procurement processes should declare any conflicts of interest before all deliberations as per the Regulations
- ix. Each member of the evaluation committee should evaluate independently prior to sharing his or her analysis in accordance with Regulation 16 (6) of PPDR, 2006;
- x. Ensure evaluations is concluded within fifteen (15) days as stipulated in Regulation 5 of Legal Notice 106
- xi. The PE should finalize the draft policy Manual for approval by the Board and implementation
- xii. For transparency and internal control purposes, the Tender/quotation Boxes should have two locks and the two keys kept by two different officer in accordance with Regulation 44 (b) of PPDR ,2006;

- xiii. The PE should adhere to all the mandatory reporting requirements in compliance to Circular No. 4/2009 of 24th June 2009, Circular No. 1 of 2014 and Section 36 (7)(8) of the PPDA, 2005 on Reporting Requirements in regard to;
- xiv. PE should ensure that all suppliers are paid and support payment documents and their copies are filed in the respective contract files;
- xv. The PU should implement audit recommendations in the audit reports as soon as they are brought to their attention.

Compliance Rating

The compliance rating is provided in details in Chapter 5 of the report. The compliance level of the KenGen procurement system for the period under review was rated at 72%.

Conclusion

We reviewed the procurement functions and procedures in Kenya Electricity Generating Company Ltd (KenGen) to verify whether they conformed to the requirements of the Public Procurement and Disposal Act 2005 and their attendant Regulations, the various manuals and the circulars issued by PPRA. In the course of our review we have identified some deviations in the conduct of procurement proceedings and have attached ratings to them.

The major challenges found in KenGen were in the areas of maintainance of procurement records, made it difficult to establish whether proper procurement procedures were not adhered to or documents were simply not filed.

We have included an action plan, to be used for follow-up of the implementation of the recommendations to ensure that the corrective measures are implementated in order to improve compliance, efficiency, and effectiveness of the procurement function in the entity.

We are pleased that the KenGen's senior management welcomed the review exercise as a mechanism to identify and address any shortcomings and weaknesses in the entity's compliance with the Act and its attendant Regulations. The management of KenGen has indicated that they will be committed to take remedial actions within the timeframe set out in the action plan.

Overall, the PE has demonstrated a satisfactory level of compliance at 72% (against the minimum threshold of 60%). The compliance rating is based on an assessment of the extent of adherence to the relevant Act, the Regulations and guidelines with reference to the sampled procurement transactions. The procuring entity should endeavour to improve their performance. One way of doing so is by continuous capacity building in the various aspects of procurement law and Regulations which are pointed out in this report and ensuring that systems are put in place to enhance compliance.