

PUBLIC PROCUREMENT REGULATORY AUTHORITY



THE SUGAR DIRECTORATE

PROCUREMENT REVIEW REPORT

NOVEMBER, 2016

REVIEW REPORT IN SUMMARY

This report contains the findings of a review of the procurement proceedings undertaken by the Sugar Directorate for the period July 2013 to June 2015.

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

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 the attendant Regulations, Circulars and any of the directives issued by PPRA, and to propose recommendations for remedial measures against weaknesses identified, institutional arrangements, and/or irregularities in procurement practices, and capacity.

The reviewer expected:-

- i) The Kenya Sugar Board (now Kenya Sugar Directorate - KSD) to have implemented the PPDA, 2005, the regulations, all directives and instructions of the PPRA in its procurement and disposal with a compliance rating of not less than 60%.
- ii) The Sugar Board (now Directorate) to have established adequate systems and procedures for implementation of (i) above.
- iii) The Sugar Board (now Directorate) to have adequate capacity in terms of numbers and training for the implementation of (i) above.
- iv) The Sugar Board (now Directorate) to have established effective communication with the PPRA for guidance and professional as well as proficiency training.

Areas of Compliance:

- i) AO ensured that Kenya Sugar Directorate had a Tender Committee and a Procurement Committee in accordance with the Act and the regulations;
- ii) AO ensured that KSD established a procurement unit;
- iii) AO signed contracts for the procurement and disposal activities on behalf of KSB for contracts entered into in accordance with the Act and the regulations;
- iv) AO ensured that procurement plans were prepared;
- v) KSD prepared a consolidated plan as part of the annual budget plan in accordance with regulation 20 of the PPDR;
- vi) The detailed procurement plans from departments were prepared and submitted by end of April;
- vii) The consolidated procurement plan was resolution authorized by the board of KSD;
- viii) KSD was took necessary steps to bring the invitation to tender to the attention of those who wished to submit tenders by advertising in the prescribed method, pursuant to the Act
- ix) Adequate time for preparation of tenders was given in accordance with Regulations 10 and 12 of the Public Procurement and Disposal (Amendment) Regulations, 2013;
- x) Tender documents contained relevant information such as instructions on sealing, labeling and submission of tenders, the location and deadline for submission, applicable preference programs, and procedure and criteria to be used to evaluate and compare tenders;
- xi) The fee charged by KSD for the document, was within the Kshs 1000 prescribed under Regulation 11 of the Public Procurement and Disposal (Amendment) Regulations, 2-13of 18th June 2013;

- xii) KSD did not charge a fee to obtain the prequalification documents, in accordance with Regulation 11(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013 of 18th June 2013;
- xiii) KSD was using tender documents as prescribed under section 29 (4) of the PPDA and Regulation 29 (1) of the PPDR in open tenders;
- xiv) Tenders were opened by a committee appointed by the AO in accordance with the Act.
- xv) KSB's tender box had two (2) locks; the keys of which were each kept by a different officer. The box remains locked until the time for tender opening , pursuant to Regulation 44 of the PPDR, 2006; and,
- xvi) KSB notified the award of contract to both successful and unsuccessful bidders simultaneously as required by the Act.

Areas of Non- Compliance:

- i) The PU did not maintain and safeguard procurement and disposal documents and records in accordance with Regulation 8(3) (d) of the PPDR;
- ii) In some instances did not prepare contract documents, in line with the award decision;
- iii) In some instances did not implement the decisions of the procurement, tender and disposal committees as well as coordinate all activities of these committees;
- iv) Did not advise the PE on aggregation of procurement to promote economies of scale in the following examples;
- v) Did not carry out periodic market surveys to inform the placing or orders or adjudication by the relevant award committee of items like tea, toners, flash disks, spoons that were purchased in multiple one- off transactions;
- vi) Did not certify invoices and payment vouchers to suppliers;
- vii) It was not evident that the TC reviewed the quarterly reports on quotations that had been awarded by the PC;
- viii) The Chairman of the Disposal Committee appointed by the AO, contrary to the requirements of Regulation 92 (2) of the PPDR, for the Disposal Committee members to select a chairman from among its members;
- ix) The teams carrying out evaluations were not established in accordance para. 5 of LN 106;
- x) The evaluation teams failed to give a report and recommendations to the TC, contrary to section 66 (5) of the PPDA,2005;
- xi) The TPC did not perform their role to receive goods, services and works as required under para 5 of LN 106;
- xii) The evaluation teams did not carry out independent evaluations and rating, prior to sharing their finding with other members as is required under Regulation 16 (6) of the PPDR;
- xiii) The evaluation teams introduced criteria that were not originally in the tender document, contrary to section 66 of the PPDA.
- xiv) It was not evident that copies and circulars issued by PPOA, including a copy of the PPDGM were availed to all persons in the PU;
- xv) The PU did not maintain individual procurement files for each procurement procedure as required under Regulation 34 (3) of the PPDR;
- xvi) The consolidated procurement plan did not have the thirty percent (30%) allocated to the Youth, Women and PWDs, contrary to paragraph 7 L.N 114 of 18th June 2013;
- xvii) The PE did not prepare individual procurement plans pursuant to Regulation 22 of the PPDR and chapter 6.5 of the PPDGM, upon receipt of a Purchase Requisition, for significant procurements;

- xviii) KSD procurement plan did not provide for aggregation of items for procurement through applicable arrangements for common user items, pursuant to regulation 21 (d) of the PPDR;
- xix) The consolidated procurement plan was not submitted to PPOA as required under PPOA circular No 4-2009 of 24th June 2009.
- xx) Specifications made reference to particular trademarks such as “Yana” in the purchase of tyres, contrary to section 34 (4) of the PPDA.
- xxi) KSD use of the standard RFQ form did not effectively capture important information, such as date and time of quotation, name and designation of the persons opening the quotations;
- xxii) KSD was not returning tender securities to unsuccessful bidders, upon signing with the successful bidder contrary to section 57, (4) (C) of the PPDA;
- xxiii) KSD was not discharging the Performance Bonds upon conclusion of the contract;
- xxiv) KSD did not open contract files after the procurement contract was signed to record the actual performance of the contract as required under chapter 9.3 of the PPDGM;
- xxv) The procedure for disposal of obsolete, unserviceable and surplus stores in regulation 129 of the PPDR was not followed;
- xxvi) The DC did not recommend a method of disposal, based on a technical report, as is required under regulation 128 (2) of the PPDR; and,
- xxvii) Users(employees) in charge of unserviceable, obsolete or surplus stores or equipment did not perform their role to bring the matter to the attention of the DC, as required under Regulations 129 (1) of the PPDR;

Recommendations

- i. The AO should sign contracts for the procurement and disposal activities for contracts in accordance with the Act in accordance with regulation (c) of the PPDR;
- ii. The PU should prepare contract documents, in line with the award decision;
- iii. The PU should implemented the decisions of the procurement, tender and disposal committees as well as coordinate all activities of these committees;
- iv. The PU should advise the PE on aggregation of procurement to promote economies of scale;
- v. The PU should carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee;
- vi. The PU should certify invoices and payment vouchers to suppliers;
- vii. The PU should maintain and safeguard procurement and disposal documents and records in accordance with the regulations;
- viii. The PU should carry out periodic market surveys to inform the placing or orders or adjudication by the relevant award committee;
- ix. Members of the Disposal committee should select a chairman from among them in accordance with Regulation 92 (2) of the PPDR, 2006;
- x. KSD should establish Evaluation Committees to carry out evaluation of the tenders, proposals, negotiations and inspection and acceptance of goods or works in accordance para. 5 of LN 106.
- xi. The Evaluation Committees should prepare a report on the analysis of the tenders and final ratings assigned to each tender and submit the report to the tender committee as required under the Act and the Regulations
- xii. There Evaluation Committees should perform their role to receive goods, services and works as required under para 5 of LN 106;

- xiii. The Evaluation Committees should perform independent evaluations and rating, prior to sharing their finding with other members pursuant to Regulation 16 (6) of the PPDR;
- xiv. The evaluation teams should perform comparison and evaluation using criteria set out in the tender documents and no other criteria as required under the Act
- xv. Procurement manuals such as the PPDGM and circulars issued by the PPOA should be at the disposal PU staff and other persons involved in the procurement process;
- xvi. The PU should maintain individual procurement files for each procurement procedure, pursuant to Regulation 34 (3) of the PPDR, 2006;
- xvii. The PU should maintain and safeguard procurement and disposal documents and records in accordance with Regulation 8(3) (d) of the PPDR,2006;
- xviii. The PE should prepare specific requirements and give a complete description of the item/s in a manner that allows for a fair and open competition among those who wish to participate in accordance with the Act
- xix. Technical requirements should not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin in accordance with the Act.
- xx. KSD should use standard RFQs forms effectively, registering important detail such as date, time of opening the quotations, name and designation of the persons opening, as appears in clause 7.5 of the PPDGM.
- xxi. KSD should return tender securities to unsuccessful bidders, upon signing with the successful bidder as required in 57, (4) (C) of the PPDA;
- xxii. KSD should meet reporting requirements as required by PPRA circular No. 4/2009 of 24th June 2009 on procurement valued at 5 million and above, terminated procurement proceedings, tenders awarded to Youth, Women and PWDs as well direct procurements of Kshs 500,000 and above;
- xxiii. KSD should make reference to PPRA price guidelines to inform appropriateness of prices in awarding contracts;
- xxiv. KSD should open a contract file after procurement file has been signed to record actual performance of the contract as required under chapter 9 of the PPDGM;

Conclusion

The major challenges found in the sugar directorate were in the areas of lack of a well established PU to advise on the procurement issues and perform other roles as required. There was also poor record keeping / maintenance of procurement documents which also affected the completion time for the assessment.

We have included an action plan which will form the basis for a follow-up on the implementation of our recommendations to ensure that the corrective measures are taken in order to improve compliance, efficiency, and effectiveness in procurement management within the entity.

Overall, the Sugar Directorate has demonstrated a satisfactory level of compliance with the relevant Act and Regulations and guidelines applicable during the period under review in respect of the sampled procurement transactions at 60 %. The procuring entity should endeavor to improve its performance so that it becomes fully compliant by building the capacity of the staff involved in various aspects of the procurement and establishing appropriate systems to facilitate efficient and effective procurement.