



**FINAL REPORT**

**TANATHI WATER SERVICES BOARD**

**PROCUREMENT REVIEW**

**JUNE, 2011**

**TABLE OF CONTENTS**

1	INTRODUCTION .....	8
2	ORGANIZATION OF TAWSB.....	13
3	FINDINGS, OBSERVATIONS AND RECOMMENDATIONS .....	14
4	SPECIFIC FINDINGS .....	32
5	COMPLIANCE RATING .....	38
6	ACTION PLAN.....	45
7	CONCLUSION .....	47

## ACRONYMS

AO	Accounting Officer
FY	Financial Year
GOK	Government of Kenya
GRN	Goods Receipt Note
HQTS	Headquarters
IA	Internal Auditor
ICT	Information, Communications and Technology
KACC	Kenya Anti Corruption Commission
KNAO	Kenya National Audit Office
LPO	Local Purchase Order
LSO	Local Service Order
LTA	Long term arrangement
MD	Minor Deviations
MDD	Moderate Deviations
MDDD	Major Deviations
TAWSB	Tanathi Water Services Board
N/A	Not Applicable
ONT	Open National Tender
PC	Procurement Committee
PE	Procuring Entity
PI	Proforma Invoice
PPDA	Public Procurement and Disposal Act, 2005
PPDR	Public Procurement and Disposal Regulations, 2006
PPOA	Public Procurement Oversight Authority
PR	Procurement Review
PU	Procurement Unit
RFP	Request for Proposal
RFQ	Request for Quotation
SP	Satisfactory Performance
TC	Tender Committee
TP	Threshold Programme

## EXECUTIVE SUMMARY

This report presents the findings of the procurement review of the Tanathi Water Services Board (TAWSB), carried out from 9<sup>th</sup> to 22<sup>nd</sup> December, 2010. The main objective of the exercise was to review the status of the Board's procurement, contracting and implementation processes and systems with a view of establishing its level of compliance with PPDA and the PPDR, circulars and directives issued by PPOA. Consideration was also given to the relationship between procurement and overall service objectives of TAWSB.

The review team considered performance of procurement functions for the period 1<sup>st</sup> July, 2009 to 30<sup>th</sup> June, 2010. The review procedures performed included the examination of selected samples of the tenders, request for proposals and request for quotations. The review did not consider the disposal proceedings as the entity had not undertaken any disposal during the period. The team was informed that the entity is relatively new as it was created on 4<sup>th</sup> June, 2008 vide legal notice No.69 and therefore none of its properties/ assets had qualified for disposal.

Accordingly, the scope of the review limited to procurement cycle from planning to completion using various key performance indicators.

The review involved examination of the procurement files and documents pertaining to TAWSB's procurement systems and processes. This was supplemented by discussions with the persons involved in the procurement related functions. The review will be finalized by exit meeting with the Accounting Officer, members of procurement standing committees, Head of Procurement Unit and any other persons involved in the procurement functions.

The review team did not review the implementation of the findings and recommendations of prior audit reports carried out in FY2009-2010 as they were not made available to the review team.

Key general findings and recommendations relating to each of the areas considered in this review are provided in Chapter 3 of the report. An action plan for implementation of the recommendations is provided in Chapter 6 at the end of this report. The PPOA team will review the implementation of the recommendations in the action plan in Chapter 6 after a three-month period from the date of final report.

One of the limiting factors in carrying out the review was inadequate filing system, records, data, and documentation relating to the procurement processes selected for this review. The exercise was also made difficult because some important documents to the review had been taken by Kenya Anti Corruption Commission which included Tender register, Quotation register, Minutes of the tender committee and list of approved suppliers/contractors. However, the list of suppliers was availed on the last day of the review. This caused some delay in the review fieldwork.

The review team noted the following satisfactory compliant practices from the samples that were examined:

- The tender and procurement committees are in place;
- Evaluation committees are appointed as and when required;
- Advertisements notices indicate the closing date and time and that interested bidders are free to attend the bid opening if they wish;

- Tender opening procedures are carried out in accordance with regulations;
- There is a standing list of registered suppliers/contractors;
- TAWSB has taken reasonable efforts to bring the invitation to tender to the attention of prospective tenderers;
- The Procuring Entity has put in place fair and impartial procedures for receiving and opening of tenders;
- A secure facility for the receipt of tenders has been provided by TAWSB;
- The evaluation criteria are spelt out in the tender document; and
- Members of staff have been trained on PPDA and PPDR

However, the review team noted the following areas with deviations or weaknesses that need immediate attention of the Accounting Officer and the management:

- The Head of Procurement Unit, members of standing committees and key staff with procurement responsibilities have not received sufficient training in PPDA, PPDR, PPOA circulars and General Manual;
- The manual operationalizing procurement on TAWSB has not been shared with PPOA in line with Regulation 30 to ascertain its conformity with the PPDA and PPDR;
- The procurement directives issued by PPOA are not placed in a central location that is accessible to all persons who may wish to refer to them;
- There was no evidence that the Heads of User Departments have submitted annual departmental plans to the Accounting Officer pursuant to Regulation 20(4);
- The consolidated annual procurement plan for the period under review does not conform to the format approved by PPOA; further no evidence that the same had been approved by the Accounting Officer/Board of directors pursuant to Regulation 20(5);
- There are no individual procurement plans for specialised and complex works and services as set out in the Procurement General Manual;
- Lack of standard purchase requisitions for initiating procurement activities;
- The purchase requests initiated by the User Departments do not indicate estimated values of goods being procured as required by Regulation 22(2);
- The filing of procurement and contract documents is inadequate. The procurement and contracting records are fragmented amongst various files and departments;
- No evidence that each member of the technical evaluation committee evaluated tenders independently from the other members prior to sharing his or her analysis;
- There are no contract files for ease of monitoring progress and conformity with the terms of contract;
- There is inadequate awareness of the publications, directives, manuals and various standard documents prepared and distributed by PPOA;
- The PE has not applied preference and reservations pursuant to Section 39 of the PPDA;
- The PE has not been preparing contract agreements for all tenders above Kshs. 500,000.00 as required by Section 7.5 (r) of the Public Procurement and Disposal General Manual;
- There is no evidence that disposal committee met within 14 days of appointment and thereafter on quarterly basis as stipulated in Section 128 of the PPDA and Regulation 92(3);

- There is no documented complaints mechanism for handling bidders' enquiries and complaints; and
- The Procuring Entity has not established an inspection and acceptance committee as required by Regulation 17. No evidence that the inspection and acceptance committee have ever inspected goods, works and services to verify that they are delivered as per the contract terms and specifications.
- Awarding tenders retrospectively contrary to Regulation 27(1) e.g. award of Quotation No.TAWSB/225/09-10 for Tools for Nthongoni Farm dam was approved by Procurement Committee on 31<sup>st</sup> March, 2010 while Quotation is dated 3<sup>rd</sup> March, 2010.
- No approval of direct method of procurement by tender committee pursuant to Section 29 of the PPDA;
- The PE has not been observing threshold matrix with regard to use of quotation method of procurement;
- Poor record keeping which is against Section 45 and Regulation 34
- TAWSB have not analysed their recurrent or ongoing requirements for medium to long-term needs with a view to making framework contracts. Many items like pipes which are being procured through RFQ should be placed under framework contracts to enable the PE to obtain the better prices associated with economies of scale and to reduce administrative costs ;
- There was no evidence that the prices of common user items have been compared with the price index provided by PPOA;
- Insufficient documented contract management procedures in place to monitor progress and conformity with the terms of contract;
- The PE does not file all tender awards above Kshs. 5 million; termination of procurement proceedings; direct procurement above Kshs.500, 000.00 and disposal to employees reports with PPOA as stipulated in the Regulations and PPOA Circular No.4/2009 of 24<sup>th</sup> June, 2009.
- Procurement Committee is not submitting its quarterly reports to Tender Committee;
- No procurement file for each procurement;
- Absence of communication of award letters;
- Inadequate monitoring of contracts awarded;
- The list of approved suppliers/contractors availed to the review team was not approved by the tender committee;
- No approval by tender committee on the persons to be issued with quotations;
- Some minutes of the tender/procurement committee were not signed;
- Some quotations were opened by one person only e.g. Quotation No. TAWSB/016/09-10 for Supply of Quarry Stones for extension of office; the figures in the quotation by Demjo Enterprises were altered and has not been initialled.
- Some requisitions not properly filled/authorised
- Some quotations not indicating the quantity of items being procured
- Some of evaluations of tenders were not done in the three stages as required by Regulations 47, 49 and 50;
- Some of the minutes of the tender/procurement committees did not indicate the price at which the tenders is awarded
- Minutes of tender/procurement committee does not have meeting numbers.

The team recommend that the TAWSB management put in place the following measures in order to avoid future non-compliance:

- Clarify accountability for project management and delivery of major projects by establishing a Contract Manager in accordance with Clause 9.4 of the General Manual to manage the linkages across functional areas and between TAWSB and its partners;
- Develop a procurement tracking schedule to support the better management of the procurement function for the donor funded projects;
- Establish a comprehensive procurement plan and ensure that all future procurement requests are derived from the consolidated procurement plan.
- Organise training of all management staff/heads of departments and all persons involved in procurement on specialised aspects of procurement Act and regulations;
- Introduce measurable mechanisms that promote value for money in its procurement of goods, works and services by ensuring that procurement is done in an open and transparent manner;
- Introduce standard tender documents and procurement forms for procurement processes and contracting;
- Compare all prices of common user items with the PPOA price index;
- Prepare and update a Disposal Plan;
- Ensure reporting requirements to PPOA are complied with;
- Improve the monitoring of contract management processes and update the procurement files.
- establish disposal committee
- establish inspection and acceptance committee
- PE should address all the weaknesses highlighted in the report.

As specified in the terms of reference, the review team used the sample of procurement proceedings to evaluate the level of compliance with the Public Procurement and Disposal Act, associated regulations and directives issued by PPOA. In so doing, the team considered the implications and the significance of individual ratings of the key performance indicators. As indicated in the report, some instances of non-compliance are of greater significance than others. This factor has been considered in determining the final compliance level.

The team's overall assessment of the compliance level for TAWSB is calculated to be 45.6% with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions for the period reviewed. This is below the minimum acceptable level of compliance of 60% set out in the Performance Monitoring Plan for the present project. Thus, the overall performance of the Board in procurement and disposal is not satisfactory and has significant weaknesses that need to be addressed.

Finally, the team wish to take this opportunity to thank TAWSB staff for their co-operation and assistance during this review.

# 1 INTRODUCTION

## **Purpose**

This procurement review is one of the reviews carried out by PPOA on the selected PEs with a view of establishing their levels of compliance with procurement law, circulars and directives issued by PPOA. The principal goal of this exercise is to help the PE develop capacity building programs to enable it to apply the procurement law better.

Prior to the commencement of the review, an entry meeting was held on 9<sup>th</sup> December, 2010 between PPOA and the PE to lay down the modalities of the review such as the scope of the review, the review plan, the reviewers' expectations, access to documentation and other administrative issues. The PPOA team was led by Mrs. Jane Njoroge, General Manager, Technical Services while the PE's team was lead by Eng.J. M. Mutuva, Chief Manager, Utilities and Community Development who is also the chairman of the tender committee.

## **Mandate of PPOA**

The mandate of the PPOA on procurement reviews is derived from Section 49 (1) (a) of the PPDA which provides that "the Director-General or anyone authorized by him may inspect at any reasonable time the records and accounts of a procuring entity and the procuring entity and the contractor shall cooperate with and assist whoever does such an inspection".

## **Role of the PE**

- Section 27(1) of the Public Procurement and Disposal Act 2005 provides that a public entity shall ensure that this Act, the regulations, and any directions of the PPOA are complied with respect to each of its procurements;
- Section 27 (2) of the Act provides that the Accounting Officer shall be primarily responsible for ensuring that the procuring entity fulfils its obligations in the implementation of the provisions of the Act;
- Section 27 (3) of the Act provides that each employee of the procuring entity and each member of board or committee of the entity shall ensure, within the areas of responsibility of the employee or member, that the Act, regulations or any directions of PPOA are complied with; and
- Section 101 of the Act provides that a public entity shall provide the Authority with such information relating to procurement as the Director-General may require in writing.

## **Objectives**

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

The specific objectives of this procurement review were:

- To verify whether the procurement and contracting procedures, processes and documentation followed by TAWSB were in accordance with the PPDA and PPDR;



- To establish level of TAWSB's adherence to the generally accepted principles of economy and efficiency, equal opportunities, transparency, integrity and fairness and promotion of local industry;
- To determine technical compliance, physical completion and price competitiveness of each contract in the selected representative sample;
- To review the capacity of TAWSB to handle procurement efficiently;
- To establish whether adequate systems are in place for procurement planning, implementation and monitoring and whether adequate documentation is maintained, as required by the regulations;
- To establish whether remedial actions taken on recommendations made in the previous reviews have been implemented successfully;
- To make recommendations for improvement in an action plan which will be followed up within a specified time frame to establish whether these improvements have been implemented;
- To determine the extent to which TAWSB has provided value for money in executing its procurement functions;
- To assist in clarification of areas where TAWSB may have misunderstood the requirements of the PPDA and PPDR; and
- To determine challenges faced by the TAWSB in the implementation of the Act.

### **Expectations**

The review expected:

- The Board to have achieved a level of compliance above the minimum acceptable threshold of 60% and above with the requirements of the PPDA, PPDR and all directives issued by PPOA in their procurement, disposal and contracts;
- Adequate systems and procedures put in place by the Board for implementation of the procurement law, regulations and directives;
- The Board to have adequate capacity and training to implement the procurement law; and
- Essential procurement records to be maintained with adequate safeguards for procurement records.

### **Procurement Profile**

The TAWSB undertook 277 procurement proceedings during the FY 2009-2010 as indicated in the Quotation Register. However, the total procurement expenditure was not provided by the PE. In addition, it was noted that the quotation/tender register had several tenders/quotations on drilling and equipping of boreholes. However, the PE did not provide records on the procurements and awards of the same.

### **Sample**

The review covered a sample of the following thirteen transactions selected from the population of transactions executed by the Board from 1<sup>st</sup> July 2009 to 30<sup>th</sup> June, 2010 period, including works, goods, and services, to the extent possible.

	TENDER NO	METHOD	DESCRIPTION	AMOUNT (Kshs.)
1	TAWSB/001/2010-2011	ONT	Construction of Umanyi Mtito Andei water supply Project	120,490,011.77
2	TAWSB/121/08-09	ONT	Ikanga-Mutumomo water supply project	129,981,308.00
3	TAWSB/	ONT	Detailed Engineering Design for Kitui – Masinga water supply and sanitation	18,883,350.00
4	TAWSB/221/2009-2010	EOI	Expression of Interest for Review and verification of detailed design for Masinga-Kitui water and sanitation project and supervision of construction works	
5	TAWSB/031/09-10	RFQ	Construction of Kalundu dam	30,089,500.00
6	TAWSB/180/09-10	RFQ	Construction of Kithaasyu Water Project	12,813,844.00
7	TAWSB/222/09-10	RFQ	Construction of pump house and pipeline at Llbissel Borehole Water Project	4,924,730.00
8	TAWSB/225/09-10	RFQ	Tools for earth dam-lower Yatta District	138,040.00
9	TAWSB/	ONT	Consultancy services for detailed engineering design and tender documentation for Masinga-Kitui Water Supply	18,883,350
10	TAWSB/100/09-10		Supply of pipes and fittings	
11	TAWSB/		Tender for rehabilitation of a lateral sewer between KMC and Twin Plaza, Athi River	8,882,778
12	TAWSB/104/09-10	ONT	Consultancy Services for Transaction Advisor	36,424,232.00
13	TAWSB/215/09-10	RFQ	Borehole Equipping & Construction of Pump House, Gantry. Erection of Water Tank, Steel Tower, Cattle Troughs and Water Tank	8,381,065.00

The review team did not visit any of the TAWSB facilities outside the Headquarters due to limited time for the review.

The TAWSB did not provide the review team with inventory reports to determine whether the PE conducts periodic and annual stocktaking in accordance with the PPDR.

### **Methodology**

The review procedures included the examination of selected samples of the open tenders, Request for Proposal and request for quotations proceedings. No disposal proceedings were considered as the TAWSB has not disposed any of its assets. The review team was informed that the TAWSB is relatively new organizations having been created vide Legal Notice No.69 of 4<sup>th</sup> June, 2008 and therefore none of its assets has qualified for disposal.

### **Key documents and data collection**

The key procurement documents and data related to the terms of reference were reviewed. The information collected was analyzed to provide an overall picture of the level of compliance in the various stages of the procurement process. The overall risk rating and scoring systems for the procurements handled by TAWSB over the review period were assessed using the criteria in Chapter 5 of this report.

Other documents used by the team in the review included PPDA 2005, PPDR 2006 and the General Manual. The TAWSB did not avail prior internal and external audit reports.

Discussions were held with the following personnel of TAWSB who are involved in the procurement process.

	<b>Name</b>	<b>Title</b>
1	Eng. Muthui	Accounting Officer
2	Eng. Peter Njiru	Chairman PC
3	Eng. J. Mutuva	Chairman, TC
4	Mr. Lamet Maika	Procurement Manager
5	Mr. A. Kioko	Member, Disposal Committee

Arising from such discussions, the team obtained information regarding procurement process, procedures and the capacity of the TAWSB on matters related to procurement.

### **Key Performance Indicators and rating criteria**

The procurement review was based on risk assessment methodology that focuses on the issues that pose the greatest threat to the compliance with the procurement law and regulations.

The reviewed procurements are categorized according to the procurement/disposal key performance indicators. These consist of three categories of a risk level assigned to each performance indicator, namely:

- **High Risk** – Procurements where serious weaknesses could cause material financial, regulatory or reputational risks warranting immediate attention by senior management;
- **Moderate Risk** – Procurements where weaknesses, although less likely to lead to material financial, regulatory or reputational risk, warrant timely management action using the existing framework;
- **Low Risk** Procurements with weaknesses where resolution within the normal management framework is considered desirable to improve efficiency and promote best practice. Deviations from laid down procedures would normally be graded “low,” if there were sufficient evidence of management action to rectify the deviation and to monitor compliance.

Once a risk level had been assigned to each key performance indicator, review tests were devised to ascertain whether the compliance was working as indicated in the risk assessment. More emphasis, time, and tests will be focused on those items with the highest risk.

When assigning compliance scores, the review team considered the extent to which compliance procedures were in place for each aspect of the law and regulations. Whole numbers for each item are used:

- 3 indicates full compliance with the stated requirement;
- 2 is for cases in which the system exhibits less than full compliance and needs some improvements in the area being assessed;
- 1 is for those areas where substantive work is needed to bring them into compliance; and
- 0 is the residual indicating a complete failure to comply with the proposed standard.

Each compliance assessment is multiplied by the risk factor to obtain the overall score for each performance indicator. In cases where there are several requirements being evaluated, the scoring was based on the performance range:

61-100%	3
41-60%	2
21-40%	1
0-20%	0

The scores obtained for each performance indicator were then added to arrive at the total score, which was then shown as a percentage of the maximum possible score.

The key performance indicators and the corresponding risk levels used are set out in Chapter 5.

### **Limitation of scope**

The scope of the review was limited by the following:

- Some records, data and documentation relating to the procurement processes selected were not available e.g. list of approved suppliers/contractors, reports on previous reviews and agreements on donor funded project
- The PE took much time to retrieve the required documents;
- Inability to verify the authenticity of some of the documents sampled like the unsigned minutes of the tender committee and procurement committee dated 29<sup>th</sup> September, 2009 and 31<sup>st</sup> March, 2010 respectively and evaluation report for Ikanga Mutomo Water Project.

## **2 ORGANIZATION OF TAWSB**

### **Mandate**

- Efficient and economic provision of water services as authorized by the license;
- Development and management of assets;
- Hold/lease assets and water services infrastructure;
- Plan development services and facilities to increase access to water and sanitation;
- Contracting water services providers and ensure efficient and economical provision of services

### **Vision**

To be the premier Water Services Board in the African region”

### **Mission**

To ensure provision of potable, reliable, affordable and sustainable water and sewerage services to our customers in collaboration with Stakeholders through leasing, development, continuous improvement and expansion of facilities and contracting of competent Water Service Providers

### 3 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

#### 3.1 Functions of the Accounting Officer

##### *Findings*

The AO is carrying out his responsibilities as stipulated under Section 27 (2) of the PPDA. He was very supportive of the procurement review and recognises the importance of procurement in achieving the overall long term strategic objectives of the organization. However, the following weaknesses were noted: the composition of the procurement committee is not updated; inspection and acceptance committee is not established; poor record keeping by the procurement unit; and PE has not prepared a procurement plan in line with the format approved by PPOA.

##### *Recommendations*

The AO should ensure that the PE complies with the PPDA and PPDR in all its future procurements

##### *Response*

*The AO will ensure that PE complies with PPOA in all procurement.*

#### 3.2 Functions of Procurement Unit

##### *Findings*

TAWSB has established a PU in accordance with the PPDA and PPDR with a total staff of three officers. Mr. Lamet Maika the Head of PU is responsible for day-to-day management of the Procurement Unit and is the Secretary to the TC.

There was no evidence that the staff members of PU are members of KISM or any other professional body for procurement personnel.

Out of the three procurement personnel of the PU, two of them have attained certain levels of qualifications in procurement as illustrated in the table below:

NAME	Qualifications	Designation
Maika Lamet Kimirei	BBA, Diploma in Purchasing and Supply	Procurement Manager
Vaati Mwendwa	Certificate in Pharmaceutical technology, Certificate in Business Management	Procurement Assistant
Triciah Wanza Wambua	Certificate in Purchasing and Supplies, Certificate in Computer Applications	Procurement Assistant

The head of the PU and one of the procurement assistants are currently pursuing further trainings in procurement.

The team noted the following weaknesses in the PU:

- The unit does not maintain comprehensive procurement and disposal filing systems and records in accordance with Section 45 of PPDA and Regulation 34 of PPDR;
- Did not make available to the review team the Consolidated Procurement Plan for the period under review as the one that was availed did not conform to the template provided by the PPOA;
- PU does not prepare disposal plans in accordance with Regulation 8(3)(w);
- Does not advise the procuring entity on aggregation of procurement to promote economies of scale in areas of common user items;
- While the unit maintains standing lists of registered suppliers, there is no evidence that the list is updated annually as provided in Regulation 8(3) (a). Further, no evidence was availed to the team to prove that the list had been approved by the tender committee.
- The PU does not ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers/contractors pursuant to Regulation 59(2)(c);
- Does not prepare quarterly reports on the awards by Procurement Committee as required by Regulation 10(2)(n);
- There is no evidence the Head of the Procurement Unit has appointed an officer to serve as secretary to the procurement committee as required by Regulation 13 (4);
- Does not monitor contract management by User Department in line with Regulation 8(3)(t);
- No records were availed to confirm that the PE conducts periodic and annual stock taking in accordance with Regulation 8(3) (a a).
- No evidence that the PU conducts market survey; and
- Does not prepare and submit to the PPOA reports required under the PPDA, PPDR and the directives of the PPOA; and
- The staff of the Procurement Unit have not received adequate training in PPDA, PPDR and other procurement related manuals

### ***Recommendations***

PU personnel should familiarise themselves with the responsibilities of the Unit to enable them to improve on all the identified deficiencies and ensure that the functions of the Unit are carried out as envisaged by Regulation 8.

Further, the PU should liaise with PPOA for sensitization on PPDA, PPDR, the directives of the PPOA and other procurement related matters.

### ***Response***

*The PU will familiarize themselves with PPOA, PPDR to improve in any deficiencies. And training of the PU will be emphasized. PU personnel relevant certificates are available for PPOA.*

### 3.2.1 Number of trained persons sensitized on the procurement

#### *Findings*

- The PE does not liaise with PPOA for training on the PPDA, PPDR and other procurement documents like the General Manual and various tender documents.
- The time table provided by the Procuring Entity as evidence for having undertaken training is not supported by the attendance register for the persons who attended the purported training;
- The number of the personnel that were trained was not availed
- The training that was undertaken by the PE was not adequate

#### *Recommendations*

The PE should prioritise their training to include the following:

- Sensitization of all personnel and members of various committees of the PE on their responsibilities as stipulated in the PPDA and PPDR;
- Advanced training to improve skills of procurement personnel and user departments in:
  - Procurement planning;
  - Procurement methods;
  - Qualifying potential suppliers for complex and specialized services;
  - Evaluation of bids; and
  - Contract management;
- Specialized aspects of procurement in areas of:
  - Records management;
  - Framework contracting;
  - ICT Manual;
  - Consultancy manual; and
  - Works manual.

#### *Response*

*PE will arrange for training of its personnel to improve skills and to enable them discharge their duties as per the regulation. PE will arrange for trainings in the next financial year.*

### 3.3 Functions of Tender Committee

#### *Findings*

The PE has established a Tender Committee as below and it holds regular meetings with minutes.

S/No.	NAME	DESIGNATION
1.	Eng. J. Mutuva	Chairman
2.	Mr. Martin Ng'aa	Member
3.	Mr. Christopher Kilonzo	Member
4.	Mr. A. Kioko	Member



<b>S/No.</b>	<b>NAME</b>	<b>DESIGNATION</b>
5.	Mr. J. Kangwe	Member
6.	Mr. Augustine Ndingo	Member
7.	Ms. Jane Sein	Member
8.	Mr. Kimanga Mutua	Member
9.	Mr. M. M. Nyamawi	Member
10.	Mr. Lamet Maika	Secretary

The review team observed the following weaknesses and deficiencies:

- The chairman of the tender committee is not deputized by the head of finance as required by regulation 10(1) and Paragraph 3 of the Third Schedule of the Regulations;
- Extracts of TC minutes are not filed in the procurement file;
- The minutes of the tender committee does not have the background of award indicating a brief summary of the procurement process;
- The PE does not invite observers for the tenders valued above Kshs. 50,000,000.00 as required by Regulation 12(8-9);
- There is no evidence that the tender committee confirmed availability of funds prior to making awards as required by Regulation 10(2)(d);
- No evidence was availed to prove that the tender committee approved the list of persons qualified to submit proposals pursuant to Section 80 of the PPDA;
- It does not review the quarterly reports on quotations that have been awarded by the Procurement Committee in accordance to Regulation 10(n);
- There is no reference of the budget line and approved funds availability in the minutes;
- Does not approve negotiations pursuant to Regulation 10(2) (l);
- The PE has not appointed alternate members of the tender committee in line with Regulation 12(1).
- Some minutes of the tender committee are not prepared in line with Regulation 12(6) (a) in that the names recorded in the attendance register of the committee members does not tally with the names appearing in the minutes (e.g. whereas the TC minutes of 27<sup>th</sup> August, 2009 indicates that Mr. A Kioko was present, the attendance register does not show that he was present) ;
- Not all minutes of the tender committee are signed.
- Tender committee opened annual tenders for the year 2009/2010 but did not indicate the procedures used in the opening, the number of bidders for each category; minutes not signed by all members in line with Section 60(9)

### ***Recommendation***

The identified weaknesses in TC procedures should be addressed.

### ***Response***

*The PE will address the weakness noted in TC to improve the discharge of duties. Training will be organized for the TC.*

### 3.4 Functions of the Procurement Committee

#### *Findings*

- The Procurement Committee is established vide **unsigned** internal memo Ref: No.TAWSB/PROC/4.VOL.1 (9) of 10<sup>th</sup> October, 2008. The members of the committee are as follows:
  - Peter Njiru - Chairman
  - Robert Musyimi - Member
  - Caleb Mwanzia - Member
  - Catherine Munyao - Munyao
  - Gideon Kavoo - Secretary
- The appointment of Gideon Kavoo as the secretary of the procurement committee is irregular as he is not a staff of the Procurement Unit;
- The procurement committee file availed to the review team had minutes of two meetings held on 23<sup>rd</sup> December, 2009 and 31<sup>st</sup> March, 2010 only and it was therefore difficult to verify whether the committee holds regular meetings in line with Regulation 15.
- According to the minutes of the procurement committee the composition of the procurement committee is different as indicated here below:

S/No.	NAME	DESIGNATION
1.	Eng. Peter M. Njiru	Chairman
2.	Ntheketha C. Kioko	Member
3.	Robert Musyimi	Member
4.	Vaati Mwendwa	Member

- The PC does not confirm availability of funds prior to awarding tenders;
- The PC does not ensure that all relevant procurement documentation e.g. purchase requisitions are used for processing the procurement proceedings;
- The procurement committee does not ensure that all the awards it make are within prescribed threshold; and
- The PC does not submit quarterly reports to the TC as required by Regulation 10(2)(n).
- Minutes of the procurement committee does not have the background of award and the price at which the awards are made.
- The minutes of the procurement committee are not signed by the members to signify their authenticity.
- In some instances, the Procurement Committee acted against Regulation 27(7) for adjudicating on a tender that had been concluded and LPO issued. e.g. Quotation No. TAWSB/225/ 2009-2010 was awarded by PC to Toddy Hardware on 31<sup>st</sup> March, 2010 under Minute No.33/036/2009-2010 while LPO was raised on 3<sup>rd</sup> March, 2010.

#### *Recommendation*

The identified weaknesses in PC procedures should be addressed.

#### *Response*

*PC to be trained on procurement rules and regulations*

### 3.5 Functions of the Disposal Committee

#### *Findings*

The PE had appointed a Disposal Committee as required by Section 128 of the Act during the period under review. The members of the committee are as follows:

S/No	Name	Designation
o	M.M Musyimi	Chairman
o	C. Kilonzo	Member
o	A. Kioko	Member
o	Vaati Mwendwa	Member
o	E. Ntayia	Secretary

- Disposal committee is not appointed in accordance with Regulation 92(1) in that:
  - o The Officer in charge of finance is not a member;
  - o E. Ntayia who is indicated as the secretary of the disposal committee is not currently the head of procurement unit;
  - o The chairperson of the disposal committee was selected by the AO and not the disposal committee as required by Regulation 92(2);
- No information was availed to the review team to prove that the committee held its first meeting within 14 days of appointment and thereafter on quarterly basis as stipulated in Regulation 92(3).

#### *Recommendations*

The PE should ensure that composition of the Committee is updated and that it conducts its duties in line with the Regulation 92(2) and (3).

#### *Response*

*A new disposal committee has been appointed and training will be done.*

### 3.6 Functions of Evaluation Committee

#### *Findings*

Evaluation committees are established for the tenders within the threshold of the tender committee pursuant to Regulation 16 for the purposes of carrying out the technical and financial evaluation of the tenders.

For the tenders that were reviewed, the following weaknesses were found:

- No records to demonstrate that each of the evaluation committee member evaluated the tenders independently from each other prior to sharing his or her analysis with other members of the evaluation committee pursuant to Regulation 16(6);
- The evaluation of Tender No. TAWSB/121/08-09 , Ikanga Mutom Water Project, took more than the 30 days period stipulated under Regulation 16(5)(b); further the evaluation report was not signed by all members of the evaluation committee;
- Inappropriate disqualification a bidder on the ground that it had a litigation history as evidenced in the prequalification of suppliers/contractors in the annual tenders;

- No adherence to evaluation criteria set out in the tender documents e.g. Quotation No. TAWSB/024/09-10 for provision of transportation services.
- Not evaluating in three stages in line with Regulations 47, 49 and 50
- allocating scores to mandatory requirements e.g. tender for rehabilitation of lateral sewer between KMC and twin plaza, Athi River;
- waiver of mandatory requirements especially in the prequalification of suppliers/contractors
- Introduction of criterion that was not in the tender documents e.g. tender for consultancy service for feasibility study on Kilome-Mikuyu Water Supply where Bhundia Associates had the highest score of 0.892 but was not awarded the tender on the ground that the bidder had three other ongoing projects (Ilika Water Project, Athi Miangene Water Project and Kikima Water Project) with the PE. The award was made to the second lowest evaluated bidder i.e. Palkar Consulting Engineers; Palkar were invited for negotiations with the PE where both parties agreed that the bidder's tender sum be reduced by 15% from Kshs. 5, 043, 509 to Kshs. 4, 286, 881. This was irregular as negotiations are not envisaged in open tendering method.

### ***Recommendations***

The PE should address all the above weaknesses

### ***Response***

*Member of staff will be trained on procurement so that when appointed on the evaluation team, they are conversant.*

## **3.7 Functions of Inspection and Acceptance committee**

### ***Finding***

- The PE has not established an Inspection and Acceptance committee in line with Regulation 17(1)
- No information regarding receipt of goods, works or services was availed;
- PE does not issue interim or completion certificates or Goods Receipt Notes ; and
- The team did not find any certificate of completion of project or consultancies issued by the inspection and acceptance committee as provided by Regulation 17(4) (a).

### ***Recommendations***

- The PE should establish inspection and acceptance committee for the purpose of ensuring that goods, works or services delivered to the PE are as per specification and terms of the contract; and
- Ensure that the Inspection and Acceptance committee carries out its mandate as provided for under Regulation 17(3).

### ***Response***

*A new inspection and acceptance committee*

### **3.8 Systems and procedures for implementation of the procurement law and regulations**

#### ***Findings***

- The PE has prepared procurement operational manual for use by all persons involved in the procurement related functions but the PE has not shared the manual with PPOA to verify conformity with the law and regulations;
- There is limited awareness of updated publications, directives, manuals, and standard documents prepared and distributed by PPOA in accordance with Section 9(c) (i) of the PPDA to be used by procuring entities;
- Some of the staff involved in the procurement related functions that were interviewed by the team were not fully aware of their responsibilities as provided by the PPDA and PPDR.

#### ***Recommendations***

- The PE should share its procurement manual with PPOA in line with Regulation 30 of the PPDR
- PE should organize for sensitization of its staff on their roles in procurement process
- The PE should prepare an operational schedules manual that incorporates the PPDR First Schedule.

#### ***Response***

*Training to be carried out in the next Financial Year.*

### **3.9 Threshold matrix and segregation of Responsibilities**

#### ***Findings***

- The procurement committee awards tenders beyond prescribed threshold of a maximum of Kshs. 500, 000.00
- The PE has not been advertising some tenders valued above Kshs. 6, 000, 000.00. Instead, the PE used quotations regardless of the value of procurement involved e.g. Quotation No. TAWSB/108/09-10 for construction of Kithaasyu Water Project which was awarded to Kivumbuni Gen. Contractors Kshs. 12, 813, 844.00. Other procurements that were not advertised are as indicated in Annexure 2.

#### ***Recommendations***

- The PE should ensure adherence to the threshold matrix provided in the First Schedule of PPDR.
- PC should desist from awarding of tenders above prescribed limit of Kshs. 500, 000.00.
- PE should ensure use of appropriate methods in all its procurements

#### ***Response***

*The PE has already put in place measures to address the observation of thresholds in procurement methods.*

### **3.10 Poor record keeping and filing systems of the procurement documents**

#### ***Findings***

- The PE does not maintain all procurement records pursuant to Section 45 of the PPDA;
- PE does not maintain individual file for each procurement as required by Regulation 34(3). Such file should contain such information like:
  - procurement initiation requisition;
  - all correspondence on the procurement if any;
  - Bid documents;
  - Bids received;
  - Bids analysis or evaluation report and award of the contract; and
  - Information on the award of the contract and particulars of the contract.
- The procurement records were fragmented and different documents relating to procurement are kept by different offices, e.g. legal department.
- Tender register was not availed to the review team to enable it to establish the number of tenders processed by the PE
- No information was provided regarding the number of procurement proceedings during the FY under review

#### ***Recommendations***

- The Procurement Unit should upgrade the filing systems and records management to conform to the provisions of Section 45, Regulation 34(3), General Manual, Procurement Records Management Procedures Manual;
- The PU should ensure that a complete procurement file is maintained for each procurement activity in line with Regulation 34(3). The file should contain all the relevant documents starting with the purchase requisition, all documents pertaining to tendering process, evidence of receipt and payment for goods.
- Document maintained in the procurement file should be original documents, or certified copies of the originals where not possible.

#### ***Response***

*A new recording system and storage space will be put in place in the next Financial Year*

### **3.11 Procurement Planning**

#### ***Findings***

The review identified the following weaknesses in procurement plan prepared by the mainstream PU:

- The procurement plan availed to the review team for the FY under review was not conformity with the format approved by the PPOA vide PPOA Circular No.4/2009 of 24<sup>th</sup> June, 2009 ;
- No evidence that the consolidated procurement plan was approved by the AO or the Board in line with Regulation 20(5).

- Multi-annual, rolling work plans for procurement are not prepared by each User Department and there is no indication whether the requirements should be procured under single-year or multi-year arrangement (Regulation 20(3));
- There is no schedule of the planned delivery, implementation or completion dates for all goods, works, services and consultancies;
- There is no evidence that the procurement plan had been regularly updated to accommodate changes during the year; and
- The review team were neither provided with User Departmental annual procurement plans, nor with information to proof that the same were submitted and approved by the Accounting Officer at least thirty days before the close of the financial year pursuant to Regulation 20(4))

### ***Recommendations***

- The PE should address all the weaknesses identified by;
  - Each department should prepare its annual departmental procurement plan using the format approved by PPOA and submit it to AO at least 30 days before the end of each financial year in line with Regulation 26(4)
  - Ensure that PU prepares Consolidated annual procurement plan for the organization
  - AO and the Board of Directors should approve the procurement plan pursuant to Regulation 20(5).
- The Procurement Unit should not commence any procurement activity which is not in the procurement plan;
- The head of the PU should conduct procurement planning meetings with User Departments to assist them with technical expertise; and
- The work plan of the PU should include preparation and updating of the procurement plan in regular progress reports (giving status of procurement progress, reasons for delay and revised procurement schedule).

### ***Response***

*The PE has received the approved format and each department will submit its procurement plan for consolidation to Board annual procurement plan.*

## **3.12 Purchase requisitions**

### ***Findings***

- The PE does not initiate major procurement proceedings with a standard purchase requisition forms as provided for by Regulation 22(1);
- Procurement requisition availed to the team does not:
  - Indicate estimated value of goods, works or services being procured as stipulated by Regulation 22(2).
  - Does not have specifications of the items being procured
  - Entries in some of the requisition forms are not properly done.

- There is no budget line indicated on the requisition forms used by the PE to show source, allocation, and availability of funds in the budget for particular procurement as required by Section 26 (3).

### ***Recommendations***

- The review team noted that the Standard Purchase Requisition Form is expected to be released by PPOA shortly. In the meantime, the Procurement Unit should develop an interim purchase requisition form that conforms to the requirements of the PPDR, General Procurement Manual and directives or guidelines from PPOA;
- The Standard Purchase Requisition Form for works, which initiates the procurement process for procurement of works, should be in accordance with the Procurement Works Manual which has been prepared by PPOA and should specify as a minimum the following information:
  - State the objective of the works;
  - Establish the preliminary specifications;
  - Confirm budget availability;
  - Indicate authority for the procurement; and
  - Allocate a unique Procurement Number to be used for procurement tracking and monitoring;
- The Procurement Unit should put in place a central control register for all requisitions received in the unit in order to put in place sufficient internal control.
- No requisition should be approved unless it contains all the relevant information

### ***Response***

*All the recommended will be put in place. A purchase requisition form is already in place.*

## **3.13 Prequalification and registration of suppliers**

### ***Findings***

- The PE has a standing list of prequalified suppliers/contractors developed during the period under review as required by Regulation 8(3)(a) but there was no evidence that the standing list is being updated annually to allow new bidders to be included and to remove those who are no longer qualified;
- No prove that the list of approved suppliers/ contractors was approved by the tender committee
- The PE did not use standard bidding documents for prequalification of goods, works and services.
- Evaluation criteria used in the evaluation of prequalification documents was not objective and quantifiable;
- There was no evidence that the entity undertook evaluation of the suppliers to ascertain that they fully met the criteria under Section 31 of the PPDA like:
  - The person is not debarred from participating in procurement proceedings under Section 115 of the Act and Regulations 90 and 91;



- The person is solvent; and
- The Board is not precluded from entering into the contract with the person under Section 33 of the PPDA.
- No records were available to prove that the PU is rotating the suppliers/contractors listed in the standing list to ensure fairness and transparency. The review team found from the assessment of the RFQs that there were some contractors/suppliers that are being considered more regularly than others;
- Waiver of mandatory requirements for some bidders was discriminatory and in breach of Sections 2 and 39(1) of the PPDA e.g. in the prequalification for supply and installation of plastic water tanks and accessories, Fidelity Agencies were prequalified despite failing to meet some of the mandatory requirements like general experience and key personnel while Kabati Machinery Centre was disqualified for failing on one requirement namely authority/license to practice.

### ***Recommendations***

- Before approving or prequalifying a particular supplier, PU in conjunction with the User Department should conduct a supplier evaluation to validate the information provided by the bidders or pre-qualified bidders and to assess whether suppliers' performance meets the expectation or does not meet the expectation in terms of quality of goods and services;
- The PE should strengthen supplier performance evaluation; and
- The PE should ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c).

### ***Response***

*PE to undertake the recommendations stated in prequalification of suppliers*

## **3.14 Specifications**

### ***Findings***

The User Departments did not prepare specifications for all the requisitions available to the team before submitting the request to the Procurement Unit;

### ***Recommendation***

The PE should ensure that all persons involved in procurement related functions prepare technical specifications in accordance with the law before presenting their requisitions to the PU.

### ***Response***

*The user department avails the specifications*

### **3.15 Choice of procurement method**

#### ***Findings***

It was noted that the PE employs RFQ, RFP and ONT as the main methods of procurement. Though the PE failed to provide a summary of procurement proceedings executed under each method, it was established from the Quotation Register that the PE had floated 271 Quotations for various goods, works and services. The value of these procurements could not be established as the PE failed to provide their summary.

Direct procurement method was used for procurement of spares parts for Kiambere-Mwingi Water Pump as one of the alternative procurement methods without getting approval by the tender committee and proper justification in line with Section 29 (3) of the PPDA as indicated in the minutes of the tender committee dated 17<sup>th</sup> February, 2010. Further the procedure for direct procurement was not followed. No evidence was availed to demonstrate that the PE negotiated with the suppliers in line with Regulation 62(4) of the PPDR.

#### ***Recommendations***

The PE should ensure that alternative procurement methods are applied in accordance with the Act, Regulations and other directives issued by the Authority.

#### ***Response***

*Direct procurement has done in that the Italy Company is the sole manufacturer and distributor of the pumps and spares. There is no local supplier of spare parts.*

### **3.16 Preference and reservations**

#### ***Findings***

The PE has not applied preference and reservations as provided in Section 39 (8) of the PPDA read together with Regulation 28(1) of the PDDR for procurements that were 100% funded by the Government of Kenya. The PE did not provide any reason for not applying these preferences.

#### ***Recommendations***

The PE should apply preference and reservations as provided in Section 39 of the PPDA and Public Procurement and Disposal (Preference and Reservations) Regulations, 2011 where applicable.

#### ***Response***

*In all future procurements, PE will observe section PDDA 39 (8) and 28(1) PDDR*

### **3.17 Preparation of tendering documents**

#### ***Findings***

Some of the appropriate standard tender documents as prescribed in Section 29(4) of PPDA, Third Schedule of the PPDR and General Manual are not used in all procurement processes reviewed. The PE has not adopted the following key standard bidding documents as specified in the Third Schedule of the Regulations namely:

- Standard Procurement requisition form;
- Tender register;
- Application for adjudication of tenders/quotation;
- Standard tender document for small works;
- Guidelines for framework contracting
- Standard prequalification documents

#### ***Recommendations***

- The PE should adopt the recommended standard bidding documents and procurement forms that are relevant to its procurement and disposal procedures. In the cases of where the document is still in preparation by PPOA, the PE should liaise with PPOA and agree on the appropriate form to be used; and
- The PE should make use of the appropriate tender documents in each procurement and customize them properly to reflect its requirement

#### ***Response***

*PE will adopt the entire standard bidding documents and procurement forms for PPOA from the beginning of the new financial year.*

### **3.18 Advertisement of tender opportunities**

#### ***Findings***

- The PE has taken reasonable efforts to bring the invitation to tender to the attention of those who may wish to participate in tenders pursuant to Section 54 of PPDA; and
- Advertisements notices indicate the closing date and time, with an invitation to bidders to attend the bid opening if they wish.

### **3.19 Modification to tender documents**

#### ***Findings***

The tenders reviewed did not have any modification. The PE was therefore not evaluated on this indicator.

### **3.20 Submission and Receipt of Bids**

#### ***Findings***

- The PE has a secure facility for the receipt of tenders provided at the designated tender location, with two locks with keys for each lock kept by a different officer; and
- Bid opening procedures are carried out in accordance with Sections 60 and 89 of PPDA and Regulations 45 and 61 of the PPDR.

### **3.21 Formation of Contracts**

#### ***Findings***

- All procurements reviewed, none had records to ascertain that notifications of award letters were sent out to all the successful and unsuccessful bidders at the same time in accordance with Section 67(2) of PPDA and copies filed in the procurement file;
- The release of security/bid bonds was not recorded;
- ‘Bid Acceptance letters’ were not filed in the procurement files as required by Chapter 2.6 of the General Manual;
- PE does not make written contracts for all contracts above Kshs. 500, 000.00 in line with Clause 7.5(r) of the Public Procurement and Disposal General Manual;
- PE does not maintain contract file for each procurement in line with Clause 9.3 of the General Manual;
- Out of the thirteen (13) procurements that were reviewed, the PE provided 3 contract documents only; and
- Contract for construction of Ikanga-Mutomo Water Supply Project does not include the documents indicated at paragraph 2 namely:
  - Letter(s) of acceptance
  - Form of bidding and appendix to form of bidding
  - Condition of contract
  - Specifications
  - Drawings
  - Priced bills of quantities
  - Program of works
  - Project staff

#### ***Recommendations***

The identified weaknesses in procedures should be addressed to conform with the Act and Regulations.

#### ***Response***

*Necessary measures will be put in place to ensure compliance with the Act.*

### 3.22 Termination of Proceedings

#### *Findings*

The review team was informed that the PE had not terminated any contract/procurement proceedings during the period under review. Therefore, the PE was not evaluated on this criterion.

### 3.23 Notification to PPOA

#### *Findings*

The following are some of the contracts above Kshs. 5,000,000.00 that were not reported to the PPOA as required by directives from PPOA:

Tender	Description	Category	Method	Value(Ksh)	Supplier/contractor
TAWSB/01/2010-2011	Umanyi mtito andei water supply project	Works	ONT	120,000,000.00	Bird Civil Engineering Ltd
TAWSB/104/09-10	Consultancy Services for Transaction Advisor	Services	ONT	36,424,232.00	Osano & Associates
TAWSB/100/09-10	Supply of pipes	Goods	RFQ	11,414,000.00	General Industries
TAWSB/180/08-10	Construction of Kithaasyu Water Project	Works	RFQ	12,813,844.00	Kavumbuni General Construction
TAWSB/215/09-10	Borehole Equipping and Construction of Pump houses, Gantry, erection of water tank, steel tower, cattle troughs and water kiosks	Works	RFQ	8,281,065.00	Rural Reach Construction Co. ltd

It was also noted that the PE had procured spare parts for Kiambere-Mwingi Water Pump using direct procurement method as indicated in the minutes of the TC held on 27<sup>th</sup> February, 2010. This procurement was not reported to the PPOA as required by Regulation 62(3) of the PPDR and PPOA Circular No.4/2009 of 24<sup>th</sup> June, 2009. Further no evidence was availed to the review team to prove that prior approval was sought from TC for use of direct procurement method as required by Section 29(3) of the PPDA.

Other required notifications on termination and disposal to employees did not arise.

#### *Recommendations*

The PE should notify PPOA of all the procurement and disposal as directed by the PPOA as follows:

- All procurement contracts of Kshs. 5,000,000.00 and above;
- All terminated procurement proceedings;
- All direct procurement of Kshs 500,000.00 and above; and
- All disposals to employees.
- The PE should ensure that the above reports submitted to the PPOA using the template approved by PPOA.

#### *Response*

*PE has taken measure to ensure that all procurement contracts above Kshs. 5,000,000 are submitted to PPOA.*

### 3.24 Enquiries and Complaints Mechanism

#### *Findings*

- The Board does not have documented systems and procedures for handling bid complaints and does not keep a complaints/protest log.
- No written information was available on how complaints on the Detailed Design and Tender Documentation for Nulturesh-Machakos-Kajiando Water Supply and Sanitation Project, Lot 1 and 2, were solved.

#### *Recommendations*

PE should introduce a documented systems and procedures for handling bid enquiries and complaints and keep a complaints/protest log.

#### *Response*

*PE is setting up a system of handling bid complaint immediately*

### 3.25 Follow up of ARB decisions and recommendations.

#### *Findings*

There was no procurement taken to the review Board for the period under review. Accordingly, the PE was not evaluated on this indicator.

### 3.26 Value for Money

#### *Findings*

The PE does not consider value for money in its procurement functions in that:

- No evidence that the PE conducted market survey for common user items to ensure that it procures at the prevailing market price;
- The high value procurements for projects were linked to the consolidated procurement plans of the financial year 2009-2010;
- Requisitions have no realistic estimates for all procurement activities reviewed; and
- Floating quotation to three contractors/suppliers in all procurements done using RFQs limiting the choice of the PE
- Failure to subject suppliers/contractors who are not picked from approved list to technical evaluation to determine their competences.
- Failure to indicate the quantity required in some quotation forms e.g. Quotation for supply of business cards.
- The PE did not provide any evidence that it compared its prices with PPOA common user prices provided in the market price index. Example of items which appear to have been procured at high prices are:

Quotation No.	Item description	Unit	Qty	Awarded price (Kshs) per unit	PPOA's recommended price (kshs)	Difference (Kshs) per unit
TAWSB/186/09-10	Wheel barrow	No	1	4,200	3,045	1155
	Panga	No.	1	400	135-450*	
	Shovel	No.	1	750	320	430
	Fork jembe	No.	1	1,500	360	1140

	Wheel barrows	No.	20	4292	3,045	1247
TAWSB/225/09-10	Shovels	No.	40	464	320	144
	Panga	No.	10	232	135-450	
	Business Cards	No.	1	12	5	7
TASB/232/09-10						

***NB: \* price obtained from Uchumi Super Market***

### ***Recommendations***

- PE should ensure that standard goods, works and services are procured at the prevailing real market price as required by Section 30(3) of the PPDA;
- The PE should seek to enhance value for money.

### ***Response***

*PE has PPOA price index and also carries out regular market survey on pricing to ensure value for money is attained.*

## **3.27 Contract Management**

### ***Findings***

The team observed the following weakness in contract management:

- Individual contract files were not opened for all the contracts reviewed;
- There is no contract management plan;
- There is no file record relating to the release of bond security;
- Inception report for projects delivered not filed in the procurement file;
- Progress reports/works complete/time period completed are produced but not filed in the procurement file;
- Final report/completion of works/installation and Board not filed in the procurement files;
- There is no contract register maintained by PU.

### ***Recommendations***

PU to enhance management and administration of procurement contracts as provided in Chapter 9 of the General Manual.

### ***Response***

*PE has noted the weakness in contract management and a contract management plan is at the inception stage*

## 4 SPECIFIC FINDINGS

### Tender No.TAWSB/121/08-09

#### **Ikanga-Mutomo Water Supply Project**

**Contract Value Kshs. 129, 981, 308.00**

**Procurement Method: ONT**

- Evaluation of the tender took more than 30 days contrary to Regulation 16(5) (b). According to the evaluation report, the tender opened on 27<sup>th</sup> July, 2009, appointment letter for the evaluation committee is dated 28<sup>th</sup> August, 2009 and the evaluation was conducted between 31<sup>st</sup> August and 3<sup>rd</sup> September, 2009.
- Evaluation report did not indicate the results of the preliminary evaluation despite indicating that it was done;
- The tender sum of the successful bidder was corrected from Kshs. 137, 258, 704.00 to Kshs.129, 981, 308.00 but no indication that the bidder was notified of the correction of errors in its bid in line with Section 63 of the PPDA and Clause 34.2 of the Instruction to Tenderers.
- Evaluation report is not signed by all members of the evaluation committee.
- There were no records to ascertain that each member of the technical evaluation committee evaluated the submissions independently from the other members prior to sharing their analysis rating with other members of the technical evaluation committee as required by Regulation 16(6);
- No purchase requisition to initiate the procurement in line with Regulation 22(2)
- Individual procurement plan was not prepared as required by Regulation 22(5)
- No evidence that the outcome of the tender was communicate to all bidders at the same time in accordance with Section 67(2) of the Act
- No contact file availed to the review team

#### **Response**

*All the omissions are noted and PE has already taken measures to ensure that compliance to the PDDA & PDDR are followed to the later*

### **Tender for Detailed Engineering Design for Kitui-Masinga Water Supply and Sanitation**

**Contract Value: Kshs. 18, 883, 350.00**

**Procurement Method: ONT**

- No evidence that each member of the evaluation committee evaluated independently from each other prior to sharing their analysis.
- The evaluation report does not indicate the errors noted in the tender submitted by Otieno Odongo & Partners. Further, errors were communicated to the tender committee and not PU.
- No evidence that Otieno Odongo & Partners were informed of the correction of the errors pursuant to Section 63 of the Act and concurred with the correction before the correction was effected;



- Evaluation report does not disclose the details of the criteria used in the evaluation of tenders.
- No evidence that the procurement was initiated by a purchase requisition in line with Regulation 22(1).

***Response***

**Prequalification of Suppliers/ contractors**

- The PE did not use the standard prequalification documents contrary to Section 29(4) of the Act;
- Contractors/suppliers selected outside list of approved suppliers/contractors were not subjected to the technical evaluation;
- Biased application of the evaluation criteria/ Failed to adhere to the evaluation criteria set out in the tender documents e.g. In case of prequalification for provision of transport services, Zaburi Investments and Kitvash General suppliers were prequalified yet they had not complied with all the requirements of the tender;
- The evaluation committee exceeded its mandate by recommending that procurement of air ticketing and travel arrangement to be done through quotation after realising that no bidder had expressed interest;

***Response***

*In Prequalification of suppliers/ contractors all the weakness has been noted and corrective measures have been put in place. We have embarked on prequalification of 2011-2012.*

**Tender for Supply and Delivery of Pipes & Fittings for Various Projects**

- According to PE, this was an open tender but the following documents were not availed:
  - Tender notice inviting bidders to tender;
  - Minutes of tender opening;
  - Bids submitted by bidders
  - Blank copy of the tender documents issued to the bidders;
- Minutes of tender committee held on 23<sup>rd</sup> November, 2009 does not indicate to whom the tender was awarded and the prices at which it was awarded
- Evaluation report is not signed by the evaluation committee
- Evaluation was not done in three stages, preliminary, technical and financial in line with Regulations 47, 49 and 50 of the PPDR, despite indication in the evaluation report availed to the review team that it was done in three stages.
- The 15% preferences accorded to non-manufacturers not provided in the bid document and thus in breach of Section 66(2) of the Act

***Response***

### **Tender for Rehabilitation of Lateral Sewer between KMC and Twin Plaza, Athi River**

- Purchase requisition not used to initiate the procurement process in line with Regulation 22(1)
- Evaluation not done in three stages pursuant to Regulation 47, 49 and 50 of the PPDR
- Irregular to allocate scores to the mandatory requirements ( registration certificate, tax compliance certificate, PIN and Business permit)
- No evidence that each member of the technical evaluation committee evaluated independently from other members before sharing their analysis with others as required by Regulation 16(4).

### ***Response***

*The works did not commence due to the noted irregularities and process restarted*

### **Tender for Transaction Advisor for PPPs**

- No purchase requisition to initiate procurement as required by Regulation 22(1)
- PU did not prepare individual procurement plan pursuant to Regulation 22(5)
- No evidence that each member of the evaluation committee evaluated independently from other members as required pursuant to Regulation 16(6);
- No evidence that notification of award letters dispatched to all bidders pursuant to Section 67(2) of the Act.
- No contract file
- PE called for EOI as indicated in the tender notice. Did no conduct prequalification procedure pursuant to Regulations 23, 24 and 25 to identify the bidders to issue with tender documents. Instead process conducted like open tender.
- Evaluation took more than the 30 days period from date of tender opening as stipulated by Regulation 46.

### ***Response***

*Corrective measure is put in place*

### **Quotation No.TAWSB/031/09-10**

#### **Construction of Kalundu Dam**

- Tender was awarded to Timetrax Ltd at Kshs. 30,089,500.00
- The bidder awarded the contract is not in list of contractors provided by the PE and therefore the technical competence was not tested
- No documents were availed to enable the team to evaluate the procurement process.
- No contract signed between the PE and successful bidder was availed.
- No contract file was availed
- Used inappropriate method as the amount involved exceeded the prescribed threshold of Kshs. 2, 000, 000.00
- Minutes of the opening of the quotations and the quotation documents that were submitted by the tenderers were not availed to review team;

- The names of the evaluation team are not indicated in the evaluation report;
- Evaluation report is not signed by the evaluation committee to make it authentic

***Response***

**Detailed Design Review Kiambere-Mwingi Water Supply and Sanitation Project Phase II**

- No evidence that the procurement process was initiated through a procurement requisition in line with Regulation 22(1)
- No evidence that correction of errors were communicated to the affected bidders pursuant to Section 63 of the Act.
- Preliminary evaluation was not done
- No evidence that bidders were invited to witness the opening of financial proposals
- No evidence that correction of errors on the financial proposals was done in line with Section 63 of the PPDA

***Response***

*Omissions are noted and corrective measures have been put in place, for the same not to reoccur.*

**Tender No.TAWSB/01/2010-2011**

**Dicription:** Construction of Umanyi-Mtito Andei Water Supply Project

**Contract Value:** 120, 490, 011.77

- No evidence that the procurement process was initiated through a purchase requisition in line with Regulation 22(1) of the PPDR;
- PE did not prepare individual procurement plan for this project in line with Regulation 22(2);
- No prove that each member of the evaluation committee evaluated the tender independently from other members of the evaluation committee prior to sharing their tender analysis in line with Regulation 16(6);
- Evaluation report was signed by two out of the four evaluation committee members;
- PE did not provide copies of the notification of award letters to prove that communication of award was done at the same time to all bidders in line with Section 67(1) of the PPDA;
- According to the evaluation report, bidder number three, Sosmut Trading Co. Ltd, was found responsive at the preliminary evaluation stage but its tender was not considered at the technical evaluation stage;
- The evaluation committee recommended for negotiation with the successful bidder for reduction of scope of work to fit into budget of Kshs. 120, 000, 000.00; approval of the negotiations by the tender committee and the negotiation report were not availed to the review team.

***Response***

*PE to take measure to correct the irregularities*

## **General findings on quotations**

- All quotations are issued to three bidders only which may not be in line with Section 89(3)(b) of the PPDR which requires the PE issue quotation to as many persons as possible to ensure effective competition unless it is not practical;
- Some quotations are not signed by the PE in the space provided;
- Date for returning the quotations to the PE is provided as “immediately” which is ambiguous as regard to actual time for returning the quotations;
- Quantities required in some quotations indicated as “1” instead of indicating in the quotation the actual number of items required to guide the suppliers; e.g. Quotation No.TAWSB/186/09-2010. (Annexure 3)
- Some quotations are not stamped and signed by the supplier(s) in the space provided;
- The names of the quotation opening committee not indicated in some quotations;
- Some quotations opened by one person;
- Evaluation of all quotations was based on price alone. Technical evaluation was not done to ascertain technical competence of the persons who were not selected from prequalified list of contractors/suppliers

## **USE OF WRONG PROCUREMENT METHOD**

### ***Findings***

Request for quotation procurement method was used for soliciting bids for procurements above the prescribed threshold. Such procurements include:

- Quotation No.TAWSB/100/09-10 for supply of pipes was awarded to Genera Industries at Kshs.11, 414, 390.00 as indicated in Local Purchase Order Serial No.0371.
- Quotation No.TAWSB/180/09-10 for Construction of Kithaasyu Water Project: awarded to Kavumbuni General Contractors at Kshs. 12, 813,844.00
- Quotation No.TAWSB/271/2009-2010 for Fencing Works at Maruba Dam: awarded to Katulani Building Contractors at Kshs. 4, 447, 132.00
- Tender for procurement of transaction advisor: according to the tender notice, the PE called for expression of interest. PE did not conduct process as envisaged in the Regulations 23, 24 and 25 of the PPDR
- Splitting of orders to avoid appropriate procurement method as evidence in Quotation Nos. TAWSB/160/2009-2010 and TAWSB/162/2009-2010 which were awarded to College Hill and Naivas Ltd, Kitui in meeting held on 31<sup>st</sup> March, 2010; Quotation No.TAWSB/175/09-10, Quotation No.TAWSB/176/09-10 and TAWSB/177/2009-10 which were awarded to Motor Cross Ltd.

***Recommendation***

The Procurement Unit should ensure that the correct procurement method is used in compliance with the Threshold matrix.

***Response:***

*PU will comply with the PDDA and PDDR to ensure correct procurement method is used in compliance with the threshold matrix.*

## 5 COMPLIANCE RATING

Item	Performance Indicator	Indicates aspect of the procurement	Scores				Max score	Actual score
			3	2	1	0		
1	<b>Functions of Accounting Officer (1)</b>	The Accounting Officer is carrying out his responsibilities under Section 27 (2) of the PPDA and has ensured that the procuring entity fulfils its obligations by ensuring that all provisions of the PPDA, the PPDR and directives of PPOA are complied with		2			3	2
2	<b>Functions of Procurement Unit (3)</b>	The key procurement officials have professional qualifications in procurement and supply management from a recognised institution.				0	9	0
		The Head of Procurement Unit and key staff with procurement responsibilities have received training in PPDA, PPDR, and General Manual.		1			9	3
		The key procurement officials are members of a recognised institute of purchasing and supply.				0	9	0
		The functions of the Procurement Unit as set out in Regulation 8 of the PPDR are satisfactorily complied with		2			9	6
3	<b>Functions of Tender Committee (3)</b>	Tender Committee is established in accordance with PPDA and PPDR and holds regular meetings with minutes that conform to Regulation 12	3				9	9
		The functions of the Tender Committee as set out in Regulations 10 of the PPDR and Chapter 4.5 of the General Manual are satisfactorily complied with.	3				9	9
		The approvals by Tender Committee conform to Regulation 11.	3				9	9
4	<b>Functions of Procurement Committee (3)</b>	Procurement Committee is established in accordance with Regulation 13 and holds regular meetings with minutes that conform to Regulation 15			1		9	3
		The functions of the Procurement Committee as set out in Regulations 14 of the PPDR and Chapter 4.4 of the		2			9	6

		General Manual are satisfactorily complied with.						
		The Procurement Committee has submitted quarterly reports to the Tender Committee on contracts it has awarded				0	9	0
5	<b>Functions of the Disposal Committee (3)</b>	The Disposal Committee is established in accordance with Section 128 and holds regular meetings with minutes.			1		9	3
		The functions of the Disposal Committee as set out in the PPDA, PPDR, and Chapter 12 of the General Manual are satisfactorily complied with.				0	9	0
6	<b>Functions of Evaluation Committees (3)</b>	Evaluation committees have been appointed as and when required within the threshold of the Tender Committee	3				9	9
		The evaluation committees have undertaken technical and financial evaluation of tenders or proposals strictly in accordance with the compliance and evaluation criteria set out in the tender documents		2			9	6
		No person has been appointed to serve in the Evaluation Committee if that person is a member of the Tender Committee of the procuring entity	3				9	9
		Each member of the technical evaluation committee has evaluated independently from the other members prior to sharing his or her analysis in accordance with Regulation 16 (6)				0	9	0
		Evaluation committees have prepared a report analysing the tenders received and final ratings assigned to each tender and submitted the report to the Tender Committee in accordance with Regulation 16 (9)	3				9	9
		Tender evaluation has been completed within 30 days of tender opening (with a further 5 days allowed where there is separate financial evaluation)		2			9	6
7	<b>Functions of Inspection and Acceptance</b>	The Inspection and Acceptance Committee has been established and undertakes its functions in accordance with Regulation 17 of PPDR and Chapter 4.7 of the General				0	9	0

	<b>Committee (3)</b>	Manual and makes appropriate use of quality assurance organisations or specialists where appropriate.							
8	<b>Systems and procedures for implementation of the procurement law and regulations (3)</b>	There are comprehensive and written operational procedures and systems which are updated regularly, setting out how the PPDA, PPDR and directives are being implemented in the PE, as stipulated in Section 26(1)	3				9	9	
		The Head of the Procurement Unit is generally aware of updated publications, directives, manuals, and standard documents prepared and distributed by PPOA			1		9	3	
		The procurement publications are in a central location that is accessible to all persons who want to refer to them, as provided in Chapter 1.8 of the General Manual				0		9	0
		Manuals including the General Manual and guidelines are available to all persons involved in procurement related functions				0		9	0
9	<b>Threshold matrix and segregation of responsibilities (3)</b>	The threshold applied conforms to Section 26 of PPDA and the category determined by Gazette Notice No. 719 of 24 January 2007 and the First Schedule of Regulations.		2			9	6	
		The person responsible for procurement initiation for each procurement method and threshold is as provided for in the First Schedule of the PPDR		2			9	6	
10	<b>Record keeping of the procurement activities (3)</b>	Adequate and comprehensive procurement records are maintained in accordance with relevant provisions of PPDA, PPDR and the Procurement Records Management Procedures Manual throughout the procurement process and provide sufficient information to enable an audit or independent review		2			9	6	
		The procuring entity maintains a comprehensive and individual file for each procurement requirement containing all information, documents, and communications relating to that procurement proceeding with such files being marked with the relevant			0			9	0



		procurement reference number.						
11	<b>Procurement planning (3)</b>	All procurements have been undertaken within the approved budget of the procuring entity and have been planned by the procuring entity through an annual procurement plan, as stipulated in Section 26 of PPDA			1		9	3
		The Heads of User Departments have submitted annual departmental plans to the Accounting Officer at least thirty days before the close of each financial year as stipulated in Regulation 20 (4)				0	9	0
		Where appropriate every significant procurement has an individual procurement plan in accordance with Chapter 6.5 of General Manual				0	9	0
		All procurements are undertaken on the basis of the consolidated procurement plan which is regularly updated and linked to the approved budget of the procuring entity and approved by the Head of the procuring entity and where applicable by the board of directors or a similar body			1		9	3
12	<b>Purchase requisition (2)</b>	Each procurement proceeding is initiated using an official procurement requisition form containing all necessary information pertaining to the procurement in accordance with Regulation 22			1		6	2
		The requisitions are generated from the consolidated procurement plan			1		6	2
13	<b>Prequalification and registration of suppliers (3)</b>	There is a standing list of registered suppliers prepared in accordance with Regulation 8 (3) (a)	3				9	9
		Prequalification for works, goods and services of complex and specialized nature is carried out in accordance with the procedures in Section 32 and Regulations 23-25 and the PE has ensured that tenders are sent to all pre-qualified		1			9	3

		suppliers and contractors						
		Qualification to perform a contract is determined based on possession of the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured	3				9	9
		The PE has ensured a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c).			1		9	3
14	<b>Specifications (3)</b>	The procuring entity uses clear, objective, neutral and functional or technical specifications and in accordance with Section 34		2			9	6
15	<b>Choice of procurement method (3)</b>	Open tendering is the main procurement procedure as stipulated in Section 29			1		9	3
		Alternative procurement methods used by the PE are chosen in accordance with the criteria in Part VI of the PPDA			1		9	3
		Procurements are not split to evade the appropriate procurement method, in accordance with Section 30		2			9	6
16	<b>Preference and reservations (3)</b>	The PE has applied preferences and reservations in accordance with Section 39 and Regulation 28 and any Guidelines which may be issued				0	9	0
17	<b>Standard Tendering Documents (3)</b>	The prescribed procurement documents are used in accordance with Section 29 (4), Regulation 33 and the Third Schedule of the PPDR		2			9	6
18	<b>Advertisement of tender opportunities (3)</b>	The procuring entity has taken such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders, in accordance with Section 54	3				9	9
		Advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening	3				9	9

19	<b>Modifications to tender documents (2)</b>	Any modification to tender documents are set out in an addendum which is promptly provided to each person who obtained the tender documents, as required by Section 53 (3)					NA	NA
20	<b>Submission and receipt of bids (2)</b>	A secure facility for the receipt of tenders has been provided at the designated tender location, with two locks with keys for each lock kept by a different officer and box remaining locked until the time for tender opening.	3				6	6
		Tender opening procedures are carried out in accordance with Section 60 and Regulation 45	3				6	6
21	<b>Formation of contract (2)</b>	Notification of acceptance of tender is given to successful and unsuccessful tenderers in accordance with Section 67				0	6	0
		Written contract is entered into in accordance with Sections 68-70	3				6	6
		Bond security released and recorded in procurement file				0	6	0
		Performance bond raised and recorded in procurement file				0	6	0
		Any advance payment is adequately secured by the performance bond or bankers guarantee and recorded in procurement file				0	6	0
22	<b>Termination of proceedings (2)</b>	Any termination of procurement proceedings has been carried out in accordance with Section 36 and approved by the Tender Committee					NA	NA
23	<b>Notification to PPOA (1)</b>	Notification is provided to PPOA of				0	3	0
		(a) Contracts over Ksh 5 million						
		(b) Direct procurement over Ksh 500,000				0		0
		(c) Termination of procurement proceedings					NA	NA
		(d) Disposals to employees					NA	NA
24	<b>Enquiries and Complaints mechanism (1)</b>	There are systems and procedures for handling bidders' enquiries and complaints				0	3	0
25	<b>Follow up of</b>	The PE has taken adequate remedial action on any ARB					N.A.	NA

	<b>ARB decisions and recommendations (2)</b>	decisions and observations made following appeal						
26	<b>Value for money (3)</b>	The PE has sought to maximize economy and efficiency and to obtain value for money in its procurements			1		9	3
		The PE has compared prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate, and has procured standard goods, services and works with known market prices at the prevailing real market price, as required by Section 30 (3)				0	9	0
27	<b>Contract management (2)</b>	Contract management, including amendments and variations, is carried out in accordance with Section 47, Regulation 31 and Chapter 9 of the General Manual					NA	NA
	<b>Total</b>						462	236

N/A –the function was not evaluated hence maximum score netted off the overall rating.

**Compliance level= 211/462\*100=45.67%**

## 6 ACTION PLAN

Item	Task	By	Timeline
1	The Board increase sensitization and advance training to all those staff responsible for key stages of the functions relating to procurement processes and records management. The senior management should be included in the training to acquaint themselves with the procurement law and regulations	AO/PU	30 <sup>th</sup> September, 2011
2	PU should improve on all identified deficient areas of its functions and ensure that its undertakes its functions in accordance with Regulations 8 and General Manual	PU	14 <sup>th</sup> June, 2011
3	TC should improve on all identified deficient areas of its functions and ensure that its undertakes its functions in accordance with Regulations 10-12 and General Manual	PU/TC	14 <sup>th</sup> June, 2011
4	PC should improve on all identified deficient areas of its functions and ensure that it undertakes its functions in accordance with Regulation 13 and General Manual	PU/PC	30 <sup>th</sup> September, 2011
5	The Disposal Committee should undertake all functions as set out in the Section 128(2). Regulation 92, Regulation 8(3)(p-q) and General Manual. An annual disposal plan should be prepared.	AO/PU	14 <sup>th</sup> June, 2011
6	All identified weaknesses in tender evaluation procedures should be addressed	PU/TC	14 <sup>th</sup> June, 2011
7	Develop operational systems and procedures for implementation of the PPDA and Regulations in the Board in accordance to Section 26 (1) and the first Schedule of PPDR(the Threshold Matrix)	AO/PU	31 <sup>st</sup> December, 2011
8	The Board should upgrade its record keeping and filing systems for the procurement documents as set out in the baseline report on management of records in the TAWSB.	AO/PU	30 <sup>th</sup> September, 2011
9	PE should prepare consolidated procurement plan in accordance to the requirements of the PPDA, PPDR, and General Manual and ensure that all procurements are generated from the procurement plan. The Procurement Unit should not commence any procurement activity, which is not in the procurement plan. Head of departments to prepare their annual plans and submit to AO within 30 days before close of financial year.	PU/AO	31 <sup>st</sup> July, 2011

<b>Item</b>	<b>Task</b>	<b>By</b>	<b>Timeline</b>
10	Introduce purchase requisition forms that meet the requirements of PPDR and General Manual for User Departments to initiate procurement processes.	PU	14 <sup>th</sup> June, 2011
11	Prepare a prequalified list of all firms and individuals providing specialised services to the Board to be used for restricted tendering.	AO/PU	1 <sup>st</sup> July, 2011
12	The PE should ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c).	PU	14 <sup>th</sup> June, 2011
13	Use alternative procurement methods strictly in accordance to Part VI of the PPDA.	AO/PU	14 <sup>th</sup> June, 2011
14	Apply preferences and reservations in accordance with Section 39 and Regulation 28 and any guidelines which may be issued by PPOA	AO//PU	14 <sup>th</sup> June, 2011
15	The Board to start using standard tender documents to initiate and process all procurements as provided in the PPDR and General Manual	AO/PU	14 <sup>th</sup> June, 2011
16	Ensure that tender opening procedures are carried out in accordance with Section 60 and Regulation 45	PU	14 <sup>th</sup> June, 2011
17	Ensure that all termination of procurement proceedings are done in accordance with Section 36 of PPDA and that notification is sent to PPOA as stipulated in the directives issued by PPOA.	PU	14 <sup>th</sup> June, 2011
18	Prepare notification to PPOA for all: <ul style="list-style-type: none"> <li>• Contracts over Ksh 5 million</li> <li>• Direct procurement over Ksh 500,000</li> <li>• Termination of procurement proceedings</li> <li>• Disposals to employees</li> </ul>	PU	14 <sup>th</sup> June, 2011
19	Develop systems and procedures for handling bidders' enquiries and complaints	AO/PU	31 <sup>st</sup> July, 2011
20	Develop measurable mechanisms that seek to maximize economy and efficiency and to obtain value for money in the Board's procurements. Compare prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate.	PU	14 <sup>th</sup> June, 2011
21	Develop comprehensive contract management systems and procedures that comply with Section 47 of PPDA, Regulation 31 and Chapter 9 of General Manual	PU	14 <sup>th</sup> June, 2011

## **7 CONCLUSION**

The team have reviewed procurement functions and procedures to verify whether they conform to the PPDA and the related regulations. We have also assessed whether the functions comply with generally accepted good practices. We have identified deviations in general areas and procurement stages and attached ratings to them.

The major challenges in the Board are in the area of recordkeeping, data and documentation controls, and inadequate contract management. Retrieving records for review purposes was slow, time consuming and even for the files made available, some records pertaining to fulfilment of the procurement process were incomplete, limiting the review scope. The PU did not provide several records requested for the exercise despite several reminders.

The team have included a tentative action plan, which will be discussed and agreed with the PE, for follow-up on the recommendations to ensure that the corrective measures are carried out in order to improve compliance, efficiency, and effectiveness in procurement management.

The office of the internal auditor needs to be strengthened through capacity building to verify, examine, and determine that every transaction comply with the Act and regulations.

The team is pleased that the Tanathi Water Services Board senior management welcomed the review exercise as a mechanism to identify and address shortcomings and weaknesses in the compliance with PPDA and associated regulations.

Overall, TAWSB has demonstrated an unsatisfactory level of compliance at 45.6% (against the minimum threshold of 60%) with PPDA, and the regulations and guidelines in respect of the sampled procurement transactions. The PE should therefore 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.

## Annexure 1: Summary of selected tenders

### 1. Tender No.TAWSB/121/08-09 for Construction of Ikanga Mutomo Water Project

Tender advertised on 6<sup>th</sup> July, 2009

Tender opened on 27<sup>th</sup> July, 2009

No. of bidders who responded was as follows:

S/No.	Bidder's Name	Tender Sum (Kshs.)	Bid bond
1.	Birdi Civil Engineers	139, 083, 113.40	700, 000.00
2.	Semeha Engineering Works	148, 898, 407.90	700, 000.00
3.	Wstbuilt General Contrcators	160, 746, 652.00	700, 000.00
4.	Zamawa Construction Co.	120, 090, 465.00	700, 000.00
5.	Polyphase Systems Ltd	210, 076, 931.96	700, 000.00
6.	Katulani Building Construction	137, 989, 871.00	Not provided
7.	Pepco Kenya Ltd	153, 221, 324.30	700, 000.00
8.	Niaz Engineering Enterprise Ltd	211, 130, 315.00	700, 000.00
9.	Hardi Enterprises	121, 768, 045.30	700, 000.00
10.	Victory Construction	132, 923, 538.00	700, 000.00
11.	Nyoro Construction Co. Ltd	219, 286, 512.50	700, 000.00
12.	Centurion Engineering & Builders ltd	108, 846, 073.40	Not provided
13.	Kenmas	106, 528, 537.00	700, 000.00
14.	Mellech Engineering & Construction	134, 337, 626.50	700, 000.00
15.	Libex Construction	162, 371, 647.90	700, 000.00
16.	Gaps Construction Co. Ltd	186, 504, 340.00	700, 000.00
17.	World Treat Water Systems	124, 303, 828.00	700, 000.00
18.	Njama Ltd	163, 900, 000.00	700, 000.00
19.	Pasha Enterprises	135, 120, 651.60	700, 000.00
20.	Juanco Contech Ltd	141, 320, 360.00	700, 000.00
21.	Imara Enterprises	137, 258, 704.00	700, 000.00
22.	Intex Construction	195, 673, 643.00	700, 000.00
23.	Tumac Engineering Services	385, 130, 425.20	Not provided

Out of 23 bidders who responded, 17 were disqualified at the preliminary evaluation stage. The evaluation committee did not record the reason(s) for their disqualification. Six bidders namely, Birdi Civil Engineers, Semeha Engineering Works, Victory Construction, Nyoro Construction Co. Ltd, Libex Construction and Imara Enterprises attained the cut-off score of 75% at the technical evaluation stage and therefore passed to financial evaluation stage. Tender was awarded to Imara Enterprises on 4<sup>th</sup> September, 2009 as recommended by the evaluation committee at corrected tender sum of Kshs.129, 981, 308. The evaluation committee did not indicate the errors that were noted on the bids submitted by three bidders including the successful bidder. Contract between the PE and the contractor was made on 28<sup>th</sup> September, 2009.

### 2. Tender for Detailed Engineering Design for Kitui-Masinga Water Supply and Sanitation

**Contract Value: Kshs. 18, 883, 350.00**

Date of opening - 2<sup>nd</sup> September, 2009

All bidders attained the cut-off score of 75% and qualified for opening of financial proposals on 21<sup>st</sup> September, 2009.



Quoted prices were as follows:

S/No.	Bidder's Name	Tender Sum (Kshs.)
1.	Wanjohi Consulting Engineers	8, 502, 800.00
2.	Otieno Odonon & Partners	20, 826, 350.00
3.	Ivory Consult Ltd	11, 908, 560.00
4.	Gauff Ingenieure	28, 950, 000.00
5.	Professional Consultants	13, 653, 200.00
6.	Bhundia Associates	20, 578, 400.00
7.	Runji & Partners	18, 161, 737.20
8.	Norken International Ltd	24, 690, 631.00
9.	Samez Consultants	22, 495, 996.00
10.	Howard Humphreys	22, 983, 300.00

- Tender sum of Otieno Odongo & Partners was corrected from Kshs. 20, 826, 350.00 to Kshs. 18, 883, 350.00 on the ground that whereas its financial proposal was presented as Kshs. 20, 826, 350.00, the actual sum was Kshs. 18, 883, 350.00;
- Errors that was noted in the bid submitted by Otieno Odongo & Partners was not provided by the evaluation committee;
- The evaluation committee did not indicate in the evaluation report the evaluation criteria used the computation of the combined score;
- PE did not provided blank copy of the tender document issued to the bidders to enable it to establish whether the criteria were properly followed;
- Tender awarded by TC on 6<sup>th</sup> October, 2009 to Otieno Odongo & Partners but the minutes of the committee does not indicate the price at which the tender was awarded;
- Contract document between PE and the bidders awarded the contract was not availed.

### 3. Prequalification of Suppliers/contractors

It involved prequalification of suppliers/contractors for the FY 2009-2010 for thirty three (33) categories of goods, works and service.

Advertised on 12<sup>st</sup> May, 2009 and opened on 4<sup>th</sup> June, 2009.

Upon evaluation, the PE developed a list of prequalified suppliers/contractors

### 4. Tender for Transaction Advisor for PPPs

Procurement method	-	EOI
Date of advertisement	-	29 <sup>th</sup> June, 2009
Date of opening	-	13 <sup>th</sup> July, 2009
No. of firms responded	-	Four (4No.)

Tendered prices were as follows:

S/No.	Bidder	Tender Sum (Kshs)
1.	RSM AsHVIR	18, 967, 150.00
2.	Osano & Associates	31, 400, 200.00
3.	Calmex Construction	38, 504, 000.00
4.	Benchmark	46, 304, 000.00

Tender awarded by TC on 13<sup>th</sup> January, 2010 to Osano & Associates at Kshs. 36, 424, 232.00 having attained the highest combined score of 83.3%. The awarded price was higher than the quoted prices on the ground that price was exclusive of VAT. However, the PE did not provide a blank of the tender document to enable the review to establish whether the tenderers were required to quote inclusive or exclusive of VAT.

Contract period: 3 months

### **Quotation No.TAWSB/031/09-10 for Construction of Kalundu Dam**

#### **Procurement Method: Quotation**

Quotations issued on - 15<sup>th</sup> July, 2009

No. of firms invited - 7

No. of firms responded - 5

Quoted prices were as follows:

S/No.	Bidder	Quoted Price (Kshs.)
1.	Pasha Enterprises	30, 248, 400
2.	Timetrax Ltd	30, 089, 500.00
3.	Katulani Building Contractors	34, 290, 000.00
4.	Natco Ltd	39, 043, 500.00
5.	Ali Mohammed General Merchants & Contractors	37, 220, 000.00

Quotations opened on 10<sup>th</sup> August, 2009.

Awarded made by the tender committee to Timetrax Ltd on 27<sup>th</sup> August, 2009 at Kshs.30, 089, 500.00 after price comparison of the quoted prices. Technical evaluation was not done on the ground that the bidders were selected from prequalified list of contractors. Minutes of the award are not signed by tender committee members.

However, it was noted that Timetrax Ltd was not one of the 61 prequalified firms for provision of building, civil and structural engineering works. Therefore its technical capacity was not tested as the evaluation was based on price alone.

### **Detailed Design Review Kiambere-Mwingi Water Supply and Sanitation Project**

#### **Phase II**

Method of procurement: EOI

Date advertised: 1<sup>st</sup> July, 2009

Closing date : 22<sup>nd</sup> July, 2009

No. of bidders responded: 14

- Results of the evaluation of the EOI were not provided despite indicating that all the bidders were qualified and hence invited to submit their technical and financial proposals;

- No information on the invitation to submit technical and financial proposals was provided.
- Technical evaluation report does not indicate the parameters/evaluation criteria that were used for evaluation. It only provided the scores of the bidders;
- The rationale of grouping bidders into lot A and B was not provided in the evaluation report;
- Seven bidders were disqualified at the technical evaluation stage on the ground that they did not attain cut-off score of 70%. No reasons were provided for their failure to meet the cut-off score;

Date of opening financial proposals: 4<sup>th</sup> November, 2009

Quoted prices

Lot A:

S/No.	Bidder	Tender Sum (Kshs.)
1.	Cas	30,705,000.00
2.	Samez	38,295,350.00
3.	Connex	26,586,500.00
4.	Runji	38,628,861.00

- Evaluation of financial proposals was not provided in the evaluation report.
- Tender was awarded by TC on 18<sup>th</sup> November, 2009 to Runji Consulting Engineers at Kshs. 38,734,274.50 having attained the highest combined score of 82.42%

**Lot B**

S/No.	Bidder	Tender Sum (Kshs.)
1.	Bhundia	28,730,000.00
2.	Frame	27,442,500.00
3.	Samez	27,973,500.00

Tender was awarded by TC on 18<sup>th</sup> November, 2009 to Frame Consulting Engineers at Kshs. 27,442,500.00 having attained the highest combined score of 90.22 %

#### **6. Tender No.TAWSB/01/2010-2011**

**Description:** Construction of Umanyi-Mtito Andei Water Supply Project

**Contract Value:** 120,490,011.77

- Tender was advertised on 2<sup>nd</sup> June, 2010 and opened on 10<sup>th</sup> August, 2010

Tenderers responded as follows:

S/No.	Bidder	Tender sum (Kshs)
1.	Braodvision Utilities Ltd	186, 850, 408.51
2.	S. S. Mehta Ltd	297, 708, 850.00
3.	Sosmut Trading Ltd	251, 655, 666.00
4.	Victory Construction Co. Ltd	211, 988, 664.56
5.	Njama Ltd	286, 513, 556.00
6.	Ignition Merchants Ltd	245, 142, 186.22
7.	Kirinyaga Construction (K) Ltd	264, 805, 735.00
8.	Irico International Ltd	141, 990, 459.39
9.	Midroc Water Drilling Co. Ltd	154, 875, 918.20
10.	Niaz Engineering Enterprises Ltd	163, 455, 556.00
11.	Birdi Civil Engineering Ltd	151, 745, 964,.40
12.	Unan Construction Co. Ltd	248, 877, 711.35
13.	Pasha Enterprises	231, 901, 091.20
14.	Joycot General Contractors Ltd	264, 807, 642.12
15.	Benma Technical Services Ltd	254, 871, 442.30

- Evaluation done in three stages namely preliminary, technical and financial evaluation stages;
- Four bidders, Braodvision Utilities Ltd, Ignition Merchants Ltd, Funan Construction Ltd and Pasha Enterprises were disqualified at preliminary evaluation. No reason is provided for their non-responsiveness;
- Tender that was submitted by Sosmut Trading Co. Ltd was not considered in the technical evaluation despite an indication in the preliminary evaluation that their bid was responsive;
- Out of ten bidders, three bidders namely Victory Construction Co. Ltd, Midroc Water Drilling Co. Ltd and Birdi Civil Engineering Ltd qualified for financial evaluation;
- In its evaluation report dated 23<sup>rd</sup> August, 2010, the evaluation committee did not recommend the award of the tender to the lowest evaluated tenderer in line with Regulation 16(10) (f). Instead it recommended for negotiation with the lowest evaluated tenderer to scale down the scope of works to fit into the budget of Kshs. 120 , 000, 000.00;
- Tender awarded to Birdi Civil Engineers Ltd at Kshs. 120, 490, 011.77 by TC in its meeting held on 23<sup>rd</sup> August, 2010;
- Results of the negotiation not provided to the review team; and
- Negotiations are not envisaged in open tenders
- The scope of works that was reduced is not provided

## Annexure 1

### Quotation above prescribed threshold (Quotation above maximum limits for use of Request for Quotation Method)

S/No	Quotation No.	Description	Category	Bidder	Quoted price (kshs.)
1.	TAWSB/001/09-10	Supply and Delivery of terameter machines	Goods	Yantai Enterprises	3, 500, 000.00
2.	TAWSB/002/09-10	Supply and Installation of Genset Pump	Goods	Davis & Shirliff	1, 724, 470.00
3.	TAWSB/024/09-10				
4.	TAWSB/032/09-10	Rehabilitation of Mutomo Ikanga Earthe dam	Works	Kalesh Hardware	2, 597, 000.00
5.	TAWSB/035/09-10	Supply of pipes and fittings –kwa fonza pipeline	Goods	Demjo Enterprises	1, 112, 900.00
6.	TAWSB/052/09-10	Borehole Drilling (200m) depth at IIngosuani Community Water Project	Works	Mountain View General Contractors	2, 291, 500.00
7.	TAWSB/058/09-10	25 water Tanks (10, 000 lts),	Goods		2, 500, 000.00
		15 water tanks (5000 lts)			615, 000.00
					<b>3, 115, 000.00</b>
8.	TAWSB/075/09-10*	Supply and Installation of 3 core submersible cable (25mm <sup>2</sup> each core) and splicing kits	Goods/wor ks	Davis and Shirliff	2, 616, 000.00
9.	TAWSB/076/09-10	Supply of Pipes & Fittings	Goods	Kinetics Engineering	2, 878, 660.00
10.	TAWSB/083/09-10	Rehabilitation of Kwa Loa Earth Dam	Works	Karesh Enterprises	2, 507, 000.00
11.	TAWSB/085/09-10	Water Tanks 24m <sup>3</sup> , 10m <sup>3</sup> , 5m <sup>3</sup>	Goods	Pasha Enterprises	2, 179, 450.00
12.	TAWSB/088/09-10				
13.	TAWSB/106/09-10	Hire Equipment/bulldozers	Services	KICEDA	3,060, 000.00
14.	TAWSB/135/09-10	improve water intake structure at Masinga Dam, Kitui	Services	Frame Consultants Ltd	5, 306, 365.00
15.	TAWSB/164/09-10	Pipes for Machakos District	Goods	Ibrahim Mohammed Kassam Contractors	1, 942, 200.00
16.	TAWSB/180/09-10	Supply of Pipes	Goods	General Industries Ltd	3, 128, 245.00
17.	TAWSB /184/09-10	Construction of 3km pipeline 50m <sup>3</sup> masonry water tank valve chambers and anchors at Kyoea/Kikunu WP	Works	Ngutani Gen. Contractors	4, 871, 06000
18.	TAWSB/205/09-10	Supply & Installation of submersible	Goods	Davis & Shirliff	2, 834, 803.00
19.	TAWSB/215/09-10	Borehole Equipping & construction of pump house, gantry. Erection of water tank, steel tower, cattle troughs and water tank	Goods	Rural Reach Construction	8, 381, 065.00
20.	TAWSB /180/09-10	Construction of Kithaasyu Water Project	Works	Kivumbuni Gen. Contractors	12, 813, 844.00
21.	TAWSB/209/09-10	Borehole drilling 300m depth at Ilasit Lotoktok district	works	Pure Water	2, 295, 500.00
22.	TAWSB/262/09-10	Construction/renovation of farm house at Ithookwe	Works	Rural Reach Construction Co.	4, 306, 653.00
23.	TAWSB/250/09-10	Installation of automatic water system Wendano	Goods	Groundfos Lifeline	3, 480, 000.00

S/No	Quotation No.	Description	Category	Bidder	Quoted price (kshs.)
24.	TAWSB/270/09-10	Pipes	Goods	General Industries Ltd	1, 371, 900.00
25.	TAWSB271/09-10	Fencing of Maruba Dam	Works	Katulani Building Contractors	4, 447, 132.00
26.	TAWSB/254/09-10	Construction of extension of Machakos Water Supply to Kenya-Israel Estate	Works	Ibrahim Mohammed Kassam	16, 105, 430.00
27.	TAWSB/265/09-10	Services for Safety Measures Training at Workplace	Services	Eridity Consultants (E.A)	3, 496, 000.00
28.	TAWSB/ 222/09-10	Construction of Ibissel Water Project in Kajiando	Works	Katulani Building Contractors	4, 924, 730.00
29.	TAWSB/ 240/09-10	Refilling of Machakos Sewerage Ponds as per contract No.240/09-10		High View Cnsturction Co.	3, 600. 000.00
30.	TAWSB /55/09-10	Fabrication, Delivery, Installation and Erection of 40m <sup>3</sup> storage tank on a 1m steel tower at Mukaa District		David Engineers	2, 299, 696,.00
31.		Borehole Equipping and Construction of Pump house Gantry erection of water tanks steel tower cattle troughs and water tank	Goods	Reach Construction	4, 222, 815.00
32.	TAWSB/140/09-10*	Staff uniform	Goods	Kat Michaels	1, 340, 000.00
33.	TAWSB /278/09-10	Supply and Delivery of tanks to Athi River District	Goods	Roto Moulders Ltd	6, 104, 000.00
34.	TAWSB/194/09-10	SUPPLY AND Delivery of pipes to Loitoktok District	Goods	Limatrax Ltd	1, 370, 070.00
35.	TASWB/167/09-10	Business Plan for WSP's	Services	Creative Resource Centre for sustainable Development	2, 400, 000.00
36.				TOTAL	128, 831, 898.3

NB: Quotation No.

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TAWSB/140/09-10 was raised three times for different items. Awarded to Kat Michaels in all instances.

TAWSB/075/09-10: LPO altered

TAWSB/270/09-10: do not tally with the quotation register. Also issued twice to same bidder

## Annexure 2

### Tenders above threshold for advertising but were not advertised

1.	TAWSB/031/09-10	Construction of Kalundu Dam	Works	Timetrax Ltd	30,000,000.00
2.	TAWSB/215/09-10	Borehole Equipping & construction of pump house, gantry. Erection of water tank, steel tower, cattle troughs and water tank	Goods	Rural Reach Construction	8,381,065.00
3.	TAWSB /180/09-10	Construction of Kithaasyu Water Project	Works	Kivumbuni Gen. Contractors	12,813,844.00
4.	TAWSB/254/09-10	Construction of extension of Machakos Water Supply to Kenya-Israel Estate	Works	Ibrahim Mohammed Kassam	16,105,430.00
5.	TAWSB /278/09-10	Supply and Delivery of tanks to Athi River District	Goods	Roto Moulders Ltd	6,104,000.00
6.	<b>TOTAL</b>				<b>65,031,655365</b>

## Annexure 3

S/no	item	Qty in RFQ	Qty in LPO	Deviation	Cost for qty in RFQ	Total cost for Qty in LPO	Difference
1.	Wheel barrows	1	20	19	4,292.00	85,840.00	81,548
2.	Shovel	1	40	39	464.00	18,560.00	18,096
3.	Spring jembes	1	40	39	754.00	30,160.00	29,406
4.	Panga	1	10	9	232.00	2,320.00	2088
5.	Tape 50 m	1	1	0	1160.00	1,160.00	0

### Note:

1. The number of items indicated in the RFQ is different from the number indicated in the LPO
2. The PE did not provide information on how the decision to vary the quantity required was arrived at
3. The PE could have enjoyed economies of scales if it had provided the suppliers with full information of the quantity required.