



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

FINAL REPORT

**WESTLANDS CONSTITUENCY DEVELOPMENT
FUND**

PROCUREMENT REVIEW

REVIEW PERIOD: 01 JULY 2007 - 30 JUNE 2008

DECEMBER 2009

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TABLE OF ACRONYMS

AIE	Authority to Incur Expenditure
AO	Accounting Officer
CDF	Constituency Development Fund
D	Minor Deviations
DC	Disposal Committee
DD	Moderate Deviations
DDD	Major Deviations
DG	Director General
DP	Direct Procurement
EC	Evaluation Committee
FY	Financial Year
GOK	Government of Kenya
HoD	Head of Department
IA	Internal Auditor
KNAO	Kenya National Audit Office
LPO	Local Purchase Order
LSO	Local Service Order
LVP	Low value Procurement
MP	Member of Parliament
OB	Occurrence Book
OIT	Open International Tender
ONT	Open National Tender
PC	Procurement Committee
PE	Procuring Entity
PO	Procurement Officer
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 Quotations
RT	Restricted Tender
SP	Satisfactory Performance
SPP	Specially Permitted Procurement
TC	Tender committee

EXECUTIVE SUMMARY

This report is a product of a procurement review that was carried out in Westlands Constituency Development Fund office based in Westlands Nairobi. The review was conducted from 28th April to 25th May 2009. It was intended to cover the financial year commencing 1st July 2007 to 30th June 2008.

The Government of Kenya spends about 60% of its budget in procurement of goods and services through the public sector. As a result it has become important to ensure that procurement function is efficiently carried out. For this purpose necessary legislation was passed to guide the conduct of public procurement. The law passed is the Public Procurement & Disposal Act 2005 (PPDA) and the Public Procurement & Disposal Regulations 2006 (PPDR). The Public Procurement Oversight Authority, the body that was created by the same law to oversee public procurement also issues circulars to further guide Procurement Entities (PE) in the conduct of procurement. The purpose of this review was therefore to gauge the level of compliance to the Public Procurement law by the Constituency Development Fund (CDF) Office of Westlands Constituency.

The mandate and the formation of CDF emanates from the CDF Act of 2003 which was revised in 2007.

Westlands CDF office has attempted to comply with the PPDA and PPDR but needs to address key requirements prescribed by PPDA and PPDR. A Tender Committee is in place and performs the tasks of the other statutory procurement Institutions which is contrary to the requirements of the PPDA and PPDR. No formal contracts are signed between the Contractor and the office. Adherence to the threshold matrix and use of Standard Tender documents are not observed. Statutory reports to PPOA are not made where necessary as in the case of construction of Lavington Secondary School whose value is over Kshs. 5M.

Recommendations have been made in the areas where deviations were found. Some of the Key recommendations include the use of open tendering, use of Standard Tender Documents, proper contract management, strengthening the institutional capacity as prescribed by the law and networking with relevant Ministries and Departments during implementation of projects to supplement the skills gap (in compliance to Section 30(1) of the CDF Act).

The report has also recommended to the PPOA a follow-up to assist the CDF Office implement the given recommendations. Some recommendations suggest that the educational background of those appointed in the CDF Committee be considered to ensure that those appointed to the Tender Committee (TC) have the potential to undertake such a task.

1.0 INTRODUCTION

The Public Procurement and Disposal Act, 2005 and Public Procurement Regulations, 2006 became operational on 1 January 2007. The Act established the Public Procurement Oversight Authority (PPOA), which, inter alia, is mandated to monitor the public procurement system, report on its overall functioning, and recommend areas of improvement. To this end, the Authority has been carrying out Procurement and Disposal Reviews of the Kenya's public procurement system in order to establish its state of compliance with the procurement law, circulars and directives issued by the Authority. The principal goal of this exercise is to help entities develop capacity building programs to enable them better apply the provisions of the Act and the Regulations. This exercise is one of the ongoing activities at PPOA with the long term goal of reviewing all public entities.

It is in this light that PPOA contracted Lindi Agencies to conduct procurement reviews of category 'C' PEs selected across the various sectors in which Westlands Constituency Development Fund was among those selected.

1.1 PPOA Mandate in Public Procurement

PPOA procurement review function is conferred by section 49 1 (a) of PPDA:

“The DG, or anyone authorized by the DG, may inspect at any reasonable time, the records and any accounts of the PE and contractor relating to the contract and the PE and contractor shall cooperate with and assist whoever does such an inspection.”

The Ag. Deputy Manager Compliance Department of PPOA wrote to the Fund Manager Westlands CDF on 21st April 2009 making him aware that a review would be carried out. The letter also contained a list of documents and information to be provided.

1.2 Responsibility of Procuring Entity

To ensure that priority projects emanating from the community are implemented using the funds from the CDF. Priority projects range from Health Sector, Education Sector, Infrastructure, Security and other pressing needs of the community.

1.3 Entry Meeting

The Ag. Deputy Manager, Compliance Department of the PPOA, Mr. P.K. Ndung'u arranged for an entry meeting of the review on 28th April at 9.30 am at CDF offices situated in Westlands.

The CDF team was comprised of the following:-

- i. Simon Mugo – Chairman of TC
- ii. Ibrahim Kiplagat – Secretary to the TC
- iii. Josephine Night – TC Member
- iv. Job M. Mutini – Fund Accounts Manager (ex officio member TC)

The team representing the PPOA comprised of the following:-

- i. Peter K. Ndung'u – Acting Deputy Manager Compliance PPOA

- ii. Stanley Miheso – Compliance Officer PPOA

Lindi consultants review team comprised of the following:-

- i. N. N. Wachira – Team Coordinator
- ii. Ernest W. Kinuthia – Team Leader
- iii. M. A. Edebe – Consultant
- iv. W. K. Murithi – Consultant
- v. J. W. Wamaguru – Consultant

Purpose of the Meeting:

- i. To formally introduce Lindi Agencies’ Ltd. Consultants to Westlands CDF officials by the PPOA.
- ii. To highlight the importance of conducting the review.
- iii. To advise on the type of review and the period it would take.
- iv. To explain the respective responsibilities of both the PE and the reviewer.
- v. To advise on the key deliverables and the course of action on the outcomes by the PPOA.

Key Remarks by Mr. P.K.Ndung’u, the Acting Deputy Manager Compliance:

- 1. The review would assess the compliance of the PE to the Public Procurement & Disposal Act 2005 and Public Procurement & Disposal Regulations 2006, and the other circulars issued by PPOA as they performed the procurement function.
- 2. The review would also bring to light the challenges facing the PE as it implements the cited law. Such findings would be useful when amendment of the law is addressed.
- 3. The review was to address procurements carried out in the financial year 2007/2008 only. The review was not intended to be an investigation and that Westlands CDF was randomly chosen among potential PEs in that category.
- 4. The PE was to provide all the documents and information that the Reviewers might need to carry out the exercise within the period given.
- 5. The report of the review will be discussed with the PE during the Exit Meeting and later will be posted in the PPOA Website.
- 6. The findings of the review would guide PPOA on the type of assistance the PE may require to improve on its compliance to the PPDA & PPDR and other PPOA circulars, as it performed the procurement function. The assistance may range from capacity building by training to recommendation that procurement function be out sourced from professionals.

1.4 General Objectives

The general objective of the review was to establish the degree of compliance to the PPDA and PPDR, Circulars and any of the directives issued by PPOA and to propose recommendations for remedial measures against weaknesses identified.

1.4.1 Specific Objectives

- i. To ascertain the level of compliance to the PPDA & PPDR.
- ii. To understand the constraints causing the non-compliance if any.

- iii. To gauge the efficiency in the implementation of projects.
- iv. To establish staffing levels in the PE and their understanding of procurement law
- v. To establish if appropriate institutional structures have been put in place to conduct the procurement function.
- vi. To establish if procurements of goods, services and works are implemented as specified.
- vii. To find out whether goods, services and works are supplied within the market prices.

The scope of the procurement review

Reviewing contract administration and management

1. Reviewing the capacity of implementing agencies in handling procurement efficiently, comment on the quality of procurement and contracting; and identify reasons for delay if any
2. Determining whether adequate systems are in place for procurement planning, implementation and monitoring and documentation are maintained as per required standards
3. Determining whether the required institutional arrangement is in place
4. Confirming that all necessary supporting documents, records are kept in respect of all relevant procurement
5. Comparing and rating cost of key items across the various Procuring Entities with prevailing market prices
6. Verifying whether Goods, works and Consulting Services contracted were supplied/ completed according to the required specifications and technical standards;
7. Verifying whether there has been any disagreement, either between the Accounting Officer and the Tender Committee, or between the Tender Committee and the Procurement Unit; and how such disagreements were handled and eventually disposed of;
8. Verifying whether there are any reasons given for direct procurements. Indicate whether these reasons would suffice (are genuine) as provided for in the Act, Regulations and Guidelines;
9. Verifying whether the firms awarded contracts are registered with the registrar of companies, and who are the directors;
10. Verifying whether there are any cases where a member of the PE involved in the procurement and disposal process has ever declared his/her interest in any contract, to avoid conflict of interest; and whether such a member's interest was eventually awarded the contract or not;
11. Preparing a report on the findings of the procurement audit; and
12. Providing recommendations that will remedy any weaknesses identified by the audits.

2.0 BACKGROUND AND ORGANISATION OF WESTLANDS CDF

2.1. Mandate

The CDF office of Westlands Constituency is vested with the responsibility of identifying and implementing priority projects to benefit the residents of the constituency. These projects cut across sectors such as health, education, security, infrastructure to name but a few.

2.2 Vision

The constituency has not yet prepared its strategic plan. It is in the process of preparing one, which is to be in line with Vision 2030. Once it is done, the Constituency will put its own in place.

2.3 Mission

The mission is also awaiting the drafting of a strategic plan

2.4 Functions of the Procuring Entity

- To co-ordinate the identification of priority projects from the community and forward the same to the National CDF Office for funding.
- To co-ordinate the procurement of goods, works and services once funds are received.
- Monitor and manage the contracts.
- To assist with the payment of contracts after completion of projects.
- Receive and address grievances arising from implementation of contracts.

2.5 Funding

Funds for the constituency are allocated by Parliament through the National Office of the Constituency Development Fund.

The funds are administered using the Constituency Development Fund Act of 2003 which has been amended in 2007.

3.0 REVIEW METHODOLOGY AND SPECIFIC FINDINGS

3.1. Key documents

1. Project files
2. Minutes of the Tender Committee
3. Minutes of the main CDF Committee
4. Budget Estimates

3.2. Interviews

The review also involved discussions with persons involved in procurement. It was noted that the CDF does not have permanent staff involved in procurement. Members of the TC meet only once in a month or in case of a pressing need to adjudicate various procurements. The Fund Accounts Manager is the one involved in day to day implementation of projects.

3.3. Persons interviewed during the review

NAME	TITLE	ROLE
Munyi Mutini	Fund Accounts Manager	Accounting Officer
Ibrahim Kiplagat	TC Secretary & Secretary to Bursary Committee	TC Secretary

3.4. Sampling

3.4.1. Selection of Samples

A total of 11 samples of procurement transactions (total population) were selected in accordance with the procedures outlined in the Procurement Review Manual.

Number of samples	Estimated initial compliance with PPDA %									
	10	20	30	40	50	60	70	80	90	100
	Probability of finding a sample which does not comply with PPDA %									
3	99.90	99.20	97.30	93.60	87.50	78.40	65.70	48.80	27.10	0
4	99.99	99.84	99.19	97.44	93.75	87.04	75.99	59.04	34.39	0
5	100	99.97	99.76	98.98	96.88	92.22	83.19	67.23	40.95	0
6	100	99.99	99.93	99.59	98.44	95.33	88.24	73.79	46.86	0
7	100	100	99.98	99.84	99.22	97.20	91.76	79.03	52.17	0
8	100	100	99.99	99.93	99.61	98.32	94.24	83.22	56.95	0

9	100	100	100	99.97	99.80	98.99	95.96	86.58	61.26	0
10	100	100	100	99.99	99.90	99.40	97.18	89.26	65.13	0

The review team estimates compliance level they would be looking for to be the actual since the whole population was taken. The review included all areas and categories of procurement functions in all the contracts. The sampling table which is adapted from international standard EN45503 in this case does not apply.

3.4.2. Distribution of the procurement methods in the samples reviewed

Procurement Method	Number
OIT	-
ONT	-
RT	-
RFQ	11
RFP	-
DP	-
LVP	22

3.4.3. Details of the samples reviewed

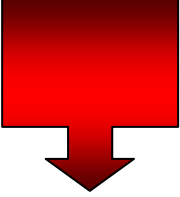
(i) Request for Quotations

Item No.	Project Name and Code	Sector	Method	Amount
1	006/02 Kangemi Maternity	Health	RFQ	2,600,000
2	006/51 Mji wa Huruma	Health	RFQ	1,000,000
3	006/56 Kilimani Primary	Education	RFQ	2,000,000
4	006/57 Nairobi Primary	Education	RFQ	518,000
5	006/59 Lavington Sec. Sch.	Education	RFQ	6,000,000
6	006/61 School Furniture	Education	RFQ	1,000,000
7	006/64 Karura Primary	Education	RFQ	500,000
8	006/52 Mpaka Road Bridge	Infrastructure	RFQ	3,700,000
9	006/50 Mau Mau Police Post	Security	RFQ	2,500,000
10	006/62 Lighting of slums	Security	RFQ	2,960,000
11	006/14 CDF office Equipment	Administration	RFQ	989,990.40
	Totals			23,767,990.40

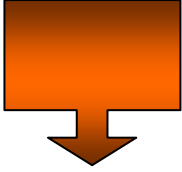
(ii) Low value procurement (values aggregated for the reviewed period)

ITEM NO.	ITEM DESCRIPTION	No. of Orders	AMOUNT
1	Transport (period covered)	5	153,350
2	Communication (Airtime)	7	48,600
3	Stationery Assorted	5	32,630.40
4	Assorted Maintenance	5	50,282.40
	Totals		284,862.80

3.4.4 Rating Criteria

<p>Major Deviation (DDD)</p> 	<p>Where the major requirements of the PPDA and PPDR were not adequately followed. This could cause material, financial loss or carry risk for the regulatory system or the entity's reputation. These cases include deficiencies in the structures and systems to implement the law and regulations, or where the procedures have been so flawed that there is severe risk of mis-procurement or procurement fraud such as:</p> <ul style="list-style-type: none">• Procurement procedures are not integrated within the financial framework of the entity;• Main structures are not appointed and operationalised e.g.<ul style="list-style-type: none">Accounting OfficerTender CommitteeProcurement UnitProcurement CommitteeDisposal CommitteeInspection and Acceptance CommitteeTender Opening CommitteeEvaluation Committee.• Coverage not complete<ul style="list-style-type: none">ProcurementContract managementDisposalGoods, works and service• Standard and specific committees not meeting as stipulated;• No consolidated procurement plan linked to approved budget;• Lack of procedures for making procurement decisions;• Not adhering to the threshold matrix;• Improper choice of procurement procedures;• Procurements inflated;• Lack of approved prequalified list for suppliers;• Lack of annual disposal plan;• Inappropriate influence on evaluation;• Inadequate protection of confidential information;• Lack of comprehensive procurement records;• Tender committees not meeting as required;• Tender evaluation committees not appointed in accordance with the Act;• Not reporting to PPOA as required;• Many key procurement records that are stipulated by law for retention are missing <p>Such cases warrant immediate attention by the Accounting Officer.</p>
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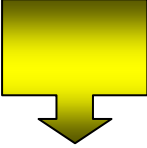

Moderate
Deviation
(DD)



Where procurement procedures were considered to have significant omissions or deviations, including:

- Some procurement records are missing;
- Lack of central comprehensive procurement files;
- Procurement unit not functioning as per the regulations.
- Lack of signatures on key minutes
- Choice of selection procedure not justified;
- Contracts over Kshs. 5million not reported to PPOA;
- Criteria for the evaluation of proposals not specified in the tender documents;
- Award Letter missing;
- Description of goods, works or services in the bid not adequate;
- Entities with recurring or ongoing requirements have not analyzed their medium to long term needs to adopt long-term arrangements or framework contracts;
- No evidence of analysis of bid documents by Tender Evaluation Committee;
- Lack of evidence of commencement certificate in contract missing;
- Lack of evidence of contract being countersigned by AO;
- Evidence of performance bond not in the contract file;
- Inspection and acceptance certificates confirming delivery not available;
- No justification/Authorization for Applying the method;
- No authorized procurement requisitions;
- Non-disclosure of tender evaluation details;
- No specified period of validity of tenders;
- Prequalification proceedings not adequate;
- Absence of award criteria in tender documents;
- Absence of procurement requisitions;
- Record of procurement proceedings not comprehensive;
and
- Inadequate oversight by internal auditor.

These weaknesses warrant immediate attention of the senior management.

<p>Minor Deviation (D)</p> 	<p>Where procurement practices and procedures conformed to most regulations, though there were deviations, which are relatively small in quantity, size or degree and are low in risk. These weaknesses warrant immediate attention of the procurement unit or user department. The deviations include:</p> <ul style="list-style-type: none"> • Absence of an Award Letter in procurement file; • Absence of authorization Date of LPO; • Absence of Invoice copy in the procurement file; • Absence of LPO Authorization; • Absence of LPO or LSO in the procurement file; • All tenderers not informed of the result of a tendering process in accordance with the law; • Anti corruption mechanisms not defined and published; • Commencement of contract date missing; • Date of evaluation committee report or recommendation letter missing; • Date of the bid opening missing; • No evidence of performance bond in the contract file; • Goods or Services Received Note missing in file; • Inadequate monitoring of contracts awarded; • Incomplete procurement plan; • Methods and criteria for selecting firms and for awarding contracts are not documented; • Records are available but not in the procurement file; and • Time limits for replies not adhered to. <p>These weaknesses should be addressed by senior management as part of an ongoing improvement plan.</p>
<p>Satisfactory Performance (SP)</p> 	<p>Where procurement practices and procedures met the requirements of the law and regulations and were considered to meet standards of good practice.</p>

3.4.5 Limitation of scope

- Unavailability of some procurement records & a computer with some procurement data as recorded at Kileleshwa Police Station under OB/17 of 7th June 2008 and OB/18 of the same date.
- Lack of proper handing over of documentation to the new Fund Accounts Manager and the new CDF Committee caused some information gap (A Treasurer to the main CDF Committee passed on in January 2008. First Manager was appointed on 7th November 2007 and resigned in April 2008. The current one was posted in November 2008. On May 2008, the CDF Committee was suspended and a new committee appointed on 16th July 2008).
- The office does not maintain Quotation/Tender register. This made it more difficult to track down each procurement.

3.4.6 Specific Findings

(i) Request for Quotations

Item No.	Code And Project Name	Procurement Method	Findings	DDD	DD	D
1	006/2- Kangemi Maternity	RFQ	Not adhering to threshold matrix Standard tender documents not in use Contract not signed Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X X X	X	X
2	006/1- Mji wa Huruma	RFQ	Not adhering to threshold matrix. Standard tender documents not in use. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X X	X	X X
3	006/56- Kilimani Primary School	RFQ	Not adhering to threshold matrix. Standard tender documents not in use. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X X	X	X X

Item No.	Code And Project Name	Procurement Method	Findings	DDD	DD	D
4	006/57- Nairobi Primary School	RFQ	Not adhering to threshold matrix. Standard tender documents not in use. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X X	X	X X
5	006/59-Lavington Secondary School	RFQ	Not reporting to PPOA Not adhering to threshold matrix. Standard tender documents not in use. Failure to advertise. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond.	X X X X	X X X	X
6	006/64- School Furniture	RFQ	No clear specifications drawn No approved list of suppliers. Some procurement records missing All tenderers not informed Acceptance and inspection certificate unavailable		X X	X X X
7	006/64-Karura Primary School	RFQ	Not adhering to threshold matrix. Standard tender documents not in use. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X	X X	X X
8	006/52-Mpaka Road Bridge	RFQ	Not adhering to threshold matrix. Standard tender documents not in use. Failure to advertise. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X X	X X	X X

Item No.	Code And Project Name	Procurement Method	Findings	DDD	DD	D
9	006/50- Mau Mau Police Post	Unclassified	No procurement rules followed Could cause material, financial loss or entities reputation	X X		
10	006/62- Lighting of Slums	RFQ	Not adhering to threshold matrix. Standard tender documents not in use. Contract not signed. Procurement prices inflated Inadequate monitoring of projects. No evidence of performance bond	X X X	X	X X
11	006/16- Office Equipment	RFQ	Inspection and Acceptance certificates unavailable Procurement unit is not established	X	X	

(ii) Low value procurement (aggregated for the reviewed period)

Item No.	Item Description	Procurement Method	Findings	DDD	DD	D
1.	Hire of Transport	LVP	No proper authorization No documentation of supply sources No receipts or invoices are maintained No established criteria for choice of supply sources	X	X	X
2.	Communication (Airtime)	LVP	No proper authorization No receipts of invoices are maintained	X		X
3.	Stationery Assorted	LVP	No proper authorization No documentation of supply sources No invoices or receipts are maintained No established criteria for choice of supply sources Order splitting	X	X X	X
4.	Minor Repairs maintenance of the buildings (various)	LVP	No proper authorization No documentation of supply sources No invoices or receipts No established criteria of choice for supply sources	X	X X	X

4.0 PROFILE OF PROCUREMENTS IN REVIEW PERIOD

4.1 Total Value of Procurement (In Kshs)

Procurement Method	Civil Works	Goods	Services	Total
RFQ	17,288,040	1,989,990.40	978,686	20,256,716.40
LVP	50,282.40	32,630.40	153,350	236,262.80
TOTAL	17,338,322.40	2,022,620.80	1,132,036	20,492,979.20

4.2. Number of Procurements in Procurement Period/ Reviewed

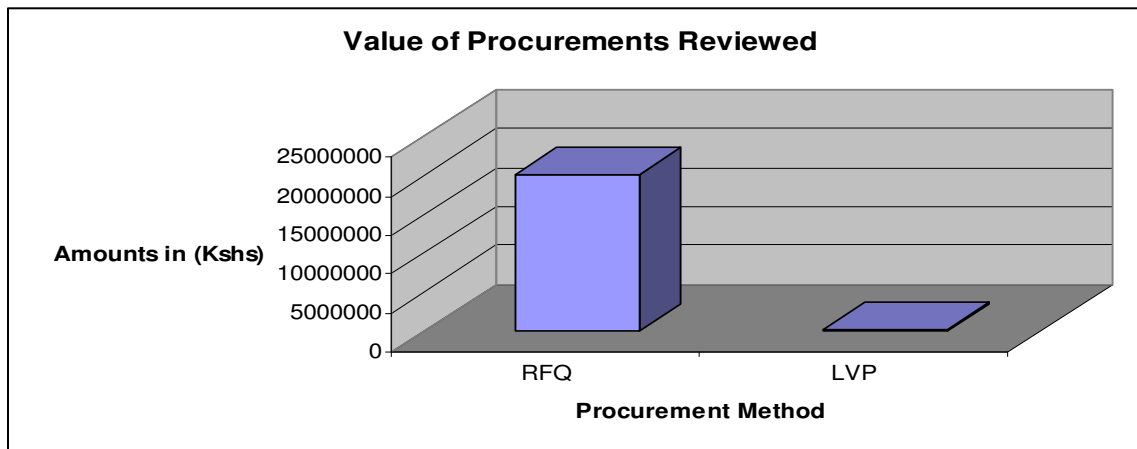
Procurement Method	Civil Works	Goods	Services	Total
RFQ	9	2	0	11
LVP	5	5	12	22
TOTAL	14	7	12	33

4.3. Number of Physical Inspections

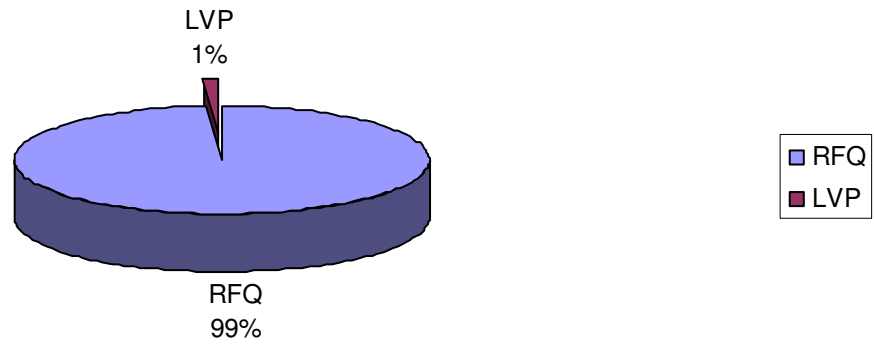
Procurement Method	Civil Works	Goods	Services	Total
RFQ	6	2	0	8
LVP	5	5	12	22
TOTAL	11	7	12	30

4.4. Total Value of Procurements Reviewed (In Kshs)

Procurement Method	Civil Works	Goods	Services	Total
RFQ	17,288,040	1,989,990.40	978,686	20,256,716.40
LVP	50,282.40	32,630.40	153,350	236,262.80
TOTAL	17,338,322.40	2,022,620.80	1,132,036	20,492,979.20



Value of Procurements Reviewed



5.0 GENERAL FINDINGS AND RECOMMENDATIONS

5.1. Inadequate Institutional capacity

Findings

It was found that all the institutions that are prescribed by the Act and the Regulation (PPDR Part II) with the exception of the Tender Committee were lacking.

Tender Committee was in place but appointment of members was not as prescribed by the second schedule of PPDR and Section 26(4) of the Act. However no individual letters of appointment were issued to members. Other committees such as procurement committee, Tender and Quotation Opening Committees, Evaluation Committees, Inspection and Acceptance Committees were not being appointed as necessary. Procurement unit has not been established. The Tender Committee ended up performing the roles of these committees hence undermining the maxim of the separation of powers for enhanced transparency.

This was precipitated by lack of staff capacity in terms of numbers and skills. The Fund Accounts Manager who is an accountant by profession single-handedly performed the role of a procurement unit and procurement committee.

Members of the Tender Committee

1. Simon Mugo – Chairman
2. Ibrahim Kiplagat – Secretary (Secretary to bursary fund in main CDF Committee)
3. Bruno Agonga – Member
4. DO Westlands – Member
5. Josephine Night – Member
6. Francis Amboka – Member (Chairman to main CDF Committee)
7. Job M. Mutini - (Ex- officio member)

NB: These appointments compare well with the second schedule paragraph 16(b) except for the secretary who should be the secretary to the CDF Development Committee.

Recommendation

Establishment of the statutory institutions for carrying out procurement is vital for systematic performance of procurement function.

The prescribed institutions for carrying out the procurement function outlined above should be put in place. The National office should address the issue of staff shortage as it appears to be a constraint.

5.2. Poor Record Management

Findings

The office did not maintain a Quotation/Tender Register which assists in sequencing and numbering of individual procurements.

Records were lost and destroyed when CDF Committee was suspended and a new one installed as reported in Kileleshwa Police Station under OB/17 & OB/18 of 7th June 2008.

Proper Record Management is a statutory requirement of the Act (Section 45) and Regulation 34.

Recommendation

The national CDF office should train staff on record management skills.

Back up information should be kept in case of physical loss of records or computer.

Maintain Quotation/Tender registers for ease of tracking individual procurements in a Financial Year.

5.3. Lack of Separation of Powers

Findings

The TC and the Fund Accounts Manager perform most of the functions.

One of the major objectives of the Act and the Regulations is to enhance transparency and in the process of procurement so as to minimize corruption. It has instituted various committees to perform various functions during a procurement process. This ensures that there is segregation of duties and responsibilities throughout entire process, hence, checks and balances.

Recommendation

Westlands Constituency CDF should ensure that all statutory institutions for procurement are put in place and are functional. These include a Procurement Unit (Regulation 8(1)), Procurement Committee (Regulation 13), Tender Opening Committees for tenders (Section 60 (7)(a)), Evaluation Committees (Regulation 16(1)), Inspection & Acceptance Committees (Regulation 17). The Tender Committee should be appointed in compliance to the Second Schedule No. 16(b).

5.4. Anomalies in the Procurement Function

Findings

The generation of projects at grass root level and the consequent vetting by the District Project Committee and eventually the national CDF office for funding does not leave room for conventional annual procurement planning. Some of the projects forwarded may be struck at the funding level.

It is not clear how needs are generated for the procurement of goods and services for running the CDF office. No procurement plans are drawn for them. There are no stores ledgers maintained. There is no Inventory Register. There is no method to account for the items after procurement. There is no Inspection & Acceptance Committee to vet on quality and quantities. They are not put on charge.

There are no issue or receipt documents. Valuable office equipment is issued out to CDF Committee Members for temporary use and there is no documentation.

For example some office equipment procured under code 00/16 were issued to some CDF Committee Members for temporary use but no records were maintained.

Recommendation

Comprehensive procurement plans should be drawn in compliance to Section 27(2) and Regulation 7(d), 20(3) and 21(2) for all procurements for running the office.

A comprehensive inventory should be maintained for the assets of the office. A stock control mechanism should be put in place to assist in accounting for the stores and in procurement planning.

5.5. Poor Contract Management

Findings

There is a Monitoring & Evaluation Committee which is complemented by technical experts once in a while. The experts are sourced privately and sometimes from the City Engineer. Despite this the quality of completion of projects is very poor.

It was noted that no formal contract agreements for all projects was signed between the contractor and the CDF Office contrary to Section 68 of PPDA. Dates of commencement and completion, payments terms were not spelt out.

Contract management (Section 4(b)) is key to quality and timely completion of projects given that small works comprise the highest percentage of the Westland CDF budget.

Recommendation

A formal contract agreement spelling out the responsibilities of the contractor and those of the CDF Office should be entered into as provided for under Section 68 of PPDA.

Payments should be made after certification by technical experts competitively sourced. Where formal agreements have been entered, payment is made according to the terms of the contract.

5.6. Failure to use Open Tendering

Findings

Westlands Constituency sources goods, services and works from the firms from the Constituency in the belief that the funds are intended to benefit the constituents. Section 31.1 of the CDF Act states;

‘All works and services relating to projects under this Act shall be sourced using existing Government procurement regulations.’

This disposition has led to inflated pricing of projects that prompted the Patron to order withholding of payments to contractors (Minutes of CDF meeting dated 16th December 2008).

Open tendering is the prescribed method of procurement for given thresholds, PPDA (Section 29.1). The intention is to promote competition and in the process get value for money.

Recommendation

Only open tendering should be applied where thresholds allow and there should be no splitting of orders to allow adequate competition.

5.7. Irregularities in the Procurement Function

Findings

ITEM NO.	REQUIREMENTS BY THE LAW	IRREGULARITY FOUND	EXPLANATION GIVEN
1.	Regulation 6 requires a PE to undertake procurement in accordance with the thresh hold matrix	The PE did not observe the thresh hold matrix in choice of procurement procedure as all procurements were made through the request for quotation.	Lack of awareness on the requirement
2.	Regulation 7(a) require a PE to appoint TC members in accordance to 2 nd schedule	The only committee the PE has appointed is the TC. Secretary to TC is the Secretary to the Bursary Committee which is contrary to 2 nd schedule 16(b) of Regulations (Constituency Development Committee Secretary should be TC Secretary)	Lack of awareness on the requirement
3.	To enhance separation of powers, enlisted sections of PPDA & PPDR require establishment of the following institutions; <ul style="list-style-type: none"> • Procurement Unit- Section 26 & Regulation 7(b) • Procurement Committee- Regulation 13(1) • Co-ordination of receiving & opening tenders- Regulation 8(3)(c) • Tender Evaluation Committee- Regulation 16(1) • Inspection & Acceptance Committee- Regulation 17(1) 	The PE has not appointed these committees. Instead TC members are overlapping by performing roles of these committees.	Lack of awareness on the requirement
4	Regulation 8(3) (a) requires PE's to maintain and update annually lists of registered tenderers that it needs.	It was observed that no list was prepared and the PE did not make use of a prequalified list of another PE.	Lack of awareness on the requirement
5	Section 58(5) requires a PE to have a tender box for security of bids.	The PE does not have tender box.	Lack of awareness on the requirement
6	Regulations 29 advocate the use of standard tender documents.	These were not in use.	Lack of awareness on the requirement
7	Regulation 34(3) requires each procurement to have its own file in which all communication is kept.	This is being partly complied with since not all the documents of a single procurement are in one file.	Improvement shall be made

ITEM NO.	REQUIREMENTS BY THE LAW	IRREGULARITY FOUND	EXPLANATION GIVEN
8	Section 26(3) and regulation 20(5) require a PE to have a procurement plan.	This was not observed for procurements for running the office.	Lack of awareness on the requirement

Recommendation

The Fund Accounts Manager is not a procurement professional and since he is responsible for carrying out most of these functions, he should be trained on PPDA and PPDR. He should also ensure that he posses copies of these documents. Members of the TC should also be sensitized in the Act and Regulations.

5.7.1 The Function of the Procurement Unit as Stipulated by Regulation 8.3

	REQUIREMENTS OF REGULATION	OBSERVATION
1.	Maintain and update annually standing lists of registered tenderers required by the procuring entity and liaise with the Authority in respect of the Authority's register of suppliers and procuring agents. (Regulation 8.3a)	None was maintained by the PE.
2.	Prepare, publish and distribute procurement and disposal opportunities including invitations to tender, pre-qualification documents and invitations for expressions of interest. (Regulation 8.3b)	The PE never observed this requirement.
3.	Coordinate the receiving and opening of tender documents. (Regulation 8.3c)	Not observed by PE. The PE did not have a tender box at the time of the review.
4.	Maintain and safeguard procurement and disposal documents and records in accordance with these regulations. (Regulation 8.3d)	The PE poorly maintained procurement and disposal documents and records.
5.	Submit shortlists and lists of pre-qualified tenderers to the tender committee or procurement committee for approval. (Regulation 8.3e)	Not observed by PE.
6.	Issue procurement and disposal documents to candidates in accordance to the Act and these Regulations. (Regulation 8.3f)	Not observed by PE.
7.	Propose the membership of evaluation committee to the Accounting Officer for approval. (Regulation 8.3g)	Not observed by PE.
8.	Coordinate the evaluation of tenders, quotations and proposals. (Regulation 8.3h)	Poorly managed and no documentation.
9.	Recommend a negotiating team for appointment by the Accounting Officer where negotiations are allowed by the Act and these Regulations and participate in negotiations. (Regulation 8.3i)	Not observed by PE.
10.	Prepare and publish notices of award and notices of tender acceptance. (Regulation 8.3j)	Not observed by PE.
11.	Prepare contract documents, in line with the award decision. (Regulation 8.3k)	Not observed by PE.
12.	Prepare and issue rejection and debriefing letters. (Regulation 8.3l)	Not observed by PE.
13.	Prepare contract variations and modifications to documents. (Regulation 8(3)(m))	Not observed by PE.

	REQUIREMENTS OF REGULATION	OBSERVATION
14.	Maintain and archiving documents and records of the procurement and disposal activities for the required period. (Regulation 8.3n)	Attempt made but poorly done contrary to Regulations.
15.	Provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures. (Regulation 8.3o)	No situation was observed.
16.	Implement the decisions of the procurement, tender and disposal committees including coordinating all activities of these committees. (Regulation 8.3p)	Poorly done.
17.	Act as a secretariat to the tender, procurement and disposal committees. (Regulation 8.3q)	Poorly managed.
18.	Liaise with the Authority and other bodies on matters related to procurement and disposal. (Regulation 8.3r)	Rarely and none was documented.
19.	Prepare and submit to the Authority reports required under the Act, these Regulations and guidelines of the Authority. (Regulation 8.3s)	Not observed by PE.
20.	Monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts. (Regulation 8.3t)	Poorly observed by PE.
21.	Report any significant departures from the terms and conditions of the contract to the head of the procuring entity. (Regulation 8.3u)	Not observed by PE.
22.	Advise the procuring entity on aggregation of procurement to promote economies of scale (Regulation 8.3x).	Not observed by PE.
23.	Co-ordinate internal monitoring and evaluation of the supply chain function. (Regulation 8.3y)	Not observed by PE.
24.	Carry out periodic market surveys to inform the placing of orders and adjudication by the relevant award committee. (Regulation 8.3z)	Not observed by PE.
25.	Conduct periodic and annual stocktaking. (Regulation 8.3aa)	Not observed by PE.
26.	Certify the invoices and payment vouchers to suppliers. (Regulation 8.3bb)	None was observed.
27.	Approve extension of the tender validity period. (Regulation 8.3cc)	Not observed by PE.
28.	Verify that the available stock levels warrant initiating a procurement process. (Regulation 8.3ee)	Not observed by PE.

Findings

The PE had not established a Procurement Unit hence the provision of Regulation 8.3 were greatly undermined.

Recommendation

The PE should establish a procurement Unit to ensure that all the provisions of the law as stated in Regulation 8.3 are observed.

5.8. Mandatory Reporting to PPOA

Findings

Statutory reports to PPOA especially on procurement of Kshs 5M and above were not observed as in the case of the construction of Lavington Secondary School whose value is above Kshs. 5M.

Recommendation

Direct procurements above Kshs. 5M should be reported to PPOA.

6.0 EXIT MEETING

An exit meeting with the CDF's management team was organized on 10th Dec, 2009 after the fieldwork and compilation of the Final Draft Report. Mr. Maurice J.O. Juma, the PPOA' Interim Director General, P.K. Ndung'u, the Ag. Deputy Manager Compliance led both the PPOA and Lindi Agencies Ltd. teams in the meeting. The PE's team was led by Mr. Job Munyi Mutini, the CDF Manager. The meeting was held in the CDF's Board Room.

Present

Name	Designation	Organization
Job M. Mutini	CDF Manager	CDF Westlands
Bruno Agonga	CDF Treasurer	CDF Westlands
Simon Mugo	Chairman of CDF-TC	CDF Westlands
Martin Muli Mutuku	CDF Member	CDF Westlands
Patrick A. Nagila	CDF Secretary	CDF Westlands
Josephine Night Opondo	TC Member	CDF Westlands
Dalip H. Abdi	DO/CDF Member	CDF Westlands
Francis Amoni	Member	CDF Westlands
Mr. Maurice J.O. Juma	Interim Director General	PPOA
Peter K. Ndungu	Ag. Dep. Manager Compliance	PPOA
Joseph Kimani	Asst. Snr. Compliance Officer	PPOA
N.N. Wachira	Team Coordinator	Lindi Agencies Ltd.
Ernest W. Kinuthia	Team Leader	Lindi Agencies Ltd.
W.K. Murithi	Consultant	Lindi Agencies Ltd.
Samuel W. Nderitu	Consultant	Lindi Agencies Ltd.

Purpose of the Exit Meeting

The purpose of the exit meeting was to primarily discuss the review's final draft report and more specifically the key findings and the recommendation for improvement in an action plan.

Mr. Ndung'u thanked the PE for the cooperation it had accorded the consultants during the review exercise which was carried out both satisfactorily and successfully.

He reminded the PE that the review was in respect to the period 1st July 2007 to 30th June 2008 and observed that since that period, the PE may have put in place some of the requirements of the new Procurement Law. However, a lot is still required to be done so as to be fully compliant with the PPDA and PPDR.

The Interim Director General emphasized that, in the light of the findings in the report, compliance in the following key areas was unsatisfactory and in need of immediate remedial action:

1. Establishment of statutory structures and separation of duties in respect to the procurement function.
2. Procurement planning and its links to budgets and expenditure.
3. Compliance with the Financial Threshold Matrix (the First Schedule).

4. Initiation and authorization of purchase requisitions.
5. Use of standard tender documents.
6. Contracting and contract management.
7. Records management and
8. Mandatory reporting to PPOA.

Presentation of the Key Review Findings by the Consultants and the PE's Response.

Mr. Kinuthia, team leader, Lindi Agencies presented a summary of the key findings contained in the final draft report which had been forwarded by the PPOA to the PE.

The PE led by the CDF Manager confirmed that the report had been received and studied and having been taken through the summary of the key findings felt that it was a fair and accurate record of the situation as it were during the financial year under review but indicated that a lot have been implemented and achieved and therefore the current picture is totally different as shown in the action plan below.

Way Forward

In view of the above and based on the findings contained in the report, recommendations for improvement in form an action plan which would be implemented by the procuring entity and monitored by PPOA was discussed and agreed upon with the Westlands CDF.

7.0 ACTION PLAN

No.	Tasks	Lead Accountable	Time	PPOA Review Date
1	Sensitize all persons involved in procurement function on PPDA & PPDR	PPOA/ CDF National Office	31 st January, 2010	
2	Appoint TC Members as stipulated in the procurement law and special of issues of Kenya Gazette Supplement N0. 63, Legislative Supplement N0.38 of 18 th September, 2009. Such members should have the requisite educational qualification to understand and interpret the provisions of the procurement law and perform their duties	CDF Manager	31 st December, 2009	
3	Hire or train a staff with procurement skills	CDF National Office	31 st January, 2010	
4	Appoint TC Members as stipulated by law	CDF Manager	31 st December, 2009	
5	Put in place all procurement institutions prescribed by law	CDF Manager	31 st December, 2009	
6	Adhere to the thresh hold matrix in all procurements	CDF Manager/TC Members	10 th December, 2009	
7	Use open tendering as the preferred method where thresh hold allow	CDF Manager/TC Members	10 th December, 2009	
8	Maintain and update annual standing list of suppliers or make use of a list of another PE	CDF Manager/TC Members	31 st March, 2010	
9	Adopt standard practice of using experts for drawing of technical specifications, coming up with estimates and contract management of works projects as required by procurement law	CDF Manager/TC Members	10 th December, 2009	
10	Improve on record management for all procurement records and provide backup in soft copies incase of loss in compliance with the Act & Regulations	CDF Manager	10 th December, 2009	
11	Make use of the appropriate	CDF Manager	10 th December, 2009	

No.	Tasks	Lead Accountable	Time	PPOA Review Date
	Standard Tender Documents in procurement function			
12	Maintain an Inventory for all assets of the CDF office.	CDF Manager	Being implemented	
13	Adopt a proper Stock control method and an accountable process of issues and receipts	CDF Manager	10 th December, 2009	
14	Proper Contracts be drawn and duly signed by the contractor and the PE	CDF Manager	10 th December, 2009	
15	Make statutory reports to PPOA as provided for under circular No. 4.	CDF Manager	10 th December, 2009	

8.0 CONCLUSION

The Constituency Development Fund has a unique set-up that is governed by the Constituency Development Fund Act of 2003 which was revised in 2007.

Section 23(1) of the CDF Act mandates the elected MP to constitute the CDF committee within the 1st 60 days of a new parliament or by-election. Although the Act gives guidance on the sectors they are to be appointed from, however, whoever gets appointed has a bearing on the appointing authority. The biggest number that constitutes the CDF Tender committee are appointed from the greater CDF Committee. It is of utmost importance to ensure that, the education background of those members is commensurate with the demands of carrying out the procurement function. This factor needs to be taken care of.

Section 31(1) of the CDF Act is clear and emphatic that “All works and services relating to projects under this Act shall be sourced using existing Government Procurement regulations.”

The biggest challenge for the Westlands CDF is to implement all the provisions of the PPDA and PPDR. The roles of the different parties must be clearly understood. The patron should allow the TC, to operate freely. All the prescribed institutions for undertaking the procurement must be put in place to allow the separation of powers to enhance transparency and accountability.

Thresholds must be adhered to especially in the choice of the procurement procedure. Open tendering must be used where threshold allow for greater competitiveness.

The use of the standard tender documents should be adopted for uniformity in bidding procedure. Contract Management should be done in accordance with the provisions of the law to ensure parties adhere to the contractual obligations.

Record management should be improved, and maintained in accordance with the requirements of the PPDA and PPDR. Statutory reports to PPOA must be regularly submitted.

The office must maintain an inventory for the CDF assets, and install stock control mechanism to guard against losses and to assist in planning.

Section 30.1 of the CDF Act stipulates that “Projects to be implemented with the assistance of the relevant Government Departments.” This was not evident in Westlands CDF as portrayed by the haphazard implementation of some of the projects.

Westlands Constituency should take the advantage of this provision and seek assistance of professionalism in Government Ministries and Departments to overcome these enormous

handicaps in performing the procurement function. These may include use of pre-qualified suppliers of other PEs.

The procuring entity is urged to fast track implementation of the agreed actions steps contained in the action plan to improve the compliance level to the Procurement Law and guarantee transparency, accountability and value for money.