



**PUBLIC PROCUREMENT OVERSIGHT AUTHORITY**

*Transforming Procurement*

**FINAL REPORT**

**ELDORET MUNICIPAL COUNCIL**

**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
CO	Clerical Officer
D	Minor Deviations
DD	Moderate Deviations
DDD	Major Deviations
DP	Direct Procurement
EMC	Eldoret Municipal Council
FY	Financial Year
GoK	Government of Kenya
IA	Internal Auditor
IPR	Independent Procurement Review
KACC	Kenya Anti Corruption Commission
KRB	Kenya Roads Board
LAIFMIS	Local Authority Integrated Financial Management Information Systems
LATF	Local Authority Transfer Fund
LPO	Local Purchase Order
LSO	Local Service Order
LVP	Low value Procurement
OIT	Open International Tender
ONT	Open National Tender
PE	Procuring Entity
PIN	Personal Identification Number
PO	Procurement Officer
POL	Petroleum, Oils, Lubricants
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
VAT	Value Added Tax

## **EXECUTIVE SUMMARY**

The report is based on the outcome of the procurement review of the Eldoret Municipal Council undertaken by Lindi Agencies on behalf of PPOA.

The review was carried out from 5<sup>th</sup> May, 2009 to 15<sup>th</sup> June, 2009. The objective of the exercise was to review the status of the council's procurement, contracting and implementation processes in order to determine the level of compliance with the procurement law, regulations, circulars, and directives issued by the Public Procurement Oversight Authority and generally acceptable professional best practices principles.

The review considered the performance of procurement functions for the period 1<sup>st</sup> July, 2007 to 30<sup>th</sup> June, 2008. The scope of the review comprised the areas of procurement and disposal process from initiation to completion undertaken by the Council.

The field work was carried out by going through the procurement procedures and processes as practiced by the Procuring Entity, interviewing key persons involved in the procurement function, and interrogation of documents relating to procurement processes from initiation to completion.

The detailed results of the review and the recommended action plan are included in the report. Findings in respect to the background of the procuring entity and specific procurements findings as they relate to each of the areas considered are highlighted. Also included in the report are general findings and recommendations as they relate to each of the reviewed activity.

Among the general findings, it was noted that the required institutional arrangements, standing and specific committees are in place and well constituted in accordance with PPDA. During the year under review procurement plans were non existent and the management of procurement records was poor and needs to be improved in compliance with Section 45 (2) of PPDA. Mandatory reporting to PPOA was not being observed in contract awards exceeding Kshs. 5 Million and termination of procurement proceedings and disposal to employees.

Issues coming out from this report caused some concern as they could constrain transparency, accountability and integrity. The Accounting Officer should embark on addressing them as they were felt to be critical to the success of achieving compliance with the procurement law and hence maximise efficiency, economy and value for money.

## **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 Eldoret Municipal Council was among those selected.

### **1.1 Mandate of PPOA**

PPOA is mandated with the responsibility of the following among others:-

- Ensuring that procurement procedures established under the Act and Regulations are complied with;
- Monitoring the procurement systems and reporting on its overall functioning;
- Assisting in the implementation and operations of the public procurement system.
- Initiating public procurement policy.

Section 49(1)(a) of the Act, provides for the PPOA's procurement review function, which states 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 contractor shall co-operate and assist whoever does such an inspection. Upon this, the Director General wrote to the Town Clerk of the Eldoret Municipal Council, informing him that the review would take place and attached the checklist of the information and documents to be provided by the Municipal Council.

In this regard PPOA contracted Lindi Agencies Ltd. to carry out this review exercise.

### **1.2 Responsibility of a procuring entity**

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 in respect to each of its procurements.

### **1.3 Specific Review Objectives**

The main purpose is to carry out review of the status of Eldoret Municipal Council's procurement activities, in order to establish the level of compliance with the Procurement Law.

#### **The specific objectives of this procurement review are:**

1. To verify the procurement and contracting procedures, processes and documentation followed by EMC in order to determine whether they were carried out in accordance with the Public Procurement and Disposal Act 2005 and the associated Regulations;
2. To establish the Municipal Council's adherence to the general principles of economy and efficiency, equal opportunities, transparency, integrity, fairness, and value for money;
3. To determine the technical compliance, physical completion and price competitiveness of each contract in the selected representative samples;
4. To review the capacity of EMC to handle procurement efficiently, comment on the quality of procurement and contracting, and identify reasons for delays, if any;
5. To establish whether adequate systems are in place for procurement planning, implementation and monitoring and whether reliable documentation is maintained as required by the law;
6. To establish whether recommended actions made in the previous reviews have been carried out successfully;

7. To make recommendations for improvement in action plan which will be followed up to establish whether these improvements have been implemented;
8. To assist in clarification of areas where EMC may have misunderstood the requirements of the legislation; and
9. To identify weaknesses e.g. capacity needs, lack of equipment, which impede good performance and need to be rectified.

#### 1.4 Entry meeting

An entry meeting with the Municipal Council's management team was organized on 5<sup>th</sup> May 2009 before the commencement of fieldwork. Mr. P.K. Ndung'u, the Ag. Deputy Manager Compliance led both the PPOA and Lindi Agencies' Ltd. teams in the entry meeting. The PE's team was led by Mr. Stanislus Ondimu, the Town Clerk. The meeting was held in the Eldoret Municipal Council Hall.

#### Present

No.	Name	Designation	Organization
1	Stanislus Ondimu	Town Clerk	EMC
2	Joseph C.Koech	Deputy Town Clerk	EMC
3	Moses Olum	Chief Public Health Officer	EMC
4	Wasike Wanyama	Admin Officer	EMC
5	James Ochieng	Municipal Engineer	EMC
6	Musambay Josephat	PAO	EMC
6	Samson Changwony	Acting Procurement Officer	EMC
7	Paul Cheserek	Admin Officer	EMC
8	Nalika Francis	ICT Officer	EMC
9	Joseph K. Chelule	Director Environment	EMC
10	Pius Munialo	MEO	EMC
11	Amos K. Kirwa	DMEO	EMC
12	Richard Rotich	Ag DSSH	EMC
13	Ratcliffe Nangalama	DCPHO	EMC
14	Lutta Jones	Snr. Architect	EMC
15	George Okeyo	PHO 1	EMC
16	Nicholas Ngenu	RCH 1	EMC
17	Millicent Okonjo	Deputy Municipal Treasurer	EMC
18	Sarah Siambi	C.O (Procurement)	EMC
19	Allan Mauka	Town Treasurer	EMC
20			
21	Peter K. Ndungu	Ag. Deputy Manager Compliance	PPOA
22	Stanley Miheso	Compliance Officer	PPOA
23	N.N. Wachira	Team Coordinator	Lindi Agencies Ltd.
24	Ernest W. Kinuthia	Team Leader	Lindi Agencies Ltd.
25	Titus Kanina	Consultant	Lindi Agencies Ltd.
26	Robert Hamadi	Consultant	Lindi Agencies Ltd.

#### Purpose of meeting

The purpose of the meeting was for the Public Procurement Oversight Authority (PPOA) to:-

1. Formally introduce Lindi Agencies' team of consultants to the Eldoret Municipal Council team.
2. To inform EMC the purpose of carrying out the procurement review.

3. To advise on matters in respect to the type of review/audit and the period to be covered by the subject review.
4. To advise in respect to the anticipated duration of the review exercise and the stages in which it would be carried out.
5. To advise on what is expected of both the consultants and the EMC and expected deliverables following the exercise and how such deliverables will be dealt with by the PPOA.
6. To advise on the likely impact following the findings of the review.

**Mr. Peter Ndung'u advised as follows:**

1. That the review was primarily to assess the performance and the compliance of the Procuring Entity (PE) with the procurement law which is specifically the PPDA and PPDR.
2. The review would also address the challenges that the PE is encountering as it implements the said law. This, he said, would be useful when the amendment of the law will be addressed.
3. That the review will address performance and compliance with the law for the period of financial year 2007/2008 only. It will not be an investigation and it is not as a consequence of any reported or observed omission or commission on the part of the PE.
4. That the PE should provide all the documents and information that the consultants may require to ensure that the exercise is carried out smoothly and successfully within the limited time that has been allocated to the exercise/assignment.
5. That the consultants are expected to produce a report of their findings which will eventually be posted to the PPOA's website after it has been discussed and agreed with the PE during the exit meeting.
6. That the likely results to the PE, following the report, are assistance from PPOA to enhance performance and compliance with the law. This could be but not limited to provision of training, sensitization to the law, capacity building or even recommendation that the procurement function be handled by professionals. Remedial measures would also be recommended where found necessary.

## **2. BACKGROUND AND ORGANIZATION OF ELDORET MUNICIPAL COUNCIL**

### **2.1 Mandate**

To provide, manage and service municipal services to residents of Eldoret as stipulated in the Local Government Act Cap 265 of the Laws of Kenya.

### **2.2 Vision**

To be the best managed metropolis.

### **2.3 Mission**

To provide efficient and effective services, through participatory planning and sustainable use of resources.

### **2.4 Functions of Procurement Entity**

The procurement entity offers the following core services.

- Pre-primary and Primary Education Management
- Public Health and Sanitation
- Fire Brigade and Ambulance
- Community Development and Welfare
- Roads and Drainage
- Refuse Collection
- Urban Planning and Development Control
- Markets and Bus park Control
- Street Lighting
- Cemeteries
- Rental Houses
- Recreational Parks

### **2.5 Funding**

- Internal Funding through Revenue Collection within the Municipality.
- LATF
- Fuel Levy
- KRB Monies
- Donor Funds

### 3. REVIEW METHODOLOGY AND SPECIFIC FINDINGS

#### 3.1. Key documents

The review relied on gathering sufficient evidence to support its findings in regard to the compliance and performance of the Council.

The team examined various documents i.e.

- Procurement files,
- Contract files,
- Project documentation,
- Budgets/estimates,
- Requisition files,
- Quotation documents,
- Tender documents,
- Tender committee minutes,
- LPO's and LSO's,
- Delivery notes,
- Invoices, as well as other relevant documents,

#### 3.2. Interviews and Discussions

The team held discussions/interviews with relevant staff/officials of EMC directly involved in the procurement function to ascertain general and specific information about the procurement/disposal processes, procedures, and the existing capacity at the EMC procurement unit.

##### Persons Interviewed During the Review

Name	Title	Role
Stanislaus Ondimu	Town Clerk	Accounting Officer
Eng. James Ochieng Owade	Municipal Engineer	Head of Engineering Dept.
Michael Wangai	Procurement Officer	Head Procurement Unit
Sarah Siambi	CO Procurement	Procurement Unit
Christopher Musasia	Store Man	Head of Stores
Isaac Tallam	Chief Internal Auditor	Head of Audit

#### 3.3. Sampling

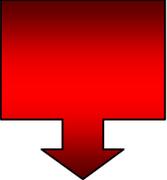
##### 3.3.1. Selection of Samples

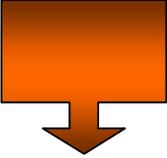
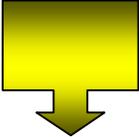
Samples of procurement transactions were selected in accordance with the procedures outlined in the procurement review manual. Random sampling was used for particular procurements in the various categories of methods available and undertaken in the financial year categorised on goods, works, services and value.

The review team estimated compliance level they would be looking for at 50% and the probability of non-conformity to be 93.75 %. The number of contracts, which were selected for review in order that a realistic review report is achieved, included all areas and categories of procurement process. With random selection of four there is a high probability of finding one sample, which does not comply, can be found from the table below. This sampling table is adapted from International Standard EN45503.

Number of samples	Estimated initial compliance with Public Procurement and Disposal Act 2005 %									
	10	20	30	40	50	60	70	80	90	100
Percentage 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

### 3.3.2. Rating Criteria

<p>Major Deviation (DDD)</p> 	<p>Where the major requirements of the PP&amp;D Act and Regulations 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"><li>• Procurement procedures are not integrated within the financial framework of the entity;</li><li>• Main structures are not appointed and operationalised e.g.<ul style="list-style-type: none"><li>Accounting Officer</li><li>Tender Committee</li><li>Procurement Unit</li><li>Procurement Committee</li><li>Disposal Committee</li><li>Inspection and Acceptance Committee</li><li>Tender Opening Committee</li><li>Evaluation Committee.</li></ul></li><li>• Coverage not complete<ul style="list-style-type: none"><li>Procurement</li><li>Contract management</li><li>Disposal</li><li>Goods, works and service</li></ul></li><li>• Standard and specific committees not meeting as stipulated;</li><li>• No consolidated procurement plan linked to approved budget;</li><li>• No disposal plan;</li><li>• Lack of procedures for making procurement decisions;</li><li>• Not adhering to the threshold matrix;</li><li>• Choice of improper procurement procedures;</li><li>• Procurements inflated;</li><li>• Lack of approved prequalified list for suppliers;</li><li>• Lack of annual disposal plan;</li><li>• Inappropriate influence on evaluation;</li><li>• Inadequate protection of confidential information;</li><li>• Lack of comprehensive procurement records;</li><li>• Tender committees not meeting as required;</li><li>• Tender evaluation committees not appointed in accordance with the Act;</li><li>• Not reporting to PPOA as required;</li><li>• Many key procurement records that are stipulated by law for retention are missing</li></ul> <p>Such cases warrant immediate attention by the Accounting Officer.</p>
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<p style="text-align: center;">Moderate Deviation (DD)</p> 	<p>Where procurement procedures were considered to have significant omissions or deviations, including:</p> <ul style="list-style-type: none"> <li>• Some procurement records are missing;</li> <li>• Lack of central comprehensive procurement files;</li> <li>• Procurement unit not functioning as per the regulations.</li> <li>• Lack of signatures on key minutes</li> <li>• Choice of selection procedure not justified;</li> <li>• Consolidated Procurement plan not updated;</li> <li>• Contracts awarded not from the approved list of suppliers;</li> <li>• Contracts over Ksh 5million not reported to PPOA;</li> <li>• Criteria for the evaluation of proposals not specified in the tender documents;</li> <li>• Award Letter missing;</li> <li>• Description of goods, works or services in the bid not adequate;</li> <li>• Entities with recurring or ongoing requirements have not analyzed their medium to long term needs to adopt long-term arrangements or framework contracts;</li> <li>• No evidence of analysis of bid documents by Tender Evaluation Committee;</li> <li>• No evidence of award by Tender Committee;</li> <li>• Lack of evidence of commencement certificate in contract missing;</li> <li>• Lack of evidence of contract being countersigned by AO;</li> <li>• Evidence of performance bond not in the contract file;</li> <li>• Inspection and acceptance certificates confirming delivery not available;</li> <li>• No justification/Authorization for Applying the method;</li> <li>• No authorized procurement requisitions;</li> <li>• Non-disclosure of tender evaluation details;</li> <li>• No specified period of validity of tenders;</li> <li>• Prequalification proceedings not adequate;</li> <li>• Absence of award criteria in tender documents;</li> <li>• Absence of procurement requisitions;</li> <li>• Record of procurement proceedings not comprehensive;</li> <li>• Lack of justification for direct and restricted procurement;</li> <li>• Termination of procurement proceedings not reported to PPOA;</li> <li>• Inadequate oversight by internal auditor.</li> </ul> <p>These weaknesses warrant immediate attention of the senior management.</p>
<p style="text-align: center;">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"> <li>• Absence of an Award Letter in procurement file;</li> <li>• Absence of authorization date of LPO;</li> <li>• Absence of Invoice copy in the procurement file;</li> <li>• Absence of LPO Authorization;</li> <li>• Absence of LPO or LSO in the procurement file;</li> <li>• Absence of Payment Voucher copy in the procurement file;</li> <li>• Absence of Procurement Request in the procurement file;</li> <li>• All tenderers not informed of the result of a tendering process in accordance with the law;</li> <li>• Anti corruption mechanisms not defined and published;</li> </ul>

	<ul style="list-style-type: none"> <li>• Commencement of contract date missing;</li> <li>• Date of evaluation committee report or recommendation letter missing;</li> <li>• Date of the bid opening missing;</li> <li>• Date of the MTC meeting awarding the contract missing;</li> <li>• Evidence of award by Tender Committee not in file;</li> <li>• No evidence of contract being countersigned by AO in procurement file;</li> <li>• No evidence of performance bond in the contract file;</li> <li>• Goods or Services Received Note missing in file;</li> <li>• Inadequate monitoring of contracts awarded;</li> <li>• Incomplete procurement plan;</li> <li>• Methods and criteria for selecting firms and for awarding contracts are not documented;</li> <li>• Records are available but not in the procurement file; and</li> <li>• Time limits for replies not adhered to.</li> </ul> <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. Limitation of scope

- Lack of well kept records
- Time constraint

#### 4.0 PROFILE OF PROCUREMENTS IN REVIEW PERIOD

##### 4.1. Details of the samples reviewed

##### 4.1.1. Open National Tenders and their values

Tender No.	Description	Value In (Kshs)
EMC/FIN/2/1/III/185	Purchase of 4wd Tractor	2,980,000.00
EMC/LATF/07/08/01	Construction of Municipal Court	1,845,951.25
EMC/EU/2008/2009/01	Construction of Kahoya Market	23,643,280.00
EMC/2007-2008	Provision of Insurance Services	830,581.00
EMC/FINL/1/III/191	Disposal of Unserviceable, Parts, Plant And Vehicles	Summary not on record
	<b>Total</b>	<b>29,299,812.25</b>

##### 4.1.2. Request for Quotations

RFQ No.	Description	Value(Kshs)
207/07/08	Electrical Items	52,860.00
198/07/08	Secretarial Set	10,697.00
179/07/08	Spare Parts For Toyota KWS 525	35,300.00
154/07/08	Office Furniture	35,430.00
197/07/08	Survey of Huruma/ Kingongo Market	19,770.00
	<b>Total</b>	<b>154,057.00</b>

##### 4.1.3. Direct Purchase

No.	Description	Value (Kshs)
1	Purchase of G.I. Pipes	<b>16,680.00</b>
	<b>Total</b>	<b>16,680.00</b>

##### 4.1.4. Low Value Procurement (Bought on cash basis)

No.	Description	Value (Kshs)
1	Fuel	2,000.00
2	Tablets	2,100.00
3	Fuel	2,000.00
4	Tablets	1,500.00
5	Milk, Sugar, Sodas	1,506.00
	<b>Total</b>	<b>9,106.00</b>

#### 4.1.5. Disposal

Tender no.	Description	Value
EMC/FINL/1/III/191	Unserviceable Parts, Plant & Vehicles.	Summary of records not found

#### 4.2 Specific Findings

Tender	Method	Findings	DDD	DD	D	SP
EMC/FIN/2/1/III/185 1 4WD TRACTOR	ONT	No Procurement Plan	X			
		No procurement requisition			X	
		Procurement procedure commenced without budgetary allocation	X			
		No extract of the TC minutes in the file			X	
		No preliminary evaluation committee minutes in procurement file	X			
		Tender Security not available and not in file	X			
		No completion Certificates in the file			X	
		No Invoices and payment documents in the procurement file.			X	
		No Delivery notes copies in the file			X	
		No Inspection and Acceptance Certificates in the file			X	
		Evaluation committee minutes not signed by one person			X	
		Evaluation comparison analysis report not available and not in file			X	
		T/EMC/LATF/07/08/01 CONSTRUCTION OF MUNICIPAL COURT	ONT	No Procurement Plan	X	
No procurement requisition	X					
Procurement procedure commenced without budgetary allocation	X					
No extract of the TC minutes in the file					X	
No preliminary evaluation committee minutes in procurement file	X					
Tender Security not available and not in file	X					
No extract of the TC minutes in the procurement file					X	
<b>The project was discontinued after the award due to change in specification</b>						
T/EMC/E4/2008/09 CONSTRUCTION OF KAHOYA MARKET	ONT	No Procurement Plan	X			
		No procurement requisition	X			
		Procurement procedure commenced without budgetary allocation			X	
		No extract of the TC minutes in the file			X	
		No preliminary evaluation committee minutes in procurement file			X	
		Tender Security not available and not in file	X			
		No extract of the TC minutes in the procurement file			X	
		Evaluation committee minutes not signed by one person			X	

Tender	Method	Findings	DDD	DD	D	SP		
		Evaluation comparison analysis report not available and not in file			X			
		<b>Project on-going</b>						
EMC/2007-2008 PROVISION OF INSURANCE	ONT	No Procurement Plan	X					
		No procurement requisition	X					
		Procurement procedure commenced without budgetary allocation					X	
		No extract of the TC minutes in the file				X		
		No preliminary evaluation committee minutes in procurement file	X					
		Tender Security not available and not in file	X					
		No extract of the TC minutes in the procurement file	X					
		No Invoices and payment documents in the procurement file.			X			
		Evaluation committee minutes not signed by one person				X		
		Evaluation comparison analysis report not available and not in file				X		
		<b>This being an insurance procurement for the calendar year 2008, services continued beyond 30/06/2008</b>						

### REQUEST FOR QUOTATION

Quotation	Method	Findings	DDD	DD	D	SP	
QTN NO: 154/07/08 FOR SUPPLY AND DELIVERY OF FURNITURE	RFQ	No Procurement Plan	X				
		No Procurement Requisition			X		
		Procurement procedure commenced without budgetary allocation	X				
		Committee minutes present					X
		No invoices and procurement			X		
QTN NO:197/07/08 SURVEY OF HURUMA-KINGONGO MARKET BLOCK	RFQ	No procurement plan	X				
		No Procurement requisition			X		
		Procurement procedure commenced without budgetary allocation	X				
		Committee minutes present			X		
		No invoices and payment documents in procurement file			X		
QTN NO: 189/07/08 PURCHASE OF YELLOW FEVER VACCINE	RFQ	No procurement plan	X				
		No Procurement requisition				X	
		Procurement procedure commenced without budgetary allocation			X		
		Committee minutes present					X
		No invoices and payment documents in procurement file					X
QTN NO:179/07/08 PURCHASE OF SPARE PARTS FOR TOYOTA HILUX DOUBLE CABIN KWS 525	RFQ	No procurement plan	X				
		No Procurement requisition				X	
		Procurement procedure commenced without budgetary allocation			X		
		Committee minutes present			X		
		No invoices and payment					X

		documents in procurement file				
QTN NO:202/07/08 PURCHASE OF ELECTRONIC ITEMS	RFQ	No Procurement plan	X			
		No Procurement requisition			X	
		Procurement procedure commenced without budgetary allocation		X		
		Committee minutes present				X
		No invoices and payment documents in procurement file				X
QTN NO:198/07/08 PURCHASE OF SECRETARIAL SET	RFQ	No procurement plan	X			
		No Procurement requisition			X	
		Procurement procedure commenced without budgetary allocation		X		
		Committee minutes present			X	
		No invoices and payment documents in procurement file				X

#### **DIRECT PROCUREMENT**

Procurement of GI pipes worth 16,680/= had been carried out directly from one Njaralam Hardware and payment voucher No. 445 raised without quotation yet there was an existing tender for hardware materials.

## 5.0 GENERAL FINDINGS AND RECOMMENDATIONS

### 5.1 Standing and Specific Committees

#### Findings

1. The required institutional arrangement and standing and Ad-hoc committees are in place, and well constituted in accordance with the PPDA. All the standing and specific committees have been established as below

Name
Tender Committee
Procurement Committee
Tender Opening Committees
Evaluation Committees
Inspection and acceptance committees
Disposal Committee

All the members are appointed and served with appointment letters and Ad-hoc committees are appointed as and when required as per the PPDA.

2. There were instances where Evaluation Committee exceeded the time of 30 days allowed for evaluation pursuant to Regulation 16(5)(b). For example, in tender No. EMC/FIN/2/1/III/185 Supply of 1. no 4WD farm tractor whose closing/opening date was 15<sup>th</sup> April 2008 and completion of evaluation date was 13<sup>th</sup> June 2008
3. There was no evidence that preliminary evaluation of tenders are carried out pursuant to Regulation 47.

#### Recommendations

There is need for the evaluation committee to adhere to the time frame as per Regulation 46 and also carry out preliminary evaluations as per Regulation 47.

### 5.2 Procurement Unit

#### Findings

1. The Procurement Unit is established in accordance with Section 26(4) of PPDA and Regulation 8(1) of PPDR.
2. Of the eight (8) staff members in the Procurement Unit, only four (4) possess relevant professional qualification. One officer is an IT professional.

#### 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)	Was not being done
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)	Was being done
3.	Coordinate the receiving and opening of tender documents. (Regulation 8.3c)	Was being done
4.	Maintain and safeguard procurement and disposal documents and records in accordance with these regulations. (Regulation 8.3d)	Was being done
5.	Submit shortlists and lists of pre-qualified tenderers to the tender committee or procurement committee for approval. (Regulation 8.3e)	Was not being done
6.	Issue procurement and disposal documents to candidates in accordance to the Act and these Regulations. (Regulation 8.3f)	Was being done
7.	Propose the membership of evaluation committee to the Accounting	Was being done

	Officer for approval. (Regulation 8.3g)	
8.	Coordinate the evaluation of tenders, quotations and proposals. (Regulation 8.3h)	Was being done
9.	Recommend a negotiating team for appointment by the Accounting Officer where negotiations are allowed by the Act and these Regulations and participate and negotiations. (Regulation 8.3i)	Was not being done
10.	Prepare and publish notices of award and notices of tender acceptance. (Regulation 8.3j)	Was not being done
11.	Prepare contract documents, in line with the award decision.(Regulation 8.3k)	Was not being done
12.	Prepare and issue rejection and debriefing letters. (Regulation 8.3l)	Was not being done
13.	Prepare contract variations and modifications to documents. (Regulation 8.3m)	Was not being done
14.	Maintain and archiving documents and records of the procurement and disposal activities for the required period. (Regulation 8.3n)	Was being done
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)	Was not being done
16.	Implement the decisions of the procurement, tender and disposal committees including coordinating all activities of these committees. (Regulation 8.3p)	Was being done
17.	Act as a secretariat to the tender, procurement and disposal committees. (Regulation 8.3q)	Was being done
18.	Liaise with the Authority and other bodies on matters related to procurement and disposal. (Regulation 8.3r)	Was being done
19.	Prepare and submit to the Authority reports required under the Act, these Regulations and guidelines of the Authority. (Regulation 8.3s)	Was not being done
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)	Was being done
21.	Report any significant departures from the terms and conditions of the contract to the head of the procuring entity. (Regulation 8.3u)	Was not being done
22.	Advise the procuring entity on aggregation of procurement to promote economies of scale (Regulation 8.3x).	Was being done
23.	Co-ordinate internal monitoring and evaluation of the supply chain function. (Regulation 8.3y)	Was being done
24.	Carry out periodic market surveys to inform the placing of orders and adjudication by the relevant award committee. (Regulation 8.3z)	Was not being done
25.	Conduct periodic and annual stocktaking. (Regulation 8.3aa)	Was being done
26.	Certify the invoices and payment vouchers to suppliers. (Regulation 8.3bb)	Was being done
27.	Approve extension of the tender validity period. (Regulation 8.3cc)	Was being done
28.	Verify that the available stock levels warrant initiating a procurement process. (Regulation 8.3ee)	Was not being done

Procurement Staff:-

No.	Name	Designation	Qualification
1	Michael Wangai	Procurement Officer	KIM Diploma in Supplies Management
2	Samson Changwony	Clerical Officer	KIM Diploma in Supplies Management
3	Sarah Siambi	Clerical Officer	KIM Diploma in Supplies Management
4	Prisca Chebet	Clerical Officer	Computer Packages
5	Christopher Musasia	Store Keeper	KIM Diploma in Supplies Management
6	Francis Kibirong	Stores Attendant	
7	Esther Mburu	Clerical Officer	
8	Jane Mutaho	Clerical Officer	

## **Recommendations**

1. Further training for the staff to enhance their professional capacity.
2. Training and sensitisation of staff on the PPDA and PPDR.

### **5.3. Departmental and Consolidated plans**

#### **Findings**

Procurement plans were nonexistent during the year 2007/08 under review.

#### **Recommendations**

There is need to institute procurement plans pursuant to Section 26(3)(a) and Regulation 20 and 21.

### **5.4. Authorization of Purchase Requisition**

#### **Findings**

Purchase requisitions are formerly raised as per the Regulation 22(1), 22 (3 and4). Adequate specifications are in some cases not given as in the case of Tender No. MC/FIN/02/01/III/185 Purchase of 4WD Tractor.

#### **Recommendations**

The specifications should be complete and precise in order to enable proper and correct procurement.

### **5.5. Quality of Procurement and Contracting**

#### **Findings**

1. The establishment does not have operations and procurement manuals. There was a works contractors' prequalification mechanism and a contractors' list was in place. However, in the category of goods and services, there was no supplier registration mechanism and hence the PE had no list of registered suppliers pursuant to Regulation 8(3)(a).
2. The PE has a mechanism in place for verifying suppliers' statutory documents. They have the LAIFMIS which gives every supplier, who has been awarded an order, a unique identification number after complying with all the basic statutory documents.

#### **Recommendation**

A comprehensive registration mechanism for suppliers and contractors should be instituted

### **5.6. Procurement Record Management**

#### **Findings**

Necessary supporting documents and records are available in respect to all procurements. However, procurement records for individual procurements had not been maintained as required by section 45(1) of PPDA and Regulation 34(3) of PPDR.

#### **Recommendations**

Procurement files for individual procurements should be maintained as required by section 45(1) of PPDA and Regulation 34(3) of PPDR.

### **5.7. Contract Administration and Management**

#### **Findings**

1. After award, a formal contract is effected between the PE and the contractor for high, value projects.
2. It was noted that contracts are signed by the users (HoDs), while this should have been done by the AO, pursuant to Regulation 7(c) and the Threshold Matrix. Contract agreements are not in procurement files, but are instead with the users (HoDs).
3. Procurement Unit is not involved in the contract management unless a case of contract variation or termination arises.
4. Certificates of completion were signed by the users following which payment was effected.

### **Recommendations**

1. There is need to institute contract administration for high value awards given and signed by the Accounting officer as required by the procurement law
2. Once the procurement files are opened, these contract agreements, all other documentation relating to the contract e.g. variation, termination and completion should be filed there.
3. The PE should have involved the Inspection and Acceptance Committees as required by Regulation 17(3) of PPDR.

### **5.8. Inspection and Acceptance Committee**

#### **Findings**

Establishment of Inspection and Acceptance Committees was in place. They were however, not involved in all cases as in the case of Tender No. EMC/EU/2008/2009/01 Construction of Kahoya Market.

#### **Recommendations**

Verification of receipt of goods, services or works should always be as stipulated under Section 26(3)(c) of PPDA and Regulation 17 of PPDR and as provided for in the threshold matrix.

### **5.9. Disposal Committee**

#### **Findings**

The Disposal Committee is established as per Section 128 and Regulation 92. However, the disposal committee did not report its findings to the AO as required and also there was no Asset Register to record its proceeds. For example, Disposal Tender No. EMC/FINL/1/III/191 Disposal of Unserviceable parts, plant and vehicles.

#### **Recommendations**

There is a need to establish an Asset Register where all council fixed assets are recorded and value accounted for up to the time of disposal.

### **5.10. Storage Facility (Inventory Management)**

#### **Findings**

The Council maintains accountable and general stores warehousing facilities which were properly discharging their role of receiving, storing, and issuing supplies that are procured by the procurement entity.

There is adequate storage facility particularly considering that the Municipal Council uses Just in Time System of stockholding (stocks are bought on an as and when required basis). Stock yard facilities are also available for holding bulky and non perishable goods. It also operates a POL facility.

The stores facility is well secured and fire fighting equipment is in place within the facility including the POL shed.

The stores yard is guarded round the clock. EMC also has a fire tender available for its facilities and the needs of the municipality.

### **5.11 Stock Taking**

#### **Findings**

Stock taking was carried out during the year under review and necessary action taken in respect to variances.

#### **Recommendations**

Periodic and annual stock taking as is provided for by Regulation 8(3)(aa) should be done for all stock items.

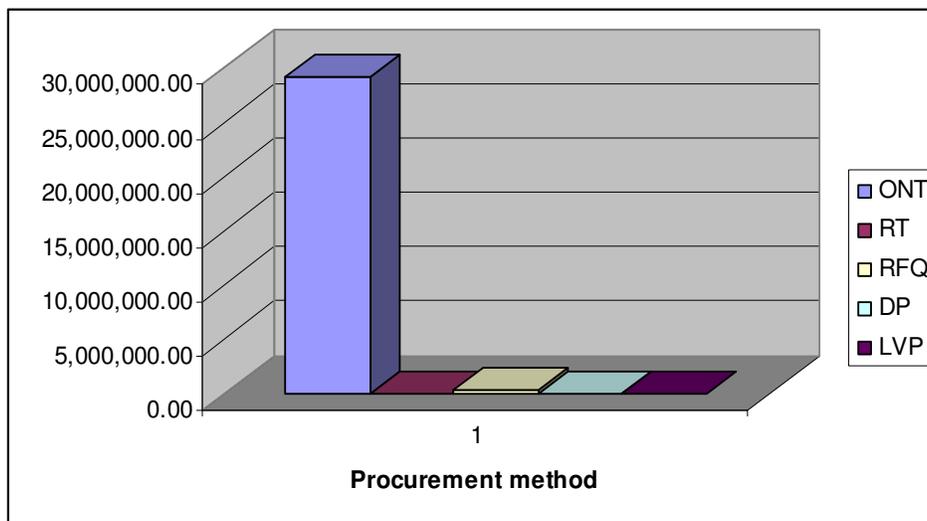
## 5.12 Procurement Methods (Instances and Values)

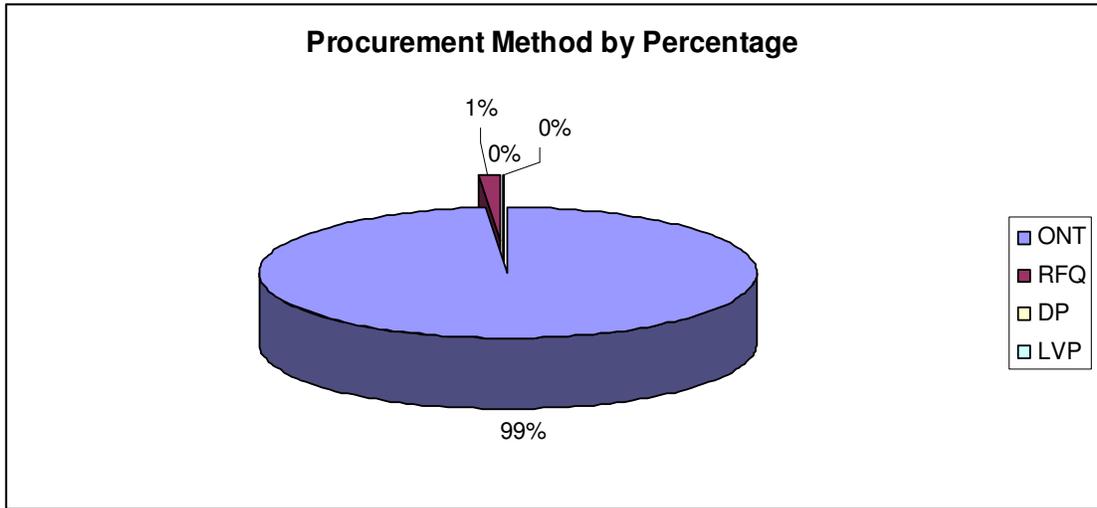
### 5.12.1 Total number and value of procurements in the FY

Procurement Method	Number	Value (Kshs)
Open International Tender	-	-
Open National Tender	51	Totals were unavailable
Restricted Tender	-	-
Request for Quotation	250	Totals were unavailable
Request for Proposal	-	-
Direct Procurement	2	Totals were unavailable
Low Value Procurement	several	Totals were unavailable

### 5.12.2 No. of Transactions sampled in each method

Procurement Method	Quantity	Amount
OIT	-	-
ONT	5	29,299,802.25
RT	-	-
RFQ	5	154,057.00
DP	1	16,680.00
LVP	5	9,106.00





### 5.13 Disposal to Employees

#### Findings

Disposal to staff contrary to the provisions of Section 131 of PPDA and Regulation 93 of PPDR was carried out. An example of this is the sale of motor vehicle No. KUL 327 a Suzuki Sierra to a staff member of EMC at Kshs. 70, 000 having been the highest bidder in respect to Tender No. EMC/FIN/2/III/189.

#### Recommendations

No Disposal should be made to staff members as guided by Section 131 of PPDA except, as expressly allowed under Regulation 93(1) of PPDR.

### 5.14 Mandatory Reports to PPOA

#### Findings

Mandatory reports to PPOA were not always being effected for instance: Termination of procurement proceedings of Tender No. EMC/LATF/07/08/01 Construction of Municipal Court). Contract awards exceeding Kshs. 5million (for instance Construction of Kahoya Market Tender No. EMC/EU/2008/2009/01 whose value was Kshs. 23, 643,280.00 was not reported to PPOA)

#### Recommendations

Mandatory reporting to PPOA as provided for by Regulation 8(3)(s) of PPDR and by PPOA circular No. 3/2008 should be adhered to.

## 6.0. EXIT MEETING

An exit meeting with the Municipal Council's management team was organized on 16<sup>th</sup> Dec 2009 after the fieldwork and compilation of the Final Draft Report, Mr. P.K. Ndung'u, the Ag. Deputy Manager Compliance led both the PPOA and Lindi Agencies Ltd. teams in the exit meeting. The PE's team was led by Ms. Millicent Okonjo, the Ag. Municipal Treasurer (for the Municipal Clerk). The meeting was held in the Clerk's office.

### Present

No.	Name	Designation	Organization
1	Millicent Okonjo	Ag. Municipal Treasurer	EMC
2	Edwin K. Limo	ME – EMC	EMC
3	Nangalama R.M	DCPHO	EMC
4	Sarah Siambi	SCO (Procurement)	EMC
5	Tallam K.	Ag. DMT	EMC
6	Aligulah Thomas	Registry	EMC
7	Stephen Sirma	Ag. DSSH	EMC
8	Wasike Wanyama	Admin Officer	EMC
9	Joshua Keitany	RO II-Examination	EMC
10	Michael Wangai	Ag. PO	EMC
11	Samson Changwony	SCO Procurement	EMC
12	Nalika Francis	ICT Officer	EMC
13	Moses Olum	CPHO	EMC
14	Jones C. Lutta	Architect	EMC
15	Richard M. Yego	Ag. DDSS& H	EMC
16	S.K. Chemai	PMCO	EMC
17	J.A. Musambayi	Ag. ATC	EMC
18	George Okeyo	PHO 1	EMC
19	Amos K. Kirwa	Ag. Municipal Ed. Office	EMC
20	Peter K. Ndungu	Ag. Deputy Manager Compliance	PPOA
21	Joseph Kimani	Asst. Snr. Compliance Officer	PPOA
22	N.N. Wachira	Team Coordinator	Lindi Agencies Ltd.
23	Ernest W. Kinuthia	Team Leader	Lindi Agencies Ltd.
24	Titus Kanina	Consultant	Lindi Agencies Ltd.
25	Robert Hamadi	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. P.K. Ndung'u passed greetings from the PPOA's Interim Director General as well as his apologies for not having been able to attend the meeting in person. He further thanked the PE for the cooperation it had accorded the consultants during the review exercise which was carried out both satisfactorily and successfully.

Mr. Ndung'u reminded the PE that the review was in respect to the period 1<sup>st</sup> July 2007 to 30<sup>th</sup> June 2008. He observed that since that period, the PE had put in place some of the requirements of the new Procurement Law. However, a lot still required to be done so as to be fully compliant with the PPDA and PPDR.

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

As the Final Interim Report had been forwarded by the PPOA to the PE the previous month, the meeting was only lead through a summary of the key findings by the consultants' team leader.

The PE on its part 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 was then. The PE, lead by the Ag. Municipal Treasurer (for the Municipal Clerk) concurred that the report be adopted without any amendments.

**Matters Arising**

Mr. Ndung'u 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.

Following the foregoing, recommendations for improvement in an action plan which would be followed up by PPOA to establish whether these improvements have been implemented was agreed upon with the Municipal Council.

## 7.0 ACTION PLAN

No.	Tasks	Lead Accountable	Time	PPOA Review Date
1	There is need for the evaluation committees to adhere to the time frame as per Regulation 46 and also carry out preliminary evaluations as per Regulation 47.	Municipal Clerk	Done	
2	1. Further training for the Procurement staff to enhance their professional capacity. 2. Training and sensitization of staff on the PPDA and Regulations.	Municipal Clerk and PPOA	Being implemented	
3	There is need to institute procurement plans pursuant to Section 26(3)(a) and Regulation 20(1)	Municipal Clerk, Head of Procurement and HoDs	Done	
4	The specifications should be complete and precise in order to enable proper and adequate procurement.	Heads of User Department and Head of Procurement	Being observed	
5	A comprehensive registration mechanism for suppliers and contractors should be instituted	Head of Procurement	Being observed	
6	Procurement records for individual procurements should be maintained as required by Section 45(1) of PPDA.	Head of Procurement	Being observed	
7	1. There is need to institute contract administration. Contracts should be signed as per the threshold matrix.  2. Once the procurement files are opened, these contract agreements and all other documents relating to the contract e.g. variation, termination and completion should be filed there.	Municipal Clerk and Head of Procurement	16/12/2009  Being observed	
8	Verification of receipt of goods, services or works should always be as stipulated under Section 26(3)(c) of the Act and as provided for in the threshold matrix	Municipal Clerk and Head of Procurement	Being observed	
9	There is a need to establish an asset register where all council fixed and expendable assets are recorded and value accounted for up to the time of disposal.	Municipal Clerk and Head of Procurement	Being observed	
10	It is important that the PE carries out prequalification of tenderers pursuant to Section 32 of PPDA	Municipal Clerk and Head of Procurement	Being implemented	
11	The following should be reported to the PPOA according to PPOA			

No.	Tasks	Lead Accountable	Time	PPOA Review Date
	Circular No.3/2008; <ul style="list-style-type: none"> <li>• Termination of procurement proceedings</li> <li>• Contract awards exceeding Kshs. 5million</li> <li>• Disposal to staff</li> <li>• Direct Procurement equal to and exceeding Kshs. 500,000.00</li> </ul>	Municipal Clerk and Head of Procurement	Being implemented	
12	Procurement of items by Direct Method without authority contrary to Section 74 of PPDA	Procurement Unit	Immediately	

## **8.0 CONCLUSION**

This report underlines the procurement activities carried out within EMC during the year 01.07.07 to 30.06.08.

It starts with the background analysis of the review including; scope, PE itself, its Mandate, functions, organizational structure, the appointment of the review process and other necessary components or inputs within the entire review process.

From the PPOA mandate and PPDA and PPDR, the main objective was to determine the level of compliance of the procurement processes against the Act.

The general and specific findings showed certain deviations and these were noted and recommendations made based on the Act.

Although there were deviations noted, there are structures in place which can remedy the situation within three months following the recommendations made. EMC should be able to improve on the level of compliance.

## APPENDICES

### Tender Committee

Name	
Stanley Koech	Chairman
Dr. David Koech	Member
Michael Wangai	Secretary
Dr. Tecla Tum	Member
Moses Chelule	Member
Simon Gathu	Member
John Mutia	Member
Joshua Sitienei	Member

### Alternate Members TC.

Ibrahim Chirchir
Moses Olum
Richard Rotich
Stephen Kipseba
David Kipsam
Sarah Siambi

### Procurement Committee Members.

Moses Olum	Chairman
Millicent Okonjo	Member
Joseph Musambayi	Member
Jones Lutta	Member
Stephen Sirma	Member
Stephen Kipseba	Member
Amos Kirwa	Member
Samson Changwony	Member
Sarah Siambi	Secretary

### Inspection and Acceptance Committee

Name	
Mrs. Judith Adero	Member
Moses Werunga	Member
Jones Lutta	Member
Millicent Okonjo	Member
Amos Kirwa	Member
Ratcliffe Nangalama	Member
Michael Wangai	Member
Jacob Barasa	Member

### Evaluation Committee

Name	
Mr. Too	Chairman
Ms. Agnes Chirchir	Member
Mr. M. Chemwor	Member
Mr. F. Naliaka	Member

**Disposal Committee**

Name	
Dr. David Koech	Member
Patrick Muro	Member
David Kipsam	Member
Wilberforce Wabuko	Member
Michael Wangai	Member

**Technical & Financial Evaluation Committee**

Eng. J. Ochieng
Arch. J. Lutta
Ms. M. Okonjo
Mr. Amos Kirwa

**Summary of Sample Procurements Reviewed**

<b>Procurement Method</b>	<b>Civil Works</b>	<b>Goods</b>	<b>Services</b>	<b>Total</b>
<b>OIT</b>	-	-	-	-
<b>ONT</b>	25,489,231.25	2,980,000.00	830,581.00	<b>29,299,812.25</b>
<b>RT</b>	-	-	-	-
<b>DP</b>	-	16,680.00		<b>16,680.00</b>
<b>RFP</b>	-	-	-	-
<b>RFQ</b>	-	221,267.00	136,320.00	<b>357,587.00</b>
<b>LVP</b>	-	9,106.00		<b>9,106.00</b>
<b>SPP</b>	-	-	-	-
<b>Total</b>	<b>25,489,231.25</b>	<b>3,227,053.00</b>	<b>966,901.00</b>	<b>29,683,185.25</b>