



**FINAL REPORT**

**KENYA PORTS AUTHORITY  
PROCUREMENT REVIEW**

**REVIEW PERIOD: 1 JULY 2007-30 JUNE 2008**

**30 September 2009**

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## ACRONYMS

AIE	Authority to Incur Expenditure
AO	Accounting Officer
CTC	Corporation Tender Committee
D	Minor Deviations
DD	Moderate Deviations
DDD	Major Deviations
DP	Direct Procurement
EMU	Efficiency Monitoring Unit
FY	Financial Year
GOK	Government of Kenya
IT	Information Technology
KACC	Kenya Anti Corruption Commission
KNAO	Kenya National Audit Office
KPA	Kenya Ports Authority
LPO	Local Purchase Order
LSO	Local Service Order
LVP	Low value Procurement
MCA	Millennium Challenge Account
OIT	Open International Tender
ONT	Open National Tender
PE	Procuring Entity
PIN	Personal Identification Number
PPDA	Public Procurement and Disposal Act
PPDR	Public Procurement and Disposal Regulations
PPOA	Public Procurement Oversight Authority
PU	Procurement Unit
PV	Payment Voucher
RFP	Request for Proposal
RFQ	Request for Quotations
RRI	Rapid Results Initiative
RT	Restricted Tender
SAP	Systems Application Product
SP	Satisfactory Performance
SPP	Specially Permitted Procurement
SPPO	Senior Principal Procurement Officer
TC	Term Contract
TP	Threshold Program
USAID	United States Agency for International Development

## **EXECUTIVE SUMMARY**

The PPOA/ARD team carried out procurement review for KPA from the 28 June 2009 to 14 August 2009. The objective of the exercise was to review of the status of Authority's procurement, contracting and implementation processes and systems, in order to determine the level of compliance with the Public Procurement and Disposal Act 2005 and the associated regulations, circulars, and directives issued by the Public Procurement Oversight Authority (PPOA) and generally accepted principles of good practice.

The review considered performance of procurement functions for the period 1 July 2007 - 30 June 2008. The review scope encompassed key areas of the KPA's procurement and disposal processes from planning to completion. Sample procurements were selected by random sampling method.

In undertaking the review, procurement was considered as a high risk and strategic service function. Consideration was given to the relationship between procurement and overall service objectives of the PE. The review has referred to the key elements of the strategic procurement function including:

- Needs assessment;
- Procurement Planning;
- Formulation of specifications;
- Requisition of requirements;
- Solicitation of bids;
- Evaluation and decision to procure in principle; and
- Contracting and contract management.

The fieldwork was undertaken by going through the files and documents pertaining to the PE's procurement systems and processes and, where appropriate, was supplemented by discussions with the key persons involved in the functions related to procurement. The work was then finalized in consultation with the Procurement Unit and the heads of User Departments overseeing the procurement functions.

Mr M. O Juma, the Ag Director General of PPOA led the joint ARD/PPOA to the exit meeting with senior KPA management on 15 September 2009 to discuss the findings and recommendations. Eng. Atonga, the Acting Managing Director led the KPA team. During the meeting, several issues brought forward by either party were clarified. Those present agreed on changes in procedures and other measures necessary to rectify the problems and deficiencies observed in the course of the review

This report presents the results of the procurement review and highlights the key findings, observations and recommendations namely:

- Commencement of procurement proceedings without adequate funding set aside for the procurement activity;
- Lack of adequate procurement planning including contract packaging and procurement scheduling that has lead to several cancellations of procurement proceedings;
- Lack of transparency in the choice of firms selected under direct and restricted tendering procedures that resulted in costlier procurement and unacceptable procurement practices;
- Inadequate contract management;

- Commencement of works without written contracts;
- Inadequate records management;
- The defects identified in completed construction works are not conveyed systematically to the contractor for rectification before the defects liability period has expired;
- The overall state of "filing and documentation" and "contract documentation" is weak;
- Signed contract documents for goods, works and consulting services are often not filed in the procurement file, which is contrary to regulation 34 (3) of PPDR;
- Contract variations are very frequent especially in contracts for civil works;
- Non-availability of output reports under consultant contracts; and
- Tender registers for many projects are not complete.

The review also considered the reports of earlier reviews carried out in KPA including the, KACC, *External Audit Report for YR2007-2008, Independent Review to Carry out Health Check of KPA Finances 2008 by PriceWaterhouseCoopers*, and periodic internal audit reports. The review evaluated the implementation of the findings and recommendations of these reports.

There is need to improve management of the procurement function to:

- Enhance internal compliance to procurement law and regulations in procurement and contract management processes;
- Improve PPOA reporting requirements;
- Improve records management and filing systems;
- Address inadequate staff capacity;
- Enhance insufficient sensitisation training of senior management; and
- Improve contract management.

The PE should produce a comprehensive systems and procedures for implementation of the Act and regulations that establishes procurement as high-risk and strategic service function.

The detailed results of the review and recommended action are documented in this report. Key findings and recommendations as they relate to each of the areas considered in this review are provided in Chapter 3 of the report, followed by specific findings in Chapter 4. A complete action plan of the recommendations as they relate to each of the areas considered in this review is provided at the end of this report, together with a timescale for implementation.

This report has included a three-month follow-up period after which the PPOA team will review the implementation of the recommendations.

The areas considered in the report are critical to the future success of the PE's procurement work. Unless the recommendations are implemented, the PE will not be able to comply fully with the *Public Procurement and Disposal Act 2005* and the associated regulations and directives.

## **1 INTRODUCTION**

### **1.1 Specific Review Objectives**

The main purpose was to review of the status of PE's procurement, contracting and implementation processes and systems, in order to establish the state of compliance with the procurement law, regulations, circulars, directives issued by the PPOA and best practices.

The specific objectives of this procurement review were:

- a) To verify the procurement and contracting procedures, processes and documentation followed by the PE, in order to determine whether they were carried out in accordance with the Public Procurement and Disposal Act 2005 and the associated Regulations;
- b) To review the adequacy of internal controls;
- c) To establish KPA's adherence to the general principles of economy and efficiency; equal opportunities; transparency; integrity; fairness; and value for money;
- d) To determine the technical compliance, physical completion and price competitiveness of each contract in the selected representative sample;
- e) To review the capacity of the PE to handle procurement efficiently; comment on the quality of procurement and contracting; and identify reasons for delays, if any;
- f) To establish whether adequate systems are in place for procurement planning, implementation and monitoring and whether reliable documentation is maintained as required by the regulations;
- g) To establish whether the recommended actions made in the previous reviews have been carried out successfully;
- h) To assist in clarification of areas where the PE may have misunderstood the requirements of the legislation;
- i) To identify weaknesses, e.g. staff shortages, lack of equipment, which can impede good performance and may need to be rectified; and
- j) To make recommendations for improvement in an action plan to be followed up within 3 months to establish whether these improvements have been implemented.

### **1.2 Scope of the review**

The procurement review covered all procurement activities under the PPDA jurisdiction. The review selected a sample of the total number of contracts selected from various thresholds and categories carried out during the period 1 July 2007 to 30 June 2009. The review covered all method and categories of procurements to the extent possible.

Main procurement areas covered by the review included:

- a) **Procurement methods**
  - Open tenders;
  - Restricted tenders;
  - Request for quotations;
  - Low value procurements; and
  - Disposals
- b) **Categories**
  - Goods;

- Works; and
- Services.

### **1.3 Review Methodology**

#### ***Key documents***

The fieldwork for the review focused on gathering sufficient evidence to support any findings regarding the compliance and performance of the KPA.

The team reviewed the supporting documentation, such as procurement files, contract files, project documentation, budgets, and strategic plans where available. The PE's strategic plan is still in preparation.

Other background documents included but were not limited to the following, *Public Procurement and Disposal Act, 2005 and Regulations, 2006, Public Procurement and Disposal General Manual, Procurement Review Manual, and Procurement Records Management Procedures Manual 2008.*

#### ***Interviews and Discussions***

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

#### ***Sampling***

A total sample of 47 procurement transactions amounting to Ksh 1,637,953,931.31 were selected in accordance with the procedures outlined in the Procurement Review Manual. There were 39 disposal proceedings undertaken during the period under review and a sample of eight was selected for review.

The sampling method and scope were discussed with the Procurement Unit. The review team estimated the probable compliance level of the PE to be 50% and the probability therefore of finding any non-conformity to be 99.6%. The number of contracts, which were selected for review, included all procurement methods and categories including works, goods and services undertaken by the PE. With random selection of a minimum of 14 procurement proceedings, there is a high probability of finding one transaction that does not comply with the Act and regulations. This sampling table is adapted from European Standard EN45503.1996.



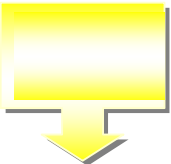

This level of estimated compliance was based on discussion with the heads of the procurement sections in the departments and the head of Procurement Unit on the overall management and organization of procurement functions in the PE.

The review team also found that KPA had four cases where applications were made to the administrative review board since 2001. The tenders selected for examination are at Appendix 7.1.

### **Rating Criteria**

A range of performance indicators to track deviations from the compliance with the act and regulations were selected as set out in the Procurement Review Manual. The deviation indicators were discussed with the staff of the PE.

The reviewed procurements were categorized according to the procurement deviation rating criteria outlined in the procurement manual and TOR. The method was discussed with the head of Procurement Unit and consisted of four categories namely:

<p>Major deviation <b>DDD</b></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 cases warrant immediate attention by the Accounting Officer.</p>
<p>Moderate Deviation <b>DD</b></p> 	<p>Where procurement procedures were considered to have significant omissions or deviations. These weaknesses warrant immediate attention of the senior management.</p>
<p>Minor Deviation <b>D</b></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: Senior management as part of an ongoing improvement plan should address these weaknesses.</p>
<p>Satisfactory Performance</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>

### **Limitation of scope**

The review team's ability to carry out the review satisfactorily was limited by the following:

- a) Lack or incompleteness of records, data and documentation relating to the procurement methods selected. The procuring entity was unable to provide us with comprehensive list of documents relating to the procurement proceedings undertaken during the review period to enable us make selection of samples;



- b) Project implementation and monitoring files requested by the review team were not made available;
- c) Because of the incompleteness of the central register of tenders and absence of a comprehensive records control system, document location and retrieval was difficult;
- d) Lack of documented administrative manuals relating to initiation, certification, and approvals at various levels; and
- e) Inability to verify the authenticity of the documents sampled against authorized official schedules of responsibilities.

## **2 OVERVIEW OF KENYA PORTS AUTHORITY**

### **2.1 Mandate**

Kenya Ports Authority (KPA) is a statutory body under the Ministry of Transport established by an Act of Parliament of 20 January 1978 with the mandate to maintain, operate, improve and regulate all scheduled seaports situated along Kenya's coastline.

The Authority is responsible for the operation and management of the port of Mombasa, other small seaports, Inland Container Depots and a liaison office in Kampala that caters for all transit countries.

The KPA is a public procuring entity within the jurisdiction of the Public Procurement and Disposal Act 2005 under Class A category.

### **2.2 Vision of KPA**

To be rated amongst the top twenty ports in the world in terms of reputation and performance by the year 2010.

### **2.3 Mission of KPA**

"To facilitate sea-borne trade in the most efficient manner by progressively bench marking out operational targets to internationally acceptable standards"

### **2.4 Organisation of the KPA**

To enable it carry out its functions, KPA is organised in nine key divisions namely:

- Human Resources and Administration;
- Finance;
- Corporate Services;
- Operations;
- Technical Services;
- Legal Services;
- Harbour Master Dept;
- Internal Audit; and
- Security Services

### **2.5 Organisation of procurement functions**

The Purchasing and Supplies Manager heads the Procurement Unit. The functions of the Procurement Unit include inventory management, stores, procurement and disposal.

The PU follows an open tendering system and purchases are done according to the needs of the end user, requiring at least three quotations before awarding contracts to any supplier.

The purchase requisition and purchase orders for all the stock items are generated through a central SAP system, which is accessible to all personnel involved in the procurement functions. The PU either has no role at all or plays very little part in procurement planning and the preparation of the contract documents. According to the senior staff, there is heavy

involvement of senior management including the Board members in crucial decisions in the supply chain management, especially in the areas of specifications for high value equipment, negotiation with suppliers and final decision on awards. This involvement has attracted reports in the media of contentious award of tenders by KPA that cause a perception of corruption in the Authority. This has led to increased oversight examinations and investigations by KACC, EMU and KNAO. The prolonged at times duplicated investigations have resulted in delays and at times cancellation of affected tenders. The work of the PU is also affected, as the staff have to stop tenders in process until the investigations are complete.

Sensitization training of the PE's high-level staff including members of the board in the requirements of the procurement law and regulations and role of PU is very critical as most of the interference originates from the senior levels.

## 2.6 Procurement performance data

### *Budget and procurement expenditure*

DESCRIPTION	2006-2007	2007-2008	2008-2009
Operating revenue	12,372,111,000.00	13,333,504,000.00	16,086,000,000.0*
Procurement Expenditure	4,198,025,173.80	4,632,658,921.70	3,356,676,528.23
Ratio of procurement to total revenue	34.1%	34.7%	20.8%

\* Forecast

### *Procurement values by category*

GOODS	2,043,738,378.38
WORKS	1,823,183,927.59
SERVICES	537,480,551.39
CONSULTANCY	334,503,114.06
<b>TOTAL</b>	<b>4,738,905,971.42</b>

### *Procurement method by Value for FY 2007-2008*

PROCUREMENT METHOD	COMMITMENT	PERCENTAGE
Open national tender	2,827,743,340.13	59.7%
Direct procurement	334,561,620.99	7%
International open tender	1,313,570,135.09	28%
Low value procurement	15,575,737.10	0.3%
Restricted tender	43,721,377.91	1%
Request for quotation	210,454,460.65	4%
<b>TOTAL</b>	<b>4,745,626,671.87</b>	<b>100</b>

*Number of transactions for procurement under review*

PROCUREMENT METHOD	NO	PERCENTAGE
Direct procurement	49	11%
International open tender	16	4%
Low value procurement	30	7%
Open national tender	172	37%
Request for quotation	171	37%
Restricted tender	18	4%

*Low Value procurement*

MOMBASA RUBBER STAMP SERVICES	374,796.48
IMPALA AUTO SPARES LIMITED	297,550.00
NAKUMATT HOLDINGS LIMITED	2,109,989.81
NISHA PRINTERS LIMITED	39,500.00
SHARP ELECT. TECHNOLOGY LTD.	255,000.00
VEE ZED ENTERPRISES LIMITED	66,500.00
WELDEQUIP AND PRODUCTS LTD.	7,650.00
M/S KABWANA KAMAKU	23,050.00
PUNJANI ELECT. & IND. H/WARE LTD	579,052.18
SOUTHHILL COMPANY LIMITED	3,500.00
GATH MANAGEMENT LTD	25,000.00
NEW SIANA ELECTRICAL AND H/WARE	23,000.00
SYSTECH LTD.	286,000.00
SAN STEVENS ELECTRICAL SALES	6,605.30
KENON HARDWARE AGENCIES	36,730.00
JODAR AUTO SERVICES	42,000.00
AKIDA GENERAL SUPPLIERS	25,700.00
FILMICO AGENCIES LTD	46,000.00
CASROM SUPPLIES LTD	12,149.00
EMIRATES ENTERPRISES	527,800.00
HALLASEY COMPANY	99,000.00
SAMBA ELECTRONICS LIMITED.	77,586.18
HITECH RADIOCALL SERVICES	427,695.00
PEDLINE ELECT. AND H/WARE ENTERPRIS	1,450.00
GENERAL TYRE SALES LIMITED	21,500.00
SOURCE LOGISTICS E.A.LIMITED.	381,526.00
MOMBASA AIR COMPR. SERVICES LTD.	575,000.00
GREEN LIGHT ACCOMMODATION CO.LTD	2,262,278.80
OTIENO INTERNATIONAL LIMITED.	187,500.00
PANESAR POWER SYSTEMS	33,927.90
<b>TOTAL</b>	<b>8,855,036.65</b>

*Ten top suppliers*

The ten top suppliers were awarded a significant portion of the contracts in terms of value. For review purposes, the review team focused on the categories that had significant and numerous contract placements during the year, subject to the assumption that the listing of procurements for the period provided was complete. The lion's share in terms of contracts with the highest value for the period 2007-2009 was taken by:

2008-2009		2007-2008	
LIBYA OIL KENYA.	311,560,092.82	MULJI DEVRAJ AND BRO.	432,935,351.60
JOH ACHELIS AND HOHNE.	286,600,720.71	KENYA OIL COMPANY LTD	388,146,724.14
SYSTEMS APPLICATIONS PRODUCTS	216,705,491.28	RELIABLE ELECT.ENGINEERS	290,763,048.36
ALLDEAN SATELLITE NETWORK.	125,867,630.00	CHINA ROAD AND BRIDGE	261,612,325.89
MICROSOFT EAST AFRICA.	107,420,848.50	ADRA INTERNATIONAL LTD.	146,443,429.21
NIRAS PORTCONSULT A/S	106,242,301.59	UNIQUE SUPPLIERS LTD	145,794,272.16
KEMA INVESTMENT LIMITED	92,273,178.01	TRANSAS MARINE UK Ltd.	131,844,637.08
DHANJAL BROS LIMITED	90,717,770.00	JOH ACHELIS AND HOHNE	118,547,753.02
LAKHANI GENERAL SUPPLIERS	77,315,255.00	H. YOUNG AND COMPANY	106,801,885.00
NEFF AUTO SPARES AND H/WARE	68,019,867.22	DHANJAL BROS LIMITED	102,943,787.50

The ten suppliers supplied 23% of KPA procurement requirement.

#### ***Inventory and stock control***

The current total stock holding after stock take of 30<sup>th</sup> June 2009 was:

Mombasa	304,607,727.68
Nairobi ICD -	9,660,282.28
Kisumu ICD	3,076,551.23
<b>TOTAL</b>	<b>317,344,561.19</b>

#### ***Obsolete stock***

CODE	LOCATION	OBSOLETE
1100	BUILDING	21,869.56
1200	TECHNICAL	11,681,149.07
1300	GENERAL	109,415.00
1600	CONTAINER TERMINAL	54,581,317.54
1700	MARINE	9,931,597.30
2100	NBI TECHNICAL	3,139,172.51
2200&2300	NBI GENERAL&FUEL	179,920.65
3100	KSM TECHNICAL	267,013.35
3200	KSM GENERAL	32,710.13
<b>TOTAL</b>		<b>79,944,165.11</b>

### 3 GENERAL FINDINGS AND RECOMMENDATIONS

#### 3.1 Incomplete records management and filing systems

**Finding:** Records management and filing of procurement of records, data and documentation relating to the procurement processes is weak.

There is no complete and comprehensive individual file, marked with the relevant procurement number, for all the procurement proceedings reviewed. Key procurement processing documents such as an extract of the procurement plan, purchase requisitions and/or application forms for new procurements are not included in a majority of the files reviewed. Signed contract documents for goods, works and services are not filed in the procurement tender file. This contravenes Regulation 34 (3).

The Authority maintains a tender register; however, the information on the register is incomplete in the majority of cases. The review team established that out of the 111 tenders listed on the register only contract for tender No.048/2008/IT indicated when the contract was signed. The tender register for the year 2008 has several columns not filled. The following information is not available in the tender register:

- Purchase requisition;
- Estimated value;
- Method of procurement;
- Closing date;
- Evaluation completion date; and
- Date of notification of contracts above Kshs. 5 million to PPOA.

The Procurement Unit does not maintain a central register for procurement requisitions for data transparency and monitoring.

**Review team:** KPA is not using the present SAP information system adequately to record and analyse data on:

- The financial aspects and audit trail of procurement processes from commencement to completion;
- Characteristics of procurement processes, such as the procurement method, the frequency and reasons for using a particular method, the complexity and the sensitivity of the procurement proceeding;
- The number of administrative complaints and recourse mechanisms;
- The number and types of controls carried out on procurement irregularities detected and information for challenging the fairness of the procedure applied; and
- Helping officials make informed procurement and financial decisions.

**Recommendation:** An accurate record is a key condition for effective accountability and control mechanisms. KPA needs to establish procedures to ensure that records for procurement processes are documented and substantiated in accordance with procurement law and regulations in order to promote compliance and accountability.

In order to help KPA officials make informed decisions about procurements, internal SAP information systems should be upgraded and configured to incorporate the requirements of Section 45 of the Act, Regulation 34 (3) and the *Procurement Records Management Procedures Manual*. ([www.ppoa.go.ke](http://www.ppoa.go.ke)) in order to:

- Incorporate procurement plans in the systems;

- Link procurement planning with budgetary framework;
- Adopt the PPOA recommended procurement forms, standard bidding documents and contract documentation; and
- Monitor the progress and actual performance of the contractor.

*KPA Response*

*While appreciating the existing challenges and weaknesses in the system the PE had already captured this element in our risk register and indeed documentation is one the areas we had noted as risk areas. It is also a key area in our ISO documentation. Corrective measures already undertaken, include the establishment of a central registry, control of records, capacity building through training of registry staff at the Mombasa Polytechnic University College, Archiving of old records at the central store and Archives Department. When these initiatives are completed, we shall achieve 100% compliance.*

*This was an issue of interpretation otherwise; the files exist but are filed by the different sections and departments that handle the Authority's transactions and processes for instance Tenders Section handle tender documents and associated correspondence while Contract section handle and file all contract correspondence, stores and creditors ledger section (finance) handle and file payment vouchers and associated correspondence.*

*We have noted the weakness and we undertake to ensure all records are compliant with the provisions of the regulations. Periodic self-audits and reviews shall also be carried out to ensure compliance.*

*All documentation and information on individual tenders are filed in the tender master file and updated in the tender register concurrently. (Please refer to the attached copy of tender register that was availed to the consultants in both hard (printed copy) and soft (electronic) showing that the PE is fully compliant).*

*The Purchase requisitions are electronically generated and automatically serialised by the Materials Management Module in SAP. At any one point, a report can be extracted.*

*These were challenges that the PE is experiencing with the SAP system, which were shared with the consultants and as a corrective action the KPA management has already awarded a tender for Upgrading of the SAP System to incorporate these requirements and make it compliant with the reporting requirements of PPDA and Regulations.*

**Review Team:** *At the time of the review, the tender register reviewed had incomplete information against a number of tenders.*

*There was no summary of purchase requisitions made available to the review team.*

### 3.2 Inadequate procurement performance data

**Finding:** KPA has an average procurement expenditure of Kshs 4 billion per year against annual operating revenue of Kshs 13 billion. The team observed that presently KPA does not have an adequate system for capturing the procurement performance data.

KPA management needs accurate procurement data for business planning and decision-making. Using inaccurate procurement data might result in wrong decisions. The information being generated now is not reliable for accurate management of information, which is a key factor in ensuring transparency across the entire procurement process.

In order to help officials make informed decisions about procurements, internal information systems must provide accurate data on procurement contracts, in particular on the types of goods and services and their individual prices, which could help define the needs in a realistic manner and facilitate the evaluation of procurements.

The SAP information systems have the advantage of recording reliable procurement information per contract and can help track irregularities in the process. The Procurement Unit has not used the SAP information systems adequately to record and analyse data on:

- The financial aspects of procurement including linkage to the budgetary framework; and
- Characteristics of procurement processes, such as the procurement methods used, the frequency, reasons for using exceptions to direct procurement and justification for variation.

**Recommendation:** The Procurement Unit should institute procurement expenditure data capturing and collation system for the entire PE. By analysing summary reports generated from expenditure data, stakeholders within and outside the PE can discover what KPA is procuring, when was it procured, who they are procuring from (and at what cost), how frequently they are procuring and which category of works, goods or services are being procured.

The Procurement Unit should review the inventory policy to reduce the stock level and dispose of the obsolete stocks currently standing at 25% of total stocks.

**Response:**

*All Procurement Expenditure Data maintained in SAP is accurate. SAP being an ERP system there exist linkages / interface between the various modules i.e. Materials Management (MM) Finance (Budgeting and Controlling), HR and Plant Maintenance. Information from original Hard Copy source documents is replicated in the system and this can be verified by audit (The Consultants).*

*It is not clear what the consultants mean in their recommendation that standard bidding documents and contract formats be incorporated in SAP since the Standard documents are always used and availed as original source documents in hard copy in the tendering process while SAP system is used for transaction management and reporting*

*The inventory policy is in draft stage pending approval by the KPA Board of Directors. Disposal process is also ongoing.*



*Review team:* Comprehensive procurement data by procurement method was not made available to the review team.

### 3.3 Procurement /Supplies staff capacity

**Finding:** The PE has a large team of staff dedicated to the management and administration of procurement, supplies and stores. KPA utilises the specialist expertise of a number of other posts within the PE on an ad hoc basis to undertake procurement related functions. Such officials contribute to the procurement functions within their area of responsibility and make valuable cost-effective contributions to procurement process elements, such as drafting of specifications, data capturing, evaluation and preparation of contract agreements. Personnel involved in procurement on an ad hoc basis include IT, finance, legal and planning officers. Currently the PE has the following staff at both the headquarters and field offices:

Purchasing and Supplies Manager	1
Principal Procurement officer	3
Senior Procurement Officer	6
Procurement Officers	10
Assistant Procurement Officers	16
Clerical officers	29
Clerical Assistant	11
Support Staff	19
Other	9
<b>Total number of staffs</b>	<b>104</b>

In general, KPA has an excess number of procurement personnel over and above the optimal establishment of 94. The key weakness identified is inadequate professional training of the personnel as only five procurement officers are qualified members of CIPS.

**Recommendation:** The PE should ensure that procurement staff qualification and skills matches the complexity of the procurement functions to ensure competence. The entity should allocate appropriate resources for sensitisation training of those personnel who are involved in the procurement related functions on ad hoc basis so that they understand the requirements of the Act in their areas of responsibility.

**Response:**

*The Authority is committed to ensure adequate capacity in the PU and thus comply with the PPDA and Supplies Management Practitioners Act. To this end the PE has registered as a corporate Member of KISM, the staff have been sensitised and encouraged to qualify as Supplies Practitioners and register with KISM. Additional efforts include sponsorship to colleges and seminars and continuous professional development.*

### 3.4 Insufficient sensitisation training

**Finding:** PPOA undertook sensitisation training for 107 junior and middle level management officers involved in procurement related functions in the PE both at headquarters and at field locations on "Public procurement training workshop for User Department staff, sub tender committee and tender committee" at Turtle Bay Beach Club, from 25 to 28 September 2006. The review team observed that senior management staff involved in decision making on procurement related functions have not under gone sensitisation training. KPA has no internal training policy for organising training on sensitisation of procurement law and regulations for those staff involved in procurement related functions.

**Recommendation:** The procuring entity should strengthen the capacity of resources available in procurement related functions. The existing senior officials including the members of the Board require training to acquire the knowledge and skills necessary to monitor and ensure that the provisions of the law and regulations are complied with in all procurement related functions.

The procuring entity should prioritise their training to include the following:

- Sensitization of personnel of the PE in requirements of the procurement law;
- Specialized aspects of procurement in areas of:
  - Records management; and
  - Framework contracting
- Advanced training to improve skills of senior procurement practitioners in
  - Procurement planning;
  - Writing specifications;
  - Qualifying potential suppliers;
  - Evaluating bids; and
  - Contract management.

#### **Response**

*There are several training and sensitization seminars that KPA has carried out since the inception of the PPDA these include  
Directors and Divisional Controllers: Indian Ocean Beach Hotel Mombasa (1 week Facilitated by PPOA)  
Sunrise Hotel Mombasa PPOA- all Heads of Departments and key users  
Nairobi and Kisumu ICDs - by PPOA  
Procurement Staff Royal reserve, Mombasa  
Royal Court Hotel Mombasa, -KISM  
Mombasa Beach PPOA stakeholders  
Attendance of several PPOA seminars and workshops  
Training is continuous and the PE is committed to ensure sensitization and capacity building with the limitation of the budget.*

**Review team.** Only one training workshop was provided during the review. The clarification by the entity is noted.

### 3.5 Lack of comprehensive system and procedures

**Findings:** The PE follows the Public Procurement and Disposal Act and the Procurement Regulations. The PE has prepared an internal Procurement Procedures Manual, which was developed with an objective of ensuring that procurement decisions in the Authority are made in a systematic and structured way.

At present KPA lacks internal implementation procedures and systems to guide those involved in procurement related functions in the implementation of the Act and related regulations.

**Recommendations:** The PE needs to build organizational capacity encompassing the following functions:

- Develop systems that will increase the compliance with the Act and associated regulations;
- The process of forecasting and quantification should be an integrated process involving User Departments and the Procurement Unit to strengthen KPA's procurement capacity to optimize the provision of goods, works and services, enhance partnerships and improve the overall confidence in the procurement system;
- Improve contract management and reduce variations;
- Developing a strategic direction for procurement functions that aligns with national and local objectives;
- Undertaking adequate procurement planning for all procurement requirements;
- Streamlining the assessment process for repeat suppliers and contractors; and
- Engaging with the local industry players and creating opportunities for suppliers to participate in service developments.

**Response:**

*KPA is disagreeable with the comment.*

*The KPA Procurement Procedure was developed pursuant to section 26 of the PPDA to ensure compliance with the Act and regulations. The document is widely circulated and is controlled in tandem with the ISO requirements. There is no conflict between the KPA procedure manual and the PPDA*

*The PPOA procurement manual is a broad guideline while ours is a procedure manual, which recently released complements our procedure manual. We are currently reviewing the PPOA manual to identify areas where it can assist us in improving our own manual.*

**Review team comment:** *The KPA was requested to share a copy of their Procurement Procedures Manual with PPOA.*

### 3.6 Inadequate procurement planning

**Finding there** is lack of appropriate procurement planning including procurement needs identification, packaging and procurement scheduling that has led to several cancelations of procurement proceedings due to non-availability of funding. PricewaterhouseCoopers in their report last year observed that *“There is a need within KPA to develop an across the board corporate planning culture. This would involve communicating effectively to various*

*divisions that there are serious implications and opportunity costs of having not delivered expenditure toward various projects and that these should not be treated passively”* This observation is critical with regard to procurement planning. Poor procurement planning has resulted in several operational risks namely:

- Understatement of the need, which is likely to lead to purchase of unsuitable products or services, wastage of money and unsatisfied needs;
- Change of scope of works or design after award of contract;
- Misinterpretation of user needs, which can result in unacceptable purchases; and
- Insufficient funding, which is likely to result in delay in making the purchase and additional costs for re-tender.

The current procurement plan is inadequate as both a planning and monitoring tool. Most of the procurement proceedings are not linked to the procurement plan. Procurement requirements are lumped together with general description and projected expenditure allocation that resembles a cost centre accounting tool and does not adhere to the requirement of Section 26 (3) (a) of the Act and Regulations (20)-(21). This has resulted into users having freedom to initiate procurement requirements, which were not planned, if there are funds in a specific cost centre. The procurement proceedings are not linked to specific budget line as required by Section 26 (3) (a).

**Recommendation:** Procurement planning is essential for effective tendering or proposals; cost efficiency; the award of contracts; and the delivery of inputs. Procurement planning entails more than the development of cost centres for various goods, civil works and services but combines the legal and institutional frameworks within which procurement must be carried out. KPA should organise sensitisation training for the development of procurement planning that conforms with the requirement of the Act and associated regulations. The PU should conduct procurement planning meetings with User Departments more frequently so that the users can be assisted with technical expertise. The SAP systems should be configured to integrate procurement planning as recommended by the Act and regulations.

### **Response**

*We concur with the recommendation.*

*The KPA management shall organize workshops to sensitize and train all user departments on how to prepare procurement plans.*

*However it worth noting that the PPOA has just issued the format and guidelines for procurement planning which were lacking in the past resulting in varying interpretations of how procurement planning should be carried out . The PU has a section in place within the procurement unit charged with coordinating and assisting user departments in developing their procurement plans and aggregates them into a corporate procurement plan.*

### **3.7 Inadequate use of standard tender documents**

**Finding:** The PE is not using most of the standard procurement documents set out in the Third Schedule of the Regulations. The procurement forms in the SAP systems are not comprehensive enough to provide adequate information necessary for procurement processes.

The contract documents are drafted by the legal department and were found to be importing FIDIC references to the contract agreement.

The documents that do not conform to the PPOA standards include the following-

- Standard tender document for procurement of works (buildings and associated civil engineering works);
- Standard tender document for procurement of works (roads, water bridges etc);
- Tender register;
- Contract agreement for goods
- Contract agreement for goods (term contracts);
- Contract agreement for consultancy services;
- Contract agreement for consultancy services (time based);
- Contract agreement for general services; and
- Standard tender documents for management contracts.

**Recommendation:** The Procurement Unit should ensure that User Departments make use of standard documents as set out in the Regulation. Wherever there is doubt in documentation, the PU should consult PPOA for advice.

### **Response**

*KPA uses standard tender documents issued by PPOA.  
Concerning the issue of use of FIDIC in tender documents, please refer to the following Standard Tender Documents issued by PPOA 2006*

*STD (1) FOR PROCUREMENT OF WORKS (ROADS, BRIDGES, WATER AND OTHER CIVIL ENGINEERING WORKS)*

*STD (3) PROCUREMENT OF WORKS (ELECTRICAL AND MECHANICAL WORKS)*

*STD (8) PROCUREMENT OF WORKS/PLANT (TURNKEY PROJECTS)*

*The Authority undertakes to ensure that the contracts arising from the various tenders conform to the PPOA requirements*

### **3.8 Lack of adequate information in procurement forms**

**Finding:** Users issue all procurement requisitions for consumables, both stock and non-stock, through the SAP system. It was observed that all requests including the stock then go to the Executive Management Committee for clearance. This has caused long delays in the commencement of procurement processes and has a negative impact on procurement functions. The application for authority for new works (commonly referred as *Yellow Paper*) is used to initiate the tender process for new works, goods and services.

The electronic purchase requisitions and application for authority for new works do not have:

- Detailed description of goods, civil works or services sought;
- Linkage with the procurement plan;
- Realistic estimated value;
- Field for procurement method;
- Feasibility study reports filed in the procurement file to accompany the application; and

- Comprehensive specifications that give clear, correct and complete description of requirements of the works, goods and services to be procured;

**Recommendations:** All future procurement requisitions should be linked to a consolidated procurement plan and approved specific budget. The feasibility studies reports should be attached to the applications for new requirements, where appropriate.

The Procurement Unit should ensure that a copy of the procurement requisition complete with any feasibility study is retained in the procurement file.

The Procurement Unit should introduce a central control register for the purchase requisitions initiated from various departments.

**KPA Response**

*Note: KPA disagrees with the consultants on bullets struck above*

*Our submission and demonstration to the consultants was that all purchase requisitions are tied to a particular departmental cost centre.*

*The SAP system creates a history of all previous purchase orders for every stock (catalogued) item. The challenge lies with non-stock/ direct issues and services. Our policy is to minimize incidents of non-stock/ direct issues*

*There is a mandatory field for the initiating officer (user department) to capture the estimate cost of the purchase request for the Head of Department to review and approve prior to presentation to procurement.*

*There exists a central control register for the purchase requisitions initiated from various departments at the Local Purchase Section and this was availed to the consultants. There exists a section (Stock Control) charged with the responsibility of filtering and checking the requisitions from the users prior to release for progression of procurement processes.*

*The rest of the recommendations shall be incorporated in the SAP upgrade. The feasibility and market sounding information shall also be incorporated in the procurement files.*

**Review team:** Amended appropriately to remove the disputed bulleted items.

### **3.9 Unrealistic estimates of the value in the requisitions**

**Finding:** Procurement Unit receives several requests (see table below) from User Departments for works and goods without realistic estimated values, contrary to the Section 26 (6).

Tender	Actual responsive price	Budgeted in PR	Variance	Variance(%)
KPA/127/2007/ME	25,661,162.800	5,000,000.00	20,661,162.80	413.2%
KPA/090/2007/CE	190,397,059.00	22,000,000.00	168,397,059.00	765.4%
KPA/091/2007/CE	12,635,473.00	5,000,000.00	7,635,478.88	152.7%
KPA/111/2007/EE	26,047,401.00	10,000,000.00	16,047,401	160.4%

The lack of coordination between User Departments and Procurement Unit has led to persistent failure to provide a realistic estimate of value in accordance with Regulation 22 (2). This has resulted in significant delays to the procurement process, as the users have to reorganise the budgets to make more funds available.

The increase in budgeted costs is simply being reallocated from future projects where the projects are not in place. As a result, projects may not be completed without obtaining other funding or generating sufficient revenue within the timeframe the project is required to be delivered. The Procurement Unit has not provided the users with adequate market information to enable them have realistic estimated costs when raising the requisitions.

**Recommendation:** The review team observed that this deficiency is due to lack of communication and coordination between the Procurement Unit and User Departments. KPA management must strengthen communication and coordination between Procurement Unit and User Departments so that correct information is made available to User Departments at the time of raising the requisition. The Procurement Unit should assist User Departments to get realistic estimates at the time of raising the requisition.

### **Response**

*We concur with the recommendations and we shall endeavour to ensure more teamwork from the conceptualization, planning, budgeting, initiation procurement proceeding and contract management.*

### **3.10 Inadequate specifications**

**Finding:** The specifications in several procurements reviewed presented serious weaknesses that present huge risk.

#### ***Supplier gave their own specifications***

KPA/066/2008/PSM SUPPLY OF UTILITY FURNITURE ITEMS.

M/s Island Homes surveyed the workshops, verified the requirements, and submitted their detailed bid proposal for furniture items totalling to KShs.38, 920, 548.00. There was no specification provided by the user.

The evaluation of the proposal from M/s Island Homes was carried out by the Furniture Task Force Committee and recommended that the supplier to specify the type of timber to be used.

The User Department did not provide functional characteristics of the table that would be most suitable for their requirement.

### **Response**

*The Authority provided specifications for procurement of specialised furniture and replacement of old and dilapidated furniture; these were detailed in the tender document availed.  
It was the duty of the tender evaluation committee to confirm the tender proposal against the authority's requirement. The recommendation that the type of timber used be specified was aimed at clarifying and confirming the submission from the bidder.*

**Review team:** The specifications were not made available to the review team. PPOA confirmed that there were no specifications developed as the case had been brought to their attention earlier as a complaint.

### **Vague Spécifications**

#### **KPA/001/2009/HSE PROVISION OF ENVIROMENTAL MAINTENANCE**

The requirement of this tender included cleaning services in the offices and various yards, garden maintenance, garbage collection and landscaping. The word environmental maintenance used in the tender specification is too general and is irrelevant to the task required. The user did not provide detailed description, functions and performance standards of the services required.

#### **Non-standardisation**

The review team found that there is need to harmonise the standardisation of heavy equipment used by the entity to enhance operational efficiency and effectiveness.

**Recommendation:** The PE should adopt use of adequate technical, functional specifications and performance standards that are neutral, based on non-discrimination and do not restrict competition. In the case of goods, the description should include all technical specifications; norms and standards; functional guarantees; inspection requirements; etc. Specification for equipment should take into consideration the standardisation of the equipment with the existing types to reduce unnecessary training and backup spares. In the case of civil works, a requisition should describe the statement of works; quality standards of different materials to be used; handling of defects, etc. For services, requisitions should provide the terms of reference; qualification and experience of consultants required; output of reports; etc. The Procurement Unit should be involved in the early stages of the market research for the requirement. The Procurement Unit should strictly adhere to the requirements of Section 34 of the Act.

### **Response**

*We have noted the rest of the recommendations and this reflects exactly what we are currently doing to ensure compliance with Section 34 of the Act. Where deficiencies are noted appropriate remedial measures are taken.*



### 3.11 Pre-qualification of suppliers and long term arrangements

**Finding:** The PE does not main a prequalified list of suppliers for specialised, technically complex and high value works, goods and services.

**Recommendation:** A procedural requirement should be put in place that encourages the use of a prequalification procedure for suppliers of common specialised works, goods, and professional services whenever possible. Once a list of qualified suppliers has been formulated, successful applicants should be evaluated to determine their technical and financial capacity to perform the contract if awarded.

Prequalification does not predetermine a contract but ensures that tender invitations are extended only to those with adequate expertise, capabilities and resources.

#### **Response**

*We note your observations; however, from our experience, such prequalification are prone to manipulations cartels and line-ups hence defeating the purpose. The Authority's choice of two-envelope system (technical and financial) ensures only technically competent firms are awarded contracts.*

*There are also legal limitations and financial thresholds that mitigate it against applications of such a method.*

### 3.12 Misuse of Procurement methods

#### **Irregular procurements by User Departments**

The review team confirmed an audit report that reported that the User Departments used cash imprests to directly procurement various goods valued at Ksh 8,300,901.25 without quotations. Some of the items procured include:

- |  |                 |
|--|-----------------|
| • Catalyst 3560 GPO B switches         | Kshs.899,232.00 |
| • P.E kits arena requirements          | Kshs.339,540.00 |
| • Renovation of Nairobi Ask Show Stand | Kshs.550,000.00 |
| • Desk top publishing tools            | Kshs.219,375.00 |
| • Hire of tents                        | Ksh.347,956.00  |

#### **Response**

*We note the observations and appropriate action has been taken to seal existing loopholes and ensure strict compliance with the law.*

#### **Low value Procurement**

The review team established that the following procurements undertaken under low procurement method by buying from single supplier violated the threshold and should be considered as order splitting with the objective of evading the request for quotation.

ITEMS	VALUE	RESPONSE / COMMENTS
NAKUMATT HOLDINGS LIMITED	2,109,989.81	<i>This is an annual aggregation of several low value items procured from M/s Nakumatt over the financial year. The individual items are within the prescribed threshold</i>
SYSTECH LTD.	286,000.00	<i>This was clarified as direct procurement of Software</i>
GREEN LIGHT ACCOMMODATION CO.LTD	2,262,278.80	<i>The method used was RFQ.and the figure is annual aggregation of several procurements</i>
PUNJANI ELECT. & IND. H/WARE LTD	579,052.18	<i>The method used was RFQ.and the figure is annual aggregation of several procurements</i>
MOMBASA AIR COMPR. SERVICES LTD.	575,000.00	<i>The method used was RFQ. and the figure is annual aggregation of several procurements</i>
EMIRATES ENTERPRISES	527,800.00	<i>The method used was RFQ. and the figure is annual aggregation of several procurements</i>
HITECH RADIOCALL SERVICES	427,695.00	<i>The method used was RFQ. and the figure is annual aggregation of several procurements</i>
SOURCE LOGISTICS E.A.LIMITED.	381,526.00	<i>The method used was RFQ. For clearing services provided</i>
MOMBASA RUBBER STAMP SERVICES	374,796.48	<i>The method used was RFQ. For supply of various rubber stamps</i>
IMPALA AUTO SPARES LIMITED	297,550.00	<i>The method used was RFQ. and the figure is annual aggregation of several procurements</i>
SHARP ELECT.TECHNOLOGY LTD.	255,000.00	<i>Laptops bought through RFQ</i>
OTIENO INTERNATIONAL LIMITED.	187,500.00	<i>These were items procured through restricted tender</i>

**Response:**

*There was an initial report that erroneously indicated the above to be low value procurements. However, this was clarified and documentation submitted to clarify that the procurement from M/s Nakumatt was an annual consolidation of several low value LPOs issued to the firm over the financial year a breakdown is appended. The rest of the procurements were through request for quotation and were annual consolidations of various purchase orders.*

*Review team: The entity's clarification is noted. The team worked on the first list provided. The corrected list was not provided. It will be amended once the comprehensive list and action taken is made available.*

**3.13 Framework contracting**

**Finding**

KPA has put in place 27 framework contracts for civil works, goods and services even though the PPOA has not issued guidelines on framework contracting. There was no evidence that the CTC approved the use of framework contracts as an alternative procurement method.

**Recommendation:** The CTC should approve the use of framework contracts as an alternative procurement method.

**Response**

*The PPOA has approved the use of framework contracting and issued guidelines. Where framework contracting is used, the procurement method is public tender or sometimes restricted tender and is awarded by the CTC. Term contracting under framework orders has the advantage of ensuring speed delivery of goods works and services and is prevalently used by procuring entities locally and overseas*

**Review team:** PPOA has not issued any guidelines.

**3.14 Inadequate Contracting and Contract management**

**Findings:** Contracting and contract management were identified as a major weakness of the PE in the procurement cycle. The Managing Director in his letter Ref.MMN/3/39 of 23 May 2007 instructed that all requisite procurement information should be referred to Legal Division for drafting and preparation of contracts. This means that Procurement Unit surrenders all functions of preparing of contract documents as provided for in the Regulation 8 (3)(k) to the legal department.

There were several deficiencies observed in contracting and contract management namely:

- PE prepares their own contracts which do not conform entirely to the recommended by PPOA formats;

DETAILS	DATE SENT TO LEGAL	DURATION TAKEN
Provision of Printing Services LPO 450019886	12.03.2008	EIGHT MONTHS
KPA/023/2008/PSM Supply of hydraulic hoses	09.05.2008	FIVE MONTHS
Supply of 1no. 40-50 semi luxury coach	23.04.2008	NO FUNDS
Supply of H-beams	11.06.2008	THREE MONTHS
Supply of Lloyd tested plates	11.06.2009	THREE MONTHS
Provision of services for storage of empty containers	12.05.2008	FOUR MONTHS
Supply of leather shoes and stockings	23.04.2008	SEVEN MONTHS
Supply of neck ties, scarves and badges	11.06.2009	FIVE MONTHS
Construction of Part Yard At the Former Shed 13/14	27.03.2008	EIGHT MONTHS
Construction of Part Yard At The Former Shed 12	27.03.2008	EIGHT MONTHS
Mbaraki Bulk Terminal Limited (MBTL)	16.04.2008	SEVEN MONTHS
Supply of 2 No. Panamax Ship To		

Shore (STS) Gantry Cranes		
Supply of Hydraulic Hoses and Fittings	09.06.2008	FOUR MONTHS
Supply of Timber Sleepers and Screw Spikes	21.07.2008	FOUR MONTHS
Supply of Personal Protective Equipments (PPEs)	13.08.2008	THREE MONTHS
	08.09.2008	THREE MONTHS
Supply of Milk to Kenya Ports Authority Nursery Schools	08.09.2009	THREE MONTHS

- It takes an average of average of 5.5 months for the legal department to draft and sign the contracts
- PE is using verbal agreement, LPOs and LSOs contrary to the requirement of Section 68 (3);
- Negotiations with suppliers after the notification of awards that have resulted in changes of specifications and scope of work that differ from the one tendered for;
- The Procurement Unit has observed that legal department engages in endless correspondences with suppliers sometimes without consulting the Procurement Unit or users who are more conversant with the procurement activity;
- There is no contract register maintained by the PE; and
- Most of the contracts do include the terms and conditions of the tender documents though they refer to them.

#### **SUMMARY OF SAMPLED CONTRACTS IN LEGAL DEPARTMENT**

##### **Procurements implemented without written contracts.**

- KPA/090/2007/CE Kshs.190,397,059.00 awarded to M/S Mulji Devraj and Brothers
- KPA/107/2007/MA Supply of 1500 books;
- KPA/023/2008/PSM Supply of hydraulic hoses;
- KPA/026/2008/KDN Supply of 50Ton and One 100Ton Jacks;
- KPA/136/2007/CE Construction of yard 13/14;
- KPA/137/2007/CE Construction of shed 12
- KPA/049/2008/IT Provision of HP Server Support and Maintenance;
- KPA/050/2008/IT Provision of Network Infrastructure and Maintenance;
- KPA/081/2008/HSE Provision of Public Outdoor Toilet Cleaning; and
- KPA/080/2008/IT Provision of IT networking works.

**Recommendation:** KPA must comply with all the requirements of the Act and regulations relating to preparation of contract documents. The PE should review the existing policy that contracts are drafted and prepared by legal department and revert the functions back to Procurement Unit as stipulated in Regulations. The legal department can, if necessary, vet and verify that the complex contracts prepared by Procurement Unit are proper in law and that the PE interests are protected. The PE should organise specialised training for those involved in contract management to strengthen the capacity of contract management in the entity.

The PE should desist from using the verbal contracts entered between KPA and contractors are illegal as they contravene Section 68 (3), which states that no contract is formed between the

person submitting the successful tender and the procuring entity until the written contract is entered into.

**Response:**

*We note the recommendations and undertake to review the current practice in order to comply with the act and regulations.*

**3.15 Variations in orders and contracts**

**Finding:** Based on our review of the documents, there has been an extensive overruns in the procurement budgets brought about by frequent variations in the terms of the contracts or prices. The main categories of variations are revision to scope of work, unforeseen/changed conditions of work, inaccurate or inappropriate estimates, delay in external party and/or timing changes.

Contract	ORIGINAL	VARIANCE	NEW VALUE	VARIANCE (%)	JUSTIFICATION
KPA/043/2007/CE	93,965,150.00	13,668,699.00	107,633,848.00	14.5%	Change of scope
KPA/107/2007/2007	200.00	150	350	75%	Change of specs
KPA/091/2007/CE	12,635,473.88	3,386,790.52	16,022,264.40	26.8%	Change of specs
KPA/036/2006/CE	\$ 4, 518,616.71	\$ 552, 975.82	5,071,592.53	12.2%	Change of scope
GREASE TRAP	691,360.00	79, 254.00	770,614.00	11.6%	Change of specs
DISPOSAL SERVICES	25,354.80	36,879.36	62,233.80	145.4%	Change of specs
KPA/195/2003/CE	15,344,800	20,593,540.00	35,938,340.00	134.2%	Change of specs
NEW CONTROL TOWER PROJECT	\$179,050.00	\$347,356.00	526,406.00	193.9	Change of specs

**Recommendation:** It will never be possible to define scope, schedule, and conditions of work ahead of time with 100% accuracy, so the need for contract variations will be never be eliminated. However, the number and frequency of variations can be minimised with proper procurement planning and accurate specification and scope of work for engineering projects.

**Response:**

*We note and shall endeavour to ensure minimise variations with preference being given to fixed price contracts.*

**3.16 Terminated procurement proceedings**

**Findings:** The following 18 procurement proceedings were terminated during the period under review.

It was established that in the majority cases the Authority's lack of funding for procurement was the main basis for termination, as the PE could not award contracts, which exceeded available funds. Tender no KPA/084/2007/TE for the supply of 6no.new rubber tyre gantry cranes was terminated because of the long delays to conclude the contract between KPA and the most responsive bidder arising from the intervention of KACC investigations. The supplier quoted changes in the market prices of the various components resulting from the prolonged delays. The review team observed that tender no KPA/017/2009/CE for 33-year lease for MV/V/196 (63-Acre plot) at Jomvu Kuu for establishment of port related activities was terminated on the orders of the Chairman of the Board.

**Recommendation:** Section 36 of the Act allows a procuring entity to terminate procurement proceedings at any time without entering into a contract. Even so, the Authority must establish a reasonable basis to support a decision to terminate the procurement proceedings. The PE is presumed to act in good faith and the justification must show that the action is unavoidable and the procuring officials did act prudently in initiating the procurement proceedings. The discretionary power of the officials of the Authority in the decision to terminate procurement process should be checked by PPOA to verify the justification of every termination to protect the integrity of the procurement processes at KPA.

**Response:** *Noted and shall ensure compliance.*

### 3.17 Lack of periodic market survey

**Findings:** There are no periodic market price surveys undertaken by the Procurement Unit as required under Regulation 8 (z).

The first step in sourcing suppliers is often market research, particularly if the product or service has not previously been procured. Procurement Unit may obtain names of potential suppliers through registration of prospective suppliers for commonly procured requirements and prequalification of specialized and complex works, goods and services.

**Recommendation:** The PU should ensure that periodic market price surveys are carried out to ensure that prices quoted and charged are reflect fair market prices.

To assist Procurement Unit in with market survey the following databases and venues are available for the PE:

- PPOA website;
- DACON , a database of consulting companies maintained by the World Bank;
- Consultations with other ports organizations or agencies who have purchased similar inputs;
- Kompas System, a widespread database with more than 23 million references to the products and services of over 1.8 million companies; and
- Trade publications, directories, supplier catalogues and professional journals;

**Response:** *We have our own SAP database; we also benchmark the PPOA market price for common user items and drugs, The Joint Industrial and Building council and Ministry of Public Works rates among others. We do market sounding before commencement of procurement.  
The documentation and circulation of the above shall be improved.*

### 3.18 Procurement complaints

**Finding:** KPA had three cases that went to the Appeals Board since 2003. The main grounds of all the appeals are flawed evaluation procedures where KPA is using evaluation criteria other than the ones outlined in the tender documents. Besides, the review team observed that there are several procurement complaints raised by bidders during tender processes for the tenders for the supply of drugs and environmental maintenance services. For the former the main complaint was that the user is favouring some suppliers and for the latter the complaint was doubt over the evaluation. For environmental maintenance services tender, the PE appointed a management taskforce to investigate the allegations. The tender was subsequently cancelled and is due for retendering. The supply of drugs tender was evaluated and awarded without substantively addressing the issues raised by the protester.

**Recommendation:** The PE must address in the first instance any complaint or protest from any bidder. The PE should also advise in its response, the next cause of action that the protestor should take if not be satisfied.

The Procurement Unit should establish a complaints resolution mechanism and that would address bidders' complaints effectively.

#### **Response**

*The law is clear on complaints procedure and requests for administrative review. The Authority does not entertain unsolicited correspondence on tenders that are under evaluation. Confidential and anonymous letters are dealt with by management through the integrity system.*

### 3.19 Disposal of obsolete equipment and stores

**Finding:** The Authority maintains stores for various equipment spares, fuel, electrical and hardware besides other general items in all stores situated in Mombasa, Nairobi and Kisumu. The Authority is currently incurring financial loss by way of stockholding costs of obsolete stocks.

**Recommendation:** The management should dispose of all obsolete and dormant stocks in compliance with the Public Procurement and Disposal Act 2005.

*Response: The items were identified during the last stock-take and appropriate measures are being taken to ensure that they are disposed in line with the law.*

## 4 SPECIFIC FINDINGS

### 4.1 KACC investigations

The following KACC Communication was examined:

- Letter Ref. KACC/MSA/INV. 6/11/2/35 dated 21/01/2009 regarding maintenance of water system at Bandari College, Container terminal and CFS No. 7, 13/14 for year 2007/2008 and 2008/2009;
- Letter Ref. KACC/MSA/INV. 6/11/2/100 dated 29/10/08 relating to procurement of Second Grain Bulk Handling operator at Kalinin, Report submitted by the Authority for period 2000 to date.
- Letter Ref. KACC/MSA/INV.6/11/2/ (13) – Case No. 187/2008 dated 12/3/08, Construction of Part Yard 12, 13, 14. Tender No. KPA/136/07/CE Kshs.99, 140,893.50. Allegation that one of the bidders had prior knowledge of the project sum.
- Ref. KACC/MSA/INV.6/11/2/ (14) dated 10/3/08 – General Housing repairs at the Old Port Mombasa in 2007. Requested for documents.
- Ref. KACC/MSA/6/11/2 (8) and KACC/MSA/6/11/2 (a) dated 21/12/07, Tender No.KPA/016/2007, Purchase of 2No. Shore gantry cranes. Requested for documents.
- Ref. KACC/MSA/INV.6/11/2 (10) dated 11/2/2008. Alleged Irregular Acquisition and Disposal of Tags. Requested for documents.
- Ref. KACC/MSA/INV.6/11/2/ (4) dated 31/10/2007. Alleged Irregular Purchase of building materials. Requested for documents.
- Ref. KACC/MSA/INV.6/11/2/ (2) dated 20/7/2007 (Ref. Msa/2/1/05 Vol xx III dated 25/7/07. Request for information on the Purchase and Installation of new engine on Mc/50

### 4.2 Specific findings on various tenders reviewed

#### ***KPA/001/2009***

ENVIRONMENTAL MAINTENANCE SERVICES

**CATEGORY:** Services

**PROCUREMENT METHOD:** Open National Tender

**BUDGET AMOUNT:** NOT AVAILABLE

**CONTRACT NO:** Contract not awarded

<b>Consultants' remarks</b>	<b><i>KPA \response</i></b>
<ul style="list-style-type: none"> <li>• There was no comprehensive and complete individual file for this tender (Regulation 34(3));</li> </ul>	<i>Master file KPA/001/2009 available and was availed to consultants</i>
<ul style="list-style-type: none"> <li>• There was no procurement plan that covered the requirements (Regulation 20);</li> </ul>	<i>Available see document attached</i>
<ul style="list-style-type: none"> <li>• There is no budget set aside to meet the obligations from the resulting contracts (Section 26 (6) of the Act;</li> </ul>	<i>Available see vote:</i>



<ul style="list-style-type: none"> <li>• There is no purchase requisition provided for these requirements (Regulation 22 (1-5));</li> </ul>	<p><i>Is an essential service request from user available</i></p>
<ul style="list-style-type: none"> <li>• The description and scope of work was too wide and ambiguous covering multi disciplines and could not be adequately interpreted. There is a risk of definition of inappropriate service. This was landscaping, gardening and cleaning services. This could bring confusion in evaluation process;</li> </ul>	<p><i>This is an existing discipline with practising firms that carry out such services in Kenya.</i></p> <p><i>The evaluation criteria is very clear and measures particular qualifying criteria</i></p>
<ul style="list-style-type: none"> <li>• There is no evidence confirming who determined the method of procurement between the User Department and Procurement Unit;</li> </ul>	<p><i>Default procurement method Open National tender on the basis of expenditure threshold</i></p>
<ul style="list-style-type: none"> <li>• This is a service requirement and Request for Proposal method should have been more appropriate (Section 76 (1)) through Expression of Interest (Section (1));</li> </ul>	<p><i>RFP is applicable to consultancy. There exists a standard tender document for procurement of services which is what we used</i></p>
<ul style="list-style-type: none"> <li>• There is no bidders' tender document register showing the people who purchased the documents;</li> </ul>	<p><i>Available see copy attached</i></p>
<ul style="list-style-type: none"> <li>• There were no minutes taken during the site conference;</li> </ul>	<p><i>Available see copy attached</i></p>
<ul style="list-style-type: none"> <li>• There were no minutes despatched to the bidders who attended the site visit;</li> </ul>	<p><i>Refer to addendum below</i></p>
<ul style="list-style-type: none"> <li>• An addendum was circulated to the bidders after the site meeting. The review team was not provided with the reasons, which necessitated the addendum;</li> </ul>	<p><i>Matters arising out of the site visit</i></p>
<ul style="list-style-type: none"> <li>• There was no document confirming that the tender opening team was approved by the Accounting Officer; and</li> </ul>	<p><i>See appointment letter attached</i></p>
<ul style="list-style-type: none"> <li>• There was no bid opening register listing the received bids and therefore the bids received were not recorded at the time of opening. There was no evidence that the evaluation team was approved by the Accounting officer.</li> </ul>	<p><i>Available see copy plus minutes</i></p>

*All the above information was provided to the Consultant including all the files and submissions. The findings are therefore rather surprising.*

**KPA/015/08/C5**

REVIEW AND UPDATE OF PORT MASTER PLAN STUDY OF THE PORT OF MOMBASA

**Category:** Professional services.

**Procurement Method:** Request for Proposal

**Tender amount:** Not available.

<ul style="list-style-type: none"> <li>• There was no comprehensive and complete individual file for this tender (Regulation 34(3));</li> </ul>	<p><i>Master file KPA/015/08/CSM available and was availed to consultants</i></p>
<ul style="list-style-type: none"> <li>• There was no procurement plan that covered the requirements (Regulation 20);</li> </ul>	<p><i>Available see copy</i></p>
<ul style="list-style-type: none"> <li>• There is no budget set aside to meet the obligations from the resulting contracts (Section 26 (6) of the Act;</li> </ul>	<p><i>Available see copy</i></p>
<ul style="list-style-type: none"> <li>• There is no purchase requisition provided for these requirements (Regulation 22 (1-5);</li> </ul>	<p><i>Available PR no 10038031 see copy in appendix</i></p>
<ul style="list-style-type: none"> <li>• There is scope of work outlining the specifications, terms of reference and the expected outputs;</li> </ul>	
<ul style="list-style-type: none"> <li>• There is no estimated value of the procurement proceeding at the time of initiating the proceedings (Regulation 22 (2));</li> </ul>	<p><i>Refer to budget</i></p>
<ul style="list-style-type: none"> <li>• There is no evidence confirming who determined the method of procurement between the User Department and Procurement Unit;</li> </ul>	<p><i>Default procurement method Open National tender on the basis of expenditure threshold</i></p>
<ul style="list-style-type: none"> <li>• This is a service requirement and Request for Proposal method should have been more appropriate (Section 76 (1)) through Expression of Interest (Section (1));</li> </ul>	<p><i>Used RFP document, the Two envelope system is a prequalification akin to EOI</i></p>
<ul style="list-style-type: none"> <li>• There is no bidders' tender document register showing the people who purchased the documents;</li> <li>• There were no minutes taken during the site conference;</li> </ul>	<p><i>Available see copy</i></p>
<ul style="list-style-type: none"> <li>• There were no minutes despatched to the bidders who attended the site visit;</li> </ul>	<p><i>Refer to addendum below</i></p>
<ul style="list-style-type: none"> <li>• An addendum was circulated to the bidders after the site meeting. The review team was not provided with the reasons, which necessitated the addendum;</li> </ul>	<p><i>Matters arising out of the site visit</i></p>
<ul style="list-style-type: none"> <li>• There was no bid opening register listing the received bids and therefore the bids received were not recorded at the time of</li> </ul>	<p><i>Available see copy</i></p>

opening. There was no evidence that the evaluation team was approved by the Accounting officer;	
<ul style="list-style-type: none"> <li>The financial evaluation was carried out and report issued on 26 May 2009. The evaluation period has exceeded thirty days as stipulated in Section 66 (6)/Regulation 46; and</li> </ul>	<i>noted</i>
<ul style="list-style-type: none"> <li>The tender committee has not made deliberated on the tender as such there is no contract award as at now.</li> </ul>	<i>Refer to CTC meeting no Contract duly signed and executed</i>

**KPA/006/2009/CMO**

**PROCUREMENT OF DRUGS**

**Category:** Goods

**Procurement Method:** Open tendering

**Tender amount:** Not available

<ul style="list-style-type: none"> <li>This is a method used to develop biannual framework agreement for supply of drugs to the KPA. Orders will be placed with the most response bidder as when need arises. No financial obligation will arise from the contract agreement;</li> </ul>	
<ul style="list-style-type: none"> <li>The method chosen is not provided in the Act as provided in section 29 (2);</li> </ul>	<i>Open National tender</i>
<ul style="list-style-type: none"> <li>There is no tender committee approval of the choice of the method of procurement;</li> </ul>	<i>Open National tender no approval required</i>
<ul style="list-style-type: none"> <li>There is no evidence that the procurement is within the threshold as provided in the First Schedule (Regulation 62 (1);</li> </ul>	<i>See estimated expenditure based on last years records</i>
<ul style="list-style-type: none"> <li>There was no comprehensive and complete individual file for this tender (Regulation 34(3);</li> </ul>	<i>Refer to master file KPA/006/2009/CMO</i>
<ul style="list-style-type: none"> <li>There was no procurement plan that covered the requirements (Regulation 20);</li> </ul>	<i>See copy</i>
<ul style="list-style-type: none"> <li>There is no budget set aside to meet the obligations from the resulting contracts (Section 26 (6) of the Act;</li> </ul>	<i>Available see copy attached</i>
<ul style="list-style-type: none"> <li>There is no purchase requisition provided for these requirements (Regulation 22 (1-5) authorised in accordance with First Schedule;</li> </ul>	<i>Purchase requests raised as and when required</i>
<ul style="list-style-type: none"> <li>There was no request to the tender committee on the choice of the biannual framework method;</li> </ul>	<i>Not a requirement</i>
<ul style="list-style-type: none"> <li>There is no estimated value of the procurement proceeding at the time of initiating the proceedings (Regulation 22 (2));</li> </ul>	<i>Not applicable</i>

<ul style="list-style-type: none"> <li>• There is no evidence confirming who determined the method of procurement between the User Department and Procurement Unit;</li> </ul>	<i>Default procurement method Open National tender on the basis of expenditure threshold</i>
<ul style="list-style-type: none"> <li>• The standard bid documents are adopted but there was no evidence that the User Department approved the documents;</li> </ul>	<i>Approved by CMO and pharmacist see copy ( but not a requirement anyway)</i>
<ul style="list-style-type: none"> <li>• The tender document requested certificate of registration from KMLTTB/NCK/PPB or any other medical professional;</li> </ul>	<i>Which is quite OK</i>
<ul style="list-style-type: none"> <li>• There was no approval for the bid notice;</li> </ul>	<i>Approved see copy</i>
<ul style="list-style-type: none"> <li>• There is no bidders' tender document register showing the people who purchased the documents;</li> </ul>	<i>Available see copy</i>
<ul style="list-style-type: none"> <li>• An addendum was circulated to the bidders after on 24 February 2009. The review team was not provided with the reasons, which necessitated the addendum;</li> </ul>	<i>Questions from bidders</i>
<ul style="list-style-type: none"> <li>• The bid opening was undertaken on 5 March 2009 but there was no minutes were recorded for the meeting;</li> </ul>	<i>Available duly signed and filed</i>
<ul style="list-style-type: none"> <li>• Compare the bids received with bids purchased;</li> </ul>	<i>They are tallying</i>
<ul style="list-style-type: none"> <li>• The following persons who participated in the opening were not in the approved list by accounting officer; and <ul style="list-style-type: none"> <li>○ Fatuma Abdul</li> <li>○ Evans Kwera</li> <li>○ Alfred Warombo; and</li> <li>○ D. Mutual</li> <li>○ Ali Addi.</li> </ul> </li> </ul>	<i>This was a Public opening and the listed are secretariat staff facilitating and witnessing the tender opening</i>
<p>The financial evaluation was carried out and report issued on the evaluation period has exceeded thirty days as stipulated in Section 66 (6)/Regulation 46</p>	<i>noted</i>

**KPA/038/2008/PSM - Uniform**

**Category:** Goods

**Procurement Method:** Open tendering

**Tender amount:** Not available

<ul style="list-style-type: none"> <li>• This is a method used to develop biannual framework agreement for supply of drugs to the KPA. Orders will be placed with the most response bidder as when need arises. No financial obligation will arise from the contract agreement.</li> </ul>	
<ul style="list-style-type: none"> <li>• The method chosen is not provided in the Act as provided in section 29 (2);</li> </ul>	<i>Open National tender</i>

<ul style="list-style-type: none"> <li>• There is no tender committee approval of the choice of the method of procurement</li> </ul>	<i>Not a requirement</i>
<ul style="list-style-type: none"> <li>• There is no evidence that the procurement is within the threshold as provided in the First Schedule (Regulation 62 (1));</li> </ul>	<i>Based on estimated expenditure</i>
<ul style="list-style-type: none"> <li>• There was no comprehensive and complete individual file for this tender (Regulation 34(3));</li> </ul>	<i>Available Refer to master file KPA/038/2008/PSM - uniforms</i>
<ul style="list-style-type: none"> <li>• There was no procurement plan that covered the requirements (Regulation 20).</li> </ul>	<i>Available see copy</i>
<ul style="list-style-type: none"> <li>• There is no budget set aside to meet the obligations from the resulting contracts (Section 26 (6) of the Act;</li> </ul>	<i>Available see copy</i>
<ul style="list-style-type: none"> <li>• There is no purchase requisition provided for these requirements (Regulation 22 (1-5) authorised in accordance with First Schedule;</li> </ul>	<i>Bought as and when required / not applicable</i>
<ul style="list-style-type: none"> <li>• The was no request to the tender committee on the choice of the biannual framework method</li> </ul>	<i>Not applicable</i>
<ul style="list-style-type: none"> <li>• There is no estimated value of the procurement proceeding at the time of initiating the proceedings (Regulation 22 (2))</li> </ul>	<i>Available budget</i>
<ul style="list-style-type: none"> <li>• There is no evidence confirming who determined the method of procurement between the User Department and Procurement Unit; and</li> </ul>	<i>The Procurement Unit determines the method being the coordinating department. Default Open national tender use.</i>
<ul style="list-style-type: none"> <li>• The standard bid documents are adopted but there was no evidence that the User Department approved the documents;</li> </ul>	

***KPA/107/2007/MA***

**PRINTING AND SUPPLY OF TARIFF BOOK**

- The Secretary informed members that during its meeting on 8<sup>th</sup> November, 2007 the Corporation Tender Committee (CTC) deliberated on and awarded the subject tender vide substantive Memo No.2061 to M/s Flora Printers at a unit price of KShs.200/= exclusive of VAT for a period of three (3) years;
- M/s Flora Printers, vide their letter dated 17<sup>th</sup> January 2008 requested for the price to be varied to KShs.350/= exclusive of VAT. This was because of finalization of the layout of the tariff book with the User Department;
- Whereas the tender was awarded on the option of the book consisting 36 pages, excluding the cover (9 pages in full colour and 26 pages in 2 colours) and in portrait layout; the User Department approved 48 pages plus cover, (8 pages in full colour and the remaining pages in 3 colours), in landscape layout. This requires additional input by the bidder hence the request for price variation;

- Members noted that the variation requested for was in excess of what was permissible by the prevailing Public Procurement and Disposal legislation. The meeting sought advice from the Secretary on the way forward;
- The Secretary informed members that what was awarded had been reached at on a rate basis and Management requested changes in design. The Secretary guided the meeting that the new prices were justifiable as they were in proportion to the additional design and printing work which had been done to the specification of Management; and
- The CTC considered and after due deliberation approved price variation of the contract with M/s Flora Printers, for Printing and Supply of Tariff Books, from KShs.200.00 exclusive of VAT to KShs.350.00 exclusive of VAT.

***CTC MEETING NO. 28***

**GREASE TRAP AT MBARAKI SPORTS CLUB**

- The Secretary informed the meeting that the Corporation Tender Committee, during its Meeting No. 28, held on 14<sup>th</sup> December, 2007 deliberated on and ratified urgent procurement of the proposed Grease Trap and Alternative Soak Pit at Mbaraki Sports Club from M/s Kiziwi General Services at a total cost of KShs.691, 360.00 VAT inclusive;
- The Chief Civil Engineer, vide his letter Ref: MEN/H/2/2 dated 6<sup>th</sup> March 2008 had recommended a variation of the contract. This was because there were some omissions and unforeseen situations;
- The revised bills of quantities, for the finalization of the project, reflecting a variation by KSh.79, 254.00 inclusive of VAT was attached for reference. The variation was 11.5% of the original contract price;
- The expenditure would be charged under cost 51240204 – cost element 600261, which had a balance of KShs.68, 765,057.73; and
- The Corporation tender Committee considered the request and after due consideration approved variation of the contract with M/s Kiziwi General Services, for proposed Grease Trap and Alternative Soak Pit at Mbaraki Sports Club by Ksh. 79,254.00 inclusive of VAT.

***KPA/073/2008/HSE***

**M/S RENTOKIL INITIAL**

**PROVISION OF SANITARY DISPOSAL SERVICES AT ICD NAIROBI**

- The Authority entered into a contract with M/s Rentokil Initial Kenya Limited for the provision of sanitary bins on 01.07.2004 at ICD Nairobi. The firm charges Thirty two (32) units monthly, for provision of sanitary disposal services;
- M/s Rentokil Initial Kenya Limited, vide their letter Ref: 500665, dated 16<sup>th</sup> January, 2008 (copy attached) requested for a variation of the quarterly fee from KShs.25,354.80 exclusive of VAT to KShs.36,879.36 exclusive of VAT, with effect from 1<sup>st</sup> January 2008;
- The reason for the variation was an increase in operational costs and the Secretariat recommended that the Corporation Tender Committee considers the matter and if it deems it fit, approve the variation of the contract; and
- The Corporation Tender Committee considered the request and after due consideration approved extension for 3 Months to allow time for a re -tendering.

***KPA/195/2003/CE***

- Consultancy services for the design and supervision of rehabilitation of Kipevu bridge and berths nos. 7-10;
- The subject contract was signed on 26<sup>th</sup> July 2004 between KPA and M/s Andrew P. Burnard & Associates Consulting Engineers (APB&A), for KShs.15,344,800.00 inclusive of VAT;
- The consultant tabled a claim for KShs.34,539,014.00 representing a variation by KShs.19,194,214.00;
- After deliberation, the CTC deferred action and appointed a committee comprising the under-listed members, to negotiate with the Consultant and re-submit the request, based on legitimate terms and a revised report;
- The Committee held two meetings to familiarize themselves with the consultant's claim (item by item), guided by the signed contract and description of services. This was aimed at reaching common understanding on the variation claim, before inviting the consultant for negotiations;
- The Consultant had indicated that the contract for provision of consulting services for the rehabilitation of Kipevu Bridge and Berths Nos. 7 to 10 was to be carried out as one contract. However, he was subsequently instructed, that each be to be carried out separately. Because of the separation the consultant claimed 60% increment (KShs.4,526,776/=);
- Members felt that separation of the tenders resulted to additional administrative input, inform of extra time and effort by the Consultant. The Consultant was requested to justify any additional technical input and the expertise involved in the separation of the contracts and submit a more detailed and revised paper;
- The Committee was advised that this was not part of the original design. Berths 9 and 10 were just for repair, but due to the need to accommodate bigger ships, the Consultant was requested to look into the design of new berths and possibilities of deepening the two berths. For this reason, he placed a claim for 30% variation;
- The Committee was advised that there was a difference between doing repairs and studying the possibility of deepening. Following a request by the Committee, the Consultant accepted to review the claim and provide a justification;
- The consultant indicated that due to decision by KPA to permit contractors to work at night and on Sundays, his supervision required extension;
- The Committee was advised that separation of the contracts could have led to an increase in administrative costs but not supervision and expertise. There was however need to consider how much more technical effort was required to supervise two independent contracts running concurrently as opposed to one contract. The Consultant promised to provide a justification detailing the additional resources and working hours;
- In his claim, the Consultant stated that the contract amounts were greatly in excess of those estimated by him at the time of his tender. This factor increased his responsibilities for the execution of his work;
- The Committee was advised that for consultancies based on CAP 525, the fees were a proportion of the cost of construction, but in this case the Consultant's fees were lump sum and not dependent on the actual construction costs. The contract was not based on the project fees; hence, his claim on this item had no merit and was therefore not permissible for negotiation;
- At the time of bid submission, the Consultant had assumed a contract commencement date of less than two months after completion of tender evaluation and a contract

period of 18 months. However, his work was greatly affected due to the delays and extended contract periods;

- The Committee was advised that if the contract period were extended due to the Contractor's fault, KPA would impose delay charges and pay the Consultant. M/s H. Young should therefore be pressurized to finish their work as scheduled; and
- Members agreed that the matter be kept in abeyance until the delay materializes. Costs associated with extended and delayed contract period would be recalculated after the actual delay was ascertained. The method of calculation of the cost would be agreed upon and the CTC would be requested to adopt the formula.

***KPA/091/2007 CE***

**PROPOSED CANTEN AT DOCKYARD KSHS 12,635,473.88**

<ul style="list-style-type: none"> <li>• Lack of comprehensive and complete proceedings records (Act Section 45 (1) (6) and regulation 34 (3));</li> </ul>	<p><i>Available refer to master file KPA/091/2007 CE</i></p>
<ul style="list-style-type: none"> <li>• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a);</li> </ul>	<p><i>Available see copy</i></p>
<ul style="list-style-type: none"> <li>• No official purchase requisition availed to the review team (Regulation 22 (1) Act Section 101);</li> </ul>	<p><i>PR no 10037517 available see copy in appendix</i></p>
<ul style="list-style-type: none"> <li>• Procurement procedures commenced without sufficient funds set aside in the budget to meet the obligations of the resulting contract (Act section 26 (6). It was noted that there was a budget allocation of Kshs.7,635,478.83 while the estimated cost of the project was Kshs.12,635,473.88 ( a deficit of Kshs.5,000,000);</li> </ul>	<p><i>Virement of funds was done.</i></p>
<ul style="list-style-type: none"> <li>• The contract was signed on 21/4/2008, however only four pages of contract are in the file. Clause 4 states that “ the following documents shall be deemed to form, and be read and construed, as part of the agreement: however, the letter of acceptance, form of tender, conditions of contract, Appendix to conditions of contract, performance security, instructions to tenders, Kenya Ports Authority Health, Safety and Environment Policy and Declaration, were not part of the signed page of the contract;</li> </ul>	<p><i>Detailed copies of contracts available in (Legal office, contracts office, finance department, Chief Civil Engineer and audit)</i> <i>Extract for filing only</i></p>
<ul style="list-style-type: none"> <li>• The award notification is dated 8/2/2008;and</li> </ul>	<p><i>Ok Delays on contract finalization noted</i></p>



<ul style="list-style-type: none"> <li>There was a price variation of 26.8% due to price affecting materials.</li> </ul>	<i>Approved refer to Joint industrial and building council rates applicable and CTC memo / minutes</i>
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***KPA/090/ 2007 CE PROPOSED IMPROVEMENT TO KIPEVU OIL TERMINAL SAFETY WORKS KSHS.190,397,059.00***

<ul style="list-style-type: none"> <li>Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation 21 (a)</li> </ul>	<i>Available see copy</i>
<ul style="list-style-type: none"> <li>No official purchase requisition availed to the review team (Act Section 101 and Regulation No. 22 (1);</li> </ul>	<i>Pr no 10037307 see copy</i>
<ul style="list-style-type: none"> <li>Procurement procedure commenced without sufficient funds set aside in the budget to meet the obligations of the resulting contract (Act Section 26 (6). We noted that, there was available budget of Kshs.22,000,000.00 while the awarded bid value was Kshs.190,397,059.00 (deficit of Kshs.168,397,059.00). This resulted in a delay in awarding the tender pending budget approval in the next financial year</li> </ul>	<i>A Multi-year project with annual provisions</i>
<ul style="list-style-type: none"> <li>Lack of comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation No. 34 (3);</li> </ul>	<i>Master file KPA/090/ 2007 CE Available for scrutiny</i>
<ul style="list-style-type: none"> <li>The financial evaluation committee corrected the bid amount to Kshs.186,263,353.54 ( M/S Mulji Devraj and Brothers Ltd) while the award letter indicated Kshs.190,397,059.00); and</li> </ul>	<i>The error had been noted and LPO was issued at the corrected tender amount. Contract addendum issued see copy</i>
<ul style="list-style-type: none"> <li>The CTC minute No. 5/1 meeting No. 03/2008 of 10/3/08 awarded the bidder M/S Mulji Devraj and Brothers Ltd at Kshs.190,397,059.00</li> </ul>	

***KPA/005/08/TE***

**BUILDING, SUPPLY AND COMMISSIONING OF FOUR (4N0) 40' AND TWO (2N0) 20' SEMI AUTOMATIC MANUAL SPREADERS USD 263,910.00**

<ul style="list-style-type: none"> <li>Lack of comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation No. 34 (3);</li> </ul>	<i>Master file no KPA/005/08/TE available for scrutiny</i>
<ul style="list-style-type: none"> <li>Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and regulation No. 21 (a);</li> </ul>	<i>See crane spares item in plan</i>
<ul style="list-style-type: none"> <li>The team was not provided with the official</li> </ul>	<i>Pr no 1003805 see copy in appendix</i>

purchase requisition raised by the User Department, therefore we were unable to determine whether the estimate of the cost is realistic and based in economic and market condition; and	
<ul style="list-style-type: none"> <li>The wrong contract document dated 13/7/2007 filed in the procurement proceedings file and therefore the correct contract not availed (Act Section 68 (3)).</li> </ul>	<i>Noted</i>

**KPA/07/2007/MA**

**PRINTING AND SUPPLY OF TARIFF BOO ( 3 YEAR CONTRACT)**

<ul style="list-style-type: none"> <li>Lack of a comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation number 34 (3);</li> </ul>	<i>Master file no KPA/07/2007/MA Available for scrutiny</i>
<ul style="list-style-type: none"> <li>In accurate and incomplete specifications of the tariff book given to the bidders leading to variation of specifications and price (Act Section 34 (1) (2);</li> </ul>	<i>Noted however some of the changes were brought about by recommendations from stakeholders and legislative changes</i>
<ul style="list-style-type: none"> <li>The procurement not linked to any specific procurement plan (Act Section 26 (3) (a), 26 (6) and regulation No. 21 (a);</li> </ul>	<i>Done under printing works budget</i>
<ul style="list-style-type: none"> <li>The reason for choice of Restricted Tender method of procurement was given as “Urgent” however, although invitation for bids were dated 19/9/2007, tenders opened on 11/10/07, the CTC approved the award on 08/11/07 and the award notification dated 10/11/2007, variation of prices due to change in specification was approved by CTC in meeting No. 2/2008 of 7/2/08, minute No. 4/4; and.</li> </ul>	<i>Noted delays in process</i>
<ul style="list-style-type: none"> <li>No contract document availed so far.</li> </ul>	<i>Noted delays in process</i>

**KPA/100/2008 CE (RT)**

**REPAIR TO DAMAGED QUAY STRUCTURE AT MBARAKI WHARF  
KSHS.12,580,767.00**

<ul style="list-style-type: none"> <li>Lack of comprehensive and complete procurement proceeding records (Act Section 45 (1) (6), Regulation No. 34 (3);</li> </ul>	<i>Master file KPA/100/2008 CE (RT) Available for scrutiny</i>
<ul style="list-style-type: none"> <li>The bidder awarded on 20/1/2009 and the contract signed on 15/05/2009;and</li> </ul>	<i>Delays on contract finalization noted</i>
<ul style="list-style-type: none"> <li>No official purchase requisition availed to the review team (Act Section 101 and Regulation 22 (1);</li> </ul>	<i>Purchase requisition number --- see copy</i>

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**TENDER NO. 142/2007 TE**

SUPPLY AND COMMISSIONING OF FOUR (4NO) REACH STACKERS (1,200,000.00 (KES 130,800,000.00)

<ul style="list-style-type: none"> <li>Lack of comprehensive and complete procurement plan (Act Section 26 (3) (a) and (26) and Regulation No. 21 (a);</li> </ul>	<i>Noted area for improvement</i>
<ul style="list-style-type: none"> <li>There is no official purchase requisition availed to the team (Act Section 101, Regulation No. 22 (1);</li> </ul>	<i>Purchase requisition number 10038018 available see copy in appendix</i>
<ul style="list-style-type: none"> <li>Notification of award dated 26/03/2008 and the contract signed 3/6/2008; and</li> </ul>	<i>Delays on contract finalization noted</i>
<ul style="list-style-type: none"> <li>No evidence delivery and commission of Reach Stackers availed (Act Section 101),</li> </ul>	

**KPA/101/08 (RT)**

PROVISION OF COMPREHENSIVE MAINTENANCE FOR A PC, UPS AND RELATED EQUIPMENT KSHS.10,329,393.10

<ul style="list-style-type: none"> <li>Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a);</li> </ul>	
<ul style="list-style-type: none"> <li>No official purchase requisition availed to the review team (Regulation 22 (1) and Act Section 101);</li> </ul>	<i>Purchase requisition number available see copy and correspondence</i>
<ul style="list-style-type: none"> <li>Lack of comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation No. 34 (3);</li> </ul>	<i>Master KPA/101/08 (RT). Available for scrutiny</i>
<ul style="list-style-type: none"> <li>Award notification dated 13/03/09 and the contract signed on 4/5/2009; and</li> </ul>	<i>Delays on contract finalization noted</i>
<ul style="list-style-type: none"> <li>No evidence of the implementation of the contract (Act Section 101);</li> </ul>	<i>Ongoing file available for scrutiny</i>

**KPA/089/2008/DY**

PROVISION OF DRY DOCKING SERVICES FOR TUGBOATS KSHS.13,406,529.00

<ul style="list-style-type: none"> <li>Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a);</li> </ul>	<i>See budget copy</i>
<ul style="list-style-type: none"> <li>No official purchase requisition availed to the review team (Regulation 22 (1) and Act Section 101)</li> </ul>	<i>Purchase requisition no 10041146 See copy attached</i>
<ul style="list-style-type: none"> <li>Lack of comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation No. 34 (3);</li> </ul>	<i>Master file KPA/089/2008/DY</i>

<ul style="list-style-type: none"> <li>• Award notification dated 14/10/2008, signed contract not in the file; and</li> </ul>	<i>Delay noted. Contract available</i>
<ul style="list-style-type: none"> <li>• No evidence of the completion of the project availed to the review team (Act Section 101).</li> </ul>	<i>Noted to liaise with user department and I&amp;A committee</i>

**KPA/136/07/CE**

CONSTRUCTION OF PARTYARD AT FORMER YARD 13/14 AT THE PORT OF MOMBASA – KSHS.99,140,893.50.

<ul style="list-style-type: none"> <li>• No official purchase requisition availed to the review team (Act Section 101 and Regulation No. 22 (1);</li> </ul>	<i>Purchase requisition number 10034762 line 080 available see copy</i>
<ul style="list-style-type: none"> <li>• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation 21 (a)</li> </ul>	<i>See copy attached</i>
<ul style="list-style-type: none"> <li>• Notification of award dated 11/3/2008, contract document not availed yet; and</li> </ul>	<i>Delays on contract finalization noted</i>
<ul style="list-style-type: none"> <li>• No evidence of the completion of the project availed to the review team (Act Section 101).</li> </ul>	<i>Project file and progression status available for scrutiny</i>

**KPA/137/07/CE**

CONSTRUCTION OF PARTYARD AT FORMER SHED 12 AT THE PORT OF MOMBASA KSHS.97,763,323.32

<ul style="list-style-type: none"> <li>• No official purchase requisition availed to the review team (Act Section 101 and Regulation No. 22 (1);</li> </ul>	<i>Purchase requisition number 10034762 line 090 available see copy</i>
<ul style="list-style-type: none"> <li>• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation 21 (a);</li> </ul>	<i>See copy attached</i>
<ul style="list-style-type: none"> <li>• Notification of award dated 11/03/2008 and</li> </ul>	<i>Delays on contract finalization noted</i>
<ul style="list-style-type: none"> <li>• Contract document not availed yet.</li> </ul>	

**KPA/035/2008/TE (RT/RFP)**

CONSULTANCY TO MANAGE THE CONSTRUCTION, DELIVERY, TESTING, COMMISSIONING OF NEW GANTRY CRANES USD 235,000.00

<ul style="list-style-type: none"> <li>• No official purchase requisition availed to the review team (Act Section 101 and Regulation No. 22 (1);</li> </ul>	<i>See approval and correspondence attached</i>
<ul style="list-style-type: none"> <li>• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a) and Regulation 21</li> </ul>	<i>Was part of crane acquisition see copy</i>

(a);	
<ul style="list-style-type: none"> <li>• Award notification dated 9/6/2008; and</li> <li>• No contract availed so far.</li> </ul>	<i>This contract was dependent on the cranes tender that was cancelled. Therefore could not proceed</i>

**TENDER NO. 135/07/ME/ (OIT)**

SUPPLY AND COMMISSIONING OF FORKLIFT TRUCKS (3NO, 3 TON, 2NO, 5 TON AND 1NO, 10 TON) GBP216,490.00

<ul style="list-style-type: none"> <li>• No official purchase requisition availed to the review team (Act Section 101 and Regulation No. 22 (1));</li> </ul>	<i>Purchase requisition number 10038325 See copy</i>
<ul style="list-style-type: none"> <li>• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a);</li> </ul>	<i>See copy attached</i>
<ul style="list-style-type: none"> <li>• Notification of award dated 26/3/2008; and</li> </ul>	<i>Delays on contract finalization noted</i>
<ul style="list-style-type: none"> <li>• Contract signed on 24/6/2008.</li> </ul>	

**KPA/001/2008/CE**

SUPPLY AND FITTING OF FURNITURE AT MANAGING DIRECTORS RESIDENCE (RT) KSHS.5,976,364.08

<ul style="list-style-type: none"> <li>• No official purchase requisition availed to the review team (Act Section 101, Regulation No. 22 (1));</li> </ul>	<i>Purchase requisition no 10036928 available see copy</i>
<ul style="list-style-type: none"> <li>• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a);</li> </ul>	<i>See Corporate furniture vote</i>
<ul style="list-style-type: none"> <li>• Restricted tendering procurement method was approved by the CTC under minute No. 6/5 meeting No. 029/07 of 17/12/07. Choice of procurement method was justified under Act Section 73 (2) (a) that the furniture was of specialized nature. We were not availed the company policy on staff housing furnishing as it appears the staff made choice of furniture of his taste;</li> </ul>	<i>Noted to develop policy on assets</i>
<ul style="list-style-type: none"> <li>• Notification of award dated 11/3/08;and</li> </ul>	<i>Purchase order no... issued see copy</i>
<ul style="list-style-type: none"> <li>• Contract not seen yet.</li> </ul>	

**KPA.083/07/TE**

SUPPLY OF 20NO. NEW SKELETAL TRIALERS (OIT)KSHS.51,774,772.00 (16NO)

<ul style="list-style-type: none"> <li>• Lack of comprehensive and complete procurement proceedings records (Act</li> </ul>	<i>Master file KPA/032/2008/DY</i>
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Section 45 (1) (6) and Regulation No. 34 (3);	<i>Available for scrutiny</i>
• No official purchase requisition availed to the review team (Act Section 101, Regulation No. 22 (1); and	<i>Available PR no see copy</i>
• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a).	<i>Available see copy</i>

**KPA/032/2008 DY**

SUPPLY OF LLYOD TESTED PLATES KSHS.12,597,325.52 (E52,397.20)

• Lack of a comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation No. 34 (3);	<b>Master file KPA/032/2008/DY</b> <i>Available for scrutiny</i>
• No official approved purchase requisition availed to the review team 9Act Section 101, Regulation No. 22 (1);	<i>Available PR no 10035119 see copy</i>
• Award notification dated 9/6/2008; and	<i>Delays on contract finalization noted</i>
• No contract document in the file.	

**KPA/023/2008/PSM (RT)**

SUPPLY OF HYDRAULIC HOSES AND FITTING TO KPA

• Lack of a comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation No. 34 (3);	<b>Master file KPA/023/2008/PSM (RT)</b> <i>Available for scrutiny</i>
• No official approved purchase requisition availed to the review team 9Act Section 101, Regulation No. 22 (1);	<i>Procurement as and when required</i>
• Notification of award dated 17/07/2008;	<i>?</i>
• No contract document in the file; and	<i>Pending legal department</i>
• CTC approved of RT procurement method not availed.	<i>Not applicable</i>

**KPA/083/2008/PSM:**

SUPPLY, INSTALLATION AND COMMISSIONING OF FUELLING FACILITIES  
KSHS.20,947,350.00

• No official approved purchase requisition availed to the review team (Act Section 101 and Regulation No 22 (1);	<i>MD approval and PR10039426 number available</i>
• Lack of comprehensive and complete procurement proceedings records (Act Section 45 (1) (6) and Regulation 34 (3);	<i>Master file KPA/083/2008/PSM available for scrutiny</i>
• Procurement not linked to any	<i>See emergency justification and MD</i>

approved procurement plan (Act Section 26 (3) (a), 26 (6) and Regulation No. 21 (a);	<i>approval</i>
• Notification of award dated 3/9/2008; and	<i>Delays on contract finalization s noted</i>
• Contract document dated 29/3/2009.	

***KPA/099/2007/CE:***

**HYDROGRAPHIC AND BATHMETRIC SURVEYS**

• No official approved requisition availed to the review team (Act Section 101 and Regulation No. 22 (1);	<i>PR number 10031229 available see copies</i>
• Lack of comprehensive and complete proceedings records (Act Section 45 (1) (6) and Regulation 34 (3);	<i>Master file no KPA/099/2007/CE: available for scrutiny</i>
• Procurement not linked to any approved procurement plan (Act Section 26 (3) (a) and Regulation No. 21 (a);	<i>Available see copy</i>
• Notification of award dated 15/11/2007; and	<i>See copies</i> <i>Delays on contract finalization s noted</i>
• No contract document availed yet.	

## 5 ACTION PLAN

<b>Tasks</b>	<b>Lead Accountable</b>	<b>Timeline</b>	<b>PPOA/ARD Review Date</b>
Upgrade record keeping and filing systems for all procurement proceedings in accordance with the Regulations and Procurement Records Management Procedures Manual	AO/PU	Immediately	
Upgrade the SAP information system to conform to requirements of the PPDA and PPDR including the standard tendering documents and forms issued by PPOA.	PU/IT	July 2010	
Organise training on SAP for all users so that the PE makes full use of SAP.	PU/IT	After the upgrade of SAP	
Organise sensitisation training for the officers who have not been sensitised and specialised training for procurement planning and framework contract, writing specifications for all staff involved in procurement related functions.	PU/PERSONNEL	July 2010	
Develop comprehensive procedures and systems for implementation of the Act and regulations.	PU	Immediately	
Implement the findings and recommendations of the previous review, examinations and audit reports that are related to procurement functions. This will improve compliance, performance, transparency and the integrity of the procurement systems in the KPA.	AO/PU	Immediately	
All User Departments procurement plans are prepared in accordance with the Act and Regulations and forwarded to Accounting Officer	PU/USER DEPTS.	Oct 2010	



<b>Tasks</b>	<b>Lead Accountable</b>	<b>Timeline</b>	<b>PPOA/ARD Review Date</b>
Prepare the consolidated procurement plan in accordance to the Act, regulations and directives from PPOA. PU to ensure that the consolidated plan captures additions and deletions that are initiated in the course of the year before the commencement of the procurement process for such additions.	PU/USER DEPTS.	Immediately	
Adopt all standard tender documents and customise them adequately to the PE requirements	PU	Immediately	
The PE should undertake a centralised pre-qualification of suppliers for specialised and complex requirements identified in the consolidated procurement plan.	PU	Immediately	
Establish a system and procedure of using realistic estimates in the requisitions before commencing the tendering process.	PU/USER DEPARTMENTS		
Remove the preparation of contract documents from legal department to PU as required by the Regulation.	AO	Immediately	
Set a time limit for preparation and signing of the contracts by both parties..	PU	Immediately	
Report all terminated procurements to PPOA and ensure acknowledgement by senior officer.	PU	Immediately	

## 6 CONCLUSION

The procurement law was established to ensure that works, goods and services are obtained in an effective manner, including the prohibition of conflicts of interest, the fair selection of vendors, providing open and free competition among vendors, etc.

We started our review against the background of other comparable past examinations and investigations. We found that KPA has not adequately addressed recommendations of the previous examinations and/or audit reports on matters relating to procurement. We have included a follow-up phase in our recommendations to ensure that the corrective measures are carried out in order to improve compliance, efficiency, and effectiveness in procurement management in the PE.

We have assessed whether the procurement-related functions comply with the Public Procurement and Disposal Act 2005, Public Procurement and Disposal Regulations 2006 and generally accepted good practices. We have identified deviations in general and specific areas of procurement stages and recommend that:

- PE prepares good quality consolidated procurement plans that link to the budget and formally approved by the Board. The consolidated procurement plan must be updated to accommodate additions and deletions during the financial year;
- PU should provide comprehensive justification for choosing direct procurement methods;
- PE should use standard tender documents and procedures for all procurement processes, and the PPOA should facilitate this by providing recommended documents and defining procedures for these types of procurements;
- The accounting officer should ensure that PU and User Departments maintain complete and comprehensive procurement records and contract management records in the procurement files;
- The PE should ensure provide training to PU personnel; and
- The PE should establish systems and procedures that describe how KPA will implement the law and regulations.

The Act requires procuring entities to promote competition and ensure that competitors are treated fairly. There are a significant number of contracts amounting to Ksh 334,561,620.99 awarded without full and open competition. There is an urgent need for the accounting officer to intervene and ensure that the departments should not engage in non-competitive contracts except in limited circumstances.

There is no documented evidence that the KPA has discovered and remedied any lapses in compliance. In the selected areas, we concluded that the KPA compliance level is low in major areas of the Act and regulations. We urge the management to demonstrate greater commitment to follow the Act in their operations. It is important for KPA to embrace the Act by preparing an organization-wide compliance program.

The office of the internal auditor needs to be strengthened to verify, examine, and determine that individual transactions comply with the Act and regulations. The auditor needs to undertake training in specialised areas of the public procurement law and the related regulations to enable him to perform better. The auditor should contact the accounting

officer for intervention in areas where his recommendations are ignored by the Procurement Unit and User Departments.

The Financial Controller should ensure that settlement of bills for works, goods and services are adequately supported with interim, or completion certificates or goods received notes, as appropriate and in accordance with regulation.

The major challenge in the KPA is in the area of record keeping and contract management. Retrieving records for review purposes was difficult and time consuming. Some records pertaining to execution of the procurement process were incomplete, limiting the review scope. The area needs an urgent attention of the accounting officer, since poor record keeping compromises validity, authenticity, quality and reliability of the information coming from the entity.

It was noted that some of the documents not in operation are yet to be prescribed by PPOA. The Procurement Unit should keep in regular touch with PPOA, seek their guidance on matters of doubt, and if possible get directives from them in writing in areas where documents or policies are yet to be developed e.g. preferences and framework contracting guidelines.

Although the Procurement Unit is supposed to provide technical guidance, it was evident that the User Departments are not willing to let go the procurement related functions despite the enactment of the Public Procurement and Disposal Act. The accounting officer should intervene and ensure remedial action is taken.

The preparation of contract documents by legal department should be reviewed and the functions reverted to Procurement Unit according to the Regulations. The legal department should only vet and verify that the complex procurements contracts prepared by PU are good in law.

While PPOA are tasked with measuring and enforcing compliance, KPA needs to reduce risk and ensure that all departments implement the regulations. An effective compliance program can make KPA more effective and efficient in reducing the risk of internal and external threats, while at the same time providing proof of compliance.

There are adverse risks from non-compliance with procurement law and regulations, which can have far-reaching consequences to KPA, such as fraud, corruption, mis-procurement collusion and financial loss. An active compliance program enables the organization to accurately detect the violations, to take the appropriate action (even blocking the payment from being made), and to quickly find and review the violation in order to address the situation, preventing further damage or loss.

If KPA is unable to take remedial measures to address the serious defects identified in this report, PPOA should consider exercise of its powers under Section 105 of the Act.

## 7 APPENDIX

### 7.1 Procurement proceedings selected for review

CONTRACT	CATEGORY	METHOD	AMOUNT
KPA/084/2007/TE	GOODS	ONT	572,850,000.00
KPA/090/2007/CE	WORKS	ONT	186,263,353.54
KPA/142/2007/TE	WORKS		114,000,000.00
KPA/136/2007/CE	WORKS	ONT	99,140,893.50
KPA/137/2007/CE	WORKS	ONT	97,763,323.32
KPA/099/2007/CE	SERVICES	ONT	55,905,376.00
KPA/083/2007/TE	GOODS	ONT	51,774,772.00
KPA/085/2007/ME	GOODS	ONT	43,676,535.00
KPA/100/2007/CE	SERVICES	ONT	42,341,169.86
KPA/108/2008/DY	SERVICES	RT	33,683,135.76
KPA/135/2007/ME	GOODS	ONT	24,896,350.00
KPA/015/2008/CS	SERVICES	RT	24,701,824.00
KPA/129/2007/TE	GOODS	RT	22,184,552.00
KPA/083/2008/HSE	WORKS	RT	20,947,350.00
KPA/005/2008/TE	WORKS	RT	20,057,160.00
KPA/035/2008/TE	SERVICES	RT	17,860,000.00
KPA/031/2008/DY	GOODS	ONT	15,989,500.00
KPA/089/2007/ME	WORKS	RT	14,630,000.00
KPA/089/2008/DY	SERVICES	RT	13,406,529.00
KPA/100/2008/HSE	SERVICES	RT	12,740,552.50
KPA/091/2007/CE	WORKS	ONT	12,635,473.88
KPA/032/2008/DY	GOODS	ONT	12,597,325.52
KPA/112/2007/EE	SERVICES	RT	11,294,624.20
KPA/029/2008/FA	SERVICES	RT	10,527,348.00
KPA/105/2008/EE	SERVICES	RT	10,329,393.10
KPA/108/2007/EE	SERVICES	ONT	9,958,414.40
KPA/110/2007/EE	SERVICES	ONT	8,789,000.00
KPA/125/2007/IT	GOODS	ONT	8,400,823.00
KPA/080/2008/IT	WORKS	RT	8,253,093.49
KPA/139/2007/IT	SERVICES		7,326,524.00
KPA/106/2008/PR	GOODS	DP	6,637,840.00
KPA/087/2007/TE	SERVICES	ONT	6,589,608.00
KPA/048/2008/IT	SERVICES	ONT	6,521,810.00
KPA/120/2007/MR	SERVICES	ONT	5,990,000.00
KPA/001/2008/CE	GOODS	RT	5,976,364.08
KPA/107/2008/ME	GOODS	RT	5,250,375.00
KPA/024/2008/ME	GOODS	RT	5,176,580.00
KPA/037/2008/CE	SERVICES	ONT	5,119,567.20
KPA/023/2008/PSM	GOODS	RT	FRAMEWORK
LP/1918/07	GOODS	RFQ	84,071.00
LP/1708/08	GOODS	RFQ	423,920.00
LP/1646/08	SERVICES	RFQ	300,000.00
LP/0340/08	GOODS	RFQ	10,500.00

LP/1092/08	GOODS	RFQ	429,900.00
LP/1688/07	GOODS	RFQ	3,678,999.96
LP/1011/07	SERVICES	RFQ	420,000.00
LP/1232/07	SERVICES	RFQ	420,000.00
<b>TOTAL</b>			<b>1,637,953,931.31</b>

## 7.2 Persons met during the review

Capt. T. Khamis	Harbour Master, CTC Chairman
Ms. C. N. Mturi-Wairi	Financial Controller, CTC Deputy Chairperson
Eng. Alfred Masha	Chief Civil Engineer, CTC Alternate Member
Ms. F. Nabhany	Manager, Information Technology
Mr. J. Nyarangi	Manager, Management Accounting
Mr. Martin Kaduda	Principal Accountant Funds Control
Ms. C. N. Mturi-Wairi	Financial Controller
Mr. Felix Ong'wen	Principal Mechanical Engineer
Eng. Javan Wanga	Ag. Terminal Engineer
Eng. Alfred Masha	Chief Civil Engineer
Eng. Christopher Okwi	Chief Marine Engineer
Eng. A. M. Samatar	Technical Services Manager
Mr. Yobesh Oyaro	Procurement Supplies Manager
Mr. Johnson Gachanja	Principal Procurement Officer
Mrs. Florence Muiu	Principal Procurement Officer
Mr. Cosmas Makori	Senior Procurement Officer
Mr. Stephen Chepkangor	Senior Supplies Officer
Ms. Eveline Shigoli	Senior Supplies Officer (Stock Control)
Mr. Ken Oaga	Procurement Officer
Eng. J. Wanga	Ag. Terminal Engineer
Mr. Aggrey Demba	Asst. Procurement Officer
Dr. Gome D. Lenga	Chief Medical Officer
Mr. Ezekiel Langat	Principal Bandari College
Mr. Ali Iddi Mwin'jaka	Asst. Procurement Officer
Mr. Weldon Korir	Research Officer
Mr. Silas Mwanyindo	Senior Clerical Assistance
Ms. M. Mabruki	Corporate Dev. Mgr, CTC Member
Capt. A. A. Banafa	Asst. H. Master, CTC Member
Capt. E. S. Okoth	Snr. Pilot, CTC Alternate Member

## 7.3 Members of Standing Committees during the period under review

**Corporation Tender Committee (CPC)**

<b>NAME</b>	<b>ROLE</b>
Twalib Khamis	Chairman
Catherine N.Mturi-Wairi	Deputy Chair
Abdullahi M. Samatar	Member
Muthoni Gatere	Member
Salim Chingabwi	Member
Mwanamaka Mabruki	Member
Capt.Adnan Banala	Member
Capt.Okoth	Alt.Member
Martin Kaduda	Alt.Member
Alfred Masha	Alt.Member
Mohammed Alawi	Alt. Member
Jane Kamau	Alt.Member
Samuel Helu	Alt.Member
Javan Wanga	Alt.Member
Johnstone Ngure	Alt. Member
Yobesh Oyaro	Secretary

**Disposal committee**

<b>Member</b>	<b>Position</b>
Catherine Mturi-Wairi	Chairlady
Abdullahi Samatar	Deputy Chairman
Lung'anzi C. Mangale	Member
Javan Wanga	Member
Steven Toya	Member
Yobesh Oyaro	<b>Secretary</b>

**Disposal committee – ICD Nairobi**

<b>Member</b>	<b>Position</b>
Joseph Sirenyi	<b>Chairman</b>
Osborne Komen	Member
Lawi Odera	Member
John Kimongo	Member
Joshua Otiende	Member
James Munguti	<b>Secretary</b>

**Inspection and acceptance committees  
(Works & consultancy)**

<b>Member</b>	<b>Position</b>
Ezekiel Langat	<b>Chairman</b>
Maxwell Suero	Member
Fredrick Ndatho	Member
Bernard Basar	Member
Weldon Korir	<b>Secretary</b>

*Inspection and acceptance committee – Central store*

<b>Member</b>	<b>Position</b>
Zaharani Bwengo	<b>Chairman</b>
Paul Bor	Member
Janice Nyachae	Member
Joseph Patterson Okhako	Member
Linda Shako	<b>Secretary</b>

*Inspection and acceptance committee (Dock yard)*

<b>Member</b>	<b>Position</b>
Javan Wanga	<b>Chairman</b>
Kennedy Rotich	Member
Anderson Mtalaki	Member
Robert Ziro	Member
Rachel Musyoki	<b>Secretary</b>

*Inspection and acceptance committee (Medical store)*

<b>Member</b>	<b>Position</b>
Joseph Birir	<b>Chairman</b>
Dr. Gome Lenga	Member
Mohamed Hariz	Member
Francis Kombe	Member
Rhoda Ondiso	<b>Secretary</b>

*Inspection and acceptance committee  
(Container terminal store)*

<b>Member</b>	<b>Position</b>
Patrick Nyoike	<b>Chairman</b>
Patrick Makau	Member
Stephen Toya	Member
Joel Libanze	Member
Debra Mwawana	<b>Secretary</b>

*Inspection and acceptance committee - (Nairobi ICD)*

<b>Member</b>	<b>Position</b>
Rodgers Mwayayi	<b>Chairman</b>
Grace Tanui	Member
Paul Mwaka	Member
Eunice Koskei	<b>Secretary</b>

*Inspection and acceptance committee - (ICD KISUMU)*

<b>Member</b>	<b>Position</b>
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Elijah Ochieng	<b>Chairman</b>
Ms. Noreen Ouma	Member
Timon K. Limo	Member
Abdalla Kadenge	<b>Secretary</b>

*Procurement sub-committee (Technical)*

<b>Member</b>	<b>Position</b>
Rashid Salim	<b>Chairman</b>
Peter Othuon	Member
Zaharani Bwengo	Member
Anderson Mtalaki	Member
Charles Osiro	Member
James Rai	Member
Anne Jerono	<b>Secretary</b>

*Procurement committee (Technical)*

**Alternate members**

<b>Member</b>	<b>Alternate Members</b>
Zaharani Bwengo	Fredrick Ndatho
Anderson Mtalaki	Francis Kisembe
Charles Osiro	Phoebe Nyambok
James Rai	Salim Moyo
Peter Othuon	Simeon Akuom
Anne Jerono	Nicholas Kanana

*Procurement committee - (General)*

<b>Member</b>	<b>Position</b>
Musa H. Musa	<b>Chairman</b>
Fatma Nabhany	Member
Jao Majimbo	Member
Paul Cheruiyot	Member
Tom Ojee	Member
M. Mwatsefu	<b>Secretary</b>

*Procurement committee - (ICD Nairobi)*

<b>Member</b>	<b>Position</b>
Keziah Muchelule	<b>Chairlady</b>
Ruth Konchellah	Member
Joseph Sirenyi	Member
Joseph Saboke	Member
Solomon Mugambi	Member
Asha Abdulrahman	Member
Joshua Otiende	<b>Secretary</b>



*Procurement committee - (ICD Kisumu)*

<b>Member</b>	<b>Position</b>
Rael Choge	<b>Chairman</b>
Paul Wetuka	Member
Walter Otiende	Member
P. Obare	Member
H. Wamwea	Member
Pamela Muoso	<b>Secretary</b>

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