

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

FINAL REPORT

FOR

**MINISTRY OF JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL
AFFAIRS**

PROCUREMENT REVIEW

22 September 2010

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ACRONYMS

| | |
|---------|---|
| AO | Accounting Officer |
| FY | Financial Year |
| GOK | Government of Kenya |
| GRN | Goods Receipt Note |
| HQTS | Headquarters |
| IA | Internal Auditor |
| ICT | Information, Communications and technology |
| KNAO | Kenya National Audit Office |
| LPO | Local Purchase Order |
| LSO | Local Service Order |
| MD | Minor Deviations |
| MDD | Moderate Deviations |
| MDDD | Major Deviations |
| MOJNCCA | Ministry of Justice, National Cohesion and Constitutional Affairs |
| N/A | Not Applicable |
| ONT | Open National Tender |
| PC | Procurement Committee |
| PE | Procuring Entity |
| PI | Proforma Invoice |
| PO | Procurement Officer |
| PPDA | Public Procurement and Disposal Act |
| PPDR | Public Procurement and Disposal Regulations |
| PPOA | Public Procurement Oversight Authority |
| PR | Procurement Review |
| PU | Procurement Unit |
| RFP | Request for Proposal |
| RFQ | Request for Quotation |
| RPPSII | Reforming Public Procurement Systems II |
| SP | Satisfactory Performance |
| TC | Tender Committee |
| TP | Threshold Programme |
| UD | User Department |
| USAID | United States Agency for International Development |

EXECUTIVE SUMMARY

This report presents the findings of the procurement review of the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA), undertaken by the PPOA/ARD team from 14 December to 18 January 2010. The main objective of the exercise was to review the status of the Ministry's procurement, contracting and implementation processes and systems, in order to determine the Ministry's level of compliance with the Public Procurement and Disposal Act 2005 and the associated regulations, circulars, directives issued by PPOA, and generally accepted principles of good practice. Consideration was also given to the relationship between procurement and overall service objectives of the MOJNCCA.

The review considered performance of procurement functions during the period 1 July 2008 - 30 June 2009. The review procedures performed included the examination of selected samples of the procurement methods used by the Ministry. The review was not able to consider the disposal proceedings undertaken by MOJNCCA during the period because the PU did not provide the records.

The scope of the review encompassed 27 key performance indicators of the MOJNCCA's procurement and disposal procurement cycle from planning to completion.

The fieldwork included an examination of the files and documents pertaining to the MOJNCCA'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 management team, members of standing committees, Head of Procurement Unit and other persons involved in management and oversight of the procurement functions.

The team also reviewed the implementation of the findings and recommendations of prior internal and KNAO audit reports carried out in 2008. The team observed that the Ministry is not adequately implementing the recommendations of these prior assessments and audit reports that relate to procurement.

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

A limiting factor in carrying out the review was the poor records, data, and documentation management relating to the procurement processes selected. This caused some delay in carrying out the fieldwork

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

- MOJNCCA has appointed the Tender Committee and Procurement Committee as prescribed by PPDA and PPDR;
- A secure facility for the receipt of tenders has been provided by MOJNCCA;

The review team noted the following areas with minor deviations or weaknesses that need immediate attention of the Procurement Unit or user department:

- Absence of award letters in most procurement files;
- Absence of Invoice copy in the procurement file;
- Absence of LPOs in the procurement file;
- Absence of copies payment voucher in the procurement file;
- Absence of Procurement Requisitions in the procurement file;
- All tenderers not informed of the result of a tendering process in accordance with the law;
- Goods or Services Received Note missing in all procurement file;
- Inadequate monitoring of contracts awarded; and
- Time limits for replies not adhered to.

The review team noted the following areas with moderate deviations or weaknesses that need immediate attention of the senior management:

- Open tenders not the main method of procurement as required by the PPDA;
- Procurement Unit not functioning adequately as per the regulations;
- Lack of records of signed TC minutes;
- Criteria for the evaluation of proposals not specified in the tender documents;
- The PE have not analysed their medium to long term needs to adopt long-term arrangements or framework contracts. Many common user goods and services currently being procured on RFQ should be placed under framework contracts in order to obtain the better prices associated with large volume procurements and to reduce administrative cost;
- Evaluation Committee reports are not recorded in the TC files;
- Inspection and Acceptance certificates confirming delivery not available for the LPO and contracts;
- PU does not provide justification to TC for applying the restricted and direct procurement methods;
- No schedules of duties for initiating, certifying and approving officers;
- Termination of procurement proceedings not reported to PPOA;
- There is need for more advanced and specialised training in the Act and the associated regulations particularly in the General Manual, procurement planning and newly developed procurement guidelines issued by PPOA;
- There are no realistic estimates in all the internal memos used for initiating procurement processes;
- The prices of common user items have not been compared with the PPOA price index;
- Lack of official standard purchase requisitions for initiating procurement activities; and
- There are insufficient documented contract management procedures in place, which monitor progress and conformity with the terms of contract.

The review team have noted the following areas with major deviations or weaknesses that need immediate attention of the Accounting Officer:

- Disposal and Inspection and Acceptance Committees are not established as required by the PPDA and PPDR;

- PU does not prepare consolidated procurement and disposal plans that are linked to approved budget and in accordance to the requirements of the PPDA, PPDR and General Manual;
- Lack of approved prequalified list for lawyers offering specialised services;;
- The state of procurement records, filing systems and contract documentation is very deficient. Many procurement records that are stipulated in PPDA and PPDR are fragmented between various files or are missing. This made it difficult for records retrieval and caused delays in establishing an audit trail of the procurement processes;
- MOJNCCA staff are not aware of updated publications, directives, and manuals, prepared and distributed by PPOA;
- The PE has not applied preference and reservations as provided in Section 39 of the PPDA;
- The PE has not sought to maximise, economy, efficiency and value for money in its procurement functions;
- There is no documented complaints mechanism for handling bidders' enquiries and complaints;
- There is no evidence from the internal memos used to initiate procurement that MOJNCCA is adhering to the threshold matrix as provided in the Regulations; and
- The Ministry does not file procurement and disposal reports with PPOA as stipulated in the Regulations and directives.

We recommend that the MOJNCCA administration put in place the following:

- Prepare and implement a comprehensive procurement records retention and disposal schedule covering all categories of records as recommended in the *Report on the Management of Records of the Ministry of Justice, National Cohesion and Constitutional Affairs* prepared by ARD;
- PU should improve on all identified deficient areas of its functions;
- Prepare and update a Consolidated Procurement Plan regularly;
- Prepare and update a Disposal Plan regularly;
- Develop operational systems and procedures for implementation of the Act and Regulations;
- Introduce measurable mechanisms that promote value for money in its procurements;
- Disclose the reserve prices for the items being disposed in the bid documents;
- Organise training of all staff involved in procurement related functions on sensitisation, advanced, and specialised aspects of procurement law and regulations;
- Introduce purchase requisition forms that meet the requirements of PPDR and General Manual for user departments to initiate procurement processes;
- Compare all prices of common user items with the PPOA price index;
- Prepare contract documents, in line with the award decision, that are signed by the Accounting Officer;
- Improve contract and disposal reporting requirements to PPOA as directed by PPOA;
- Improve the monitoring of contract management processes and update the procurement files; and
- Improve liaison with PPOA on matters where the law and regulations need clarification.

As specified in the terms of reference, we used the sample of procurement and disposal proceedings to evaluate the level of compliance with the Public Procurement and Disposal Act, associated regulations and directives issued by PPOA. In so doing, we carefully

considered the implications and the significance of individual ratings of the key performance indicators. It is clear that some instances of non-compliance have greater significance than others. This factor has been considered in determining the final compliance level.

The review expected the Ministry to have reached a satisfactory level of compliance (60% and above) with the requirements of the PPDA, PPDR and all directives issued by PPOA in their procurement, disposal and contracting. However, the team's overall assessment of the compliance level for Ministry of Justice, National Cohesion, and Constitutional Affairs is calculated to be 20.75% with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions for the period reviewed. Thus, the overall performance of the Ministry in procurement and disposal is unsatisfactory. There are significant weaknesses that need to be addressed if the PE is to comply with the requirements of PPDA, PPDR, and General Manual.

Finally, we would like to take this opportunity to thank MOJNCCA management for their co-operation and assistance during this review.

1 INTRODUCTION

1.1 Purpose

This procurement review is one of eight reviews to be carried out by ARD, Inc as part of the Reforming the Public Procurement System Phase II project. The Ministry of Justice, National Cohesion, and Constitutional Affairs (MOJNCCA) was one of the entities selected by Public Procurement Oversight Authority (PPOA) for review under the current phase of the project.

An entry meeting with the Authority's management team was held on 26 November 2009 to discuss the scope of the review, the review plan, the reviewers' expectations, access to documentation and other administrative issues. Mr Maurice Juma, the Ag. Interim Director General, PPOA led the joint ARD/PPOA review team to the entry meeting. The Ministry team was led by Ambassador David Mutemi, the Director Administration and included Heads of User Departments, Head of the Procurement Unit and members of various standing procurement committees among others.

1.2 Mandate of PPOA

The Authority's procurement review function is derived from Section 49 (1) (a) of the Act, which states that the Director-General or anyone authorized by him may inspect at any reasonable time the records and accounts of a procuring entity and the procuring entity and contractor shall cooperate and assist whoever does such an inspection.

1.3 Role of the PE

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

1.4 Objectives

The overall objective of the procurement review was to review the status of MOJNCCA's procurement, contracting, implementation processes and systems, in order to determine the level of compliance with the procurement law, regulations, circulars, and directives issued by the Public Procurement Oversight Authority.

The specific objectives of this procurement review were:

- To verify whether the procurement and contracting procedures, processes and documentation followed by MOJNCCA were in accordance with the Public Procurement Act and the associated Regulations;
- To establish MOJNCCA adherence to the generally accepted principles of economy and efficiency, equal opportunities, transparency, integrity and fairness and promotion of local industry;
- To determine technical compliance, physical completion and price competitiveness of each contract in the selected representative sample;
- To review the capacity of MOJNCCA to handle procurement efficiently; comment on the quality of procurement and contracting, and identify reasons for delays, if any;
- 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;
- To establish whether recommendations made in the previous reviews or audits have been implemented successfully;
- To make recommendations for improvement in an action plan which will be followed up within 3 months to establish whether these improvements have been implemented;
- To assist in clarification of areas where MOJNCCA may have misunderstood the requirements of the legislation; and
- To determine challenges faced by the MOJNCCA in the implementation of the Act.

1.5 Expectations

The review expected:

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

1.6 Scope

The MOJNCCA provided the review team with listing of 95 procurement proceedings for the period under review. The Ministry did not make available the records relating to disposal transactions undertaken during the period under review.

The review covered a sample of transactions selected from the population of transactions provided by the Ministry from 1 July 2008 to 30 June 2009 period including works, goods, and services, to the extent possible.

The procurement review preselected 20 procurement proceedings carried out by the MOJNCCA under the PPDA during the 1 July 2008-30 June 2009 period, as set out in section 1.6.1.

| Description | No of proceedings | Value of proceedings |
|--|-------------------|----------------------|
| Total procurement proceedings provided by PE | 95 | 33,248,601.00 |
| Sample of procurement | 20 | 23,459,488.40 |
| Ratio of sample to total | 16% | 70% |

The review team did not visit any of the MOJNCCA physical facilities outside the Head quarters due to time constraints.

Due to lack of records, the review team did not review the MOJNCCA inventory and disposal proceedings to determine if the PE does conduct disposals, periodic and annual stocktaking in accordance with the PPDR.

1.6.1 Sampled procurement proceedings

| | Procurement | Method | Description | Amount |
|----|-----------------------|--------|---|----------------------|
| 1 | GJLOS/MTS/3/4/TG7//09 | RFP | Consultancy | 4,083,200.00 |
| 2 | MOJNCCA/73/08/09 | RFQ | Training | 0.00 |
| 3 | MOJNCCA/76/08/09 | RFQ | Team building | 1,658,020.00 |
| 4 | MOJNCCA/63/08-09 | RFQ | Computers | 1,033,064.00 |
| 5 | MOJNCCA/82/08-09 | RFQ | Fumigation Services | 33,524.00 |
| 6 | MOJNCCA/59/08-09 | RFQ | Printing of newsletter | 137,500.00 |
| 7 | MOJNCAA/143/08-09 | RFQ | Goods | 3,496,200.00 |
| 8 | MOJNCCA/170/08/09 | RFQ | Goods | 1,265,000.00 |
| 9 | MOJNCCA/60/08-09 | RFQ | Printing | 1,673,300.00 |
| 10 | MOJNCCA/107F/08-09 | RFQ | Stationery | 621,700.00 |
| 11 | MOJNCCA/25/08-09 | RFQ | Repair of Maintenance | 0.00 |
| 12 | MOJNCCA/25/08-09 | RFQ | Air ticket | 96,150.00 |
| 13 | MOJNCCA/116/08-09 | RFQ | Office equipment | 1,114,224.00 |
| 14 | MOJNCCA/13/08-09 | RFQ | Conference | 2,628,606.40 |
| 15 | RT/11/2008-2009 | RFP | Editing of Conference report | 0.00 |
| 16 | RT/09/2008-2009 | RT | Development of document | 0.00 |
| 17 | RT/11/2008-2009 | RT | Supply and fitting of blinds for COE office | 4,602,000.00 |
| 18 | MOJNCCA/25/08-09 | RT | Maintenance services | 342,000.00 |
| 19 | DP | DP | Printing of Service Charter | 675,000.00 |
| 20 | DP | DP | Printed T-shirts | 200,000.00 |
| | | | | 23,459,488.40 |

1.7 Methodology

The review procedures included an examination of selected samples of the procurement proceedings. The listings provided by the PU were found to be inconsistent and with many data missing. The review team could not ascertain that the list presented captured all procurement proceedings undertaken during the year under review as the PE does not maintain control registers for all procurement and disposal proceedings.

In order to get more information, the review team examined the minutes of the Tender Committee and found the Committee had approved 116 direct and 13 restricted procurement proceedings during the year under review whose records were not made available to the review team.

1.7.1 Key documents and data collection

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

Other background documents used by the team included but were not limited to the following: PPDA 2005, PPDR 2006, General Manual, Performance Monitoring Report of the Ministry November 2008, and Report on Baseline Records management of Ministry of Justice, National Cohesion and Constitutional Affairs and prior internal and external audit reports. The review team also found that the MOJNCCA staff had undergone sensitization training organised by PPOA/ARD, on aspects of PPDA and PPDR.

The review team held discussions/interviews with the following staff/officials of MOJNCCA who are directly involved in the procurement process:

| Name | Designation |
|------------------|-------------------------------|
| Amb.David Mutemi | Director Administration |
| Julius Obebo | Principal Procurement Officer |
| Rosalind Kimani | Chief Procurement Officer |
| Paul Masinde | Finance Officer |
| Ms Ndegwa | Ag. Director Administration |
| Robert Ndemo | Procurement Officer |
| James Ngairah | Chief Accountant |
| Mr Kabande | Internal Auditor |

Through interviews and discussions with officials, the review team recorded general and specific information concerning the procurement/disposal process, procedures and existing capacity at the MOJNCCA.

1.8 Key Performance Indicators and rating criteria

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

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

- **High Risk (3)** - Procurements where serious weaknesses could cause material financial, regulatory or reputational risks warranting immediate attention by senior management;
- **Moderate Risk (2)** - Procurements where weaknesses, although less likely to lead to material financial, regulatory or reputational risk, warrant timely management action using the existing framework;
- **Low Risk (1)** Procurements with weaknesses where resolution within the normal management framework is considered desirable to improve efficiency and promote best practice. Deviations from laid down procedures would normally be graded “low,” provided that there is sufficient evidence of management action to rectify the deviation and to monitor compliance.

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

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

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

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

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

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

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

1.9 Limitation of scope

Our scope was limited by the following:

- The absence of the substantive Head of PU who was attending a workshop in South Africa and thereafter proceeded on leave;
- Lack or incompleteness of records, data and documentation relating to the procurement processes selected. Because of the general disorganized storage and

absence of a reliable records control system, document location and retrieval in the PU, it was difficult to verify the authenticity of most of the documents sampled;

- Lack of dedicated filing systems for procurement records;
- Lack of an adequate work station for the review team;
- Lack of a procurement control register to verify the source, completeness and reliability of the information being generated by PU; and
- Inadequate supporting documentation is maintained for each procurement transaction.

1.10 Challenges facing MOJNCCA

The review team identified the following challenges faced by MOJNCCA in respect of the implementation of the procurement law and regulations:

- Inadequate records management and filing systems;
- Lack of operating ICT systems and applications covering all aspects of public procurement;
- Insufficient training in procurement law for the persons involved in the procurement related functions; and
- Insufficient communication and coordination of the User Departments and PU on procurement planning and initiation.

2 ORGANIZATION OF MOJNCCA

2.1 Mandate

The mandate of the Ministry covers:

- Determination of legal policy in Kenya with regard to administration of justice, constitutional matters, law reform, anti-corruption strategies, integrity and ethics, legal education, political parties, legal aid and advisory services and elections;
- Promotion of the efficient and proper functioning of the legal and justice sector;
- Coordination and facilitation of reforms in the justice sector;
- Backstopping the legal and justice sector at the policy level;
- Handling political issues for and on behalf of the legal and justice sector at the cabinet and parliamentary levels; and
- Championing sectoral reforms in its core issues.

2.2 Vision of MOJNCCA

The vision of the Ministry of Justice, National Cohesion and Constitutional Affairs is to ensure:

“A just, cohesive, democratic, corruption free and prosperous nation.”

2.3 Mission of MOJNCCA

To coordinate and facilitate the realisation of democratic governance through protection and enjoyment of fundamental rights and freedoms, creation of a constitutional order, promotion of ethics and integrity and nurturing a cohesive society.

2.4 Role of the Ministry

The Ministry was established to undertake the following key tasks:

- Development of Legal Policy;
- Policy on Administration of Justice;
- Constitutional Affairs;
- Constitutional Review;
- Anti-Corruption strategies, Integrity and Ethics;
- Legal Education and the Kenya School of Law;
- Political Parties;
- Kenya Law Reform Commission (KLRC);
- Legal Aid and Advisory Services;
- Elections;
- Kenya National Commission on Human Rights;
- Policy on National Cohesion;
- Kenya Anti-Corruption Commission (KACC);
- Governance, Justice, Law and Order Sector (GJLOS) Co-ordination;
- Human Rights and Social Justice;
- Truth, Justice and Reconciliation Commission; and
- Public Complaints Standing Committee (Ombudsman).

2.5 Organisation of procurement functions in the Ministry

The Accounting Officer for MOJNCCA is Ambassador Amina C. Mohammed. The Ministry comprises two main departments, namely Administration and Programmes. The Administration Department of the Ministry consists of six sections: Administration, Finance, Accounts, Procurement, Human Resources, ICT and Public Relations.

The Director of Administration is also chairperson of the MTC, approves expenditure for procurement before going to MTC for commitment, and is the AIE holder for administration.

2.6 Procurement Profile

2.6.1 Methods of Procurement for period 2008-2009

During the review period, MOJNCCA used various methods of procurement namely, request for quotations, restricted tenders, direct procurement and request for proposals. The PE did not use open tendering for any of the procurements provided.

| Type of procurement method | Number | Percent |
|----------------------------|------------|---------|
| Restricted tender | 13 | 6% |
| Request for quotations | 95 | 42% |
| Direct Procurement | 116 | 52% |
| TOTAL | 224 | |

The Procurement Unit did not provide the review with comprehensive records and data therefore the review was not able to verify and examine the reliability, scope, and magnitude of the procurement in the Ministry for the period under review. From the listed series of tenders, the review team found that 111 tender numbers were missing (See Specific Findings for details).

3 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

3.1 Functions of Accounting Officer

Finding

The Accounting Officer, Ambassador Amina Mohammed, is carrying out her responsibilities under Section 27 (2) of the PPDA. However, there are key weaknesses that she should address, having regard to her responsibilities as follows:

- Signing contracts prepared by PU for the procurement and disposal activities on behalf of the PE for contracts entered into in accordance with the Act and Regulations as set out in Regulation 7(c);
- Ensuring that the procurement plans are prepared as required by Regulation 7 (d); and
- Ensuring that the PE properly documents procurement proceedings and manage records in accordance with Regulation 7 (e).

Recommendations

The Accounting Officer should ensure that the identified weaknesses are adequately addressed.

Response:

The identified areas of weaknesses are being addressed. In fact, there are signs of improvement in that regard.

3.1.1 Number of trained persons and sensitized to the Procurement Procedures

Findings

The following eight personnel from the Ministry underwent ARD organised sensitisation training in Nairobi on 12-13 June 2009.

| | | | |
|-------------------|---------------------------|-----------------|---------------------|
| Carol Shileche | Procurement Assistant | Sensitization13 | 12th-13th June 2008 |
| Margaret W. Muiru | DS | Sensitization13 | 12th-13th June 2008 |
| Noah Mwiroti | Accounts Assistant | Sensitization13 | 12th-13th June 2008 |
| Peter Mulavu | Chief Procurement Officer | Sensitization13 | 12th-13th June 2008 |
| Robert O. KEBANDE | | Sensitization13 | 12th-13th June 2008 |

The Ministry does not have a training policy, strategy and capacity, or work plan in place to ensure continued development of knowledge and skills in procurement functions.

The PE does not liaise with PPOA to provide training and expert support for all staff involved in management of procurement functions and contracts.

Recommendation

- The Ministry ought to develop training policy, strategy and procedures that will provide for continuous training in procurement.
- 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 for complex and specialized services;
 - Evaluating bids; and
 - Contract management.
- The PE should improve liaison with PPOA to link the Ministry's training strategy with PPOA training priorities.

Response:

Indeed, the Ministry's training strategy was not well linked to the PPOA's. This shall be addressed to ensure it is linked.

3.2 Functions of Procurement Unit

Findings

MOJNCCA established the PU in accordance with the PPDA and PPDR. The review team was not provided with the organisation of the PU. The present Head of PU confirmed verbally that none of the staff members is a qualified Member of the Kenya Institute of Supplies Management. During the period under review, Ms Rosalind Kimani was, the Head of PU responsible for day-to-day management of the Procurement Unit and Secretary to the TC. Ms Kimani was absent most of the time of the review. Mr Julius Obebo took over as the Head of the PU as the review was in progress.

The team noted the following key weaknesses in the PU:

- Does not maintain and update annually standing lists of registered tenderers required by Regulation 8 (3)(a);
- Does not maintain procurement and disposal filing systems and records in accordance with Section 45 of PPDA and Regulation 34(3) of PPDR;

- There are instances where approval of the TC is not obtained for choice of alternative procurement methods, namely direct procurement and restricted tender prior to commencing the procurement in contravention of Section 29(3)(a);
- Does not prepare and submit to the PPOA all reports required under the Act, Regulation 8(3)(s) and directives issued by PPOA;
- Does not prepare consolidated procurement plans to include changes as required by Regulation 8(3)(w);
- Does not prepare contract documents, in line with the award decision as required by Regulation 8(3)(k);
- Does not monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts as required by Regulation 8(3)(t);
- Does not advise the procuring entity on aggregation of procurement to promote economies of scale for requirements such as stationery and office supplies;
- Does not prepare disposal plans in accordance with Regulation 8(3) (w);
- Does not conduct periodic stock and annual stock taking in accordance with Regulation 8(3)(aa);
- Does not carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee as required by Regulation 8(3)(z).

Recommendation

PU should improve on all the identified deficient areas of its functions.

Response:

The disposal and procurement filing system though in existence, was not well done. This is already being addressed. Procurement plans are now being consolidated, the contract management system now in place, aggregation of items e.g. stationery now being done to enjoy economies of scale and market survey system now strengthened

3.3 Tender Committee

Findings

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

| Name | Designation |
|--------------------|--------------------|
| Amb.David Mutemi | Chairman |
| Gichira Kibara | Member |
| David Gathi | Member |
| Katana Ngowa | Member |
| Francis Munene | Member |
| James Ngairah | Member |
| Joash Dache | Member |
| Ms Rosalind Kimani | Secretary |
| Paul Masinde | Member |
| Polycarp Ochilo | Member |

| Name | Designation |
|-------------------|--------------------|
| Mary Owino | Member |
| Grace Kamasara | Member |
| Ms Maryann Njau-K | Alt Member |
| Ms C.Munyao | Alt.Member |
| S.Gitau | Alt Member |
| D.G.Gathii | Alt. Member |
| Ezekiel O.Abang | Member |

The following specific weaknesses were found with the TC records and performance:

- Does not review, verify and ascertain that all procurement and disposal has been undertaken in accordance with the Act, the Regulations and the terms set out in the tender documents in accordance with Regulation 10(a);
- TC records are not filed in the procurement file;
- There is no evidence that TC verified the availability of funds before awarding the contract;
- There is no evidence TC verified that market prices were not exceeded;
- The TC did not determine in many cases reviewed that the procurement methods being discussed conform to requirements of the PPDA;
- There are no evaluation reports used for submission to the TC;
- There are no records in the minutes of survey reports, budget line, approved funds availability and whether there were any negotiations;
- There is no comprehensive list of all matters considered and decisions reached;
- Does not review the quarterly reports on quotations that have been awarded by the Procurement Committee in accordance to regulation 10(n);
- No certified copy of extract of minutes concerning each procurement was maintained on the individual procurement file; and
- Any dissenting opinions were not recorded.

Recommendation

The identified weaknesses in TC operating procedures should be adequately addressed.

Response

The identified weaknesses are being adequately addressed.

3.4 Functions of the Procurement Committee

Findings

The Procurement Committee is established as below in accordance with Regulation 13 but the records were not made available to ascertain that the committee conducts its meeting in accordance with Regulation 15.

| Name | Designation |
|----------------|-------------|
| John Tuta | Member |
| David Gathii | Member |
| Michael Ochola | Member |

| | |
|----------------|--------|
| Margaret Muiru | Member |
| James Kilaka | Member |

The review team found the following weaknesses in the minutes of the PC, which contravened Regulation 15 (7):

- PC minutes are not filed in the procurement file;
- The minutes of PC meetings were not made available to the review team; and

There is no standard format and price comparison schedule for submissions to PC.

Recommendation

The identified weaknesses in PC operating procedures should be adequately addressed.

Response:

The identified weaknesses are being adequately addressed.

3.5 Functions of the Disposal Committee

Findings

The entity did not make available the list of members of the disposal committee members, nor the relevant files and data and therefore the team was not able ascertain whether the entity complied with the relevant provisions of the Act and Regulations.

Recommendations

The MOJNCCA should take immediate remedial action to establish and ensure that the Committee conducts its meetings in accordance with Section 128 (2).

Response:

The disposal committee is now in place and operational.

3.6 Functions of Evaluation Committee

Findings

Evaluation committees were not appointed for any of the procurements within the threshold of the tender committee. There are no records that the evaluation committee appointed by Senior Deputy Secretary for evaluation of Tender no MOJCCA/63/2008-2009 was proposed by the PU as required by Regulation 8(3)(g).

Of all the tenders reviewed only tender no MOJNCCA/76/08-09 for Team Building Training consultancy had a comprehensive evaluation records file including:

- Individual evaluation sheets;
- Summary of technical evaluation of quotations; and
- Financial evaluation summary.

The key evaluation records missing in all other files reviewed include:

- Letters nominating the evaluation teams by PU as required by Regulation 8 (3)(g);
- Preliminary evaluation records as required by Regulation 47;
- Records to confirm that evaluation has been undertaken within the period required by the Section 66 (6) and Regulation 46; and
- There were no evaluation reports as required by Section 66(5) and Regulation 51.

Recommendation

- The PU must file copies of the letters nominating and appointing evaluation teams in the procurement files. Without the nomination records, the review team could not ascertain that the evaluation teams do not include TC members;
- Each individual team member must evaluate the tender independently before sharing the analysis;
- Prepare evaluation reports and retain copies in the procurement and TC files

Response:

Copies of letters nominating and appointing indeed existed and their filing is now in place in appropriate files.

3.7 Functions of Inspection and Acceptance committee

Finding

The Ministry verbally claimed that they do appoint Inspection and Acceptance committees as and when required. PU did not provide the review team with information and records to ascertain that the committees have been appointed and undertake their work in accordance with requirements of the PPDA and PPDR. The PU did not provide the review team with any certificates or goods receipt notes certified by the committee for the period under review.

Recommendations

The MOJNCCA should take immediate remedial action to establish and ensure that the Committee conducts its functions in accordance with Regulation 17.

Goods should be certified by the inspection and acceptance committee members after inspection of the goods, works, and services.

Response

This is now being done as the committee is in place and certificates thereof signed as appropriate.

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

Findings

- The Ministry has not yet established procedures for implementing procurement decisions in accordance with Section 26(1). The review team did not find any schedules of duties in the Ministry outlining separation of functions. It is therefore difficult to determine whether there is clear separation of powers for those undertaking initiation, processing, and receipt;
- The review team could not ascertain that the person responsible for procurement initiation for each procurement method and threshold is as provided for in the First Schedule of the PPDR;
- There is limited awareness of updated publications, directives, manuals, and standard documents prepared and distributed by PPOA in accordance with Section 9(c) (i) of the PPDA to be used by procuring entities;
- The majority of the staff involved in the procurement related functions that the team spoke to did not know the existence of the following manuals published by PPOA:
 - General Manual;
 - ICT Manual;
 - Insurance Manual;
 - Non-Intellectual Services Manual;
 - Projects Manual;
 - Works Manual;
 - Records Management Manual; and
 - User Guide.

Recommendations

- The Ministry should put in place appropriate systems and procedures that distribute procurement information including manuals, guidelines and directives from PPOA to the appropriate people, at the necessary level of detail, on a timely basis and that is accessible to all those involved in procurement related functions; and
- The PE should prepare an operational schedules manual that incorporates the authorisation levels set out in PPDR First Schedule.

Response

There is now in place the separation of duties. Those who initiate are users using the required requisition form, the secretariat processes as appropriate, and the required committee does the adjudication. However, this shall be further strengthened to guarantee quality.

3.9 Threshold matrix and segregation of Responsibilities

Findings

The Ministry did not provide schedules of duties to enable the review team to observe and verify if the requirements of the First Schedule of PPDR are being followed in the initiation, and approvals of the procurement processes.

Recommendations

Prepare written operational procedures and systems that set out the initiation and approval of the procurement activity in accordance with First Schedule of PPDR.

Response

The operational procedure, is being prepared.

3.10 Poor record keeping and filing systems of the procurement documents

Findings

The systems of filing and record keeping are extremely weak and have the following key deficiencies:

- None of the reviewed tenders/request for quotations for the year had complete information pertinent to the procurement in question;
- One hundred and eleven tenders were missing in the series of tender numbers provided to the review team;
- Many data needed for verification purposes were either missing or incomplete. This area of weakness had been observed in previous performance monitoring reports of PPOA and *Baseline Report on Management of Records in the Ministry of Justice, National Cohesion and Constitutional Affairs undertaken by ARD* but no corrective action has been taken by management;
- The Procurement Unit does not maintain a central register for procurement requisitions, tenders and contracts;
- The Ministry does not maintain adequate and comprehensive procurement records throughout the procurement process that provide sufficient information to enable an independent review and conform to the requirements of Section 45 of PPDA and Regulation 34(3);
- There is no complete procurement file for each individual procurement activity containing all information, documents and communications relating to that procurement proceeding and marked with the relevant procurement reference number;
- The Ministry does not maintain a proper filing system with clear links between procurement and expenditure files; and
- Procurement files are not secure as the files are scattered on the floor.

Recommendation

- The PE should strengthen the process of collecting, collating classifying and analyzing procurement expenditure data with the purpose of reducing procurement costs, improving efficiency and monitoring compliance. This will also affect other areas such as inventory management, budgeting and planning, and service delivery. Procurement expenditure analysis can provide answers to such questions as:

- ✓ What was bought;
 - ✓ When was it bought;
 - ✓ With whom did we buy it; and
 - ✓ How much did we pay for it?
- The Procurement Unit should upgrade the filing systems and records management to conform to the provisions of Section 45, Regulation 34(3), General Manual, Procurement Records Management Procedures Manual and recommendations of in the associated Baseline Report on the Management of Records of the Ministry of Justice, National Cohesion and Constitutional Affairs; and
 - The PU should ensure that a complete file is maintained for each procurement activity. The file should contain all the relevant documents starting with the purchase requisition, documents for the tendering process, evidence of receipt and payment for goods. As far as possible, these should be original documents, or where not possible, certified copies of the originals.

Response

Indeed, most files and their filing system were scattered during the time of review. They are being assembled now and the process shall be further strengthened. Indeed, there is a great deal of improvement.

3.11 Procurement Planning

Findings

There is a need within the Ministry to develop an across-the-board planning and internal control culture. This would involve communicating effectively to various departments that there are serious implications and opportunity costs of not having adequate planning for various projects and that these should not be treated passively. Poor procurement planning has resulted in the Ministry using direct procurement as the main procurement procedure contrary to provisions of the PPDA.

The review identified the following weaknesses in procurement planning:

- The procurement plan does not conform to the requirements of Section 26 (3), Regulation 20 and the General Manual;
- There are no individual procurement plans for general services, consultancy services and civil works as provided in the General Manual Chapter 6.5;
- Multi-annual, rolling work plans for procurement are not prepared by each User Department and there is no indication whether the requirements should be procured under single-year or multi-year arrangement (Regulation 20(3)); and
- The review team were not provided with user departmental annual procurement plans, which were submitted and approved by the Accounting Officer at least thirty days before the close of each financial year (Regulation 20(4)).
- The procurements reviewed were not linked to the procurement plan;
- There is no evidence that the procurement plans are updated to accommodate changes during the year; and
- Because the review team was not provided with the budget for the year under review, there was no way of verifying that the annual procurement planning was integrated with approved budgets.

Recommendation

Procurement planning is essential for effective procurement. Procurement planning entails more than the development of estimates for various goods, civil works, and services. It combines the legal and institutional frameworks within which procurement must be carried out. The Ministry should ensure that staff understand procurement planning and develop plans that conform to the requirements 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 Procurement Unit should not commence any procurement activity, which is not in the procurement plan.

The work plan of the Procurement Unit should include preparation and updating of procurement plan in regular progress reports (giving status of procurement progress, reasons for delay and revised procurement schedule) so that the Ministry stops the "business as usual" for annual procurement plans.

Response

Procurement plans indeed existed but in a raw form. They were not consolidated therefore. This is being addressed.

3.12 Purchase requisitions

Findings

- The procurement processes are not initiated by the standard purchasing requisition forms as provided for by Regulation 22(1). Procurement processes are initiated by internal memos from user departments, which do not indicate that they have been originated by the authorized official and approved by the official within the threshold for procurement being considered (First Schedule of PPDR);
- There is no budget line indicated on the memos to show source, allocation, and availability of funds in the budget for particular procurement as required by Section 26(3), or authority to incur expenditure for the purchases requested; and
- The memos do not indicate the estimated value of the goods, works or services are realistic and based on up-to-date information on economic and market conditions as provided in Regulation 22 (2).

Recommendation

- The review team noted that the standard Purchase Requisition Form is expected to be released by PPOA shortly. In the meantime, the Procurement Unit should develop an interim purchase requisition form that conforms to the requirements of the PPDR, General Procurement Manual and directives from PPOA; and
- The Procurement Unit should put in place a central control register for all requisitions received in the unit in order to put in place sufficient procurement internal control.

Response

What existed here were internal and loose memos which were duly approved. These acted as a requisition. Now however, the purchase requisition has been developed and is in use. A central control register has now been developed.

3.13 Prequalification and registration of suppliers

Findings

The PE had developed a list of registered suppliers for solicitation of bids for goods in accordance to Regulation 8(3)(a) of PPDR. There was no evidence that the standing list is being updated annually to allow new bidders to be included and to remove those who are no longer qualified as required by PPDR.

The PE used request for quotations (RFQ/MOJNCCA/73/08-09) to solicit for the procurement of consultancy services contrary to Section 76 of the Act.

There is no prequalified list of contractors for regularly purchased complex and specialised services including conference facilities and consultancy services.

There was no evidence that the entity undertook evaluation of the suppliers to ascertain:

- The person has the necessary qualifications, capacity, experience, resources, equipment and facilities to provided the goods and services if awarded;
- The person has legal capacity to enter into legal contracts;
- The person is not debarred from participating in procurement proceedings under Section 115 of the Act and Regulations 90 and 91;
- The person is solvent; and
- The Ministry is not precluded from entering into the contract with the person under Section 33 of the PPDA.

Recommendation

- Before approving or prequalifying a particular supplier, PU in conjunction with the user department should conduct a supplier evaluation to validate the information provided by the bidders or pre-qualified bidders and to assess whether suppliers' performance meets the expectation or does not meet the expectation in terms of quality of goods and services; and
- There is also need to strengthen supplier performance evaluation The PE should ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c); and
- Considering that, the Ministry is currently undertaking large number of advocacy and specialised consultancies, there is an urgent need for the Ministry to prepare a pre-qualified list for the consultants to be used for RFP.

Response

Prequalification of suppliers was done. However, this will be strengthened further as there were weaknesses.

3.14 Specifications

Findings

The technical specifications are prepared by the User Department in accordance with Regulation 9(i).

Detailed specifications and terms of reference are included in the bid documents for consultancies reviewed as required by Chapter 7 of the General Manual.

Specifications for common user items are neutral and do not appear to favor a particular bidder.

3.15 Choice of procurement method

Findings

The review team requested the PE to provide a summary of all the tenders undertaken by the Ministry of the period under review. The PE provided a list of 95 transactions comprising mainly RFQs as follows:

- Direct Procurement 1
- Request for quotations 80
- Restricted tenders 3

The list was analyzed and the following deficiencies observed:

- The review team found that 111 tender numbers were missing from the series provided (See Specific Findings for details);
- There was no record of open tenders in the list provided;
- The procurement methods for the following procurements were not provided:

| | |
|-------------------------|------------|
| Easton hill Enterprises | 626,000.00 |
| Merchant Concept | 394,000.00 |
| Pacific Stationers | 386,950.00 |
| Pacific Stationers | 305,200.00 |
| Kite Supply Link | 200,000.00 |
| Budget Furniture | 178,800.00 |
| Addendum Enterprises | 34,450.00 |
| Addendum Enterprises | 31,000.00 |
| Genisys Computers | 16,150.00 |
| Elite Books Centre | 7,600.00 |

The review team implored the PU on several occasions to validate the data without success. This forced the team to review the TC files for any information that can assist the team in making a judgement. From the MTC records, the review team observed that that the TC approved 13 Restricted Tenders and 116 direct procurements.

Recommendation

Due to lack of tender documents and adequate data, the review team was not able to make judgment of the procurement methods used by the Ministry and their conformity with the requirements of the Act and Regulations.

The MOJNCCA should put in place systems and procedures that ensure:

- That the Ministry uses open tendering as the main procurement procedure as provided in the PPDA; and
- That the appropriate procurement method be used for each threshold.

Response

Records of open tender now well kept as required and appropriate procurement method are being used. Further, the systems and procedures to ensure that the above is clear as required, are now in place.

3.16 Preference and reservations

Findings

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

Recommendations

The PE should apply preference and reservations as provided in Section 39 (8) of the PPDA.

Response

This will be done as and when required.

3.17 Preparation of tendering documents

Findings

The PE is using two main tender documents namely Request for Quotations and Request for Proposal Forms. The review team observed that the two documents are the same except of the headings that have been changed. The PE does not use the standard tender document request for proposals (selection of consultant) in all proceedings reviewed.

The appropriate standard tender documents as prescribed in Section 29(4) of PPDA, Third Schedule of the PPDR and General Manual are not used in all procurement processes reviewed.

The PE has not adopted some of standard bidding documents as specified in the Third Schedule of the Regulations namely:

- Request for quotation form;

- Procurement requisition form;
- Tender register;
- Application for adjudication of tenders/quotation;
- Standard tender documents for management contracts;
- Application for adjudication of tenders/quotation; and
- Standard tender documents for preference and reservations.

While the review team acknowledged that most of the standard tender documents are presently under review by PPOA and that some existing documents do not conform to the present law, the PE had not attempted to liaise with PPOA to agree on how to handle the documents required by Regulations but not operational.

The PE does endeavour to customise correctly the standard tender documents downloaded from the PPOA website.

Recommendations

- The PE should adopt the recommended standard bidding documents and procurement forms that are relevant to its procurement and disposal procedures, once the PPOA's revision of these documents and forms has been completed. In the cases of where the document is still in preparation by PPOA, the Ministry should liaise with PPOA and agree on the appropriate form to be used; and
- The PE should take advantage of the ARD training workshops for the revised standard bidding documents currently being organised in collaboration with PPOA.

Response

The required standard bidding documents are now in use and the PE shall take advantage of the ARD training workshops.

3.18 Advertisement of tender opportunities

Finding

The PE has not taken reasonable steps to make use of open tendering or to bring tender opportunities to the attention of those who may wish to submit tenders, in accordance with Section 54 of PPDA.

Recommendation

The PE should adopt open tendering as main procurement method and use appropriate advertising requirements provided in the PPDA.

Response

Open tendering method was not well used. However, every effort is being made to use it now.

3.19 Modification to tender documents

Finding

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

3.20 Submission and Receipt of Bids

Finding

- There is a secure facility for the receipt of tenders provided at the designated tender location, with two locks with keys for each lock kept by a different officer.
- Bid opening procedures are carried out in accordance with Section 89 of PPDA and Regulation 61.

3.21 Formation of Contracts

Findings

- Due to lack of evaluation and TC/PC minutes the review team could not ascertain that contracts were awarded to qualified bidders who had met the requirements of Section 31 and 66 (4) of PPDA;
- No notifications of award letters were sent out to all the successful bidders in accordance with Section 67 of PPDA and copies filed in the procurement file;
- There were no signed 'Acceptance of offers' filed in the procurement files;
- There were no records to ascertain that the unsuccessful bidders were notified at the same time when the notification of award was sent out and copies recorded in the procurement file;
- The release of security bonds was not recorded in the procurement file;
- Performance bonds were not requested for contracts; and
- Contract agreement have been created and signed by the Accounting Officer for only one proceedings reviewed.

Recommendations

- Record all processes leading to formation of contracts;
- Record copies of the released security bond in the procurement file;
- Record copies of performance bonds in the procurement files;
- Record all advance payment or progress payments secured by the performance bond or bankers guarantee in procurement file.

Response

These aspects were in existence but with weaknesses. This will be addressed. Specifically, contracts are now being entered into as required and specific areas as identified, honoured in respect of filing and issuance.

3.22 Termination of Proceedings

Findings

During the period under review, two tenders were terminated. The PE did not undertake the termination in accordance with Section 36(1) of the PPDA, did not inform the PPOA as required by the Section 36(7), and associated directive.

| Tender no | Description | Method |
|------------------|---|---------------|
| RT/09/2008-2009 | Popular version & review & fliers of the review Act | RT |
| RT/11/2008-2009 | Technical editing of conference report | RT/PFP |

Response

Termination of tender processes was indeed not reported to PPOA as required though such terminations were in order. This will be rectified and compliance enforced.

3.23 Notification to PPOA

Finding

- Direct Procurement of Qty 1000 copies of Service Charter of Ksh 675,000 from Noel Creative Media was not reported to PPOA as required by the directive for PPOA.
- Contract for Production and Transmission of Agenda 4 Television Interactive Programme of Kshs.10,593,960.00

Recommendations

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

- All procurement contracts of Ksh 5,000,000.00 and above;
- All terminated procurement proceedings; and
- All direct procurement of Ksh 500,000.00 and above.

Care should be taken to ensure that communications sent to PPOA are received and acknowledged.

Response

This shall be done.

3.24 Enquiries and Complaints Mechanism

Findings

The Ministry does not have documented systems and procedures for handling bid complaints and does not keep a complaints/protest log.

Recommendation

Introduce a documented systems and procedures for handling bid enquiries and complaints and keep a complaints/protest log.

Response

The document systems and procedures for handling bid enquiries and complaints have now been introduced.

3.25 Value for Money

Finding

The following observations show that the PE does not give consideration to value for money in its procurement functions:

- Lack of adequate procurement planning that is linked to the PE's budgetary framework;
- The PE does not provide realistic estimates in the purchase request documents;
- The PE does not consider open tendering as the main method of procurement, which would enhance competition; and
- The PE does not compare prices for common user items with the PPOA market price index.

Recommendations

The PE should seek to enhance value for money.

Response

Procurement planning now in place, open tendering now preferred and comparison of prices being done using PPOA market price index and market survey which indicates prevailing market prices.

3.26 Contract Management

Findings

The team observed the following weakness in the contract management:

- Contract files were not opened for the contracts reviewed as required by Regulation 31 and Chapter 9.2 of the General Manual; and
- There is no contract register maintained by PU in accordance with Chapter 9.6 of the General Manual.

Recommendations

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

Response

This area was not well addressed and everything is being done to manage and administer procurement contracts as provided for in the Act. In conclusion therefore, we shall ensure that the concerns raised in the review are addressed appropriately and timely.

4 SPECIFIC FINDINGS

4.1 Tender number missing from the series provide by PE

The following tender numbers were found missing from the listing provided by PU for review:

| | | |
|-------------------|-------------------|-------------------|
| MOJNCCA/001/08/09 | MOJNCCA/081/08/09 | MOJNCCA/151/08/09 |
| MOJNCCA/003/08/09 | MOJNCCA/083/08/09 | MOJNCCA/152/08/09 |
| MOJNCCA/005/08/09 | MOJNCCA/084/08/09 | MOJNCCA/153/08/09 |
| MOJNCCA/006/08/09 | MOJNCCA/085/08/09 | MOJNCCA/154/08/09 |
| MOJNCCA/007/08/09 | MOJNCCA/086/08/09 | MOJNCCA/156/08/09 |
| MOJNCCA/008/08/09 | MOJNCCA/087/08/09 | MOJNCCA/157/08/09 |
| MOJNCCA/014/08/09 | MOJNCCA/088/08/09 | MOJNCCA/158/08/09 |
| MOJNCCA/018/08/09 | MOJNCCA/089/08/09 | MOJNCCA/159/08/09 |
| MOJNCCA/021/08/09 | MOJNCCA/091/08/09 | MOJNCCA/160/08/09 |
| MOJNCCA/023/08/09 | MOJNCCA/092/08/09 | MOJNCCA/161/08/09 |
| MOJNCCA/027/08/09 | MOJNCCA/093/08/09 | MOJNCCA/162/08/09 |
| MOJNCCA/028/08/09 | MOJNCCA/100/08/09 | MOJNCCA/163/08/09 |
| MOJNCCA/030/08/09 | MOJNCCA/102/08/09 | MOJNCCA/164/08/09 |
| MOJNCCA/031/08/09 | MOJNCCA/104/08/09 | MOJNCCA/167/08/09 |
| MOJNCCA/032/08/09 | MOJNCCA/105/08/09 | MOJNCCA/168/08/09 |
| MOJNCCA/033/08/09 | MOJNCCA/106/08/09 | MOJNCCA/145/08/09 |
| MOJNCCA/035/08/09 | MOJNCCA/108/08/09 | MOJNCCA/147/08/09 |
| MOJNCCA/036/08/09 | MOJNCCA/109/08/09 | MOJNCCA/148/08/09 |
| MOJNCCA/037/08/09 | MOJNCCA/110/08/09 | MOJNCCA/080/08/09 |
| MOJNCCA/040/08/09 | MOJNCCA/111/08/09 | MOJNCCA/149/08/09 |
| MOJNCCA/041/08/09 | MOJNCCA/113/08/09 | MOJNCCA/150/08/09 |
| MOJNCCA/042/08/09 | MOJNCCA/114/08/09 | |
| MOJNCCA/044/08/09 | MOJNCCA/115/08/09 | |
| MOJNCCA/045/08/09 | MOJNCCA/119/08/09 | |
| MOJNCCA/046/08/09 | MOJNCCA/120/08/09 | |
| MOJNCCA/047/08/09 | MOJNCCA/121/08/09 | |
| MOJNCCA/048/08/09 | MOJNCCA/122/08/09 | |
| MOJNCCA/049/08/09 | MOJNCCA/123/08/09 | |
| MOJNCCA/050/08/09 | MOJNCCA/125/08/09 | |
| MOJNCCA/052/08/09 | MOJNCCA/126/08/09 | |
| MOJNCCA/053/08/09 | MOJNCCA/127/08/09 | |
| MOJNCCA/054/08/09 | MOJNCCA/128/08/09 | |
| MOJNCCA/055/08/09 | MOJNCCA/129/08/09 | |
| MOJNCCA/056/08/09 | MOJNCCA/130/08/09 | |
| MOJNCCA/057/08/09 | MOJNCCA/131/08/09 | |
| MOJNCCA/062/08/09 | MOJNCCA/132/08/09 | |

| | | |
|-------------------|-------------------|--|
| MOJNCCA/066/08/09 | MOJNCCA/133/08/09 | |
| MOJNCCA/067/08/09 | MOJNCCA/134/08/09 | |
| MOJNCCA/068/08/09 | MOJNCCA/135/08/09 | |
| MOJNCCA/069/08/09 | MOJNCCA/136/08/09 | |
| MOJNCCA/071/08/09 | MOJNCCA/137/08/09 | |
| MOJNCCA/072/08/09 | MOJNCCA/138/08/09 | |
| MOJNCCA/73/08/09 | MOJNCCA/140/08/09 | |
| MOJNCCA/074/08/09 | MOJNCCA/141/08/09 | |
| MOJNCCA/076/08/09 | MOJNCCA/144/08/09 | |

The following procurement proceedings had no tender/quotation numbers. It was therefore not possible for the review team to relate them to any file register.

| Description | Method | Category | Value | Supplier |
|-------------------------------|--------|----------|------------|-------------------------|
| Printing of 1000 – 2500 | DP | Services | 374,580.00 | Noel Creative Ltd. |
| Supply of round neck t-shirts | | Goods | 200,000.00 | Kite Supply Link |
| | | | 178,800.00 | Budget Furniture |
| | | | 626,000.00 | Easton Hill Enterprises |

4.2 Audit reports not implemented

The review team found that the PE does not adequately implement several audit reports relating to procurement issues.

The audit reports found that the following contracts were entered into without following the requirements of the law, which contravenes Sections 3, 4 (a) and 4 (2) of PPDA.

| Suppliers | PV. No. | Amount (Kshs.) |
|----------------------------|---------------------|----------------|
| Tygi Solution Limited | 4184 | 700,000.00 |
| Tygi Solution Limited | 4129 | 344,520.00 |
| Carrington Business System | 4184 | 24,157.00 |
| Computer Source Point | 4355 | 240,000.00 |
| Bunson Travel Service | 4355 | 40,289.00 |
| Bunson Travel Service | 4150 | 23,135.00 |
| Nairobi Artistic Works | 5642 | 54,500.00 |
| Blue Chip Technologies | 5860 | 54,500.00 |
| Office 2000plus | 6795/6619/4395 | 42,366.40 |
| Milimani Resort | 6338/6751/4804/4319 | 449,350.00 |
| Holiday Inn | 6754/6768 | 30,700.00 |
| KCCT | 6616 | 131,269.00 |
| Reef Hotel Limited | 4802 | 89,000.00 |
| Kasarani Sports View | 4286 | 106,875.00 |

PU did not pay attention to requirements of the PPDA and PPDR:

There was no documentary evidence to indicate how the consultants were identified since quotations were not sent out as required by the PPDA and PPDR. This was evidenced by payments made on the following vouchers

| Date | Payee | PV. No. | Amount |
|--------------|--------------------------|----------------|---------------------|
| 27/09/07 | Dr. Venkat | 6056 | 874,320.82 |
| 27/09/07 | Dr. Venkat (Tax) | 6057 | 170,352.00 |
| 29/09/07 | Prof. Noel Cox | 6058 | 1,192,234.16 |
| 29/09/09 | Prof. Noel Cox (Tax) | 6059 | 170,352.00 |
| 29/09/07 | Reutta Athiambo | 6060 | 134,862.00 |
| 29/09/07 | Reutta Athiambo (Tax) | 6061 | 7,098.00 |
| 29/09/07 | Prof. Githu Mungai | 6066 | 154,128.00 |
| 29/09/07 | Prof. Githu Mungai (Tax) | 6067 | 8112.00 |
| 29/09/07 | Dr. Elizabeth Muli | 6068 | 314,678.00 |
| 29/09/07 | Dr. Elizabeth Muli (Tax) | 6069 | 16,562.00 |
| 29/09/07 | Tom O. Ojienda | 6070 | 359,632.00 |
| 29/09/07 | Tom O. Ojienda (Tax) | 6071 | 18,928.00 |
| Total | | | 3,421,258.98 |

5 COMPLIANCE RATING AND SCORING RESULTS

| Item | Performance Indicator | Indicates aspect of the procurement | Scores | | | | Max score | Actual score |
|------|-------------------------------------|---|--------|---|---|---|-----------|--------------|
| | | | 3 | 2 | 1 | 0 | | |
| 1 | Functions of Accounting Officer (1) | The Accounting Officer is carrying out her responsibilities under Section 27 (2) of the PPDA and has ensured that the procuring entity fulfils its obligations by ensuring that all provisions of the PPDA, the PPDR and directives of PPOA are complied with | | | 1 | | 3 | 1 |
| 2 | Functions of Procurement Unit (3) | The key procurement officials have professional qualifications in procurement and supply management from a recognised institution. | | | | 0 | 9 | 0 |
| | | The Head of Procurement Unit and key staff with procurement responsibilities have received training in PPDA, PPDR, and General Manual. <i>(Information requested and not made available to the review team)</i> | | | | 0 | 9 | 0 |
| | | The key procurement officials are members of a recognised institute of purchasing and supply. <i>(Information requested and not made available to the review team)</i> | | | | 0 | 9 | 0 |
| | | The functions of the Procurement Unit as set out in Regulation 8 of the PPDR are satisfactorily complied with <i>(See performance range of 17% and Appendix)</i> | | | | 0 | 9 | 0 |
| 3 | Functions of Tender Committee (3) | Tender Committee is established in accordance with PPDA and PPDR and holds regular meetings with minutes that conform to Regulation 12 | | 2 | | | 9 | 6 |
| | | The functions of the Tender Committee as set out in Regulations 10 of the PPDR and Chapter 4.5 of the General Manual are satisfactorily complied with | | 2 | | | 9 | 6 |
| | | The approvals by Tender Committee conform to Regulation 11. | | 2 | | | 9 | 6 |

| | | | | | | | | | |
|---|--|---|--|---|---|---|---|-----|-----|
| 4 | Functions of Procurement Committee (3) | Procurement Committee is established in accordance with Regulation 13 and holds regular meetings with minutes that conform to Regulation 15 | | 2 | | | 9 | 6 | |
| | | The functions of the Procurement Committee as set out in Regulations 14 of the PPDR and Chapter 4.4 of the General Manual are satisfactorily complied with. | | 2 | | | 9 | 6 | |
| | | The Procurement Committee has submitted quarterly reports to the Tender Committee on contracts it has awarded | | | | 0 | 9 | 0 | |
| 5 | Functions of the Disposal Committee (3) | The Disposal Committee is established in accordance with Section 128 and holds regular meetings with minutes. | | | | 0 | 9 | 0 | |
| | | The functions of the Disposal Committee as set out in the PPDA, PPDR and Chapter 12 of the General Manual are satisfactorily complied with | | | | 0 | 9 | 0 | |
| 6 | Functions of Evaluation Committee (3) | Evaluation committees have been appointed as and when required within the threshold of the Tender Committee | | | 1 | | 9 | 3 | |
| | | The evaluation committees have undertaken technical and financial evaluation of tenders or proposals strictly in accordance with the compliance and evaluation criteria set out in the tender documents | | | 1 | | 9 | 3 | |
| | | No person has been appointed to serve in the Evaluation Committee if that person is a member of the Tender Committee of the procuring entity | | | | | 9 | N/A | |
| | | Each member of the technical evaluation committee has evaluated independently from the other members prior to sharing her or her analysis in accordance with Regulation 16 (6) | | | 1 | | 9 | 3 | |
| | | Evaluation committees have prepared a report analysing the tenders received and final ratings assigned to each tender and submitted the report to the Tender Committee in accordance with Regulation 16 (9) | | | | | 0 | 9 | 0 |
| | | Tender evaluation has been completed within 30 days of | | | | | | 9 | N/A |

| | | | | | | | | |
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| | | tender opening (with a further 5 days allowed where there is separate financial evaluation) | | | | | | |
| 7 | Functions of Inspection and Acceptance committee (3) | The Inspection and Acceptance Committee has been established and undertakes its functions in accordance with Regulation 17 of PPDR and Chapter 4.7 of the General Manual and makes appropriate use of quality assurance organisations or specialists where appropriate (See performance range and Appendix) | | | 1 | | 9 | 1 |
| 8 | Systems and procedures for implementation of the procurement law and regulations (3) | There are comprehensive and written operational procedures and systems which are updated regularly, setting out how the PPDA, PPDR and directives are being implemented in the PE, as stipulated in Section 26(1) | | | | 0 | 9 | 0 |
| | | The Head of the Procurement Unit is generally aware of updated publications, directives, manuals, and standard documents prepared and distributed by PPOA | | | | 0 | 9 | 0 |
| | | The procurement publications are in a central location that is accessible to all persons who want to refer to them, as provided in Chapter 1.8 of the General Manual | | | | 0 | 9 | 0 |
| | | Manuals including the General Manual and guidelines are available to all persons involved in procurement related functions | | | | 0 | 9 | 0 |
| 9 | Threshold matrix and segregation of responsibilities (3) | The threshold applied conforms to Section 26 of PPDA and the category determined by Gazette Notice No. 719 of 24 January 2007 and the First Schedule of Regulations. | 3 | | | | 9 | 9 |
| | | The person responsible for procurement initiation for each procurement method and threshold is as provided for in the First Schedule of the PPDR | | | | 0 | 9 | 0 |
| 10 | Record keeping of the procurement activities (3) | Adequate and comprehensive procurement records are maintained in accordance with relevant provisions of PPDA, PPDR and the Procurement Records Management Procedures Manual throughout the procurement process and provide sufficient information to enable an audit or | | | 1 | | 9 | 3 |

| | | | | | | | | |
|----|---------------------------------|--|--|--|---|---|---|---|
| | | independent review | | | | | | |
| | | The procuring entity maintains a comprehensive and individual file for each procurement requirement containing all information, documents, and communications relating to that procurement proceeding with such files being marked with the relevant procurement reference number. | | | 1 | | 9 | 3 |
| 11 | Procurement planning (3) | All procurements have been undertaken within the approved budget of the procuring entity and have been planned by the procuring entity through an annual procurement plan, as stipulated in Section 26 of PPDA | | | 1 | | 9 | 3 |
| | | The Heads of User Departments have submitted annual departmental plans to the Accounting Officer at least thirty days before the close of each financial year as stipulated in Regulation 20 (4) | | | | 0 | 9 | 0 |
| | | Where appropriate every significant procurement has an individual procurement plan in accordance with Chapter 6.5 of General Manual | | | | 0 | 9 | 0 |
| | | All procurements are undertaken on the basis of the consolidated procurement plan which is regularly updated and linked to the approved budget of the procuring entity and approved by the Head of the procuring entity and where applicable by the board of directors or a similar body | | | | 0 | 9 | 0 |
| 12 | Purchase requisition (2) | Each procurement proceeding is initiated using an official procurement requisition form containing all necessary information pertaining to the procurement in accordance with Regulation 22 | | | | 0 | 6 | 0 |
| | | The requisitions are generated from the consolidated | | | | 0 | 6 | 0 |

| | | | | | | | | |
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| | | procurement plan | | | | | | |
| 13 | Prequalification and registration of suppliers (3) | There is a standing list of registered suppliers prepared in accordance with Regulation 8 (3) (a) | | 2 | | | 9 | 6 |
| | | Prequalification for works, goods and services of complex and specialized nature is carried out in accordance with the procedures in Section 32 and Regulations 23-25 and the PE has ensured that tenders are sent to all pre-qualified suppliers and contractors | | | | 0 | 9 | 0 |
| | | Qualification to perform a contract is determined based on possession of the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured | | 2 | | | 9 | 6 |
| | | The PE has ensured a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c). | | | | 0 | 9 | 0 |
| 14 | Specifications (3) | The procuring entity uses clear, objective, neutral and functional or technical specifications and in accordance with Section 34 | 3 | | | | 9 | 9 |
| 15 | Choice of procurement method (3) | Open tendering is the main procurement procedure as stipulated in Section 29 | | | | 0 | 9 | 0 |
| | | Alternative procurement methods used by the PE are chosen in accordance with the criteria in Part VI of the PPDA | | | 1 | | 9 | 3 |
| | | Procurements are not split to evade the appropriate procurement method, in accordance with Section 30 | | | | | 9 | NA |
| 16 | Preference and reservations (3) | The PE has applied preferences and reservations in accordance with Section 39 and Regulation 28 and any Guidelines which may be issued | | | | 0 | 9 | 0 |

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| 17 | Standard Tendering Documents (3) | The prescribed procurement documents are used in accordance with Section 29 (4), Regulation 33 and the Third Schedule of the PPDR | | | 1 | | 9 | 3 |
| 18 | Advertisement of tender opportunities (3) | The procuring entity has taken such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders, in accordance with Section 54 | | | | 0 | 9 | 0 |
| | | Advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening | | | | 0 | 9 | 0 |
| 19 | Modifications to tender documents (2) | Any modification to tender documents are set out in an addendum which is promptly provided to each person who obtained the tender documents, as required by Section 53 (3) | | | | | 6 | NA |
| 20 | Submission and receipt of bids (2) | A secure facility for the receipt of tenders has been provided at the designated tender location, with two locks with keys for each lock kept by a different officer and box remaining locked until the time for tender opening. | 3 | | | | 6 | 6 |
| | | Tender opening procedures are carried out in accordance with Section 60 and Regulation 45 | | | | | 6 | NA |
| 21 | Formation of contract (2) | Notification of acceptance of tender is given to successful and unsuccessful tenderers in accordance with Section 67 | | | | 0 | 6 | 0 |
| | | Written contract is entered into in accordance with Sections 68-70 | | | 1 | | 6 | 2 |
| | | Bond security released and recorded in procurement file | | | | 0 | 6 | 0 |
| | | Performance bond raised and recorded in procurement file | | | | 0 | 6 | 0 |
| | | Any advance payment is adequately secured by the performance bond or bankers guarantee and recorded in procurement file | | | | 0 | 6 | 0 |
| 22 | Termination of proceedings (2) | Any termination of procurement proceedings has been carried out in accordance with Section 36 and approved by the Tender Committee | | | | 0 | 6 | 0 |

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|----|---|---|--|--|--|---|-----|-----|
| 23 | Notification to PPOA (1) | Notification is provided to PPOA of | | | | 0 | 3 | 0 |
| | | (a) Contracts over Ksh 5 million | | | | 0 | 3 | 0 |
| | | (b) Direct procurement over Ksh 500,000 | | | | 0 | 3 | 0 |
| | | (c) Termination of procurement proceedings | | | | 0 | 3 | 0 |
| | | (d) Disposals to employees | | | | | 3 | N/A |
| 24 | Enquiries and Complaints mechanism (1) | There are systems and procedures for handling bidders' enquiries and complaints | | | | 0 | 3 | 0 |
| 25 | Follow up of ARB decisions and recommendations (2) | The PE has taken adequate remedial action on any ARB decisions and observations made following appeal | | | | | 6 | NA |
| 26 | Value for money (3) | The PE has sought to maximize economy and efficiency and to obtain value for money in its procurements | | | | 0 | 9 | 0 |
| | | The PE has compared prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate, and has procured standard goods, services and works with known market prices at the prevailing real market price, as required by Section 30 (3) | | | | 0 | 9 | 0 |
| 27 | Contract management (2) | Contract management, including amendments and variations, is carried out in accordance with Section 47, Regulation 31 and Chapter 9 of the General Manual | | | | 0 | 6 | 0 |
| | Total | | | | | | 453 | 94 |

Expected =501 Non applicable =48 Assessed expected=453

Compliance 94/453*100=20.75%

6 ACTION PLAN

| Item | Task | By | Review Date |
|------|---|-------|-------------------------------------|
| 1 | Implement all recommendations of previous reviews and audit reports on matters relating to compliance with PPDA and PPDR | PU | 90 days from the date of the report |
| 2 | The Ministry increase sensitization and advance training to all those staff responsible for key stages of the functions relating to procurement processes and records management. The senior management should be included in the training to acquaint themselves with the procurement law and regulations | AO/PU | 90 days from the date of the report |
| 3 | PU should improve on all identified deficient areas of its functions | AO/PU | 90 days from the date of the report |
| 4 | TC should improve on all identified deficient areas of its functions and ensure that its undertakes its functions in accordance with Regulations 10-12 and General Manual | PU/TC | 90 days from the date of the report |
| 5 | PC should improve on all identified deficient areas of its functions and ensure that its undertakes its functions in accordance with Regulation 13 and General Manual | PU/PC | 90 days from the date of the report |
| 6 | Appoint Disposal Committee that undertakes all functions as set out in the Section 128(2), Regulation 92, Regulation 8(3) (p-q) and General Manual. | AO/PU | 90 days from the date of the report |
| 7 | For all procurements that fall within the threshold of the TC, the Ministry should establish an evaluation committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals in accordance to the criteria set out in the tender documents and conform to the requirements of the Regulation 16. Prepare evaluation reports and retain copies in the procurement and TC files | PU/TC | 90 days from the date of the report |
| 8 | Establish IAC and ensure that the committee conducts its functions in accordance with Regulation 17 and General Manual. The inspection and acceptance committee should start verifying and issuing certified goods receipt notes or certificates of completion for all procurements of goods, works and services | AO/PU | 90 days from the date of the report |
| 9 | Develop operational systems and procedures for implementation of the PPDA and Regulations in the Ministry in accordance to Section 26 (1) | AO/PU | 90 days from the date of the report |
| 10 | The Ministry to prepare the schedules of duties handbook to reflect the approval of procurement processes as set out in the First Schedule of | AO/DA | 90 days from the date of the report |

| Item | Task | By | Review Date |
|-------------|---|----------------|-------------------------------------|
| | PPDR | | |
| 11 | The Ministry should upgrade their record keeping and filing systems for the procurement documents as set out in the baseline report on management of records in the MOJNCCA to conform to the requirements of the Act and Regulations. | AO/PU | 90 days from the date of the report |
| 12 | PE should prepare consolidated procurement plan in accordance to the requirements of the PPDA, PPDR, and General Manual and ensure that all procurements are generated from the procurement plan. Head of departments to prepare their annual plans and submit to AO within 30 days before close of financial year | PPO/AO | 90 days from the date of the report |
| 13 | Introduce purchase requisition forms that meet the requirements of PPDR and General Manual for user departments to initiate procurement processes. | PU | 90 days from the date of the report |
| | Endorse budget line on all procurement documents for cross reference to the budgets | PPO/USERS | 90 days from the date of the report |
| 14 | Prepare a prequalified list of all lawyers providing specialised services to the Ministry to be used for restricted tendering. The PE should ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c). | AO/PU DA | 90 days from the date of the report |
| 15 | Organise training in the development of specifications for complex and specialised services. | PU/UD | 90 days from the date of the report |
| 16 | Adopt open tendering as the main procurement procedure as set out in Section 29 and use alternative procurement methods strictly in accordance to Part VI of the PPDA. | AO/PU | 90 days from the date of the report |
| 16 | Apply preferences and reservations in accordance with Section 39 and Regulation 28 and any guidelines which may be issued by PPOA | AO/PU AO/PU | 90 days from the date of the report |
| 17 | The Ministry to start using standard tender documents to initiate and process all procurements as provided in the PPDR and General Manual | AO/PU | 90 days from the date of the report |
| 18 | Take such steps that are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders, in accordance with Section 54 and ensure that all advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening | PU | 90 days from the date of the report |
| 19 | Ensure that tender opening procedures are carried out in accordance with Section 60 and Regulation 45 | PU | 90 days from the date of the report |

| Item | Task | By | Review Date |
|-------------|---|-----------|-------------------------------------|
| 20 | Ensure that the PE undertakes formation of contracts in accordance with Section 67,68-69, Regulations and General Manual | AO/PU | 90 days from the date of the report |
| 21 | Ensure that all termination of procurement proceedings are done in accordance with Section 36 of PPDA and that notification is sent to PPOA as stipulated in the directives issued by PPOA. | PU | 90 days from the date of the report |
| 22 | Prepare notification to PPOA for all: <ul style="list-style-type: none"> • Contracts over Ksh 5 million • Direct procurement over Ksh 500,000 • Termination of procurement proceedings • Disposals to employees | PU | 90 days from the date of the report |
| 23 | Develop systems and procedures for handling bidders' enquiries and complaints | AO/PU | 90 days from the date of the report |
| 24 | Develop measurable mechanisms that seek to maximize economy and efficiency and to obtain value for money in the Ministry's procurements. Compared prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate. | PU | 90 days from the date of the report |
| 25 | Develop comprehensive contract management systems and procedures that comply with Section 47 of PPDA ,Regulation 31 and Chapter 9 of General Manual | PU | 90 days from the date of the report |

7 CONCLUSION

We have carried out procurement reviews in procurement functions and procedures to verify whether they conform to the Public Procurement and Disposal Act 2005 and the related regulations. We have also assessed whether the functions comply with generally accepted good practices. We have identified major deviations in general areas and procurement stages and attached ratings to them. The major challenges in the Ministry are in the area of recordkeeping, data and documentation controls procurement methods, and inadequate contract management. Retrieving records for review purposes was slow, time consuming and even for the files made available, most key records pertaining to fulfilment of the procurement process were missing, limiting the review scope. The review team did implore the PU to try to make available as many records as possible but response was not good.

We have included an action plan for follow-up in our recommendations to ensure that the corrective measures are carried out in order to improve compliance, efficiency, and effectiveness in procurement management.

We are pleased that the Ministry of Justice, National Cohesion, and Constitutional Affairs management welcomed the review exercise as a mechanism to identify and address any pending shortcomings and weaknesses in the compliance with Act and associated regulations.

Overall, MOJNCCA have demonstrated an unsatisfactory level of compliance at 20.75% (against the minimum threshold of 60%) with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions for the period reviewed. The issues raised are important and warrant immediate attention by the senior management of the Ministry.



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