



FINAL REPORT

**MINISTRY OF ROADS
PROCUREMENT REVIEW**

REVIEW PERIOD: 1 JULY 2007-30 JUNE 2008

09 March 2009

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ACRONYMS

AIE	Authority to Incur Expenditure
AO	Accounting Officer
CAPL	Consolidated Annual Procurement Plan
D	Minor Deviations
DAP	Departmental Annual Procurement Plan
DD	Moderate Deviations
DDD	Major Deviations
DP	Direct Procurement
FY	Financial Year
GOK	Government of Kenya
IFMIS	Integrated Financial Management Information Systems
IPR	Independent Procurement Review
KACC	Kenya Anti Corruption Commission
LPO	Local Purchase Order
LSO	Local Service Order
LVP	Low value Procurement
MCA	Millennium Challenge Account
MOR	Ministry of Roads
MPC	Ministerial Procurement Committee
MTC	Ministerial Tender Committee
OIT	Open International Tender
ONT	Open National Tender
PAC	Principal Accounts Controller
PE	Procuring Entity
PIN	Personal Identification Number
PPDA	Public Procurement and Disposal Act
PPDR	Public Procurement and Disposal Regulations
PPOA	Public Procurement Oversight Authority
PR	Purchase Requisition
PS	Permanent Secretary
PU	Procurement Unit
PV	Payment Voucher
RFP	Request for Proposal
RFQ	Request for Quotations
RRI	Rapid Results Initiative
RT	Restricted Tender
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
VAT	Value Added Tax

EXECUTIVE SUMMARY

This report presents the results of the procurement review of the Ministry of Roads (MOR) undertaken jointly by the ARD/PPOA team under the MCA-Threshold Program, which was carried out during the period of October to December 2008. The objective of the exercise was to review of the status of MOR's procurement, contracting and 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 (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 public procurement and disposal processes from planning to completion undertaken by the Ministry, with sample procurements having been selected by random sampling method.

The fieldwork was undertaken by going through the files and documents pertaining to the ministry'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, user departments namely Engineering, Provincial Roads Engineer Embu, District Roads Engineer Embu, Finance, Accounts, and Audit. It is important to note that, despite the intervention of the Accounting Officer; the procurement unit did not make available documents or answer any queries given to them.

It had been hoped to cover more Provincial or District Offices in the course of the review. However, because of the excessive time taken to obtain documents at the Ministry's HQ, there was only time to cover the Embu Provincial Office.

The review also considered the reports of earlier reviews carried out in the ministry including the Independent Procurement Review 2005 (IPR); PPOA Rapid Results Initiative (RRI) assessment exercise carried out in 2007; External Audit Report for YR2006-2007; periodic internal audit reports; and the Baseline Record Management Report 2008. The review evaluated the implementation of the findings and recommendations of these reports. Most of the recommendations made in earlier reports have not been addressed by the entity.

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. 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.

This report has included a three-month follow-up period during which the PPOA team will work with Ministry of Roads to assist with implementation of the recommendations.

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

1 INTRODUCTION

The Government of Kenya (GOK) and USAID/Kenya signed the Kenya Millennium Challenge Account Threshold Program (MCA-TP) agreement on March 23, 2007. The program addresses public procurement reforms, with a particular emphasis on the healthcare sector. The Program consists of three components:

- a. Component 1: Reforming the Public Procurement System;
- b. Component 2: Improving Healthcare Procurement and Delivery;
- c. Component 3: Civil Society Monitoring of Procurement Reform and Healthcare Procurement and Delivery.

For Component 1 of the MCA-TP, ARD, Inc. was selected to provide technical assistance and training to support the Public Procurement Oversight Authority (PPOA) to reform the public procurement system in Kenya. One of the tasks of the project is to assist PPOA to carry out comprehensive procurement reviews (audits) to determine the level of compliance with the laws and adherence to best procurement practices in six high spending procuring entities, namely Ministry of Health, KEMSA, Ministries of Education, Energy, Roads, and the Office of the President. In assessing compliance, “procurement reviews” have been used in place of “audits,” to distinguish these activities from those of the Kenya National Audit Office.

1.1 Mandate of PPOA

Section 49.1(a) of the Act, provides for the PPOA’s procurement review function, which states that the Director-General or anyone authorized by him may inspect at any reasonable time the records and accounts of a procuring entity, and the procuring entity and contractor shall co-operate with and assist whoever does such an inspection.

The Ag. Interim Director General wrote to the Permanent Secretary on 29 July 2008, informing him that the review would take place and attaching a checklist of the information and documents to be provided by the Ministry.

1.2 Responsibility of procuring entity

Section 27(1) of the Public Procurement and Disposal Act 2005 provides that a public entity shall ensure that this Act, the regulations, and any directions of the PPOA are complied with respect to each of its procurements.

1.3 Entry meeting

An entry meeting with the Ministry’s management team was held on 24 October 2008 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 review team to the entry meeting. The MOR team was led by Eng.M.S.M.Kamau, the Accounting Officer and included among others, the Chair of the

Tender Committee, Heads of User Departments, and the deputy Head of the Procurement Unit.

1.4 Specific Review Objectives

The main purpose is to carry out review of the status of MOR's procurement, contracting and implementation processes and systems, in order to establish the state of compliance with the procurement law, regulations, circulars, and directives issued by the Authority.

The specific objectives of this procurement review are:

- a) To verify the procurement and contracting procedures, processes and documentation followed by MOR, 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 establish the Ministry's adherence to the general principles of economy and efficiency; equal opportunities; transparency; integrity; fairness; and value for money;
- c) To determine the technical compliance, physical completion and price competitiveness of each contract in the selected representative sample;
- d) To review the capacity of MOR to handle procurement efficiently; comment on the quality of procurement and contracting; and identify reasons for delays, if any;
- e) 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;
- f) To establish whether recommended actions made in the previous reviews have been carried out successfully;
- g) To assist in clarification of areas where MOR may have misunderstood the requirements of the legislation;
- h) To identify weaknesses e.g. staff shortages, lack of equipment, which impede good performance and need to be rectified; and
- i) 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.

1.5 Review Methodology

1.5.1 Key documents

The fieldwork of the review concentrated on gathering sufficient evidence to support any findings regarding the compliance and performance of the Ministry and Embu Roads Office. It had been intended to review a wider sample of district office procurements but, because of the length of time taken to obtain documents pertaining to procurements by the Ministry headquarters, it was not possible to include more than one district office in the scope of the review.

The team reviewed the supporting documentation, such as procurement files, contract files, project documentation, budgets, business plans where available.

Other background documents included but were not limited to the following: *Independent Procurement Review Report (IPR) 2005, Ministry of Roads Strategic Plan 2008-2012, Public*

1.5.2 Interviews and Discussions

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

1.5.2.1 Persons met during the review

Name	Title	Role
Eng.M.S.M.Kamau	Permanent secretary	Accounting Officer
Joseph Mutemi	Sr. Deputy Secretary	Chairman of MTC
Eng. Mwangi Maingi	Chief Engineer	Head of largest user department
Eng.Gilbert Arasa	Executive Engineer	Coordinates roads projects
Eng.S.N.Gichuru	Provincial Roads Engineer Embu	Head of User department in Embu
Billow Hussein Abdi	Chief finance Officer	Budget and finance coordination
Kenneth Mwangi	Director of Procurement	Head, PU
Mary Mwangi	PPO	Deputy head PU
Charles Mubweka	er	Head of Accounting Dept.
Ndeda	KNAO Principal Auditor	Auditing and oversight
Karagu	Internal Auditor	Auditing and oversight
S.N. Njue	Procurement staff	District Roads Embu
D.M.Gituathi	Procurement Staff	Province Roads Embu

1.5.3

1.5.4 Sampling

A total sample of 48 (35 for HQ and 13 for Embu) procurement transactions and one disposal (MOR-HQ) were selected in accordance with the procedures outlined in the Procurement Review Manual. The sampling method and scope was discussed with the Procurement Unit.

1.5.5 Details of the samples reviewed

1	TENDER NO	DEPT	METHOD	AMOUNT
2	MORPW/ADM/085/07-08	ADM	RFQ	320,000.00
3	MORPW/ADM/02/07-08	ADM	RFQ	213,817.61
4	MORPW/ADM/101/07-08	ADM	RFQ	443,282.40
5	ITEM 56	ADM	DP	1,185,000.00
6	CME/152/2007-2008	MATERIALS	RFQ	186,672.00
7	CONTRACT S.16864	MATERIALS	T C	228,000.00

8	ITEM 135 ON LIST	MATERIALS	DP	54,344.00
9	PSQ/013/44/2007-2008	KIHBIT	T C	844,450.00
10	KIHBIT/15/2007-2008	KIHBIT	RFQ	119,000.00
11	KIHBIT/90/2007-2008	KIHBIT	RFQ	460,000.00
12	JOB NO 8111A	ROADS	ONT	322,439,539.20
13	3440/RD0500	ROADS	ONT	2,564,748,836.2
14	R8007/RD0437	ROADS	VARIATIO N	1,037,068,118.4 0
15	R4577/K	ROADS	RFP	8,236,352.51
16	CE&ME/1/07-08	ROADS	RT	1,170,000.00
17	R4890/CD/05	ROADS	DP	59,700,520.00
18	QAD/60/2007-2008	QAD	RFQ	137,000.00
19	RWI/119/2007-2008	QAD	RFQ	292,500.00
20	RWI/110/2007-2008	QAD	RFQ	179,950.00
21	PWO/NBI/124/07-08	PWO	RFQ	1,794,000.00
22	PWO/NBI/16/07-08	PWO	RFQ	1,972,250.00
23	PWO/NBI/5/07-08	PWO	RFQ	1,995,000.00
24	CONTRACT-0196822	ROADS ADM	DP	5,509,952.00
25	RDS/ADM/143/2007-08	ROADS ADM	RFQ	296,000.00
26	RDS/ADM/061/2007-08	ROADS ADM	RFQ	296,00.00
27	SB/31/07-08	DESIGNS	ONT	1,199,818.00
28	RDS/D/76/07-08	DESIGNS	RFQ	137,000.00
29	RDS/D/19/07-08	DESIGNS	RFQ	281,250.00
30	DIRECT	MAINTENANCE		69,600.00
31	RDS/110/2007-2008	MAINTENANCE	RFQ	300,000.00
32	RDS/M/145/2007-2008	MAINTENANCE	RFQ	104,240.00
33	RDS/C/10/07-08	BRIDGES	RFQ	250,500.00
34	DIRECT 197092	BRIDGES	DP	4,304,130.00
35	RDS/13/44/07-08	BRIDGES	RFQ	665,000.00
36	EMBU/DTC/04/07/08	EMBU	TC	528,000.00
37	EMBU/DTC/15/07/08(26)	EMBU	TC	1,450,000.00
38	EMBU/DTC/323/07/08	EMBU	TC	4,952,890.00
39	EMBU/DTC/	EMBU	TC	450,000.00
40	EMBU/DTC/15/07/08(27)	EMBU	TC	4,270,000.00
41	EMBU/DTC/15/07/08(06)	EMBU	TC	6,800,000.00
42	EMBU/DTC/15/07/08(39)	EMBU	TC	280,000.00
43	EMBU/DTC/323/07/08	EMBU	TC	4,952,890.00
44	EMBU/DTC/15/07/08(68)	EMBU	TC	2,580,000.00
45	EMBU/DTC/15/007/008/ 75	EMBU-DRE	TC	1,101,400.00

46	EMBU/DTC/15/007/008/75	EMBU-DRE	TC	2,698,920.00
47	EMBU/DTC/15/007/008/75	EMBU-DRE	TC	2,287,400.00
48	EMBU/DTC/15/007/008/75	EMBU-DRE	TC	4,000,100.00
	TOTAL			4,076,559,798.3

The review team estimated the compliance level they would be looking for at 40% and the probability of non-conformity to be 93.60 %. The number of contracts, which were selected for review in order that a realistic review report is achieved, included all departments, procurement methods and categories or procurement functions. With random selection of three procurement activities, there is a high probability of finding one transaction, which does not comply with the Act and regulations. This sampling table is adapted from European Standards EN45503.1996.


Number of samples	Estimated initial compliance with Public Procurement and Disposal Act 2005									
	10	20	30	40	50	60	70	80	90	100
	Probability of finding a sample which does not comply with PPDA 2005 %									
3	99.90	99.20	97.30	93.60	87.50	78.40	65.70	48.80	27.10	0
4	99.99	99.84	99.19	97.44	93.75	87.04	75.99	59.04	34.39	0
5	100	99.97	99.76	98.98	96.88	92.22	83.19	67.23	40.95	0
6	100	99.99	99.93	99.59	98.44	95.33	88.24	73.79	46.86	0
7	100	100	99.98	99.84	99.22	97.20	91.76	79.03	52.17	0
8	100	100	99.99	99.93	99.61	98.32	94.24	83.22	56.95	0
9	100	100	100	99.97	99.80	98.99	95.96	86.58	61.26	0
10	100	100	100	99.99	99.90	99.40	97.18	89.26	65.13	0


The low level of estimated compliance level was based on the discussion with the head and staff of the procurement unit on the overall management and organisation of procurement functions in the Ministry. The procuring entity staffs handling the procurement related functions have not undergone sensitization training on the Public Procurement and Disposal Act and the related regulations because they did not attend the MCA-TP training workshops, although they were invited by PPOA to do so. Moreover, other studies and reviews including

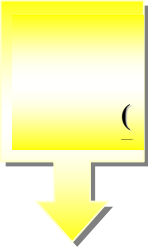
IPR 2005, MCA-TP Records management baseline studies 2008, KACC Examination report, KNAO FY2006-2007 presented a very dismal picture of the procurement management in the entity. The entity had three cases where applications were made to the Administrative Review Board in the year under review.

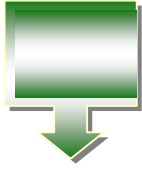
1.5.6 Rating Criteria

The reviewed procurements were categorized according to the procurement/disposal deviation rating criteria, as discussed with the Head of the Procurement Unit. These are general criteria as developed in the Procurement Review Manual and are applied to all Procuring Entities in the course of a procurement review. The features that apply to MOR are indicated later in this report. The extent of deviation is group under four ratings, namely:

<p>Major deviation DDD</p> 	<p>Where the major requirements of the PP&D Act and Regulations were not adequately followed. This could cause material, financial loss or carry risk for the regulatory system or the entity’s reputation. These cases include deficiencies in the structures and systems to implement the law and regulations, or where the procedures have been so flawed that there is severe risk of mis-procurement or procurement fraud such as:</p> <ul style="list-style-type: none"> • Procuring entity is not established and operational; • Procurement procedures are not integrated within the financial framework of the entity; • Main structures are not appointed and operationalised e.g. <ul style="list-style-type: none"> ✓ Accounting Officer ✓ Tender Committee ✓ Procurement Unit ✓ Procurement Committee ✓ Disposal Committee ✓ Inspection and Acceptance Committee ✓ Tender Opening Committee ✓ Evaluation Committees. • Coverage not complete <ul style="list-style-type: none"> ✓ Procurement process ✓ Contract management ✓ Disposal ✓ Categories • Standard and specific committees not meeting as stipulated; • No consolidated procurement plan linked to approved budget; • Lack of procedures for making procurement decisions; • Not adhering to the threshold matrix; • Open tenders not advertised as provided for in the Act and Regulations • Choice of improper procurement procedures; • Procurements split or inflated; • Contracts are not awarded to qualified person; • Unjustified termination of procurement proceedings; • Lack of approved prequalified list for suppliers;
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	<ul style="list-style-type: none"> • Lack of annual disposal plan; • Inappropriate influence on evaluation; • Inadequate protection of confidential information; • Lack of comprehensive procurement records; • Restricted /direct procurement tendering not approved by MTC; • Standard tender documents not used; • Not reporting to PPOA as required for <ul style="list-style-type: none"> ✓ Contracts of over Ksh 5million ✓ Direct Procurement ✓ Terminated proceedings ✓ Disposal to staff • External observers not invited for large contracts of over Ksh50 million; • Failure to advertise bid opportunities for contracts above certain value thresholds; • Many key procurement records that are stipulated by law for retention are missing <p>Such cases warrant immediate attention by the Accounting Officer.</p>
<p>Moderate Deviation DD</p> 	<p>Where procurement procedures were considered to have significant omissions or deviations, including:</p> <ul style="list-style-type: none"> • Some procurement records are missing; • Lack of central comprehensive procurement files; • Open tenders not the main method of procurement; • Procurement unit not functioning as per the regulations. • Lack of signatures on key minutes • Choice of selection procedure not justified; • Consolidated Procurement plan not updated; • Contracts awarded not from the approved list of suppliers; • Criteria for the evaluation of proposals not specified in the tender documents; • Award Letter missing; • Description of goods, works or services in the bid not adequate; • Direct procurement is created by dilatory conduct of the PE; • Disposal procedures not followed; • Entities with recurring or ongoing requirements have not analyzed their medium to long term needs to adopt long-term arrangements or framework contracts; • No evidence of analysis of bid documents by Tender Evaluation Committee; • No evidence of award by Tender Committee; • Lack of evidence of commencement certificate in contract missing; • Lack of evidence of contract being countersigned by AO; • Evidence of performance bond not in the contract file; • No evidence of the use of weighting in the award criteria in tender documents; • Inspection and acceptance certificates confirming delivery not available;

	<ul style="list-style-type: none"> • No justification/Authorization for Applying the method; • No authorized procurement requisitions; • No schedules of duties for initiating, certifying and approving officers; • Non-disclosure of tender evaluation details; • Lack of notice of invitation of expressions of interest and preparation of shortlists for RFPs; • No specified period of validity of tenders; • Unjustified modification and withdrawal of tenders; • Prequalification proceedings not adequate; • Absence of award criteria in tender documents; • Absence of procurement requisitions; • Record of procurement proceedings not comprehensive; • Lack of justification for direct and restricted procurement; • Termination of procurement proceedings not reported to PPOA; and • Inadequate oversight by internal auditor. <p>These weaknesses warrant immediate attention of the senior management.</p>
<p style="text-align: center;">Minor Deviation D</p> 	<p>Where procurement practices and procedures conformed to most regulations, though there were deviations, which are relatively small in quantity, size or degree and are low in risk. These weaknesses warrant immediate attention of the procurement unit or user department. The deviations include:</p> <ul style="list-style-type: none"> • Absence of an award letter in procurement file; • Absence of authorization date of LPO; • Absence of invoice copy in the procurement file; • Absence of LPO Authorization; • Absence of LPO or LSO in the procurement file; • Absence of payment voucher copy in the procurement file; • Absence of Procurement Request in the procurement file; • All tenderers not informed of the result of a tendering process in accordance with the law; • Anti corruption mechanisms not defined and published; • Commencement of contract date missing; • Date of evaluation committee report or recommendation letter missing; • Date of the bid opening missing; • Date of the MTC meeting awarding the contract missing; • Evidence of award by Tender Committee not in file; • No evidence of contract being countersigned by AO in procurement file; • No evidence of performance bond in the contract file missing; • Goods or Services Received Note missing in file; • Inadequate monitoring of contracts awarded; • Incomplete procurement plan; • Methods and criteria for selecting firms and for awarding contracts are not documented;

	<ul style="list-style-type: none"> • Records are available but not in the procurement file; and • Time limits for replies not adhered to <p>These weaknesses should be addressed by senior management as part of an ongoing improvement plan.</p>
<p>Satisfactory Performance</p> <p>SP</p> 	<p>Where procurement practices and procedures met the requirements of the law and regulations and were considered to meet standards of good practice.</p>

1.5.7 Limitation of scope

Our scope was limited by the following:

- There was insufficient cooperation on the part of some of the senior procurement personnel who in some cases refused to make documents available;
- Fragmented functions of the procurement in various departments made it difficult for the team to get documents, information and data necessary for the review;
- Lack or incompleteness of records, data and documentation relating to the procurement processes selected;
- Because of the lack of central storage and absence of a reliable records control system, document location and retrieval was difficult;
- Inability to verify the authenticity of most of the documents sampled;
- Lack of documented organizational internal control manuals relating to initiation, certification, and approvals at various levels; and
- Inability to verify the authenticity of the documents sampled against authorized official schedules of responsibilities.

2 BACKGROUND AND ORGANIZATION OF MINISTRY OF ROADS

2.1 Mandate

The Ministry is charged with the responsibility of providing basic infrastructure facilities to the public. These include development, maintenance and rehabilitation of the road network in the country.

2.2 Functions of the Ministry

The Ministry of Roads was established by Presidential Gazette Notice of May 2008 with the following functions:

- National Roads Development Policy
- Development, Standardisation and Maintenance of Roads
- Kenya Roads Board
- Kenya Highway Authority
- Kenya Urban Roads Authority
- Kenya Rural Roads Authority
- Kenya Institute of Highways and Building Technology
- Mechanical and Transport Services
- Enforcement of Axle load Control
- Materials Testing and Advice on Usage
- Standardisation of vehicles Plant and equipment
- Registration of Roads Contractors
- Registration of Engineers
- Protection of Road Reserves.

Source: Organisation of the Government of the Republic of Kenya May 2008

2.3 Vision

To achieve excellence in the construction and maintenance of roads to satisfy all road users.

2.4 Mission

To attain an efficient road sector that supports and promotes economic growth through cost effective provision and maintenance of infrastructure that is necessary for safe and reliable road transport.

3 GENERAL FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

3.1 Poor records management

Observation: In all procurements, access to information is critical to the many users and stakeholders in the systems. Systems are not put in place to collect and collate comprehensive documentation and data related to particular procurement activities and to report regularly and reliably any information required by various users including PPOA.

Findings: The system of filing and record keeping is fragmented and scattered amongst various departments of the Ministry. This hampers document location, retrieval, and traceability. There was no single comprehensive procurement file for each procurement activity selected for sampling.

A lot of data and information needed for verification purposes could not be accessed and therefore the accuracy of information was highly compromised.

Recommendation: The Ministry should upgrade the record keeping in line with the requirements of section 45 of the PPD Act and Regulation 34.3 requiring PEs to maintain comprehensive file for each procurement activity. The entity should implement the recommendations of the “*Baseline report on the management of procurement records in the Ministry of Roads*”.

Response:

It is true that the records management in this Ministry is poor. This is because the Ministry’s records management system is purely manual; the Ministry has several major departments which are bigger than even some Ministries. It is also important to note that the Ministry operates countrywide and the level of spending is relatively high. The documents handled are enormous and voluminous and a centralization of these activities can only be realized if the Ministry has a fully fledged department to specifically handle this. Personnel is a limiting factor to this regard.

We expected this report to recommend the introduction of e-procurement system to be implemented by the Ministry with the necessary support of the Ministry of Finance and e-Government Directorate.

The alternative is for the Directorate of Personnel Management to carry out a job evaluation and recruit staff to maintain procurement, finance and contract documentation or PPOA to assist in outsourcing this function. However, the Director of Procurement will constitute a team to implement the recommendations of the baseline report on management of procurement records.

3.2 Lack of comprehensive policy and strategy for construction procurement.

Findings: The ministry does not have clear and documented policy or strategy to undertake proper construction procurement.

Recommendations: Build organizational capacity to develop comprehensive policy and strategy on construction procurement encompassing the following functions for

- Developing a strategic direction for construction procurement that aligns with national and local objectives;
- Providing guidance, tools and support to staff engaged in construction procurement functions;
- Evaluating procurement methods and options;
- Streamlining the assessment process for repeat suppliers and contractors;
- Setting-up a database recording the performance and competitiveness of suppliers and contractors and using the information to inform future tender evaluation;
- Standardizing the approach to specifying requirements and standards;
- Engaging with the local construction industry players and creating opportunities for suppliers to participate in service developments;
- Establishing communication channels between services engaged in infrastructure and construction procurement; and
- Exploring opportunities to introduce modern procurement practices such as long-term contracts and collaboration with suppliers.

Response:

It is important to note that the Ministry is in the middle of a major reform initiative that has led to the creation of three (3) Road Authorities, and proposed the creation of the National Construction Authority. The procurement policy strategy is also to be crafted in integration with this policy reform. This is a good recommendation.

3.3 Incomplete procurement spend data

3.3.1 Spend analysis for HQ

DEPARTMENT	AMOUNT (Ksh)
Chief Materials Engineer	43,440,012.00
Administration	24,295,139.00
Planning	17,664,448.00
Advertisement Roads	7,390,238.00
Provincial Works Office Nairobi	107,087,656.00
Quantities and Contracts	10,466,770.00
Roads Maintenance	23,538,547,740.00
Administration-Headquarters	15,854,812.00
KIHBT	24,375,596.00
Design	64,149,861.00
Contracts/Bridges and Weighbridges	118,843,966.00
Maintenance	33,946,434.00
TOTAL	24,006,062,672.00

3.3.2 Spend analysis for Roads Department EMBU

CATEGORY	NO.OF TRANSACTIONS	VALUE
Works	44	67,687,213.00
Goods	134	53,017,978.00
Services	29	28,327,219.00

Finding: In order to provide an overall reflection of the level of compliance, the team selected a sample of 48 procurement transactions (35 at the Ministry's HQ and 13 at the Embu Provincial Office) and one disposal transaction at HQ. The team was not provided with aggregate spend data, spend visibility and control therefore was not able to determine whether the sample was representative.

Procurement spend analysis and spend visibility provides the necessary foundation for procurement unit seeking to make better, more informed procurement decisions. This enables the entity to improve strategic sourcing efforts, track contract compliance with regulations, limiting inappropriate expenditure and expand procurement operations and procurement scope.

By analysing reports generated from expenditure data, stakeholders within and outside the ministry can discover what the ministry is procuring, 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 data provided by procurement unit was inadequate and could not provide reliable information and therefore the team did not use it.

The data provided was characterised by following inadequacies:

- Poor data collection, extraction and quality;
- Incomplete and unreliable information;
- Too many sources storing data which were not centralised;
- Lack of standard processes and formats; and
- Insufficient process automation.

Recommendation

- The procurement unit should complete the data collection and extraction as requested by the audit team and organise them in the following usable format so that it can be included in final report.
- The Procurement Unit should institute a central control register for the purchase requisitions initiated from various departments.

Response

It is virtually impossible to establish an accurate procurement spend of this Ministry within a period of three weeks when this audit was carried out, taking into account that our system is manual, the numerous multi annual contracts and the numerous transactions incurred. Indicating that Shs.22 billion cannot be accounted for annually, cannot be verified objectively and is erroneous. The IFMIS system has detailed spend data and money disbursed to the districts is not captured in the system. The procurement unit does not have adequate staff to carry out data collection and extraction as requested by the audit team during the audit. This was supposed to be the work of the audit team. It is a good recommendation that the procurement unit should institute a central control register for purchase requisition initiated by various departments.

3.4 Non-implementation of recommendations of previous reviews.

Findings: There was no evidence that the recommendations made from other previous reviews on matters relating to procurement management were implemented by the

Procurement Unit. The main reviews undertaken previously include Independent Procurement Review (IPR) 2005, KACC Examinations into Systems, Policies, Procedures and Practices of Roads Sub-sector, Auditor General's Report FY2006-2007, Internal Auditor's report and MCA-TP Baseline Report on Records management report submitted in September 2008.

- All these reports have highlighted among other things the following:
- Weak oversight and enforcement;
- Non-transparent nature of procurement practices in the ministry;
- Lack of effective links between procurement and financial management; and
- Poor records management and filing systems.

These weaknesses are still very evident in the Ministry.

Recommendations: The Accounting Officer should ensure that the previous reports are implemented in order to improve the entity's performance and enhance value for money in procurement functions.

Response:

This Ministry has made efforts to implement the KACC examinations into systems; policies, procedures and practices of Road sub-sector e.g. spot checks and recommendation on improving the operations of weigh bridges and formation of corruption prevention committees.

The Audit team should clarify the meaning of “*the non transparent nature of procurement practices in the Ministry*”. The Ministry endeavors to implement recommendations of various oversight bodies to the extent possible as a continuous improvement strategy without losing its vision and mission.

3.5 Lack of separation of responsibilities

Finding: Functions related to procurement fall under the user departments contrary to the requirement of the Act (section 26(i) c) which stipulates that all procurement shall be handled by different officers in respect of procurement initiation, processing and receipt of goods, works and services.

The present organisation of the procurement functions greatly compromises the procurement policy and process compliance.

It was evident that the Procurement Unit is not adequately providing the technical guidance, leadership and direction to the user departments in the implementation of the Act and regulations.

In many cases, the procurement staff refused to co-operate with the review team despite the intervention of the Accounting Officer. They refused to provide essential information for the review and this has compromised the quality of the outcome of the exercise e.g. all procurement files selected for sampling, evidence of contract monitoring, all Direct procurement files, all disposal proceeding file, user procurement plans, all contracts with variations, and procurement staff

Recommendation: There is an urgent need for the Accounting Officer to reorganise the structures and functions of the procurement unit and the user departments so that they operate within the precincts of the Public Procurement and Disposal Act and the related regulations.

Response:

It is not true that there is lack of separation of responsibilities between the procurement unit and the user departments. All purchase requisitions for goods and services originates from the user department to the office of the Director of Procurement. After approval the same is processed by the procurement units' desk officers who are located in the user departments, as our system is decentralized given the large size of Ministry.

Evaluation of bids is then carried out by an evaluation committee appointed by the procurement unit in consultation with the Accounting Officer. The award of tender is then approved by the Ministerial Procurement Committee or Ministerial Tender Committee depending on the value of the procurement.

The procurement unit provided the present organization structure. Further information on the staffing and their qualification is available at the Public Procurement Directorate, Ministry of Finance.

The Ministry's staffs are qualified procurement professionals in accordance with the Act, recruited by Directorate of Personnel Management and the Public Service Commission. It's a good recommendation that the procurement unit should be strengthened and provided with adequate tools and skills.

3.6 Deficiencies in the Procurement Unit

Finding: The Procurement Unit is established in accordance with the PPDA Section 4 but is not fully operational as stipulated in the Act and regulations. The Procurement Unit is simply a ministerial tender secretariat with most of the procurement related functions being undertaken in the individual user departments. Many senior officers expressed their concerns over the procurement unit's inadequacy and its inability to provide technical guidance to the user departments.

REQUIREMENTS OF REGULATION	OBSERVATION	RESPONSES
Maintain and update annually standing lists of registered tenderers required by the procuring entity and liaise with the Authority in respect of the Authority's register of suppliers and procuring agents.(Regulation 8.3.a)	List of registered suppliers for the FY2007-2008 exists but there was no evidence that it is being followed by all the departments in the Ministry who appear to be operating independent from the procurement unit without documented list of suppliers	
Prepare, publish and distribute procurement and disposal opportunities including invitations to tender, pre-qualification documents and invitations for expressions of interest.(Regulation 8.3.b)	No evidence as all procurement activities except for convening the tender committee meetings are being handled by user departments. Invitation for bid for contract RD0500 was done by Chief Engineer Roads.	
Coordinate the receiving and opening of tender documents (Regulation 8.3c)	No evidence in the procurement unit. Individual Departments organize the opening of their own tenders and quotations.	
Maintain and safeguard procurement and disposal documents and records in accordance with these Regulations.(Regulation 8.3d)	Not being done. The records are kept haphazardly by the user departments contrary to Section 45 of the Act.	
Submit shortlists and lists of pre-qualified tenderers to the tender committee or procurement committee for approval. (Regulation 8.3e)	From the minutes of the MTC reviewed this is being done. No evidence that this is being done for the procurement committee.	
Issue procurement and disposal documents to candidates in accordance with the Act and these Regulations.(Regulation 8.3f)	No evidence that this is being done.	
Propose the membership of evaluation committee to the Accounting Officer for approval.(Regulation 8.3g)	No evidence that this is being done as the team was not provided with a comprehensive	

	procurement file for any transaction requested. The evaluation team for Contract RD0500 was appointed by the Chief Engineer roads.	
Coordinate the evaluation of tenders, quotations and proposals.(Regulation 8.3h)	No evidence that this is being done as the team was not provided with a comprehensive procurement file for any transaction requested.	
Recommend a negotiating team for appointment by the Accounting Officer where negotiations are allowed by the Act and these Regulations and participate in negotiations.(Regulation 8.3i)	No evidence that this is being done as the team was not provided with a comprehensive procurement file for any transactions requested.	
Prepare and publish notices of award and notices of tender acceptance.(Regulation 8.3j)	This is being done by heads of user departments e.g. letters of acceptance for tender nos: ME /2 /2008 - 2009,ME/ 10 /2008 - 2009,ME/4/2008-2009 were issued by the Chief Mechanical and Transport Engineer contrary to the regulation.	
Prepare contract documents, in line with the award decision. (Regulation 8.3k)	No evidence that this is being done by PU.	
Prepare and issue rejection and debriefing letters.(Regulation 8.3l)	No evidence that this is being done by PU.	
Prepare contract variations and modifications to documents ;(Regulation 8.3m).	No evidence that this is being done by PU.	
Maintain and archiving documents and records of the procurement and disposal activities for the required period (Regulation 8.3n).	Not being done.	
Provide information, as required, for any petition or investigation to debar a tenderer or contractor or any investigation under review procedures.(Regulation 8.3o)	Did not cooperate with the review team on an exercise appointed by Director General of PPOA.	
Implement the decisions of the procurement, tender and disposal	No evidence that this is being done by PU.	

committees including coordinating all activities of these committees.(Regulation 8.3p)		
Act as a secretariat to the tender, procurement and disposal committees.(Regulation 8.3q)	Being done.	
Liaise with the Authority and other bodies on matters related to procurement and disposal.(Regulation 8.3r)	Very weak liaison.	
Monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts. (Regulation 8.3t)	Not being done.	
Report any significant departures from the terms and conditions of the contract to the head of the procuring entity.(Regulation 8.3u)	Not being done as variations are approved by the user departments	
Prepare contract variations and modifications to documents.	No evidence that this is being done by PU.	
Maintain and archiving documents and records of the procurement and disposal activities for the required period.(Regulation 8.3n)	No evidence that this is being done by PU. Records are not comprehensive to provide reliable information.	
Implement the decisions of the procurement, tender and disposal committees including coordinating all activities of these committees.(Regulation 8.3p)	There is evidence that this is being done by PU there is no evidence that this being done for other committees.	
Prepare and submit to the Authority reports required under the Act, these Regulations and guidelines of the Authority. (Regulation 8.3s)	We were given lists but PPOA has not received the reports referred to therein. Moreover the information given was incomplete.	
Prepare consolidated procurement and disposal plans.(Regulation.8.3w)	Not available for the period under review.	
Advise the procuring entity on aggregation of procurement to promote economies of scale (Regulations 8.3x).	No evidence as each department operates individually.	
Co-ordinate internal monitoring and evaluation of the supply chain function.(Regulation 8.3y)	No evidence that this is being done by PU.	
Carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award	No evidence that this is being done by PU.	

committee. (Regulation 8.3z)		
Conduct periodic and annual stocktaking.(Regulation.8.3aa)	No evidence that this is being done by PU.	
Certify the invoices and payment vouchers to suppliers.(Regulation 8.3bb)	No evidence.	
Approve extension of the tender validity period.(Regulation 8.3cc)	No evidence that this is being done by PU.	
Verify that the available stock levels warrant initiating a procurement process.(Regulation 8.3ee)	No evidence that this is being done by PU.	

Recommendations:

- The procurement unit should provide the present organisation structure, staffing and their qualification.
- The Accounting Officer should liaise with Director of Procurement to ensure that the ministry and its agencies engage procurement professionals in their procurement units with adequate knowledge, skills and leadership capacity that meets the requirements of strategic procurement tasks in the ministry.
- The head of PU should reorganise the unit so that it operates in accordance with the PPDA 2005 and Regulation 8.3. The unit should maintain a centralized control register and archiving documents and records of the procurement and disposal activities for the required period in accordance with PPDA section 45.
- The procurement function in the Ministry of Roads is both a high risk and strategic function. The unit should be strengthened and provided with adequate tools and skills to enable it adopt strategic procurement methods including framework contracts that will increase value for money procurements.
- The unit should put in place a procurement strategic focus on:
 - ✓ Optimizing costs;
 - ✓ Simplifying transactions;
 - ✓ Streamlining the process;
 - ✓ Contract management;
 - ✓ Compliance with PPDA provisions; and
 - ✓ Comprehensive filing systems.

Response

3.7 Lack of training

There was no evidence that personnel handling the procurement-related functions have undergone any sensitization training in the Public Procurement Act, organised by PPOA and only one attended the records management workshop organised by MCA-TP in March 2008.

The PPOA records show that although the staffs handling procurement-related functions in the Ministry were invited to several sensitisation-training workshops organised by PPOA and ARD, they did not attend.

Recommendation: A procedural requirement should be implemented to have all personnel involved in procurement related function undergo sensitisation training in the Public Procurement and Disposal Act 2005 and the related regulations.

Response:

The Ministry's procurement staff has attended various sensitization procurement workshops, including one organized by the Ministry, PPD and other courses organized by PPOA. We only fail to attend courses that we learn about when the course has started or has ended.

The recommendation to training staff on the Act and Regulations is good as training is a continuous improvement tool.

3.8 Lack of standing committees

NAME	NATURE	MOR/STATUS
Tender Committee	Standing	Complying with regulations.
Procurement Committee	Standing	Not complying with Act and regulations for the YR2007-2008 but the entity constituted one on 30 Sept.2008 for the HQ. The Chief Engineer materials had constituted ITS departmental committee which is not covered under any regulations
Tender Opening	Specific	Complying with regulations
Evaluation Preliminary	Specific	Complying with regulations
Evaluation technical	Specific	Complying with regulations
Evaluation Financial	Specific	Complying with regulations
Inspection and Acceptance	Standing	Not complying with regulations.
Disposal	Standing	The minutes for the Disposal committee was found in file at HQ but appointment letters not provided by the entity to confirm whether or not it complies with regulations.

Recommendation: The Accounting Officer should constitute the Inspection and Acceptance committee in accordance with the Act and the associated regulations. The Accounting Officer to abolish all committees appointed by heads of departments to handle or adjudicate matters relating to procurement. (Departmental Procurement Committee appointed by Chief Engineer Materials.

Response

Given that this Ministry mainly buys Roads projects, which span through in most cases for three financial years, we constitute substantial completion taking over committees for these projects in accordance with the FIDIC terms and conditions of contract.

Given that they are numerous projects all over the country that we takeover every month, an adhoc committee is appointed for each project whose minutes are available. It is not practical to have a standing committee for such as, since this would be the only work that members of such a committee would be doing.

Given that we have six departments in different localities, the heads of departments should continue appointing Inspection and Acceptance Committees on behalf of the Accounting Officer for receipt of goods and services, within their departments. There are no other committees appointed by the heads of departments to adjudicated matters relating to procurement. The committee appointed by the Chief Engineer Materials was a misunderstanding by the Department and hence there is no committee like that found in this Ministry.

3.9 Funding Grants for the Ministry for FY2007 - 2008

REVISED ESTIMATES OF EXPENDITURE- FY 2007/08			
		Development	Current
380	Headquarters administrative services	30,000,000.00	
507	Kenya Institute of highways and building Technology	50,500,000.00	109,664,594.00
384	Major roads	20,487,672,120.00	23,101,798,967.00
385	Other roads	14,651,750,000.00	
488	Extra-ordinary Road maintenance	49,100,000.00	
489	Miscellaneous	2,249,000,000.00	
154	Financial Management Services		11,269,920.00
380	Headquarters administrative		346,667,962.00
381	Provincial MOW Administration		65,512,091.00
382	District MOW Administration		264,918,654.00
600	Economic Planning		9,175,564.00
386	Road marking and signs		72,239.00
392	HQ,Roads dept		170,945,059.00
393	Quality assurance		2,108,430.00
482	Provincial /district Roads Administration		325,978,328.00
483	Extra ordinary Road maintenance		47,952.00
	TOTAL	33,682,022,120.00	24,408,159,760.00

Source – Estimates of GOK Expenditure 2007/2008

Finding: There was no evidence of linkage between the purchase requisitions initiating the procurements to any budgets.

Recommendation: The user departments should ensure that all procurements being initiated through official purchase requisition (Regulation 22(1)) are linked to the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual in accordance with Section 26(3) (a).

Response

There was no evidence of linkage between the purchase requisitions initiating the procurement to any budgets. It is crucial to note that there is always a gap between the approved budget and availability of liquidity to the Ministry

This would be a good practice to introduce in the Ministry; however we request the assistance of PPOA in its implementation given the complexity of operation of this Ministry.

3.10 Pending Bills

Finding: The ministry currently has accumulated pending bills (*Appendix 7.8*) amounting to Ksh 4,027,387,903.79 for completed projects. There is a further .Ksh17, 696,402 outstanding advertisement expenses incurred by Procurement Unit without approved budgets and availability of funds.

Recommendation: The Accounting Officer to address the issue of pending bills and Director of Procurement to organise for settlement of the advertisement bills and ensure that future advertisements are undertaken in line with PPDA Section 26.6 which stipulates that "*a procuring entity shall not commence any procurement procedure until it is satisfied that sufficient funds have been set aside in its budget to meet the obligations of the resulting contract*".

Response

Given the challenge facing the Government in collection of adequate revenue by Kenya Revenue Authority to finance the budget, this Ministry will always have some pending bills, which should be viewed as accounts payable in private business ventures. The Accounting Officer through the Principal Accounts Controller and Director of Procurement has been ensuring that suppliers and contractors are paid timely given the financial constraints. The Minister of Roads and the Minister of Finance will hold a meeting shortly to discuss how to ensure that adequate funds are available to meet the Ministry's obligations.

3.11 Lack of departmental procurement plans

Findings: There is no evidence that the procuring entity prepared all departmental procurement plans under section 26(3) (a) of the Act which stipulates that the heads of departments submit their annual procurement plans to the accounting officer at least thirty days before the close of each financial year as part of the annual budget preparation process. Only one departmental procurement plan from Kenya Institute of Highways and Building Technology was made available to the review team. In Embu, the Provincial Roads Engineer is using annual work program 2007-2008 as the departmental procurement plan.

Recommendation The ministry should ensure that in future all departments prepare their procurement plans in accordance with the Act Section 3a and Regulations 20.4, which stipulates, "*a head of department shall submit an annual procurement plan to the accounting officer at least thirty days before the close of each financial year*".

Response

All departments submitted their plans to the procurement unit and a retreat was held to prepare an annual consolidated procurement plan. However, the assistance of PPOA is required especially on training in procurement plan and a short term consultancy to institutionalize the design and implementation of the plan.

3.12 Consolidated Procurement plans

Finding: There are no consolidated annual procurement plans prepared by PU for all tenders, contracts and/or LPOs reviewed. During the year under review, the users' procurement plans were prepared for each department and forwarded to PU. The departmental procurement plans (*Act 26(3a) and Regulation 20-21*) were not directly linked to any specific budget line or based on any approved budget. However, we are pleased to note that the procurement unit did commence the process of preparing the annual consolidated procurement plan for FY2008-2009 during the review period.

Recommendations:

- PU should continue with the preparation of the comprehensive consolidated procurement plan that is currently being worked on to better manage all aspects of its procurements including the procurement of professional/works/goods/other services.
- All future procurement requests should be linked to the consolidated procurement plan. The timing of both the procurement department's activities and the development of document content by others should be derived from this plan.
- A master procurement schedule, showing the target dates for procurement-related activities and the actual progress achieved, should be generated by the Ministry-wide scheduling system to serve as a communication tool for future procurement planning with project managers and subsequent progress tracking.
- The procurement unit should create a list of minimum requirements that need to be covered in the procurement process from staff requesting the services to ensure that all necessary information is gathered on a timely basis and captured in the plans.
- The procurement plan must be updated continuously to meet changing needs and changes in budgetary provisions.

Response

As stated in above the process of preparing an Annual procurement plan is weak, the Ministry will implement the recommendations of the audit team.

3.13 Lack of standard purchase requisitions

Finding: The procurement requests from the user departments do not have official standard purchasing requisitions as stipulated in the *Regulation 22.1*. Some departments have devised their own procurement requisition forms while other departments use internal memos. There is no evidence that the purchase requests had been approved by the person specified in the First Schedule, prior to the initiation of procurement proceedings (*Regulation 22.3-4*).

The requisitions do not relate to the procurement plan and have no estimated realistic value (*Regulation 22.2*) which could guide the procurement unit and/or MTC on choice of procurement method.

The procurement unit does not maintain a central register for procurement requisitions for monitoring.

Recommendations

All future procurement requests should be initiated through the official standard purchase requisition approved by PPOA, which should be duly authorized and linked to a consolidated procurement plan and approved budget

There should be a budget line indicated on the purchase requisitions to show source, allocation, and availability of funds in the budget for particular procurement, authority to incur expenditure for the purchases being requested and authorization. The information on the documentation should be similar to that on the Vote Book Certificate on the payment voucher namely:

- Budget Vote item No;
- Total amount budgeted;
- Accumulated plus commitment;
- Amount requested;
- Balance c/f;
- Signed by AIE holder; and
- Approved by Accounting Officer/designated officer.

Response

PPOA should issue a standard purchase requisition to be used by procuring entities. Otherwise the Ministry will design a standard purchase requisition to be used in the Ministry's headquarters and departments, in accordance with the audit's recommendations.

3.14 Advertisement of bids

Findings: The team was not provided with comprehensive data and documentation for all the procurement and disposal proceedings so there was no way of determining whether advertising requirements were met and filed as per the provisions of the Act.

Recommendations: Tender opportunities must be advertised in accordance with the Act and regulations. The Procurement Unit is responsible for keeping all records pertaining to the advertisement and solicitation records.

Response:

Given the weak records management system of the Ministry we could not provide comprehensive data and documentation for all the procurement and disposal proceedings. The audit team ought to have taken a sample of procurement proceeding in the MTC minutes to study and draw conclusions. The Ministry has not breached any section of the Act or Regulations in advertisement of tenders.

3.15 Methods of procurement

Finding: Due to poor record keeping, it was not possible to determine the scope of methods of procurement used in the Ministry.

Recommendation: Improve of information to include methods of procurement.

Response

The audit team should have used a representative sample to determine the scope of methods of procurement used by the Ministry. Trying to use the entire population is not practicable, as the number of transactions are just too numerous.

3.16 Direct procurement

Findings: There were five direct procurement for the total amount of .Ksh 423,477,636.20 for the FY2007-2008. The team was not provided with proof of the written approval of its tender committee; and records in writing the reasons for using the direct procurement method as provided for in the Act.

Recommendation: Procurement Unit to provide documentation for all the direct procurement.

Response:

The Ministry carried out direct procurement in accordance with the Act. No direct procurement has been carried without the necessary justification and approval of the Ministerial Tender Committee as stipulated by the Act. Documentation of all direct procurement tenders carried out is available in the MTC Minutes. This finding is therefore erroneous. The Ministry will provide details to the audit team for perusal.

3.17 Use of term contracts in Embu

Findings: It was established that both district and provincial roads offices use term contracts developed by District Procurement Officer. The team did not see the comprehensive files for each of these contracts to evaluate the process.

Recommendations: The Director of Procurement should adopt this method for all departments for common user items to same time in processing repeated orders.

Response:

It is important to note that the Ministry has;

- (a) Used term contracts designed by the Supplies branch, Mechanical and Transport Department among others;
- (b) Introduced the use of term contracts with fixed rates for road maintenance contracts that is now being implemented countrywide after a successful pilot in the last financial year.

The Ministry intends to extend term contracts to cover most common user items in the next financial year.

3.18 Publication of contract awards

Finding: The entity does not submit to PPOA details of all contracts awarded whose values exceed 5,000,000.00 as required by PPDA 2005 section 46 and PPOA directive of 7 February.2007.Alist provided by PPO did not reach PPOA and has no key details like contractor and contract reference..

Recommendation: Submit all the reports required by PPOA namely

- a) All contracts over Ksh 5million (PPDA Section 46 and directive)
- b) All terminated procurement proceedings (Act Section 36.7); and
- c) All direct procurements (Regulation 62.3).

Response

3.19 Lack of action on auditing and oversight recommendations

Findings: The review team reviewed the recommendations of the internal audit report for the period 2007-2008 and found that many of the issues raised that relate to procurement were not actioned by the procurement unit and user departments.

The review team went through the external audit report for the FY2006-2007 and action taken on the findings and recommendations in the report as regards the pending bills carried forward into the FY 2007-2008.

No evidence was provided of an audit committee being in place, its membership or its oversight recommendations. The team found that audit departments have raised several issues touching on the procurement related functions and their recommendations. There was no evidence that procurement unit responded to these concerns.

Recommendations: The Accounting Officer should ensure that all recommendations made by auditing and oversight authorities for the period of 2007-2008 are responded to and actioned accordingly.

Response:

This recommendation is too general. The Accounting Officer will ensure that recommendations are implemented. It is important to note that audit queries have been on decline as a result of adhering to the Act and Regulations.

We would be very glad if the audit team expounded on the weak areas so that the Ministry can fastrack on the areas so identified.

3.20 Lack of procurement manual

Finding: The MOR has not developed a manual (*Pursuant to PPDA 2005 section 9(c) (i), and Regulation 30*) of procurement policies and procedures that sets out the procurement policies, procedures, instructions, and regulations that Ministry employees must adhere to in matters relating to procurement. The purpose of the manual is to draw together the key policy principles and procedures to be followed by those who are responsible for managing or delivering major road construction projects (either in one of the specific Client roles or in providing Client support and advice).

Recommendation: The Ministry should develop a procurement procedures manual for the personnel involved in procurement process. Such manuals are meant to strengthen financial and oversight management procedures that should be observed at various levels of

procurement management. They would also ensure linkages between procurement procedures with the act and regulations and the financial functions.

The Manual aims:

- To disseminate good practice in public sector procurement, including guidance on roles and responsibilities, procurement strategies and the appointments process, health and safety, design quality and sustainability;
- To deliver value for money (VFM) and sound financial management; and
- To achieve compliance with procurement law and regulations including PPOA Directives.

Response:

The Ministry is in the process of crafting a policy and procedure manual, assistance of the PPOA will be highly appreciated.

3.21 Lack of prequalification

Finding: The Ministry is not publishing invitations to candidates to submit applications to be pre-qualified for specialized, complex tenders for goods and services. (*Regulation 23*)

Recommendation: A procedural requirement should be implemented to encourage the use of the prequalification procedure for suppliers of specialised and complex works, goods, and professional services whenever possible and appropriate.

Response

Prequalification is an optional procurement approach used depending on the nature of the works, goods and services being procured, hence no section of the Act or Regulations would be breached if the Ministry decided not to use prequalification. It is however important to note that prequalification has been used in the procurement of security and cleaning services among others.

3.22 Registration of Suppliers

Finding: There exists a list of registered suppliers for use for solicitation of RFQ and LVP bids, which was obtained through an open national tender in accordance with the procedures stipulated in Regulation 8.3a as in the case of Awinde Enterprises Ltd, Feliken, and Blackwood Hodge. In Embu, orders were placed with Maiwan Enterprises Eagle Twenty and Pasha Enterprises Ltd for amounts of Ksh128, 480.00, 210,000.00 and 357,500.00 respectively without quotations or term contract provided.

There was no evidence that the entity verified the documents provided by bidders with the Registrar of Companies and/or Kenya Revenue Authority to determine their validity. The review team also noted that the list did not cover all the categories of goods and services frequently procured by the Ministry. The regulations allow MOR to either establish its own list or use lists established by other procuring entities. The Provincial Roads Engineer and District Roads engineer Embu were found to using register of suppliers developed by the District Procurement Officer.

Recommendation

- MOR should improve the calibre of invitation lists, reduce the number of RFQs required, and shorten the length of RFPs by using registered (*Regulation 8.3a*) and prequalified (*Regulation 23-25*) suppliers.
- The procurement unit should improve their systems to shorten the procurement process, have a list of pre-qualified suppliers available for quick response times, reduce costs, and achieve value for money.

Response:

The number of suppliers who responded to our advertisement for registration of supplies are numerous. There is therefore need to rationalize the supply base of the Ministry in order to reduce unnecessary administrative work. We plan to do this through introduction of term contracts for common user items. The Ministry of Finance, PPOA and the Ministry of Works should also expedite the proposed improvement of Suppliers Branch, so that procuring entities can benefit from centralized term contracts. The recommendations given are good.

3.23 Terminated Procurement

Finding: The team was provided with list of procurement proceedings that were terminated during the period and review. There was no evidence that PPOA was advised of all terminated proceedings.

Recommendation: The project managers should improve the quality of information on scope definition, technical information, cost estimating and detailed requirements being forwarded to procurement unit. Accurate procurement data input will save the procurement units' and will ensure bidders have sufficient information to bid hence reduce the number of terminated proceedings

The Ministry should advise PPOA of terminated procurement proceedings as required. The procurement unit should keep comprehensive records of the terminated proceedings

Response

Instances of terminated procurement proceedings are few in this Ministry; however, the Ministry will ensure that all such cases are reported to PPOA as required by the Act.

3.24 Variation of contracts

Findings: Variations of contracted prices appear to be a routine activity in the Ministry. The review team was not provided with proof that the Procurement Unit prepared contract variations and modifications to documents. There was no evidence that user departments who are responsible for forwarding details of any required variations to contracts to the procurement unit for consideration and action did so. The team was not provided with documents to ascertain that contract variations comply with Section 85.2(b) of the Act.

Recommendations: This is a very vulnerable area with probability of huge financial losses and collusion. The procurement unit provide comprehensive details of all variations that were undertaken during the period under review.

Response

All contract variations are carried out by this Ministry in accordance with Section 47 of the Act. The information about contract variations is found in the MTC minutes.

3.25 Contract management

Findings: There were no procurement files opened for signed contracts and the procurement unit was not aware of what has happened to signed contracts.

Recommendation:

- Procurement unit and user departments should organise periodic operations meetings, involving project management, and procurement staff, should be instituted by MOR to discuss the progress of contracts to enable procurement update their schedules and documentation.
- There is an urgent need to strengthen contract management functions that cross horizontal departmental boundaries.

Response:

The challenge of the procurement department's world over in dealing with issues of contract management is well documented, for example, in the current issue of supply management, a magazine of the Chartered Institute of Purchasing and Supply, a survey indicates that only 30% of buyers sampled deal with contract management in UK.

The recommendation given is good but PPOA will need to come up with an initiative to mainstream issues of contract management in procuring entities policies and practices.

3.26 Inspection and Acceptance Committee

Finding: The entity has not constituted this committee as provided for in the Regulation 17 to inspect, test, and review the works, goods, and services and issue completion certificates in accordance with the contracts. The team did not find any completion certificates for all major contracts for goods and services undertaken by the Ministry. The team observed that the auditors had earlier made a note of this major discrepancy before and had informed the Procurement Unit.

Recommendation: The Inspection and Acceptance Committee should be constituted immediately to inspect and review all goods, works, or services in order to ensure compliance with the terms and specifications of the contract and issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

The Principal Accounts Controller should not make any payment for works, goods and services without the certificate issued by a designated committee.

In order to improve times, the procurement unit needs to track times for all stages of the contracts. A field for sign-off date should be included on the procurement checklist for each procurement document to be tracked through the system. The data obtained from the checklist will be beneficial for planning procurement schedules and timelines. The requirement for the procurement checklist should be added to the policies and procedures manual to ensure it is included in each procurement file.

Response:

The recommendation for procurement checklist to be included in the policy and procedure manual is good and it will be implemented.

3.27 Lack of disposal proceedings files

Finding: There was one disposal action (ME-22-2007-2008) undertaken during the period under review. The team were not provided with a comprehensive file for the disposal proceedings. The team was provided with the award of the items, which were disposed, but not the comprehensive documentation for the process for the proceedings.

Recommendation: The Disposal committee to develop an annual disposal plan for obsolete and surplus equipment and stores.

Response:

The audit report indicates that there was only one disposal action undertaken during the period under review.

Actually, we had 3 major disposals. The information of the items which were disposed is found in the MTC minutes.

The recommendation that we develop an annual disposal plan for obsolete and surplus equipment and stores is good.

3.28 Procurement Complaints

Finding: The Ministry had two cases that went to the Appeals Board. The team were not provided with documentations of the proceedings of these appeals. There is no effective mechanism for handling complaints and disputes raised by bidders.

Recommendation: Procurement unit should develop comprehensive filing systems for cases with complaints. These should be monitored to determine the causes of the complaints.

Response

We could not trace the documentation for the 2 appeal cases handled during the review period, the audit team can get copies from the Review Board, all that we remember is that, we won these cases hence the decisions of the Ministry were upheld by the Review Board.

We do not have a mechanism for handling complaints and disputes because we do not need one in the Ministry, since complaints and disputes are minimal due to adherence to the Act. The Review Board mechanism is adequate.

The recommendation that we develop a comprehensive filing system for cases with complaints is good although such cases are almost nonexistent.

PECIFIC FINDINGS

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	TENDER	METHOD	FINDINGS	DDD	DD	D
1	MORPW/ADM/085/07-08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No procurement file No invoices and payment documents in the procurement file Records of Procurement Proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC No procurement proceedings file	X X X	 X X X X X	 X X X
2	MORPW/ADM/02/07-08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No Invoices and payment documents in the procurement file Records of procurement proceedings not	X X X	 X	 X X

			comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC		X X	X
3	MORPW/ADM/101/07-08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No procurement proceedings file Records of procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC committee	X X X	 X X X X	 X X
4	ITEM NO 56 ON THE SUMMARY LIST (DEALER)	DP	No Procurement Plan No documents availed	X X		
5.	CME/152/2007-2008	RFQ	No Procurement Plan No documents availed	X X		
6.	CONTRACT S. 16864	CONTRACT	No Procurement Plan No documents availed	X X		
7.	CME LIST	DP	No Procurement Plan	X		

	135		No documents availed	X		
8.	PSQ/013/44/ 2007-2008	TERM CONTRA CT	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No Procurement file			
			Records of procurement proceedings not comprehensive	X		X
			No Delivery notes copies in the file			X
			No Invoices and payment vouchers in the procurement file		X	
			No Inspection and Acceptance Certificates in the file			
9.	KIHBT/15/2 007-2008	RFQ	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No extract of the PC minutes in the procurement file			X
			No procurement file		X	
			No invoices and payment documents in the procurement file			X
			Records of Procurement Proceedings not comprehensive	X		
			No Delivery notes copies in the file			X
			No Inspection and Acceptance Certificates in the file		X	

			No procurement proceeding file			
13	R8007/RD 0437	ONT	No Procurement Plan No documents availed	X X		
14.	R4577/K	RFP	No Procurement Plan No documents availed	X X		
15.	Ce8me/1/07 -08	RT	No Procurement Plan No documents availed	X X		
16.	R4890/CD/ 05	DP	No Procurement Plan No documents availed	X X		
17.	QAD/60/20 07-2008	RFQ	No Procurement Plan No procurement requisition No Information on budget allocation availed No extract of PC minutes in the file No Delivery notes copies in the file No Inspection and Acceptance Certificate in the file	X X	X X	 X X X

			No Invoices and payment documents in the file Records for procurement proceedings not comprehensive	X		
18.	RWI/119/20 07-2008	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No invoices and payment documents in the procurement file Records of Procurement Proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file	X X X	X X X	X X
	RWI/110/20 07-2008	RFQ	No procurement plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No delivery notes copies in the file No Inspection and Acceptance Certificates in the	X X X	X X X X	X X

			file No Complete procurement proceeding file			
20.	PWO/NBI/1 24/07-08	RFQ	No Procurement Plan Procurement procedure commenced without budgetary allocation No Procurement Requisition No preliminary evaluation committee minutes in procurement file Tender security not available and not in file No extract of the TC minutes in the procurement file No completion Certificates in the file No Invoices and payment documents in the procurement file No complete procurement proceedings file Records for procurement proceedings not comprehensive No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee Minutes of the Technical Committee/ Financial Evaluation Committee minutes not available	X X X	 X X X X X X	 X X X X
21.	PWO/NBI/1	RFQ	No Procurement Plan	X		

	6/07-08		<p>Information on budget allocation not availed</p> <p>No Procurement Requisition</p> <p>No preliminary evaluation committee minutes in procurement file</p> <p>Tender security not available</p> <p>No extract of the TC minutes in the procurement file</p> <p>No completion Certificates in the file</p> <p>No Invoices and payment documents in the procurement file</p> <p>No complete procurement proceedings file</p> <p>Records for procurement proceedings not comprehensive</p> <p>No Inspection and Acceptance Certificates in the file</p> <p>Evaluation committee minutes not signed by one person</p> <p>Minutes of the Technical Committee/ Financial Evaluation Committee meetings not available</p>	X	X X X X X X X	X X
22.	PWO/NBI/5 /07-08	RFQ	<p>No Procurement Plan</p> <p>Information on budget allocation not availed</p> <p>No Procurement Requisition</p> <p>No preliminary evaluation committee minutes in procurement file</p>	X X X	X	X

			Tender security not available and not in file	X		
			No extract of the TC minutes in the procurement file	X	X	
			No completion Certificates in the file			
			No Invoices and payment documents in the procurement file	X		
			Records for procurement proceedings not comprehensive		X	
			No Inspection and Acceptance Certificates in the file		X	
			There is no comparison analysis for the evaluation committee			
			Minutes of the Technical Committee/ Financial Evaluation Committee meetings not available			
23.	CONTRAC T 0196822 No. 5/6822	DP	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No extract of the TC minutes in the procurement file		X	
			No Invoices and payment documents in the procurement file			X
			No complete procurement proceeding file		X	
			Records for procurement proceedings not comprehensive	X	X	X

			No Delivery notes copies in the file No Inspection and Acceptance in the file			
24.	RDS/ADM/ 143/2007- 2008	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the TC minutes in the procurement file No Invoices and payment documents in the procurement file No complete procurement proceeding file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee	X X X X	X X	X X X X
25.	RDS/ADM/ 61/2007- 2008	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the TC minutes in the procurement file No Invoices and payment documents in the procurement file	X X	X	X X X

			No complete procurement proceedings file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee	X	X X	X
26.	SB/31/07-00	ONT	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the TC minutes in the procurement file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file	X X X	X X X	X X
27	RDS/D/76/07-08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement	X X	X X	

			file No Invoices and payment documents in procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee	X	X X	X X
28	RDS/D/19/07 - 08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No completion Certificates in the file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the	X X X	 X X X X	 X X X

			evaluation committee			
29	Direct-Maintenance	DP	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the TC minutes in the procurement file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No complete procurement proceedings file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee	X X X X X X	X	X X X X
30	Rds/110/2007 - 2008	RFQ	No Procurement Plan Procurement procedure commenced without budgetary allocation No extract of the PC minutes in the procurement file No Invoices and payment documents in the procurement file Records procurement proceedings not	X X X	X	X X X

			comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee		X	
31	RDS/M/145 /2007-2008	RFQ	No Procurement Plan Information on budget allocation not availed No complete procurement proceedings file No extract of the PC minutes in the procurement file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the evaluation committee	X X X	X X X	X X X
32.	RDS/C/10/0 7-08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement	X X	X X	

			file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file	X	X	X X
33.	DIRECT 197092	DP	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No Invoices and payment documents in the procurement file Records for procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file	X X X	X X X	X X X
34.	RDS/B/44/0 7-08	RFQ	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the TC minutes in the procurement	X X	X X	

			file			X
			No Invoices and payment documents in the procurement file	X		
			Records for procurement proceedings not comprehensive		X	
			No Delivery notes copies in the file		X	
			No Inspection and Acceptance Certificates in the file			
			There is no comparison analysis for the evaluation committee			

Specific Findings -Embu

	TENDER	METHOD	FINDINGS	DDD	DD	D
1	EMBU/DTC/ 04/07/08	TC	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No extract of the PC minutes in the procurement file			X
			No procurement file		X	
			No invoices and payment documents in the procurement file			X
			Records of Procurement Proceedings not comprehensive	X		
			No Delivery notes copies in the file			X
			No Inspection and Acceptance Certificates in the file		X	
			There is no comparison analysis for the MPC		X	

			No procurement proceedings file		X	
2	EMBU/DTC/ 15/07-08(26)	RFQ	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No extract of the PC minutes in the procurement file			X
			No Invoices and payment documents in the procurement file			X
			Records of procurement proceedings not comprehensive	X		X
			No Delivery notes copies in the file		X	
			No Inspection and Acceptance Certificates in the file		X	
			There is no comparison analysis for the MPC			
3	EMBU/DTC/ 323/07-08	TC	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No extract of the PC minutes in the procurement file			X
			No procurement proceedings file		X	
			Records of procurement proceedings not comprehensive	X		X
			No Delivery notes copies in the file		X	
			No Inspection and Acceptance Certificates in the file		X	
			There is no comparison analysis for the MPC committee			
4	EMBU/DTC	TC	No Procurement Plan	X		

			Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No procurement proceedings file Records of procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC committee	X	X	X
5.	EMBU/DTC/ 15/07/08(27)	TC	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No procurement proceedings file Records of procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC committee	X X X	X X	X X
6.	EMBU/DTC/ 15/07/08(6)	TC	No Procurement Plan Information on budget allocation not availed No Procurement Requisition	X X	X	

			No extract of the PC minutes in the procurement file No procurement proceedings file Records of procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC committee	X	X X X	X X
7.	EMBU/DTC/ 15/07/08(39)	TC	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No extract of the PC minutes in the procurement file No procurement proceedings file Records of procurement proceedings not comprehensive No Delivery notes copies in the file No Inspection and Acceptance Certificates in the file There is no comparison analysis for the MPC committee	X X X	 X X X X	 X X
8.	EMBU/DTC/ 15/07/08(39)	TC	No Procurement Plan Information on budget allocation not availed No Procurement Requisition No Procurement file Records of procurement proceedings not comprehensive	X X X	 X	

			No Delivery notes copies in the file			X
			No Invoices and payment vouchers in the procurement file		X	X
			No Inspection and Acceptance Certificates in the file			
9.	EMBU/DTC/ 15/07/08(75)	TC	No Procurement Plan	X		
			Information on budget allocation not availed	X		
			No Procurement Requisition		X	
			No extract of the PC minutes in the procurement file			X
			No procurement file		X	
			No invoices and payment documents in the procurement file	X		X
			Records of Procurement Proceedings not comprehensive			
			No Delivery notes copies in the file			X
			No Inspection and Acceptance Certificates in the file		X	

5 ACTION PLAN

Tasks	Lead Accountable	Timeline	PPOA/ARD Review Date
PU to upgrade the record keeping and develop comprehensive records management systems for all current procurement transactions. The entity should implement the recommendations of the “ <i>Baseline report on the management of procurement records in the Ministry of Roads</i> ”	AO/DOP	June 2009	Sept 2009
Build organizational capacity to develop comprehensive policy and strategy on construction procurement in the Ministry and the affiliated authorities.	AO/DOP/CEOs	June 2009	Set 2009
The Ministry and its affiliated newly formed authorities should develop s strategy to improve compliance with Public Procurement and Disposal Act 2005, regulations, directives, policies and contract terms as approved by PPOA.	DOP/AO	June 2009	Sept.2009
Institute central control register for the purchase requisitions initiated from various departments.	DOP	June 2009	Sept 2009
The Ministry and its affiliated newly formed authorities should 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 ministry.	DOP	Sept 2009	Sept 2009
Organise sensitisation training in the Public Procurement and Disposal Act 2005 and the related regulations including procurement planning for all members of standing committees, user departments and staff involved in procurement related functions including the departmental heads the Chief Executive Officers for the newly created authorities.	AO/PPOA/CEOs/ARD	June 2009	Sept.2009
The Ministry should introduce comprehensive standard purchase requisitions approved by PPOA for initiating procurement with clear	PU/USER DEPARTM	Immediate	Sept 2009

Tasks	Lead Accountable	Timeline	PPOA/ARD Review Date
links to budget lines and procurement plans.	ENTS/ARD		
Reorganise the structures, functions of the procurement unit and the user departments so that they operate within the precincts of the Public Procurement Act and the related regulations by aligning and standardising procedures and systems across the ministry, and branches, and securing executive or policy for procurement and compliance initiatives.	DOP/AO	Sept 2009	Sept 2009
Establish the appropriate budget for the procurement for all the activities projected in the consolidated procurement plan to avoid pending bills.	CFO	Sept 2009	Sept.2009
Complete the preparation of the comprehensive consolidated procurement plan that is currently being worked on by the Procurement Unit to better manage all aspects of its procurements including the procurement of professional / works / goods / other services. The head of procurement to train and mentor the Provincial/District Roads personnel on compliance.	DOP	Sept 2009	Sept 2009
Develop a master procurement schedule for all on-going contracts, showing the target dates for procurement-related activities and the actual progress achieved, to serve as a communication tool for future procurement planning with project managers and subsequent progress tracking	DOP/Chief Engineer	Sept 2009	Sept 2009
Develop policy and operations manual outlining schedules of responsibilities and authorisation levels for procurement documents. This manual will cover the complaints mechanisms	AO/DOP/PAC	Sept.2009	Sept.2009
Introduce a procedural requirement that encourage the use of the prequalification for suppliers of specialised and complex works, goods, and professional services whenever possible and appropriate.	AO/DOP/MTC	Sept 2009	Sept 2009

Tasks	Lead Accountable	Timeline	PPOA/ARD Review Date
Constitute the Inspection and Acceptance committees for the head office, the affiliated authorities and branches in accordance with the Act and regulation	AO/DOP	June 2009	June 2009
PU to endeavour to implement alternative framework contracts and long term arrangements	DOP	June 2009	Sept 2009
Periodic operations meetings, involving project management, and procurement staff, should be instituted by MOR to discuss the progress of contracts to enable procurement update their schedules and documentation.	PU/Project Managers	Sept.2009	Sept 2009
Submit all reports for procurements to PPOA as required by the PPDA and associated directives.	PU	June 2009	Sept.2009
Invite external observers to attend MTC meetings of contracts over Ksh 50million.	PU/MTC	June 2009	Sept 2009
The Disposal committee to develop an annual disposal plan for obsolete and surplus equipment and stores. Build up comprehensive filing system for each disposal.	Chairman Disposal Committee	June 2009	Sept.2009

6 CONCLUSION

The procurement law is established to ensure that works, goods and services are obtained in an effective manner and in compliance with laws and regulations, 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 reviews. We found that the Ministry has not adequately addressed recommendations of the previous reviews. 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.

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 attached ratings to them. The policies that describe how the Ministry conducts procurement and contracting for works, goods and services are lacking. There is no proof that the provisions of the Act and regulations have been adequately implemented in the ministry and its branches or affiliated agencies. There is no documented evidence that the Ministry has discovered and remedied any lapses in compliance. In the selected areas, we concluded that the MOR compliance level is very 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 MOR 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 sensitization training in the public procurement law and the related regulations to enable him to perform better. The auditor should contact senior management for intervention in areas where his recommendations are ignored by the Procurement Unit and user departments.

The office of public accounts 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 the contract in accordance with regulation.

The major challenge in the MOR is in the areas of record keeping, data and documentation controls 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 matters arising whose

areas where documents or policies are yet to be developed. 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.

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

The Accounting Officer should liaise with Director of Procurement (Ministry of Finance) to ensure that the Ministry and its agencies engage and retain procurement professionals in their procurement units with adequate knowledge, skills and leadership capacity that is in tandem with strategic procurement tasks in the Ministry.

There are adverse risks from non-compliance with procurement law and regulations, which can have far reaching consequences to MOR like 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 the Ministry 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 Entry meeting

In attendance:

No.	Name	Position	Organization
1	Eng.M Kamau	Permanent Secretary	MOR
2	Eng.Philomon Kilimo	Chief Mechanical Engineer	MOR
3	Eng. Mwangi Maingi	Chief Engineer	MOR
4	Charles Mubweka	Principal Accounts Controller	MOR
5	Maurice Juma	Ag.Interim Director General	PPOA
6	Jane Njoroge	Ag.Director Technical Services	PPOA
7	James Okello	Review Team Leader	ARD
8	Peter Ndungu	Ag.Compliance Manager	PPOA
9	Thomas Onono	Review Team	ARD
10	Mary Mwangi	PPO	MOR

Purpose

The purpose of the meeting was to introduce the ARD/PPOA review team to Ministry of Roads management. The meeting's objective was also to inform MOR management the purpose of carrying out the review that is to establish the status of MOR's procurement contracting, and implementation processes and systems, in order to determine the level of compliance with the new procurement law, regulations, circulars, and directives issued by the Public Procurement Oversight Authority.

Matters Arising

Maurice Juma, Ag.Interim Director General, PPOA took the team through an introduction of the entire MCC Threshold Program. He also reported that ARD was responsible for handling component 1. PPOA would prepare an e-procurement strategy and MOR would be one of the pilot entities before its implementation.

Mr Juma reported that Reviews at MOR would be the responsibility of ARD/PPOA staff; therefore, the purpose of the meeting was to kick-start the review process. Mr Juma stressed the importance of the review so that Kenya could be considered for compact status within the MCA Threshold Program.

Mr James Okello, ARD Review Team Leader took the team through the process that was to be used to carry out the review. The review was meant to assist Procuring Entities improve on their procurement procedures which should be carried out according to the Act & Regulations. James reported that after the review, ARD would prepare a draft report, which would then be forwarded to PPOA. Once PPOA is satisfied with the draft, it would then be forwarded to MOR management. The review would look at the mandate of MOR, structures, committees, procurement plans and whether they are linked to the budgets, record keeping, minutes of Tender Committee meetings amongst others. James requested MOR to have all documentation ready before the review team reports on 27 October 2008.

Mr. James Okello reported that the review team would use the PPDA and the related regulations as the reference point and the review would focus on the period covering the FY2007-2008 and shall include procurements of services, goods, and works. James went further to elaborate on the rating criteria that will be used. He estimated that the time needed to carry out this intensive review would be 25 days, which would also be determined by the availability of the documents. Mr. Okello also requested MOR to provide appropriate workstation for the review team.

7.2 Exit meeting

The exit meeting was organised on 6 March 2009 at the Ministry of Roads headquarters.

Purpose

A principal purpose of the exit meeting was to obtain the entity's commitment to implement the recommendations according to the period in the action plan.

The exit meeting was arranged between the PPOA/ARD team and the reviewed entity, so that those present have the necessary authority to agree on changes in procedures and other measures necessary to rectify the problems and deficiencies observed in the course of the review. Ms Jane Njoroge led the PPOA/ARD's team at the exit meeting, and Mr. Ipu, the Secretary Administration led the MOR's team comprising of the Director of Procurement and other staff handling procurement related functions.

Matters Arising

During this meeting, all findings, recommendations and MOR's issues for clarification were brought forward by both parties. The MOR's written management responses were incorporated in the report. The Director of Procurement guided the meeting through the management responses while the ARD/PPOA gave clarification of the findings and recommendations. The management response should include a corrective action plan with a period for implementation

7.3 Tender Committee members

Name	Designation	Alternative
P.O.Sika	Chairman	
Eng. Chenchu	Member	
Onyango Namenya	Member	
O.O.Mubweka	Member	
H.S Amaje		Member
K.M.Kithyo		Member
M.S.M Kamau	Member	
K.N.Mwangi	Secretary	

7.4 Procurement Committee appointed on 30 September 2008

Name	Designation	Alternative
Phillip Wachira	Snr.Finance Officer	Chairman
Virginia Njogu	Snr. Accountant	Member
M.Y.Tarusa	Administrative Officer	Member
Charles Kamau	KIBHIT	Member
Eng.S.M.Kathindai	Materials Branch	Member
M.N.Mwangi	Principal Procurement Officer	Secretary
Eng.Beja Beja	Materials Branch	Member

7.5 Disposal Committee members

Name	Designation
Arch. P.S. Wasike	Chairman
D.M.Nyare	Member
J.O.Olare	Member
Francis Gitau	Member
W.Kamanga	Member
F.R.Njoroge	Member

7.6 Action plan for Records management

To improve management of records practices and compliance with the Public Procurement and Disposal Act, 2005 and Regulations, 2006. There is a near total breakdown of records management in the two PEs covered in this study. Records and documents of the Ministries of Roads and Public Works are on the whole of great value. Some urgent intervention is needed to remedy an otherwise unsatisfactory situation. It is recommended that a team headed by a senior officer be appointed to lead in the restructuring and re-organization of records in each ministry.

Action	Lead Responsibility	Timing Month/Year	Critical Output	Status/ comments
Appointment of a team to spearhead restructuring and reorganization of ministry HQs records.	Director of Procurement. Heads of administration in both ministries.	February 2009	Team appointed headed by a senior officer. Terms of reference defined. Work programme drawn.	
Comply with section 34 (3) of PPDR	Director of Procurement. Heads of procurement units	March 2009	Open and maintain an individual file for each procurement activity. Each file to be complete and self contained and with all key documents for entire procurement cycle. Documents in each file to be correctly organized to reflect correct sequence of transactions.	
Comply with section 45 (6) of PPDA	Head of Administration Principal Accounts Controller	April 2009	Proper filing system for procurement records maintained. Official documents maintained in official and registered files. File scheme revised to provide linkage between procurement files and accounts documents.	

Accounts records	Principal Accounts Controller	May 2009	<p>Payment records – payment vouchers organized and arranged in vote head, sub-head, and item head numbers. Payment vouchers fewer than one item head to be accommodated in one file series. Each file allocated appropriate account code and reference number.</p> <p>Documents in each file arranged in chronological sequence. Files series arranged in account code and financial year sequence. An inventory of PV files cross-referenced with corresponding project, BQ and procurement files. Major project payment files organized by contractor's name, & separated from low value and personal PVs.</p> <p>Backlogs of unfiled PVs addressed. Backlogs of loose PVs filed in appropriate files. Obsolete personal and low value PVs listed & disposed of in line with Chapter 23 of the government financial regulations and procedures.</p>
Contract Documents	Chief quantity surveyor, Public Works Ministry. Head of contracts dept, Roads Ministry.	June 2009	<p>Contract agreement documents organized in number and accounting period sequence. Contracts register updated and cross-referenced with corresponding BQ and project files</p>
General policy and correspondence	Head of Administration sections in both ministries	July 2009	<p>Duties for registry staff defined. File schemes revised & bound copies circulated to action officers.</p>

Strengthening of Records Management function in both ministries	Director of Procurement. Head of administration Chief Architect Principal accountant	September 2009	Properly coordinated Records management function in both ministries. Budgetary allocation for RM.Document filing duties in MTC secretariat assigned. Merger of the six sub-registries in the Building sector.	
Registers	Director of procurement. Heads of procurement units	October 2009	Contracts and LPOs register opened and maintained.	
MTC minutes	Head of MTC Secretariat	February 2009	Complete series of MTC minutes files maintained under secure conditions.	
Support and strengthen records management function	Senior management staff All procurement staff	July 2009	Records management enhanced and strengthened by allocation of funds, resources, equipment, space and staff. RM function strengthened by support and co-operation from senior management staff.	
Closed records- Both ministries	Director of Procurement. Head of administration- Both ministries. Principal accounts controller	September 2009	Create Records Centre for closed records; prepare an inventory of closed documents. Very old ones to be assessed and listed for transfer to National Archives. Dispose of documents deemed to be of no further use.	
Records management policy and procedure manual	Director of Procurement Heads of administration in both ministries.	December 2009	A records management procedures and policy manual prepared.	

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