



FINAL REPORT

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY (NEMA)

PROCUREMENT REVIEW

REVIEW PERIOD: 1 JULY 2007 - 30 JUNE 2008

16 June 2009

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ACRONYMS

AIE	Authority to Incur Expenditure
AO	Accounting Officer
CPO	Chief Procurement Officer
D	Minor Deviations
DD	Moderate Deviations
DDD	Major Deviations
DP	Direct Procurement
FY	Financial Year
GOK	Government of Kenya
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
NEMA	National Environmental Management Authority
OIT	Open International Tender
ONT	Open National Tender
PC	Procurement Committee
PE	Procuring Entity
PIN	Personal Identification Number
PPDA	Public Procurement and Disposal Act
PPDR	Public Procurement and Disposal Regulations
PPOA	Public Procurement Oversight Authority
PU	Procurement Unit
PV	Payment Voucher
RFP	Request for Proposal
RFQ	Request for Quotations
RRI	Rapid Results Initiative
RT	Restricted Tender
SP	Satisfactory Performance
TC	Tender Committee
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 National Environmental Management Authority (NEMA). This review was undertaken by ARD under the authority and direction of the PPOA, with funding from the MCA-Threshold Program and was carried out during the month of April 2009. The objective of the exercise was to review the status of NEMA's (a) procurement and contracting processes (b) technical and physical procedures (c) contract administration and management 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 FY 1 July 2007 - 30 June 2008. The scope of the review encompassed key areas of public procurement and disposal processes from planning to completion undertaken by NEMA, with sample procurements having been selected by random sampling method.

The fieldwork was undertaken by going through the files and documents pertaining to the entity's procurement systems and processes. Where appropriate the review 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, oversight departments and members of the standing committees.

The review also considered the reports of earlier reviews carried out in NEMA, including DANIDA environmental project support report and periodic internal and external audit reports. The review evaluated the implementation of the findings and recommendations of these reports. The audit reports reviewed did not cover the performance of the procurement functions. Taking into consideration that procurement is a high-risk function; the next audit work plans should include the audit of performance of procurement functions.

The improved management of procurements, as recommended in this report, will enable NEMA to reduce and to better control the expenditure, regulatory and reporting requirements and to improve internal compliance with regulations.

NEMA should as a priority build policies and strategy that recognise the benefits of good procurement and develop internal capability to improve its procurement contract management performance.

The detailed results of the review and recommended action are documented in this report.

The key findings, recommendations and responses as they relate to each of the areas considered in this review are provided in Chapter 3 of the report.

The procurement review was concluded by the a joint exit meeting between the PPOA/ARD and the NEMA senior management during which NEMA management committed to the implementation of the recommendation in the action plan within a specific timeframe. A complete action plan for implementing the recommendations is provided at the end of this report.

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

The areas considered in the report are critical to the future success of NEMA's procurement work. Unless these recommendations are implemented, NEMA will not 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 reform, 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 KEMSA, Ministries of Education, Energy, Roads, Health and the Office of the President. Although not included in the initial list of procuring entities for reviews, NEMA was incorporated in the assignment at the request of PPOA. 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. It 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 shall co-operate with and assist whoever does such an inspection.

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 NEMA’s management team was held on 23 January 2009 to discuss the scope of the review, the review plan, the reviewers’ expectations, access to documentation and other administrative issues. The Acting Interim Director General PPOA led the review team to the entry meeting. The NEMA team was led by Dr. Muusya Mwinzi, the Chief Executive Officer and included among others, the Chair of the Tender Committee, Heads of User Departments, and the Head of the Procurement Unit.

1.4 Exit meeting

An exit meeting with NEMA's management team was held on 15 June 2009 to develop a mutual understanding of the content of the draft, review any major concerns in the report, and get the NEMA management's commitment to the implementation of the recommendations within a specific timeframe. The Acting Interim Director General PPOA led the review team to the exit meeting. The NEMA team was led by Dr. Muusya Mwinzi, the Chief Executive Officer and included among others, the Chair of the Tender Committee, Heads of User Departments, and the Head of the Procurement Unit.

1.5 Specific Review Objectives

The main purpose is to review of the status of NEMA'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 NEMA, 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 NEMA'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 NEMA 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 previous reviews have been carried out successfully;
- g. To assist in clarification of areas where NEMA 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. This will be assessed within 3 months to establish whether these improvements have been implemented.

1.6 Scope of the Review

The procurement review covers a sample of the total number of contracts selected from various thresholds and categories carried out from 1 July 2007 to 30 June 2008. Main procurement areas covered:

- a) Institutional structure and capacity:
 - Functions of Accounting Officer;
 - Procurement Unit; and
 - Standard Committees.
- b) Procurement procedures and processes:
 - Open tenders;

- Restricted tenders;
- Request for quotations;
- Low value procurements; and
- Direct procurement.

1.7 Review Methodology

1.7.1 Key documents

The fieldwork of the review concentrated on gathering sufficient evidence to support any findings regarding the compliance and performance of NEMA.

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

Other background documents included but were not limited to the following:

- National Environmental Management Authority Strategic Plan 2005-2010;
- Report of the Controller and Auditor General 30 June 2008;and
- DANIDA Environmental Project Support Report.

1.7.2 Interviews and Discussions

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

1.7.3 Sampling

A total sample of 14 procurement transactions and one disposal at NEMA were selected in accordance with the procedures outlined in the Procurement Review Manual. The sampling method and scope was discussed with the Procurement Unit.

1.7.4 Details of the samples reviewed for NEMA

Tender	Method	Amount
NEMA/52/2007-2008	RFQ	1,080,000.00
NEMA/100/2007-2008	RFQ	TERMINATED
NEMA/152/2007-2008	RFQ	297,000.00
NEMA/CDEMP/CBF	ONT	18,192,570.00
EPS PROJECT	ONT	5,673,080.00
NATIONAL CONSULTATIVE	DP	543,831.20
EXHIBITION SPACE	DP	249,571.10
NEMA/79/79/2007-2008	RFQ	657,300.00
NEMA/93/2007-2008	RFQ	429,107.00
NEMA/138/2007-2008	RFQ	151,000.00
NEMA/143/2007-2008	RFQ	92,800.00
STEADMAN SURVEY	RT	533,000.00
RETIREMENT BENEFIT SCHEME	RT	574,200.00
NEMA/T/005/05-06	No information	No information

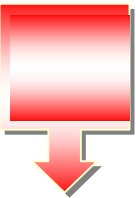



The review team estimated the probable compliance level of NEMA to be 50% and the probability therefore of finding any non-conformity to be 99.6%. The number of contracts, which were selected for review, included all procurement methods and categories including works, goods and services undertaken by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

This level of estimated compliance was based on discussion with the head of the Procurement Unit on the overall management and organisation of procurement functions in NEMA. Members of staff handling procurement-related functions have attended the sensitisation training arranged by PPOA that was held at Utalii Hotel on 12 February 2009. The entity did not have any cases where applications were made to the administrative review board in the year under review.

1.7.5 Rating Criteria

A range of performance indicators to track deviations from the Act and regulations were discussed with the staff of the Procurement Unit of NEMA.

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

<p>Major deviation DDD</p> 	<p>Where the major requirements of the PPDA and regulations were not adequately followed. This could cause material, financial loss or carry risk for the regulatory system or the entity's reputation. These cases include deficiencies in the structures and systems to implement the law and regulations, or where the procedures have been so flawed that there is severe risk of mis-procurement or procurement fraud. Such cases warrant immediate attention by the Accounting Officer.</p>
<p>Moderate Deviation DD</p> 	<p>Where procurement procedures were considered to have significant omissions or deviations. These weaknesses warrant immediate attention of the senior management.</p>
<p>Minor Deviation 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.</p>
<p>Satisfactory Performance</p> 	<p>Where procurement practices and procedures met the requirements of the law and regulations and were considered to meet standards of good practice.</p>

1.7.6 Limitations of review

The ability of the review team to carry out the review of NEMA's procurements was limited by the following factors:

- a) The Procurement Unit was not able to provide comprehensive procurement files selected for sampling as provided in regulation;
- b) Lack or incompleteness of records, data and documentation relating to the procurement processes selected; and
- c) Because of the lack of central storage and absence of a reliable records control system, document location and retrieval was difficult.

2 BACKGROUND AND ORGANIZATION OF NEMA

2.1 Mandate

NEMA is the principal agency of the government in coordinating and supervising all matters relating to environmental management and implementing all environmental policies.

NEMA was established under the Environmental Management and Coordination Act (EMCA) No. 7 of 1999, as the principal instrument of government in the implementation of all policies relating to the environment.

NEMA services include:

- Registration of Environmental Experts;
- Environmental Licensing;
- Environmental Auditing;
- Environment Incident Management;
- Environmental Inspection;
- Environmental Education and Awareness;
- Environmental Reporting;
- Environmental Planning;
- Endorsement of Proposals on GEF Small grants; and
- Development of Curriculum for Training Environmental Impact Assessment/Audit experts.

2.2 Vision

To be a world-class Environmental Authority that ensures a clean and healthy environment for all.

2.3 Mission

To safeguard and enhance the quality of the environment through coordination, research, facilitation and enforcement, while encouraging responsible individual, corporate and collective participation towards sustainable development.

3 GENERAL FINDINGS AND RECOMMENDATIONS

3.1 Procurement documents not submitted for review

Findings: The entity did not make available the following relevant procurement proceeding files and documents that were selected for review, contrary to Section 101 of the Act. These represent 50% of the cases in the sample selected for examination and cover all the open tenders chosen. The Chief Procurement Officer explained that the procurements undertaken on behalf of DANIDA were released to them after the adjudication made by the Tender Committee. He further explained that NEMA/005/05-06 for computer software tender is with KACC. The meeting held with senior management agreed that the procurement officer should make every effort to get the following documents:

- NEMA/100/2007-2008;
- NEMA/CDEMP/CBF;
- NEMA/T/005/05-06;
- EPS NAVISION SOFTWARE;
- NATIONAL CONSULTATIVE WORKSHOP;
- EXHIBITION SPACE AT KICC; and
- RETIREMENT BENEFIT SCHEME.

Deposition: The documents were not made available as agreed with management in the meeting of 29 April 2009. The Chief Procurement Officer gave the following written statements in reference to the request to produce the documents for the review:

- NEMA/100/07-08 this procurement was for assorted furniture under the RRI Initiative but it was stopped due to unavailability of funds at that time;
- NEMA/CDEMP/CBF this procurement was a European Union CDEMP Project procurement , NEMA does not procure for the project but only give technical services when required;
- NEMA/005/05-06 this procurement was for a computer software by M/S Microhouse Ltd the case of which ended up at the High Court for criminal proceedings;
- EPS NAVISION SOFTWARE this is a procurement funded by the Royal Danish Government through the EPS Project; procurement is ongoing pending commissioning later this year;
- National Consultative workshop, and HIRE OF EXHIBITION SPACE AT KICC were functions funded by the Danish government through EPS PROJECT;
- Retirement Benefit Scheme documents for this procurement are in our files but this was not requested for originally.

Recommendations: These sample procurements were selected from a summary of all procurements undertaken by NEMA for the purposes of the review and should be made available for examination. The Accounting Officer should make available the requested original or copies of documents for review before preparation of the final report. The Procurement Unit should ensure that they retain a comprehensive procurement file for all procurement proceedings.

Response: We have now in place an officer in charge of retention of comprehensive procurement files, which will include all the purchase records and payments, related to each procurement.

3.2 Poor record management and filing systems

Findings: There was no single complete and comprehensive procurement file for each procurement activity selected for cases sampled as required by Section 45 of the Act and Regulation 34(3). The system of filing and record keeping is fragmented and scattered amongst various units of NEMA. This hampered document location, retrieval, and traceability.

Recommendation: The Accounting Officer should ensure that the procuring entity properly document procurement proceedings and manage records in accordance with Regulation 7 (e).

The Procurement Unit should ensure that they retain a comprehensive filing system for all procurement proceedings in accordance with Regulation 8 (3) (n).

The Procuring Entity should upgrade record keeping in line with the requirements of Section 45 of the PPDA and Regulation 34 (3) which requires PEs to maintain a comprehensive file for each procurement activity.

Response: A comprehensive filing system for all procurement records has now been established.

3.3 Procurement procedures manual

Finding: There is a procurement procedure manual in operation developed by NEMA that guides the staff handling the procurement related functions with the procurement procedures to be followed in procurement cycle.

Recommendation: Procurement Unit should liaise with PPOA to harmonise the present procurement procedure manual with the General Procurement Manual produced by PPOA.

Response: With support from DANIDA, we are in the process of harmonising the existing manual with the PPOA general procurement manual.

3.4 Segregation of responsibilities

Finding: The review team did not find any documented and updated administrative schedules of duties in NEMA outlining systematic and structured way of handling procurement related functions as stipulated Section 26 (1). It is therefore difficult to determine whether there is clear separation of powers for those undertaking initiation, processing and receipt, as required by Section 26 (3) (c) of the Act.

Recommendation: There is an urgent need for the Accounting Officer to document the administrative schedules for structures and functions of the Procurement Unit and the user departments so that they comply with the Section 26 (1) of the Act.

Response: For the procurement unit a detailed duty allocation was forwarded to the audit team a copy of which can be availed

3.5 Lack of comprehensive systems and procedures for procurement

Findings: NEMA does not have clear and documented systems and procedures to undertake proper implementation of PPDA and regulations. The procurement policy statement in the NEMA strategic plan is simply to have timely procurement of all supplies to NEMA that meets both quantity and quality specification. The statement does not refer to compliance with the Act and regulations.

Recommendations: The entity should build organizational capacity to develop comprehensive systems and procedures on procurement encompassing the following functions:

- Developing a strategic direction for procurement that aligns with PPDA and regulations;
- Giving higher priority to procurement within NEMA;
- Undertaking regular analyses of procurement data to produce information on what NEMA are buying, how and why they are buying it, who they are buying from and how much they are spending;
- Developing management information that would provide a check on compliance in the institutions under NEMA;
- Improving records management and filing systems in NEMA;
- Providing guidance, tools and support to staff engaged in procurement related functions;
- Setting-up a database recording the performance and competitiveness of suppliers and contractors and using the information to inform future tender evaluation; and
- Exploring opportunities to introduce modern procurement practices that would enhance value for money.

Response: In policy formulation, NEMA is ready to incorporate procurement to strategically position the unit in line with PPDA.

3.6 Organisation and staffing of Procurement Unit

Finding: There are five staff members in the unit of whom only two are qualified CIPS diploma-holders and members of KISM.(Section 26(7) of the Act)

Recommendation: The Procurement Entity should endeavour to improve on the number of qualified staff.

Response: NEMA is in the process of hiring some more procurement staff to enhance human capacity in this area. In this exercise, only qualified procurement professionals will be considered.

3.7 Appointment of disposal committee

Finding: The authority has not constituted a disposal committee as stipulated in Sections 26 (4) and 128 (1) of the Act. No disposals were undertaken.

Recommendation: The Procuring Entity should constitute a disposal committee in accordance with the Act and regulations.

Response: The disposal committee is currently in place

3.8 Lack of appropriate procurement planning

Findings There is no evidence that the departments within NEMA prepared any departmental procurement plans in accordance with section 26 (3) (a) of the Act.

The review team was provided with a consolidated annual procurement plan prepared by PU. The team could not establish how the Procurement Unit generated this, as they did not have departmental procurement plans prepared in accordance with the Act and regulation. There was no source of funding specified in the consolidated procurement plan.

Recommendation: PU should improve on the consolidated procurement plan to conform to the requirements of the regulation and guidelines provided by PPOA.

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.

The procurement plan must be updated continuously to meet changing needs and changes in budgetary provisions.

Response: NEMA prepares its annual procurement plan by requesting departments to prepare their departmental plans, which are consolidated and presented to the board of management for approval

3.9 Budget and procurement expenditure

Source of Funding	2007-2008
Total Government Recurrent	427,776,940.00
Total Government Development	71,435,459.00
Total Funding	499,212,399.00

Finding: The team found that the procurement function in NEMA has evolved over the years from a relatively obscure administrative function to a strategic and high-risk function. There

is a substantial focus on environmental sector funding by the Government, which currently stands at about Ksh 500 million. The expenditure on procurement during the financial year was about Ksh 56 million, which represents approximately 13% of the total budget compared to 30% in most public sector organizations.

DANIDA is considering channelling their funding support through the Government revenue system subject to adequate financial and procurement controls being put in place. This means that there will be need for the NEMA to put in place new systems that would:

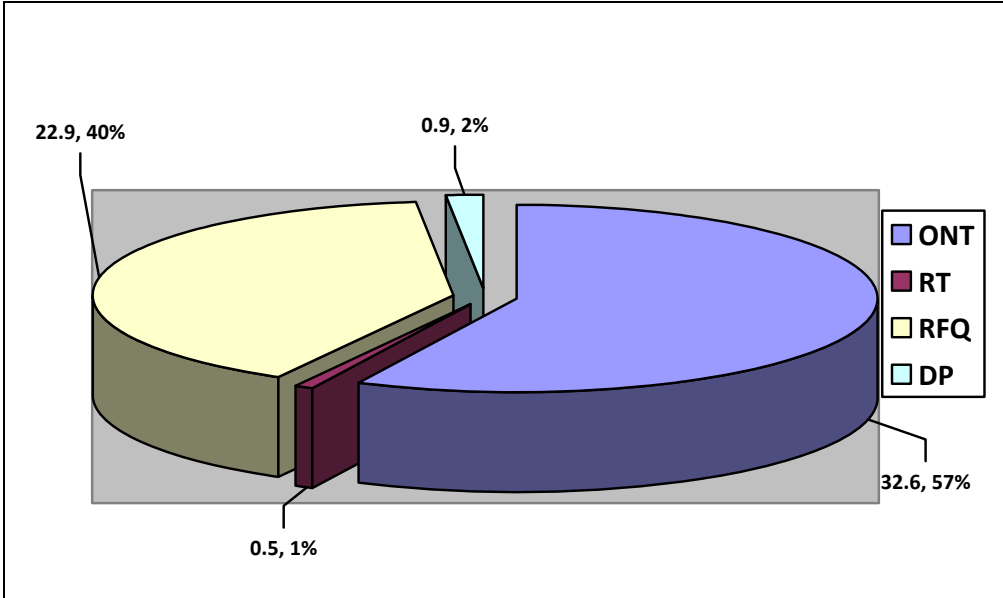
- enhance compliance with the PPDA and regulations;
- recognise the benefits and raising good procurement as a priority;
- take advantage of more efficient procurement methods;
- review, understand and improve the management of current contracts and suppliers;
- share best practice; and
- explore opportunities to gain economies of scale when buying goods or services.

Recommendations: In view of the projected DANIDA assistance, the Procurement Unit should be strengthened and provided with adequate resources including skills and expertise to cope with the expansion. The Procurement Unit should provide the user departments and field offices with necessary technical advice and leadership that will facilitate compliance with the procurement law and regulations.

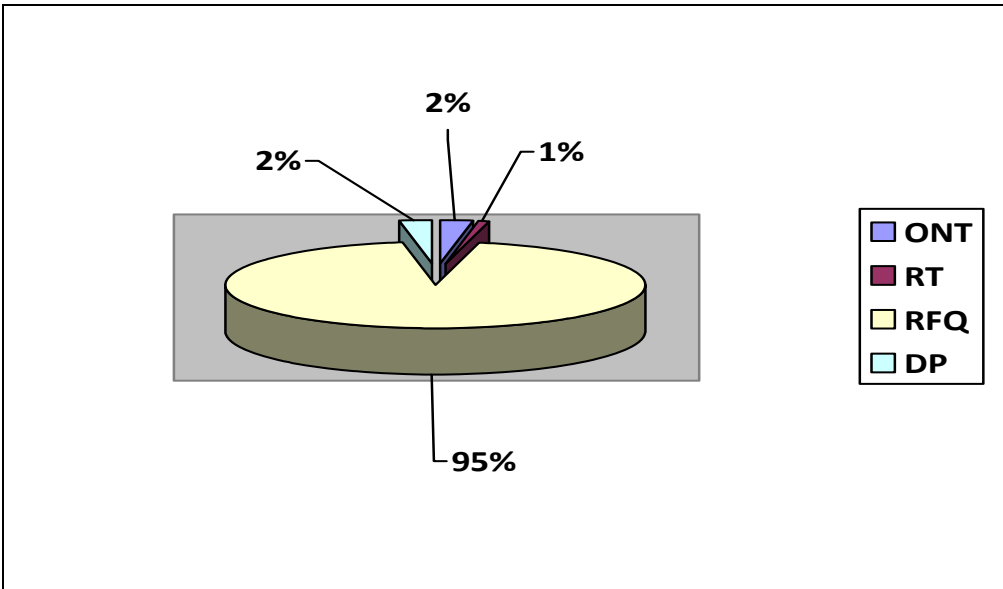
Response: NEMA is committed to enhance procurement skills to staff, including field staff, to enhance capacity in line with increased procurement duties.

3.10 Methods of procurement

<i>Procurement method</i>	<i>No of Proceedings</i>	<i>Total Value</i>
Open national tender	4	32,581,090.00
Restricted Tender	2	533,600.00
Request for Quotation	114	22,909,145.00
Direct Procurement	3	885,319.00
TOTAL		56,909,154.00



Procurement methods by Value



Procurement methods by number of transactions

Finding: The procurement expenditure data is not being generated and monitored by categories of goods, works and services, procurement methods or suppliers. NEMA spent Ksh 56,909,154.00 on procurement of works, goods and professional services of which only 32.6% was based on open tendering method. This is very low compared to the OECD recommended level of about 60%.

By analysing reports generated from expenditure data, stakeholders within and outside NEMA can discover what NEMA is procuring, when was it procured, who they are procuring from (and at what cost), how frequently they are procuring and which category of works, goods or services are being procured. The procurement data provided by Procurement Unit

was inadequate and could not provide reliable information and therefore the team did not use it.

The largest level of effort (95%) in the Procurement Unit is concentrated on processing requests for quotations for printing services, general stationery, computer accessories and vehicle maintenance services with a total budget of Ksh 22.9 million.

The information made available to the team did not include the procurement proceedings undertaken using low value procurement.

Recommendation: The Procurement Unit should be strengthened and provided with adequate resources, tools and skills to enable it adopt strategic procurement methods, including framework contracts for repetitive purchases, which will increase value for money.

The Procurement Unit should institute procurement expenditure data capturing and collation system for NEMA.

The framework contracting method of procurement should be adopted by NEMA for these regular requirements. This will allow the Procurement Unit staff to focus their efforts on more strategic tasks that will improve the value for money for NEMA.

Response: NEMA is in the process, with assistance from development partners, instituting an e-based accounting and procurement framework. With this in place procurement unit will be able to capture and collate procurement data easily.

3.11 Use of restricted and direct procurement methods

Finding: The review team was not provided with justification for the choice of restricted and direct procurement methods for Steadman survey, retirement benefit scheme, national consultative workshop and leasing of exhibition space.

Recommendation: The accounting officer should ensure that all restricted and direct procurement methods are undertaken in accordance with the provisions of the law and regulations. Procurement Unit and tender committee should document the justification and approvals are for all the procurements under these methods.

Response: Restricted procurement method was used in the above procurements due to the nature of the consultancy and time restriction. Direct procurement for the KICC function was a DANIDA funded function, which allowed for direct procurement as per their regulations and thresholds.

3.12 Lack of transparency in the choice of suppliers

Finding: The review team was not provided with the prequalification of suppliers that were used for solicitation of restricted and direct procurements.

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

Response: NEMA has currently prequalified specialised service providers from whom quotations are sourced when need arises.

3.13 Lack of standard purchase requisitions

Findings: Procurement requests from the user departments have no official standard purchasing requisitions. User departments use internal memos to initiate purchases. 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. The requests do not relate to the consolidated procurement plan and have no realistic estimated value that could guide the Procurement Unit and/or Tender Committee on choice of procurement method. The team was not provided with the tender register and therefore doubts the completeness of the procurement expenditure data.

Recommendations: The Accounting Officer should introduce the use of standard purchase requisition as recommended by PPOA for initiating the procurement processes. A resulting purchase requisition specifies to the Procurement Unit what is required and when it is needed. The purchase requisition enables the search for possible solutions to meet the desired needs and further facilitates the procurement action.

A purchase requisition should include, at a minimum:

- Linked to Consolidated Procurement Plan
- Budget Vote item No;
- Total amount budgeted;
- Accumulated plus commitment;
- Amount requested;
- Balance c/f;
- Detailed description of goods, civil works, or services sought;
- Quantity of inputs to be procured;
- Unit of measure;
- Required delivery/engagement date;
- Delivery location or location of works/services to be performed;
- Estimated price or cost;
- Any additional information (i.e., standardization, preferred method of procurement);
- Be signed by AIE holder; and
- Approved by Accounting Officer/designated officer.

Response: Currently NEMA has designed and printed standard requisition forms for use by departments as recommended by PPOA.

3.14 Inadequate Contract management

Finding: In the absence of proper records management and filing systems, the following key areas of contract management were found lacking in NEMA:

- Contract records management and filing;
- Communication between the suppliers and Procurement Unit;

- Contract progress and awareness;
- Variation and change management;
- Service level compliance; and
- Compliance with terms and conditions of the contracts.

Recommendation: There is an urgent need to strengthen contract administration and management aspects of procurement proceedings with cross horizontal departmental and field institutions.

Procurement Unit and user departments should organise periodic operational meetings, involving project management, and procurement staff, to discuss the progress of contracts to facilitate updating of schedules and documentation.

Response: NEMA has now opened appropriate contract files and follow up on contracts has been enhanced.

3.15 Terminated procurement proceedings

Finding: Tender no NEMA/100/2007-2008 for Ksh 1,070,564.00 was terminated. The records and justification for termination were not made available to the review team. There was no evidence that PPOA was advised of the termination in accordance with the PPOA guidelines issued in August 2008.

Recommendation: Provide records and justification for the termination to be included in the final report.

Response: This procurement had been proposed for the first wave of RRI but before the quotations were floated, this proposal was dropped from the RRI targets due to lack of funds.

3.16 Publication of procurement and disposal proceedings

Finding: The entity does not submit to PPOA details of procurement and disposal proceedings as required by the PPOA Circular No 3/2008 of 26 August 2008.

Recommendation: Submit all the reports required by PPOA namely:

- All contracts over Ksh 5million (PPDA Section 46);
- All terminated procurement proceedings (Act Section 36 (7));
- All direct procurements over Ksh 500,000.00 (Regulation 62 (3)); and
- All disposals to staff (Regulation 93 (2)).

Response: For the entire period under review, no procurement carried out by NEMA that was over Ksh 5 million and there was no disposal of assets to staff.

4 SPECIFIC FINDINGS FROM SELECTED SAMPLES.

TENDER/LSO/LPO	METHOD	FINDINGS
NEMA/052/2007-2008	RFQ	<ul style="list-style-type: none"> • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceeding not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 17(4) (e)).
NEMA/152/2007-2008	RFQ	<ul style="list-style-type: none"> • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceeding not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 17(4) (e)).
NEMA/79/2007-2008	RFQ	<ul style="list-style-type: none"> • Only goods valued at Ksh 342,350.00 were delivered; the team was not provided with information on the outstanding balance; • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceeding not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement

		<ul style="list-style-type: none"> plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 17(4) (e)).
NEMA/93/2007-2008	RFQ	<ul style="list-style-type: none"> • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceedings not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 4 (e)).
NEMA/138/2007-2008	RFQ	<ul style="list-style-type: none"> • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceeding not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 17(4) (e)).
NEMA/I43/2007-2008	RFQ	<ul style="list-style-type: none"> • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceeding not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 17(4) (e)).

RETIREMENT SCHEME	RT	<ul style="list-style-type: none"> • Lack of TC approval for the choice of restricted procurement method (Section 29.(3) (a)); • Lack of complete and comprehensive individual procurement file (Regulation 34 (3)); • No authorized purchase requisitions (Regulation 22 (1)); • Procurement proceeding not linked to an approved budget line (Section 26 (6)); • Procurement proceeding not in the consolidated procurement plan (Regulation 21 (1)); and • Inspection and acceptance certificates confirming delivery not made available (Regulation 17(4) (e)).
STEADMAN SURVEY	RT	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act.
NEMA/100/2007-2008	RFQ	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act.
NEMA/DAMP/CBF/TENDER/SUPP.02	OPEN TENDER	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act
EPS PROJECT	OPEN TENDER	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act
NATIONAL CONSULTATIVE	DIRECT PROCUREMENT	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act
EXHIBITION SPACE	DIRECT PROCUREMENT	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act
NEMA/T/005/05-06	OPEN TENDER	The documents requested for review not made available by the procuring entity in violation of Section 101 of the Act

5 ACTION PLAN

Tasks	Lead Accountable	Time	PPOA Review Date
PU to upgrade the record keeping and develop comprehensive records and filing systems for all current procurement and disposal transactions to conform to the Act and regulations.	AO/CPO	To be concluded by July 2009.	Last week of September
Institute a central control register for the purchase requisitions initiated from various departments.	CPO	To be concluded by July 2009.	Last week of September
Develop procurement systems and procedures for implementation of Public Procurement and Disposal Act 2005, regulations, and directives, as approved by PPOA.	AO/CPO	To be concluded by September 2009.	Last week of September
Introduce the use of framework contracts for all regular requirements.	AO/CPO	To be concluded by July 2009.	Last week of September
Establish the appropriate budget lines for the procurement activities projected in the consolidated procurement plan.	CPO/CFO	To be concluded by September 2009.	Last week of September
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	CPO/Project Managers	To be concluded by September 2009.	Last week of September
Adopt standard tender documents recommended by PPOA including purchase requisitions for initiating procurement with clear links to budget lines and procurement plans.	CPO	To be concluded by September 2009.	Last week of September
Introduce a procedural requirement that encourages the use of the prequalification for suppliers of specialised works, goods, and professional services whenever possible and appropriate.	CPO/TC	To be concluded by September 2009.	Last week of September

Tasks	Lead Accountable	Time	PPOA Review Date
Periodic operations meetings, involving project management, and procurement staff, should be instituted by NEMA to discuss the progress of contracts to enable procurement update their schedules and documentation.	CPO	To be concluded by July 2009.	Last week of September
Submit all reports for procurement proceedings to PPOA as required by the PPDA and associated directives.	CPO	To be done immediately from the date of publication of the report.	Last week of September
Constitute disposal committee and develop an annual disposal plan for obsolete and surplus equipment and stores	AO/CPO	To be concluded by July 2009.	Last week of September

6 CONCLUSION

The procurement law is designed to ensure that works, goods and services are obtained in an effective manner without conflicts of interest and providing for open and free competition among potential suppliers.

We started our review against the background of no comparable past 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.

The procuring entity did not produce seven procurement files selected from the summary provided by them. Failure to produce records for review is a fundamental breach of the PPD Act and should be addressed by the Accounting Officer. Due to lack of the documents, the review team was not able undertake the examination of the procurement procedures for the affected cases.

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 specific findings. The systems and procedures that describe how NEMA is implementing the Act and regulations in their 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 NEMA in key areas of the Act including procurement planning, record keeping and reporting. There is no documented evidence that the NEMA has discovered and remedied any lapses in compliance. In the selected areas, we concluded NEMA 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 NEMA to embrace the Act by preparing an organization-wide systems and procedures for implementation of the Act regulations and directives from PPOA.

The major challenge in the NEMA review was in the area 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 either lacking or incomplete. This deficiency requires the urgent attention of the Accounting Officer, since poor record keeping compromises validity, authenticity, quality and reliability of the information coming from the entity.

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 where documents or policies are yet to be developed. Although the Procurement Unit is supposed to provide technical guidance, it was evident that NEMA Procurement Unit is not providing that much needed expertise 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, NEMA needs to reduce risk and ensure that all departments implement the regulations. An effective compliance program can make NEMA 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.

There are adverse risks from non-compliance with procurement law and regulations, which can have far-reaching consequences to NEMA and its field offices, including 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.

The recommendations are based on key requirements, including: the need for clear leadership from the Procurement Unit and senior managers in improving procurement; information about appropriate methods of procurement; and exploring opportunities to collaborate with others to gain economies of scale when buying goods or services.

If NEMA 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.

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