



**FINAL REPORT**

**TEACHERS SERVICE COMMISSION**

**PROCUREMENT REVIEW**

**12 OCTOBER 2010**

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## ACRONYMS

AO	Accounting Officer
FY	Financial Year
GOK	Government of Kenya
GRN	Goods Receipt Note
HQTS	Headquarters
IA	Internal Auditor
ICT	Information, Communications and technology
IMIS	Integrated Management Information Systems
KACC	Kenya Anti Corruption Commission
KNAO	Kenya National Audit Office
LPO	Local Purchase Order
LSO	Local Service Order
LTA	Long term arrangement
MD	Minor Deviations
MDD	Moderate Deviations
MDDD	Major Deviations
N/A	Not Applicable
ONT	Open National Tender
PC	Procurement Committee
PE	Procuring Entity
PO	Procurement Officer
PPDA	Public Procurement and Disposal Act
PPDR	Public Procurement and Disposal Regulations
PPOA	Public Procurement Oversight Authority
PR	Procurement Review
PU	Procurement Unit
RFP	Request for Proposal
RFQ	Request for Quotation
RPPSII	Reforming Public Procurement Systems II
SP	Satisfactory Performance
TC	Tender Committee
TP	Threshold Programme
TSC	Teachers Service Commission
USAID	United States Agency for International Development
VAT	Value Added Tax

## EXECUTIVE SUMMARY

This report presents the findings of the procurement review of the Teachers Service Commission (TSC), carried out by ARD Inc on behalf of the PPOA from 1 February to 9 March 2010. The main objective of the exercise was to review the status of the Commission's procurement, contracting and implementation processes and systems, in order to determine the Commission's level of compliance with the Public Procurement and Disposal Act 2005 and the associated regulations, circulars and directives issued by PPOA, and generally accepted principles of good practice. Consideration was also given to the relationship between procurement and the overall service objectives of the TSC.

The review considered performance of procurement functions carried out during the period 1 July 2008 - 30 June 2009. In the course of the review, the consultants examined selected samples of the tenders, restricted tenders, direct procurement, request for proposals and request for quotations. The review also considered the disposal proceedings undertaken by TSC during the period.

The fieldwork included an examination of the files and documents pertaining to the TSC'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 supplemented by consultation with the Accounting Officer, members of standing committees, Head of Procurement Unit and other persons involved in management and oversight of the procurement functions in the entity.

The team also reviewed the implementation of the findings and recommendations of internal and external audit reports carried out in FY2008 - 2009. The team observed that the Commission has not adequately implemented the recommendations of these prior assessments and audit reports that relate to procurement functions.

Key findings and recommendations as they relate to each of the areas considered in this review are provided in Chapter 3 of the report, with specific findings in Chapter 4 and a scoring for the entity's compliance rating in Chapter 5. An action plan for implementation of the recommendations is provided in Chapter 6 of the report. The PPOA/ARD team will review the implementation of the recommendations in the action plan after a three-month period from the date of final report.

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

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

- TSC has put in place the structures prescribed by PPDA and PPDR. However, the review team found some deficiencies in respect of establishment and performance of certain committees, including use of a standing Inspection and Acceptance Committee and the improper use of a Board of Survey;
- The Accounting Officer is conscious of his responsibilities under the Act;
- TSC makes suitable use of open tendering, which together account for some 73% of procurement expenditure;

- Evaluation committees have been appointed as and when required within the threshold of the Tender Committee;
- No persons have been appointed to serve in Evaluation Committees if those persons are members of the Tender Committee;
- TSC has taken such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to participate;
- Advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening;
- The Disposal Committee is established in accordance with Section 128 and holds regular meetings with minutes;
- The functions of the Disposal Committee as set out in the PPDA, PPDR and Chapter 12 of the General Manual are satisfactorily complied with;
- Procurements are not split to evade the appropriate procurement method;
- Notification of acceptance of tender is given to successful and unsuccessful tenderers;
- Any termination of procurement proceedings has been approved by the Tender Committee; and
- A secure facility for the receipt of tenders has been provided by TSC.

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

- There is no comprehensive procurement file opened for each individual procurement activity;
- The Commission did not liaise with PPOA when preparing the procurement policies and procedures manual currently in operation;
- Absence of an award letter in some examined procurement files;
- Absence of invoice copy in the procurement file;
- Absence of LPO or LSO in the procurement file;
- Absence of payment voucher copy in the procurement file;
- Absence of procurement requisitions in all the procurement files examined;
- No evidence of copy of performance bond in the procurement file;
- Procurement records are available but not in the procurement file;
- Contract documents not in procurement files.

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

- The state of procurement filing and documentation and contract documentation is often deficient. The procurement records are often fragmented between various files. This made it difficult for records retrieval and caused delays in establishing an audit trail of the procurement processes;
- There are no realistic cost estimates in the internal memos used for initiating procurement processes;
- TSC has not analysed their recurrent or ongoing requirements for medium to long-term needs with a view to making framework contracts. Many common user goods and services currently being procured on LTA should be placed under framework contracts in order to obtain better prices associated with large volume procurements and to reduce administrative costs;
- Insufficient procedures were in place in relation to receiving and opening of tenders;

- The evaluation criteria are not set out in the tender document and in most cases there are no evaluation reports that conform with the requirements of PPDR;
- The prices of common user items have not been compared with the PPOA price index;
- Lack of evidence of commencement certificates for complex projects;
- The bid bonds when required are not recorded in the procurement file;
- No Tender Committee authorisation for using alternative procurement method for the utility vehicles;
- No Tender Committee authorisation for using alternative procurement method;
- Lack of official standard purchase requisitions for initiating procurement activities;
- There are insufficient documented contract management procedures in place which monitor progress and conformity with the terms of contract; and
- No schedules of duties for initiating, certifying and approving officers.

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

- There is no formal training strategy and capacity that links with the PPOA training schedules. The PE is not taking proactive initiative in organising training and expert support for all staff involved in procurement related functions;
- Procurement procedures are not integrated within the financial framework of the entity;
- There is no consolidated procurement plan that is linked to approved budget;
- There is no disposal plan that is linked to the budgetary framework and inventory management;
- There is no evidence from the internal memos used to initiate procurement that TSC is adhering to the threshold matrix;
- Choice of improper procurement procedure in carrying out long term arrangement without any framework contracts;
- Inappropriate influence on evaluation of some tenders;
- Lack of comprehensive procurement records;
- Standard tender documents not used;
- The Commission does not file procurement and disposal reports with PPOA as stipulated in the Regulations;
- Lack of general awareness of the manuals and guidelines prepared by PPOA;
- Quarterly reports for procurements adjudicated by PC are not submitted to TC;
- Many key procurement records that are stipulated by law for retention are missing; and
- There is no documented mechanism for handling bidders' complaints and inquiries.

We recommend that the TSC management put in place the following:

- Prepare and implement a comprehensive records management, filing system, retention and disposal schedule covering all categories of records as recommended in the *Report on the Management of Records of the Teachers Service Commission*;
- Organise training of all management staff on sensitisation, advanced, and specialised aspects of procurement law and regulations;
- Introduce comprehensive purchase requisition forms for User Departments to initiate procurement processes;
- Prepare consolidated procurement and disposal plans and update them regularly;

- Develop operating systems and procedures for implementation of the Act and Regulations;
- Improve reporting requirements to PPOA;
- Improve the monitoring of contract management processes and update the procurement files; and
- Improve liaison with PPOA on matters where the law and regulations need clarification and support in interpretation.

As specified in the Terms of Reference, we used the sample of procurement and disposal proceedings to evaluate the level of compliance with the Public Procurement and Disposal Act, associated regulations and directives issued by PPOA. In so doing, we carefully considered the implications and the significance of individual ratings on the key performance indicators. It is clear that some instances of non-compliance have greater significance than others. This factor has been considered in determining the final compliance level.

The team's overall assessment of the compliance level for Teachers Service Commission is calculated to be 43.6% with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions for the period reviewed. This is below the target satisfactory level of 60% compliance set in the Performance Monitoring Plan. Thus, the overall performance of the Commission in procurement and disposal is inadequate and there are significant weaknesses that need to be addressed.

Finally, we would like to take this opportunity to thank TSC staff for their co-operation and assistance during this review. The Commission appreciated the Authority's report and has realized that in order to streamline the procurement process it will undertake the following with immediate effect:

- Restructure and staff the Procurement Unit (PU) appropriately.
- Training of all staff involved in the procurement process.
- Ensure compliance with the Procurement Act and Regulations in all future procurement undertakings.

# **1 INTRODUCTION**

## **1.1 Purpose**

This procurement review is one of 8 reviews to be carried out by ARD, Inc as part of the Reforming the Public Procurement System Phase II project. The Teachers Service Commission (TSC) was one of the entities selected by Public Procurement Oversight Authority (PPOA) for review under the current phase of the project.

An entry meeting with the Authority's management team was held on 12 January 2010 to discuss the scope of the review, the review plan, the reviewers' expectations, access to documentation and other administrative issues. Mr. Maurice Juma, the Ag. Interim Director General, PPOA led the joint ARD/PPOA review team to the entry meeting. Mr Ibrahim Hussein, the Chairman led the Commission team which included Mr Gabriel Lengoiboni, Commission Secretary, Heads of User Departments, Head of the Procurement Unit and members of various standing procurement committees among others.

## **1.2 Mandate of PPOA**

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

## **1.3 Role of the PE**

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

## **1.4 Objectives**

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

The specific objectives of this procurement review were:

- i. To verify whether the procurement and contracting procedures, processes and documentation followed by TSC were in accordance with the Public Procurement Act and the associated Regulations;
- ii. To establish TSC adherence to the generally accepted principles of economy and efficiency, equal opportunities, transparency, integrity and fairness and promotion of local industry;

- iii. To determine technical compliance, physical completion and price competitiveness of each contract in the selected representative sample;
- iv. To review the capacity of TSC to handle procurement efficiently; comment on the quality of procurement and contracting; and identify reasons for delays, if any;
- v. 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;
- vi. To establish whether remedial actions taken on recommendations made in the previous reviews have been implemented successfully;
- vii. 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;
- viii. To assist in clarification of areas where TSC may have misunderstood the requirements of the legislation; and
- ix. To determine challenges faced by the TSC in the implementation of the Act.

### 1.5 Expectations

The review expected:

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

### 1.6 Scope

The TSC undertook a total of 96 procurement proceedings and 63 disposal proceedings during the period under review.

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

The procurement review preselected 29 procurement proceedings and 4 disposal proceedings carried out by the TSC under the PPDA during the 1 July 2008-31 June 2009 period, as set out in section 1.6.1 and 1.6.2.

Description of Proceedings	Proceedings	Value KSH
Total procurement proceedings provided	96	291,162,283.75
Sample of procurement	29	231,102,612.85
Ratio of sample to total	30.2%%	79.2%
Total on disposal proceedings	63	2,954,800.00
Sample of disposal proceedings	4	2,518,000.00
Percentage of sample of disposal to total disposals	6%	85.2%

The following procurements were found to have been undertaken by User Departments without going through PU:

- Fuel, oils and lubricants Ksh 4,037,013.45 (The user placed the purchase orders directly several suppliers without going through PU);
- Replacement of Vehicles Ksh 6,990,609.00 (The user department placed the directly to the DT Dobie using Supplies Branch long term contract without going through the PU. The User Department submitted the request to Tender Committee without involving PU);
- Motor Vehicle maintenance Ksh 3,374,990.00 (The user department placed orders directly to various suppliers without involving the PU).

The Purchase Order Book is not under the control of the Head of Procurement Unit and therefore he cannot control the issues of purchase orders by other departments. The Purchase Order Book is currently under the custody of the Head of Finance who at times deals directly with User Departments. This is irregular and contrary to proper internal control of the procurement process. The PE does not keep purchase requisition and tender/LPO control registers.

The team also reviewed the TSC inventory reports to determine if the PE does conduct periodic and annual stocktaking in accordance with the PPDR.

The review team did not visit any of the TSC physical facilities outside the Headquarters due to time constraint.

#### 1.6.1 Sampled procurement proceedings

Item	Tender / Quotation No.	Item Description	Method	Category	Amount Ksh
1	TSC/01/08/09	General Stationery	ONT	Goods	12,185,984.25
2	TSC/02/08/09	Computer Stationery	ONT	Goods	4,476,577.00
3	TSC/03/08/09	Printed Stationery	ONT	Goods	11,376,034.00
4	TSC/08/08/09	Equipment& Furniture	ONT	Services	19,258,167.65
5	TSC/14/08/09	Vehicle Accessories & Fuel	ONT	Goods	7,606,941.95
6	TSC/15/08/09	Air Tickets	ONT	Services	5,600,000.00
7	TSC/17/08/09	Airtime Cards	ONT	Goods	15,029,956.00
8	TSC/19/08/09	Calendars	RFQ	Works	874,400.00
9	TSC/24/08/09	Install TR & File Tracking	ONT	Service	4,895,432
10	TSC/24/08/09	Printing	RFQ	Works	307,000.00
11	TSC/26/08/09	Printers	RFQ	Goods	885,000.00
12	TSC/28/08/09	Computers	ONT	Goods	10,650,000
13	TSC/33/08/09	Policy	RFQ	GOODS	950,000.00
14	TSC/49/08/09	Training Of TSC Tender	RFQ	Service	583,480.00
15	TSC/53/08/09	Hoovers & Shredders	RFQ	Goods	2,920,000.00
16	TSC/57/08/09	Magnification Lens	RFQ	Service	307,000.00
17	TSC/66/08/09	Computers	RFQ	Goods	1,162,500.00
18	TSC/72/08/09	Printing	RFQ	Goods	7,500,000.00
19	TSC/29/09-10	Bulk fillers	ONT		64,657,703.00
20	TSC/30/09-10	Workstations	ONT		16,215,598.00
21	TSC/31/09-10	Office tables	ONT		2,200,923.00
22	TSC/32/09-10	Office chairs	ONT		24,604,145.00
23	TSC/34/09-10	Sofas and sofa tables	ONT		4,404,800.00
24	TSC/35/09-10	Glazing treatment	ONT		Terminated

25	TSC/36/09-10	Office accessories	ONT		Terminated
26	TSC/38/09-10	Branding	ONT		Terminated
27		Vehicle Insurance	RFQ	Service	1,423,349.00
28		Fuel and oils	USER		4,037,013.00
29		Replacement of Vehicles	DP		6,990,609.00
		<b>Total</b>			<b>231,102,612.85</b>

## 1.6.2 Sample disposal proceedings

LOT NO.	DESCRIPTION	QTY	RESERVED PRICE	DISPOSAL METHOD
1	Land Rover Discovery KAL 677U.	1	850,000.00	Sale by Tender
2	Mitsubishi Pajero KAG 638F	1	450,000.00	Sale by Tender
3	Peugeot 406 KAJ 467S	1	350,000.00	Sale by Tender
4	Land Rover KAN 217U Discovery	1	868,000.00	Sale by Tender
			<b>2,518,000.00</b>	

## 1.7 Methodology

The review procedures included the examination of selected samples of the open tenders, restricted tenders, direct procurement, and request for quotations.

### 1.7.1 Key documents and data collection

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

Other background documents used by the team included but were not limited to the following: PPDA 2005, PPDR 2006, TSC Procurement Operational Procedures Manual (in draft), and prior internal and external audit reports. The TSC staff had not undergone any sensitization training on aspects of Public Procurement and Disposal Act 2005 and the associated regulations.

Discussions/interviews were held with the following staff/officials of TSC who are directly involved in the procurement process.

	Title	Name
1	Accounting Officer	Gabriel Lengoboini
2.	Chairman of TC	S.M.Kavisi
3.	Head of Finance and member of TC	C.Ayabei
4	Member – Tender Committee	Mrs. P. Koske
5.	Internal Auditor	Mr. Shem Motuka
6.	Head of PU	Mr. Austin Malawi
7	Senior Procurement Officer	Santau O. Kamwaro
8	Deputy Head of PU	H.O.Oyugi
9	Procurement Officer I	Philomen Chemoiywo

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

## **1.8 Internal audit unit**

The team had a meeting with the Senior Deputy Secretary Internal Audit Mr. Shem Motuka. The scope of internal auditing within TSC is broad and involves efficacy of operations, the reliability of financial reporting, deterring and investigating fraud, safeguarding assets, and compliance with PPDA and associated regulations. Internal auditing frequently involves measuring compliance with the entity's procurement policies and procedures. However, internal auditors are currently involved in the execution of procurement activities namely:

- Initiation of procurement activities under PFMR;
- Pre-audit of payment vouchers; and
- Receiving of goods delivered by suppliers as part of inspection and receiving committee.

The Auditor stated that discussions are going to relieve the unit from the above processes.

The limitations of the internal audit scope are:

- Lack of quality procurement operational manuals, procedures and directives;
- Poor procurement records management and filing systems that hamper retrieval of information; and
- Lack of audit work plan for procurement audit and follow up. The team is therefore unable to determine whether the unit has given adequate resources to the audit of procurement processes.

The review team established that most of the internal and external auditors' recommendations on the areas related to procurement functions were not adequately addressed and the weaknesses highlighted are still prevalent in the Commission namely:

- The tendering process used to award the insurer for TSC vehicles was flawed in that the tender committee prevailed upon Sapon insurance brokers who had the lowest price to change the underwriter from Gateway Insurance Co. to CIC, which had also tendered to provide the service;
- Petrol and motor vehicle repairs are not procured by the PU but are done in office services division. The average amount of petrol consumed in a month is Ksh.160,000.00. TSC spent Ksh 7,606, 941.95 on motor vehicle accessories and fuel without adequate open national tender and without participation of PU contrary to the requirements of the PPDA and PPDR;
- Some suppliers are supplying the Commission with sub standard items, which do not meet users' specifications and quality; and
- There are some TSC properties which are in use in offices but have not been labelled.

In the review team's opinion, TSC Management is responsible for internal control and compliance with the procurement law and regulations. The PE should establish procedures and systems to implement the procurement law and which will help the TSC achieve specific objectives in each of these categories. Internal auditors perform audits to evaluate whether the procedures and systems are designed and operating effectively and provide recommendations for improvement. If the auditors are involved in pre-audit and receiving of goods then they cannot be objective in the audit of the process. The Accounting Officer should therefore consider removing the auditors from their pre-audits of payment vouchers and receiving of goods.

### 1.8.1 Expected compliance

The team selected an estimated satisfactory compliance level of 60% which was based on the target for the RPPSII and the probability of non-conformity to be 83% in accordance with the Procurement Review Manual.

### 1.9 Key Performance Indicators and rating criteria

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

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

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

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

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

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

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

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

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

## **1.10 Limitation of scope**

Our scope was limited by the following:

- Lack or incompleteness of records, data and documentation relating to the procurement processes selected;
- Because of the general disorganized storage and absence of a reliable records control system, document location and retrieval in the PU is difficult. There are no procurement control registers so the team relied entirely on the information provided by the PU at the time of the review;
- Inability to verify the authenticity of most of the documents sampled; and
- Lack of documented internal control manuals relating to initiation, certification and approvals at various levels
- The following tenders/quotations were missing from series provided by the PU:
  - ✓ TSC/18/08-09
  - ✓ TSC/27/08-09
  - ✓ TSC/34/08-09
  - ✓ TSC/41/08-09
  - ✓ TSC/47/08-09
  - ✓ TSC/56/08-09

## **1.11 Challenges facing TSC**

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

- Inadequate skilled capacity and experience of staff in the Procurement Unit;
- Inability to translate procurement law and regulations into everyday language, so that management sees and understands the impact to their compliance;
- Poor records management and filing systems;
- Lack of ICT systems and applications covering all aspects of public procurement;
- Insufficient training in procurement law for the persons involved in the procurement related functions; and
- Weak communication and coordination of the user departments on procurement planning and initiation. .

## 2 ORGANIZATION OF TSC

### 2.1 Mandate

The Act of Parliament Cap 212 of 1967 established the Teachers Service Commission (TSC) to provide services to teachers in Kenya as follows:

- Registration;
- Recruitment;
- Deployment;
- Remuneration;
- Promotion;
- Discipline; and
- Maintenance of teaching standards.

### 2.2 Vision of TSC

The vision of the Commission is:

***“Effective service for quality Teaching”.***

### 2.3 Mission of TSC

“To establish and maintain, in partnership with all stakeholders, a sufficient professional teaching service for educational institutions responsive to environmental changes”

### 2.4 Scope of procurement expenditure

During the period under review, TSC undertook 96 procurement proceedings of total value of Ksh 291,162,283.75 and 63 disposal proceedings amounting to Ksh 2,954,800.00.

### 2.5 Budgeting and Expenditure estimates

Description	2008-2009
Development Funds from Treasury	350,000,000.00
Recurrent Expenditure including salaries	78,762,557,285.00
Operational expenditure excluding teachers' salaries	9,762,557,285.00
Expenditure on procurement	291,162,283.75
Procurement expenditure as ratio to operational expenditure excluding salaries	3.06%

Source; TSC *Expenditure estimates budget 2008-2009*

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

- What was bought;
- When was it bought;
- With whom did we buy it; and
- How much did we pay for it?

### 3 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

#### 3.1 Functions of Accounting Officer

##### *Finding*

Although the Accounting Officer, Mr Gabriel Lengoiboni, is carrying out most his responsibilities under Section 27 (2) of the PPDA, he has not ensured that the PE fulfils all its obligations as set out in the PPDA.

The following weak points were observed:

- The procuring entity does not properly document procurement proceedings and manage records in accordance with the regulations;
- The Accounting Officer has not introduced the use of contracts for the procurement and disposal activities in accordance with the Section 68 of the PPDA and Regulation 7(c);
- The Accounting Officer does not ensure that all procurements are handled by different officers in respect of procurement initiation, processing and receipt of goods, works and services in accordance with Section 26(3)(c). Several LPOS were found to be initiated and processed by User Departments without involvement of the PU. (See purchase of utility vehicles in the Specific Findings);
- The review team found from the internal audit report that the Commission's procurement system includes a standing Board of Survey introduced during the period under review. This Board comprises members of staff drawn from various departments. The responsibility of this Board is to visit the suppliers and contractors, after the tenders have been opened, and evaluate the ability of the supplier or contractor to perform the contract if awarded. The same officers have remained in the Board throughout the period and evaluated all tenderers.

##### *Recommendations*

The Accounting Officer should:

- Ensure that Procurement Unit is headed by procurement professional whose qualification conforms to the Section 26 (9). Although, the Authority is yet to issue a comprehensive definition of a procurement professional, KISM in their presentation to the conference *'Towards Procurement Professionalism in Eastern Africa'* on 15th – 17th September 2010 at the Whitesands Hotel, Mombasa, gave the following guidelines:
  - ▶ ***Academic & professional qualification***
    - ▶ *Formal educational qualifications;*
      - *PhD, MSc in Procurement*
    - ▶ *Professional exams and certifications;*
      - *Graduate Diploma in PSM (CIPS UK)*
      - *Certified Professional in Supply Management (CPSM), ISM, USA)*
    - ▶ *Be registered as members of professional Institution e.g. KISM.*
- Introduce the use of contracts for all procurement activities except for the procurement activities which fall under Section 89(5)(a);
- Sign contracts for the procurement and disposal activities on behalf of the procuring entity in accordance with Regulation 7(d) of PPDR;

- Ensure that the procuring entity properly documents procurement proceedings and manage records in accordance with these Regulations; and establish procedures relating to procurement that ensures different officers handle:
  - procurement initiation;
  - procurement processing and
  - Receipt of goods, works & services.

The standing Board of Survey appointed by the Accounting Officer to evaluate suppliers before evaluation of tenders should be abolished as it is not covered in the PPDA. It is the opinion of the review team that once a list of potential qualified suppliers has been generated in accordance with Regulation 8, the PU should begin evaluating each supplier's capabilities and resources to successfully perform on a contract, if awarded.

***Response:***

- *The Commission has been issuing LPO's in lieu of contracts and signing written contracts for all service contracts and all procurements under PFMR. However, we have now introduced the use of written contracts for the procurement and disposal activities worth Kshs. 5. Million and above in accordance with Section 68 of PPDA and Regulation 7(c);*
- *All contracts entered into by the Commission (e.g. PFMR and all service contracts) were duly signed as per regulations 7(c) of PPDR;*
- *The Commission has documented procurement proceedings as reflected in the minute files (tender committee, procurement committee, tender opening committee and disposal committee) for the period under review and will continue to ensure that proper documentation is maintained;*
- *All procurement records are in place and the Commission has since April 2010 embarked on restructuring and reorganizing the procurement records management in accordance with the Regulations;*
- *It is noted that in a few instances same officers handled initiation, processing and receipt of goods, works and services. However, currently the Commission is ensuring that different officers handle initiation, processing and receipt of goods, works and services in accordance with section 26(3)(c);*
- *The Commission does not have a standing Board of Survey that evaluates suppliers before the evaluation of tenders. However, it carries out periodic market surveys whenever tenders are advertised as per regulation 8(3)(c); and*
- *The Commission is committed to ensuring that once a list of potential qualified suppliers has been generated, the evaluation of the suppliers' capabilities and resources will be done in accordance with regulations 8(3)(a).*

**3.2 Functions of Procurement Unit**

***Findings***

The PE established a PU in accordance with the PPDA and PPDR. Currently the PU has 24 personnel (Appendix 8.1). The review team was not provided with the current approved establishment of the Unit. Only two key officials out of eleven staff possess professional qualifications in procurement and supply management from recognised institutions as

provided by Section 26 (9) of PPDA and Regulation 8 (2) and 6 others are undergoing advanced studies in CIPS and are expected to be fully qualified in the next one year. The rest of the members are undergoing professional procurement studies at various stages.

Mr Austin Malawi, the Head of PU is responsible for day-to-day management of the Procurement Unit and is the Secretary to the TC.

Sixty six members of the Commission involved in procurement related functions who have underwent sensitisation training in the PPDA, and PPDR in Mombasa during July and October 2007.

The team noted the following specific weaknesses in the PU as stipulated in the Regulations:

- ✓ Consolidated procurement plans are not prepared as stipulated under sections 26(3)(a), of PPDA and Regulations 8 (3)(w), 20 and 21;
- ✓ Does not maintain and update annually standing lists of registered tenderers required by the procuring entity (Regulation 8 (3)(a));
- ✓ Does not recommend a negotiating team for appointment by the Accounting Officer where negotiations are allowed by the PPDA and PPDR and participate in negotiations (Regulation 8 (3)(i));
- ✓ Does not prepare contract documents, in line with the award decision (Regulation 8 (3)(k));
- ✓ Does not monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts (Regulation 8 (3)(t));
- ✓ Does not carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee (Regulation 8 (3)(z));
- ✓ Does not prepare a training work plan for the PU staff and all the staff involved in the procurement related functions on procurement law and regulations;
- ✓ Does not maintain comprehensive procurement and disposal filing systems and records in accordance with Section 45 of PPDA and Regulations 8(3)(d), and 34(3) of PPDR;
- ✓ Does not prepare and submit to the PPOA all reports required under the Act, Regulation 8(3)(s) and directives issued by PPOA; and
- ✓ Does not seek approval of the TC for choice of alternative procurement methods as stipulated in Section 29(3) of PPDA.

### ***Recommendation***

- The Accounting Officer should reorganise the PU and engage key officers with adequate qualification, experience and training in the procurement law and regulations;
- Prepare consolidated procurement plans as stipulated under sections 26(3)(a), of PPDA and Regulations 8 (3)(w), 20 and 21;
- Maintain and update annual standing lists of registered suppliers required by the procuring entity {Regulation 8 (3)(a)};
- Recommend negotiating teams for appointment by the Accounting Officer where negotiations are allowed by the PPDA and PPDR and participate in negotiations {Regulation 8 (3)(i)};
- Prepare contract documents, in line with the award decision {Regulation 8 (3)(k)};

- Monitor contract management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts{Regulation 8 (3)(t)};
- Carry out periodic market surveys to inform the placing of orders or adjudication by the relevant award committee {Regulation 8 (3)(z)};
- Prepare a training work plan for the PU staff and all the staff involved in the procurement related functions on procurement law and regulations;
- Maintain comprehensive procurement and disposal filing systems and records in accordance with Section 45 of PPDA and Regulations 8(3)(d),and 34(3) of PPDR;
- Prepare and submit to the PPOA all reports required under the Act, Regulation 8(3)(s) and directives issued by PPOA; and
- Seek approval of the TC for choice of alternative procurement methods as stipulated in Section 29(3) of PPDA.

**Response:**

- **Preparation of consolidated procurement plans:**  
*The Commission has not been developing consolidated procurement plans although it has had all its procurement factored in the Commission strategic plans and budget. However, the PU has now been instructed to prepare a consolidated procurement plan as stipulated under section 26(3)(a) of PPDA and regulations 8(3)(w), 20 and 21.*
- **Annual standing list of registered suppliers:**  
*The Commission is in the process of advertising pre-qualification of suppliers using the PPOA template on the pre-Qualification of supplies of goods, services and works for FY 2010/2011. Previously, the Commission used the market survey to pre-qualify suppliers.*
- **Negotiating teams:**  
*In cases of procurements like Request For Proposal and direct procurements ,the head of the PU will recommend an appropriate team of staff to the CEO for appointment to undertake such Negotiations as per section 75(a) and regulation 58(1-4).*
- **Preparation of contract documents:**  
*The Commission shall ensure the preparation of contract documents in line with the Evaluation Committee award recommendation (regulation 8(3)(k).*
- **Contract Management and Administration:**  
*The Commission will ensure that a team composed of the user departments; the Legal Division and the PU supervise the contracts until completion in accordance with the terms and condition of such contracts (Regulation 8(3) (t)). The Internal Audit department will review the contracts and determine whether the Commission got value for money from the goods, works and services.*
- **Periodic market surveys:**  
*The Commission will continue to carry out periodic market surveys to determine the suitability of suppliers to perform given contracts if awarded in line with regulation 8(3) (z).*
- **Training work plans for the procurement unit staff:**  
*The head of the procurement unit will ensure that a training needs assessment is carried out for the PU and all the staff involved in the procurement related functions on procurement law and Regulations and that such a training is factored in the*

consolidated training plans of the Commission. The training will be undertaken with close consultation with PPOA.

- **Maintenance of comprehensive Procurement and disposal filing systems and records.**

A task force has been put in place to develop a comprehensive record keeping and management system and a comprehensive procurement and disposal filing system in accordance with section 45 of PPDA and Regulations 8(3)(d), and 34(3) of PPDR. The Commission is in the process of creating files for the last 2 years and is integrating the filing system with main filing and archiving system.

- **Preparation and submission of procurement and disposal reports:**

The Commission is committed to ensuring that all reports required under the Act, Regulation 8(3)(s) and directives issued by PPOA are prepared and submitted to PPOA quarterly and that pending reports are submitted in arrears.

- **Seeking of the TC for choice of alternative procurement method:**

The Commission consolidated procurement plan will clearly indicate relevant procurement methods. However, in cases where an alternative procurement method is preferred, the PU shall be seeking approval of the TC as stipulated in Section 29(3) of PPDA.

### 3.3 Tender Committee

#### Findings

The PE has established Tender Committee as required by PPDA and PPDR and holds regular meetings with minutes. The Accounting Officer has not appointed an alternate member for each member of the Tender Committee as required by Regulation 12.

Name	Designation
Simon M. Kavisi	Chairman
Cheptumo Ayabei	V.Chairman
Austine Mlawi	Secretary
Joseph Ruttoh	Member
Beatrice Mwaniki	Member
Solomon Kathuo	Member
Pascalina Koske	Member
Charles Chedotum	Member
Luka Spira	Member
Ibrahim Dahiye	Member
Josephine Maundu	Member
Margaret Mbae	Member

For all the procurements reviewed, the review team found the TC records and filing systems to be inadequate and not able to support any fair adjudication and award.

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

- The TC handled the following procurement proceedings which were below the thresholds set out in the First Schedule;

TENDER NO	METHOD	TC NO	LPO	SUPPLIER	AMOUNT
TSC/19/08/09	RFQ	TSC 40/08/09	0628742	UNICEF	228,000.00
TSC/57/08/09	RFQ	TSC28/08/09	0133722	BAMS (K) Ltd	307,000.00

- TC modified submission with respect to the recommendations for contract award of the procurement of airtime to Mwalimu Welfare Club who did not participate in the tendering process contrary to Regulation 11(2)(a) (See details in Specific Findings);
- Contracts are not always awarded to the lowest evaluated price contrary to Section 66 (4) of PPDA (See details for award of Bulk Fillers to Design Wear in Chapter 4 on Specific Findings);
- There is no standard form for the evaluation report used for submission to the TC;
- The TC meetings are not numbered;
- There is no reference of the evaluation report, survey reports, budget line, approved funds availability and if there was any negotiations in the minutes;
- There is no comprehensive list of all matters considered and decisions reached;
- No certified copy of extract of minutes concerning each procurement was maintained on the individual procurement file; and
- Any dissenting opinions were not recorded.

Although the PPDA does not define the timeframe for any members of the Tender Committee, the review team found that some members have served in the committee for six years. They have become so involved in the process that their objectivity and neutrality is doubted. Accounting Officer should use his discretion to rotate the members who have served in one position for too long to promote professionalism and integrity of the Commission.

#### ***Recommendations***

- The members of the TC should undergo sensitization training in the PPDA, PPDR and General Manual especially in the role of TC;
- All the awards that were made in contravention to the Regulations 11 should be nullified;
- The Accounting Officer should appoint alternate members for the TC as provided in Regulation 12(1); and
- The Secretary of the Tender Committee should be trained and mentored on minutes writing and tender records management.

#### ***Response***

- **Training of Tender Committee members:-**  
*The TC members have been undergoing sensitization training from time to time on their roles and will continue to do so. Recently they went through a one week workshop on the functions and mandate of the TC and PC from 22<sup>nd</sup> to 26<sup>th</sup> March, 2010.*
- **Awards made in contravention to Regulation 11:**  
*The Commission will in future ensure adherence to Regulations 11(2)(a) when making awards. It has since advertised for the procurement of airtime through open tender.  
The Commission has complied with Regulation 12(1) and has appointed an alternate member for each of the TC member.*
- **Training and mentoring the TC secretary on minutes writing and tender records management.**  
*The secretary of the TC and other TC members will be trained and mentored on all matters of tender records management and minutes writing. The Commission shall organize and facilitate the training and request PPOA to conduct the training.*

### 3.4 Functions of the Procurement Committee

#### *Findings*

Procurement Committee is established in accordance with Regulation 13 and holds regular meetings with minutes that conform to Regulation 15

Name	Designation
Ole Shonko	Chairman
C.W.Kariuki	Member
S.M.Kathuo	Member
Mrs C.Mahasi	Member
Mrs M W.Mungai	Member
A. Mlawi	Member
Ole Kamwaro	Secretary

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

- The PC meetings are not numbered;
- There is no standard format and price comparison schedule for submissions to PC;
- The list of all matters considered does not refer to the tender or bid number;
- The following were submitted without quotations and were deferred:
  - ✓ Min/9/09/08 Purchase of RAMS;
  - ✓ Min10/09/08 Security for the radio Communication; and
  - ✓ Min11/09/08 Washing pads for scrubbing machines.
- The decision made for each matter was not recorded for all the cases reviewed; and
- There was no note on the basis for any evaluation made; and
- The PC quarterly reports are not submitted to the TC.

#### *Recommendation*

- The PC should undergo sensitisation training on the functions of the PC as set out in the Regulations and General Manual; and
- The Secretary should be mentored on how to prepare minutes for PC meetings.

#### *Response:*

*The Commission shall ensure that the secretary of the PC and other PC members are trained on the functions of the PC as set out in the Regulations and General Manual and the secretary will be mentored on how to prepare minutes for the PC meetings.*

### 3.5 Functions of the Disposal Committee

#### *Findings*

The disposal committee is appointed as below and working.

Name	Designation
John Kuria	Member
S.M.Nkanata	Member
P.Koske	Member
C.W.Kariuki	Member
C.Ayabei	Chairman
Patrick Mangatu	Member
S.O.Kamwaro	Secretary

The following disposal proceedings were selected for review:

Lot No.	Description	Qty	Reserved Price	Disposal Method
1	Land Rover Discovery KAL 677U.	1	850,000.00	Sale by Tender
2	Mitsubishi Pajero KAG 638F	1	450,000.00	Sale by Tender
3	Peugeot 406 KAJ 467S	1	350,000.00	Sale by Tender
4	Land Rover KAN 217U Discovery	1	868,000.00	Sale by Tender
			2,518,000.00	

The review found the following deficiencies:

- There was no evidence that the Committee meets at least once in every quarter as required by Section 128(2) and Regulation 92(3);
- There was no evidence that the recommendations of the committee were approved by the Accounting Officer in accordance with Section 129 and Regulation 92(4);
- PU does not prepare disposal plans in accordance with Regulation 8(3)(w). TSC provided for Ksh 25,000,000.00 in the budget for receipts from sale of inventories, stocks and machinery. The review team was not provided with details of how this budgetary provision was determined without any documented policy in place. The PE has accumulated stock of Ksh 9,617,676.20 as at 30 June 2009 compared to opening balance of Ksh 6,649,228.10 at the beginning of the financial year;
- There was no evidence that the disposal was initiated by the user department as required by Regulation 9(a);
- TSC does not have written disposal operational procedures that spells out the valuation, existence and control mechanism and makes allowances for scrap, obsolete, unusable, and slow moving, or overstocked item; and
- There are no comprehensive individual files for each disposal proceeding. The review team did find any documented disposal cycle that starts with the initiation of the process of disposing of unserviceable, obsolete or surplus stores, other assets and equipment and considered ended when the disposal has been completed and accepted;

### ***Recommendations***

- The PE should facilitate the disposal of the vehicles as they will deteriorate and lose value over time;
- Disposals should be integral part of planning process;
- Carry out an ABC analysis of the current inventory;
- Develop a written inventory procedures that spell out the valuation, existence and control mechanism and makes allowances for scrap, obsolete, unusable, slow moving, or overstocked items;
- Develop a comprehensive disposal plan based on annual review of assets and related to the procurement plan, as timing of disposal takes place when replacement is scheduled to be delivered; and
- Open comprehensive individual files for each disposal activity and where the disposal requirement involves feasibility studies and surveys directly carried out or accepted by

the procuring entity in order to prepare the tender documents the reports and other documents resulting from these studies and surveys;

**Response**

*The Commission commits itself to develop a procurement policy that will entail a disposal and replacement policy among others by March, 2011.*

*The Commission also undertakes to do the following:*

- *Sell disposable vehicles within the current FY;*
- *Integrate disposal plans in each annual procurement plan;*
- *Carry out an ABC analysis of its current inventory, and develop written inventory procedures that spell out the valuation, existence and control mechanism to minimize overstocking of items, scrap, obsolete, unusable, or slow moving items;*
- *Open individual files for each disposal activity; and*
- *Disclose the reserve price in each disposal tender sales document.*

**3.6 Functions of Evaluation Committee**

**Findings**

The Commission had appointed a standing evaluation committee to carry out technical evaluation of all hardware, software and other items before they are presented to the Tender Committee for deliberations and awarding contrary to Regulation 16(1). The same Committee was required to draw up specifications for all hardware and other related items before they are purchased. The members of the standing evaluation committees were as follows:

**Technical Evaluation**

J.N.Kuria	Chairman
E.R. Msagha	Member
C.Taipan	Member
L.Rutto	Member
G.O.Okinda	Member

**Financial Evaluation Committee**

F.Baituru	Chairman
P. Mbithi	Member
S. Ndege	Member
W.Kigen	Member

For all the tenders reviewed, the following generic weaknesses were found:

- Copies of letters appointing the evaluating teams were not in the procurement files to ascertain that the team was appointed in accordance with the regulations;
- The evaluation criteria were not set out in the tender documents to guide the technical evaluation committee in the technical evaluation of the tenders or proposals received as required by Section 66(2) and Regulation 16(5)(a) for the following tenders:
  - ✓ TSC/ 29/09/2010 - Supply of bulk Fillers (10 Bidders).
  - ✓ TSC/30/09/2010 - Supply of Workstations and Desks (27 bidders)

- ✓ TSC/ 31/09/2010 - Supply of tables (22 Binders)
  - ✓ TSC/32/09/2010 - Supply of chairs (28 Bidders)
  - ✓ TSC/34/09/2010 - Supply of sofas and Sofa tables (11 Bidders)
  - ✓ TSC/35/09/2010 - Supply of Glazing Treatment (2 Bidders)
  - ✓ TSC/36/09/2010 - Supply of Office Accessories (3 Bidders)
  - ✓ TSC/38/09/2010 - Provision for branding (4 binders)
- The evaluation of the following tenders exceeded the period of thirty days after the opening of the tenders as required by Regulation 16(5)(b):

TENDER NO	DAYS
TSC/01/08-09	81
TSC/02/08-09	81
TSC/03/08-09	81
TSC/08/08-09	81
TSC/14/08-09	81
TSC/15/08-09	81
TSC/17/08-09	81
TSC/24/08-09	56
TSC/28/08-09	49

- There was no evidence that each member of the technical evaluation committee evaluated the submissions independently from the other members prior to sharing his or her analysis, questions and evaluation including his or her rating with the other members of the technical evaluation committee as required by Regulation 16(6);
- The evaluation committees did not prepare reports on the analysis of the tenders received, and final ratings assigned to each tender and submit the report to the Tender Committee as required by Regulation 16 (9);
- Some evaluation criteria were changed and did not tally with the criteria in the bid document. In one open national tender for the procurement of airtime, the evaluation committee recommended the award to Mwalimu Welfare Club who did not participate in the bidding process

### ***Recommendation***

- There is need to organise training on the evaluation of tenders for the PU, User Departments and standing committees;
- The PE must set out the comprehensive evaluation criteria in all tender documents;
- The PU must file copies of the letters nominating and appointing evaluation teams in the procurement files;
- Each individual team member must evaluate the tender independently before sharing the analysis;
- The Evaluation committee must prepare report in accordance with Regulation 16 on analyses of tenders received, including;
  - ✓ Minutes of opening of tenders or proposals;
  - ✓ Results of the preliminary evaluation;
  - ✓ Reasons why any tender or proposal rejected;
  - ✓ Scores awarded by each evaluator;
  - ✓ Summary of relative strengths and weaknesses of each tender or proposal and
  - ✓ Recommendation for award;

- The evaluation committee should ensure that signed original versions of tender documents provide are used as they best guarantee of authenticity; and
- All tenders must be evaluated within the time limits set out in the Regulations.

**Response**

*The Commission commits to train staff selected from all user departments, the PU and from ICT on comprehensive tender evaluation criteria.*

**3.7 Functions of Inspection and Acceptance committee**

**Finding**

The procuring entity has established an inspection and acceptance committee in accordance with Regulation 17(1) although the committee is erroneously referred to as “*Inspection and Receiving committee*”;

<b>Name</b>	<b>Designation</b>
Barasa	Chairman
Philomon Chemoiywo	Member
J.N Muriu	Member
Santao Ole Kamwaro	Member
Jane Waititu	Member
Ethuro	Secretary
M. Macharia	Member
Kitemu Macharia	Member
Kennedy Ayiga	Member
Lucia Mulwa	Member
D.Nzine	Member
S.M. Kitundu	Member
J.Kithome	Member

There is one standing committee appointed for all inspection of all activities. The inspection and acceptance committee does not issue interim or completion certificates or goods received notes, in accordance with the contract, contrary to Regulation 17(4)(e).

The inspection and acceptance committee does not inspect and, where necessary, test quality of goods received as required by 17(3)(a). User Departments have complained of sub-standard and poor quality materials being received and being certified by the committee. These sub-standard goods include stationery especially envelopes, ruled paper, typing paper, glue and glue sticks. The envelopes supplied are of such poor quality that the water activated gummed flaps do not work, the texture and tolerance is so weak that they tear before reaching the addressees and the sizes do not fit the paper sizes intended.

**Recommendations**

- The Procurement Unit should develop certificates that conform to the requirements of the PPDR and the General Manual, to be certified by the inspection and acceptance committee members after inspection of the complex goods, works and services;
- The PE should consider appointing the inspection and acceptance committee for specific procurements as and when required so that the membership has reasonable knowledge of the commodities or services being inspected; and

- Whenever appropriate the committee should undertake test for goods to determine their quality and functionality instead of relying solely on visual and physical examination.

***Response***

*The Commission commits to appoint staff of high ethical and moral standing on an adhoc basis that will be trained and sensitized in all aspects of inspection and acceptance of goods, services and works as stipulated in Regulation 17(3) (a).*

**3.8 Systems and procedures for implementation of the procurement law and Regulations**

***Findings***

- There are no written systems and procedures setting out how the Commission is implementing the Section 26(1), Regulations, and directives. The procurement operational manual is still in draft. The review team did not find any schedules of duties in the Commission outlining separation of functions. It is therefore difficult to determine whether there is clear separation of powers for those undertaking initiation, processing, and receipt;
- The Head of Procurement Unit has very limited awareness of the updated publications, manuals, and standard documents prepared and distributed by PPOA in accordance with Section 9(c) (i) of the PPDA to be used in connection with procurement by procuring entities; and
- The majority of the staff involved in the procurement related functions that the team spoke to did know the existence of the following manuals published by PPOA:
  - General Manual;
  - ICT Manual;
  - Insurance Manual;
  - Non-Intellectual Services Manual;
  - Projects Manual;
  - Works Manual;
  - Records Management Manual; and
  - User Guide.

***Recommendations***

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

### ***Response***

*The Commission commits to develop and put in place a threshold matrix for procurement of goods, works and services stipulating procurement methods (International Open Tender, National Open Tender, Request for Proposal, Request For Quotations, Direct Procurement, Restricted Tender and Low Value Procurement.) with details of persons responsible for procurement initiation, body responsible for awarding the contract, person responsible for signing the contract and persons responsible for verification of receipts of goods, services or works.*

### **3.9 Threshold matrix and segregation of Responsibilities.**

#### ***Findings***

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

#### ***Recommendations***

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

### ***Response***

*The Commission commits to develop and put in place a threshold matrix for procurement of goods, works and services stipulating procurement methods (International Open Tender, National Open Tender, Request for Proposal, Request For Quotations, Direct Procurement, Restricted Tender and Low Value Procurement.) with details of persons responsible for procurement initiation, body responsible for awarding the contract, person responsible for signing the contract and persons responsible for verification of receipts of goods, services or works.*

### **3.10 Poor record keeping and filing systems of the procurement documents**

#### ***Findings***

None of the procurement files reviewed is complete, as they do not contain all the documents used in a procurement activity. The procurement records were fragmented and different documents relating to procurement are kept by different offices, e.g., Finance, Accounts, and Stores.

The key documents missing in most procurement files reviewed include:

- Purchase requisition from the User Department;
- Tender Documents adapted to the specifics of the TSC, and including the statement of requirements, the special conditions and evaluation criteria;
- Tender advertisement which adequately summarises the statement of the requirements and clearly indicates the address for the submission as well as time and date for submission;
- Tender Opening Committee appointment and Minutes;
- Evaluation Committee appointment, evaluation method, and reports;

- Marketing Survey committees minutes were found in some files but had no reference to the criteria in the tender documents;
- Tender Committee submission and minutes;
- Notification of award letters;
- Notification of regret to non-responsive tenderers;
- Contract agreement and performance bonds;
- Delivery details;
- GRN or Inspection and acceptance report forms; and
- Payment records that the accounts department maintains.

### ***Recommendation***

- The Procurement Unit should upgrade the filing systems and records management to conform to the provisions of Section 45, Regulation 34(3), General Manual ,Procurement Records Management Manual and recommendations of in the associated *Report on the Management of Records of the Teachers Service Commission*, prepared by ARD;
- The PU must maintain and safeguard procurement and disposal documents and records in accordance with the Regulation 8(3)(d);
- The User Department must maintain and archive records of contract management records in accordance with Regulation 9(e);
- The Procurement Unit should prepare and operate a file classification scheme to facilitate file opening, classification, referencing and retrieval;
- Procurement Unit must coordinate with Finance and Accounting Officers to ensure that comprehensive and individual procurement files are opened, clearly labelled with a unique and sequential identification code and date, along with the unique code of the corresponding expenditure file that contains the documentation reflecting the contractor claims, payment vouchers, receipts of goods, non-intellectual services, works and consulting services delivered. In this way, it becomes possible to facilitate effective contract administration, to keep adequate records management and to ensure that the procuring entities procurements are easily auditable; and
- The PU should ensure that a complete file is maintained for each procurement activity. The file should contain all the relevant documents starting with the purchase requisition, documents for the tendering process, evidence of receipt and payment for goods. As far as possible, these should be original documents, or where not possible, certified copies of the originals.

### ***Response***

- *The Commission has already constituted a task force that has made comprehensive recommendations to improve procurement records management as per provision 45 and Regulation 34(3);*
- *The Commission commits to maintain and safeguard procurement and disposal documents and records in accordance with Regulations 8(3)(d); and*
- *The Commission shall ensure that the user department maintains and archives records of contract management in accordance with Regulation 9(e) for effective contract administration.*

### **3.11 Lack of Procurement Planning**

#### ***Findings***

- All procurement undertaken by PE are not through an annual procurement plan as required by Section 26(3)(a) and 26(6) of PPDA, Regulations 20 and 21 and Chapter 6 of the General Manual. Some User Departments prepared departmental procurement plans for stationery, furniture, computer stationery, electrical equipment, perishable foodstuff and permanent equipment and forwarded them periodically to the PU but not in conformity with the timeframe as set out in the Regulation 20 (4) of PPDR and are not based on any indicative or approved budgets in accordance with Regulation 20(2);
- Multi-annual, rolling work plan for procurement are not prepared by each User Department and there is no indication whether the procurement requirement should be procured under single-year or multi-year arrangement (Regulation 20(3));
- Procurement methods in the plan do not conform to the thresholds defined in the PPDR, ONT is proposed for all items with values as low as Ksh 465.00; and
- The PE did not prepare individual procurement plan (General Manual Section 6.5) for the procurement of furniture which was a single complex procurement estimated to cost of Ksh 148,000,000.00.

#### ***Recommendation***

- The Commission should organise advanced training for the development of procurement planning that conforms with the requirements of the Act, associated regulations and General Manual;
- PU must prepare the consolidated procurement plans that conform to the formats and requirements of the PPDA, PPDR, and General Manual and in particular link procurement planning with Commission's budgetary process and financial management and provide a check that procurements do not commence unless the necessary funds have been approved as stipulated in Section ;
- The PU should conduct procurement planning meetings with User Departments more frequently so that the users can be assisted with technical expertise; and
- The work plan of the Procurement Unit should include continuous updating of procurement plans in regular progress reports that give status of procurement progress, reasons for delay and revised procurement schedule.

#### ***Response***

- *The Commission undertakes to train both the PU staff and user departments in developing a procurement plan to enhance:*
  - 1) *Accurate departmental plans;*
  - 2) *An accurate consolidated procurement plan; and*
  - 3) *Linkage of procurement planning with the Commission's budgetary process so that each procurement process is undertaken only when funds are available.*
- *The Commission will encourage frequent meetings between the procurement unit and the user departments for continuous updating of the procurement plan to produce necessary revised schedules.*

### **3.12 Lack of Purchase requisition**

#### ***Findings***

There is no official standard procurement requisition forms used for initiation for procurements reviewed as provided for in Regulation 22(1). The internal memos from the User Departments addressed to the PU initiate all purchase requests. For the large procurements under the threshold matrix, the memos go through AO. The AO simply endorses approval on the memos, which do not show any budget lines or linkage to any consolidated procurement plans.

There is no evidence that the persons initiating the procurements are the heads of User Departments and that there are internal controls that promote separation of responsibilities for initiating, certifying and approving authorities. There is no budget line indicated on the memos to show source, allocation, and availability of funds in the budget for particular procurement or authority to incur expenditure for the purchases requested.

#### ***Recommendation***

- The Procurement Unit should adopt the standard purchase requisition form that conforms to the requirements of the PPDR, General Procurement Manual and directives from PPOA;
- The purchase requisition must contain all relevant information necessary for procurement processing namely:
  - ✓ Funds availability and within the approved budget of the procuring entity;
  - ✓ Budget line that shows that sufficient funds have been set aside in the budget to meet the obligations of the resulting contract or Local Purchase Order contrary to Section 26 (6);
  - ✓ The procurement proceedings are planned by the procuring entity concerned through an annual procurement plan as required by Section 26(3)(a);
  - ✓ A realistic estimated unit price based on up-to-date information on economic and market conditions as provided in Regulation 22 (2);
  - ✓ Authorisation of the initiation process of ONT by Accounting Officer (First Schedule of PPDR) and Regulation 22(3); and
  - ✓ Authorisation of the initiation process of RFQ by Head of the User Department (First Schedule of PPDR) and Regulation 22(3);

The Procurement Unit should put in place a central control register for all requisitions received in the unit in order to put in place sufficient procurement internal control.

#### ***Response***

- *The Commission shall ensure the use of duly authorized standard procurement purchase requisition form as per Regulation 22 indicating funds availability and the budget line; and*
- *The Commission shall also ensure that a central control register for all requisitions received in the unit is put in place to enhance sufficient procurement internal control.*

### **3.13 Prequalification and registration of suppliers**

#### ***Findings***

- There is no approved standing list of registered suppliers in place as required by Regulation 8 (3) (a) for the period under review.
- There was no evidence that the entity undertook evaluation of the suppliers to ascertain:
  - ✓ The supplier being pre-qualified has the necessary qualifications, capacity, experience, resources, equipment and facilities to provided the goods and services if awarded;
  - ✓ The supplier has legal capacity to enter into legal contracts;
  - ✓ The supplier is not debarred from participating in procurement proceedings under Section 115 of the Act and Regulations 90 and 91;
  - ✓ The supplier is solvent; and
  - ✓ The Commission is not precluded from entering into the contract with the supplier under section 33 of the PPDA
- There is prequalification undertaken for specialised, complex and high value goods or services required by the entity for solicitation of restricted goods or services.

#### ***Recommendation***

- PU must prepare standing list of registered suppliers for regular common user items purchased through RFQ as prescribed in the PPDR;
- Before approving or prequalifying a particular supplier, PU in conjunction with the User Department should conduct a supplier evaluation to validate the information provided by the bidders or pre-qualified bidders;
- There is also need to strengthen supplier performance evaluation to assess whether suppliers' performance meets the expectation or does not meet the expectation in terms of quality of goods and services; and
- The PU must undertake prequalification exercise for critical, special, complex goods and services which may be used for open tendering and restricted tendering.

#### ***Response***

*The Commission commits to advertise prequalification of suppliers of common user items, special items, critical items and complex goods and services using PPOA prequalification documents for goods, works and services through conducting clear supplier evaluation and performance criteria, to come up with an approved standing list of registered suppliers.*

### **3.14 Specifications**

#### ***Findings***

The review established from the selected samples that TSC uses narrow definition or commercial specification (e.g. use of brand name for Hoover machines). This has resulted in fewer alternatives and at times the Commission risks obtaining unsuitable products at increased costs;

Due to lack of in-house capacity and skills to prepare the specifications of the new furniture, the PE verbally commissioned Triad Architects to develop design specifications of the furniture for their new offices as covered by the following tenders:

- TSC/ 29/09/2010 - Supply of bulk Fillers (10 Bidders).
- TSC/30/09/2010 - Supply of Workstations and Desks (27 bidders)
- TSC/ 31/09/2010 - Supply of tables (22 Bidders)
- TSC/32/09/2010 - Supply of chairs (28 Bidders)
- TSC/34/09/2010 - Supply of sofas and Sofa tables (11 Bidders)
- TSC/35/09/2010 - Supply of Glazing Treatment (2 Bidders)
- TSC/36/09/2010 - Supply of Office Accessories (3 Bidders)
- TSC/38/09/2010 - Provision for branding (4 binders)

The choice of Triad Architects without going through the tendering process, to develop the specifications for furniture is highly inconsistent with the procurement law.

These design specifications of the furniture focused on the physical attributes of the chairs and tables but completely ignored the performance and functionality of the furniture. Due to their uniqueness, the design specifications prepared by the Architects limited the competition because of the difference in the engineering practices. There were no samples available for the potential tenderers to view. The PE ended up substantively modifying the specifications of the furniture during the period of the tender. The PE did not set out the criteria of the evaluation of the furniture in the tender documents.

### ***Recommendations***

- The PE should develop specifications or the description of physical or functional characteristics of tangible goods or services that provide all relevant terms and criteria required. They should be generic in nature to maximize the broadest possible competition and conforms to the requirements of the PPDA, PPDR and Chapter 7 of the General Manual;
- The PE should always define the specification in terms of required outputs and use functional or performance specifications or hybrid of both; and
- TSC should organise training in preparation and development of specifications for all procurements that will
  - ✓ Define the specification in terms of required outputs;
  - ✓ Use functional and performance specifications;
  - ✓ Ensure specification is consistent with needs analysis;
  - ✓ Improve market knowledge;
  - ✓ Implement a control mechanism to review specification before release; and
  - ✓ Use an Expression of Interest or Request for Information to clarify requirements.

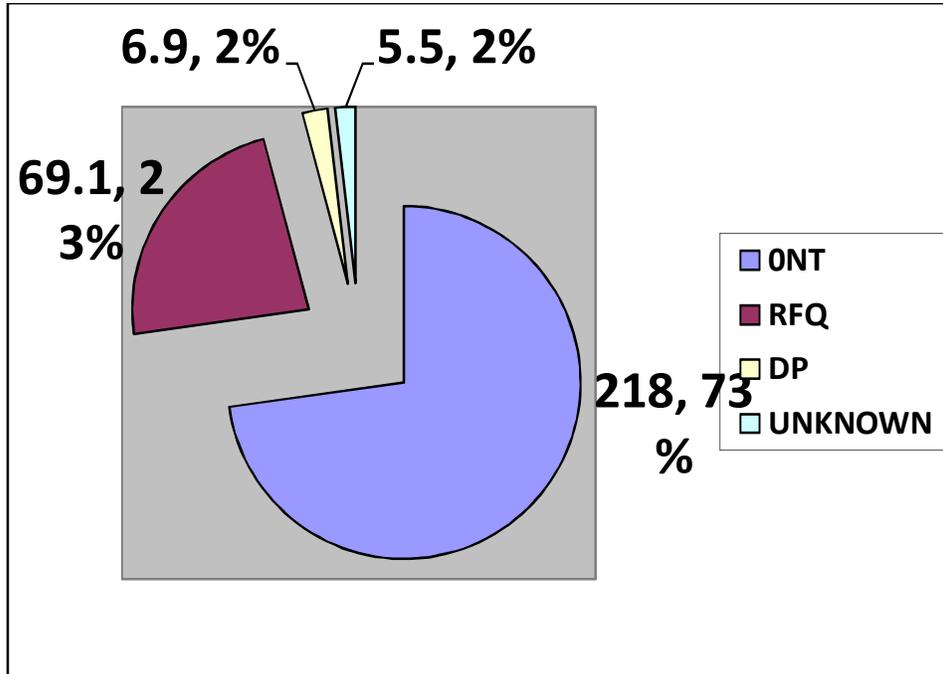
### ***Response***

- *The Commission commits to develop clear specifications that are generic in nature and have all relevant terms and criteria to provide the required outputs and use performance specifications; and*
- *The Commission also commits to train staff from the procurement and user departments on preparation and development of specifications for all procurements.*

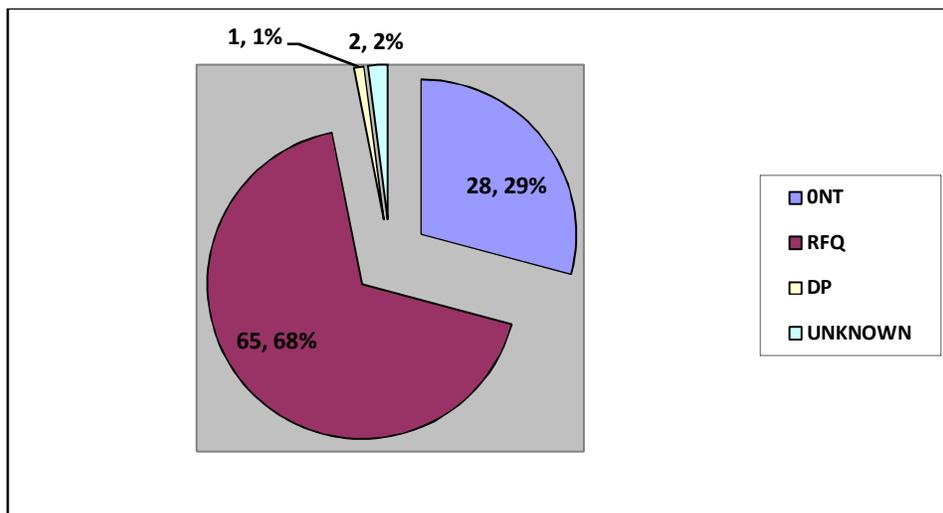
### 3.15 Choice of Procurement methods

Type of procurement method	Number	Value(Ksh)
Open National Tender	28	218,850,574.00
Request For Quotation	65	69,130,086.00
Direct Procurement	1	6,990,609.00
Unknown	2	5,460,362.00

#### 3.15.1 Procurement method by Value



#### 3.15.2 Procurement method by number of transactions



## Findings

- Open tendering is the main procurement procedure as stipulated in the PPDA currently accounting for 73% of the procurement expenditure although PU still spend 68% of the level of effort on RFQ.
- The User Department used Supplies Branch long term contracts to procurement four vehicles amounting to Ksh 6,990,609.00;
- The PE has used long term arrangements for ten common user items amounting to Ksh 70,214,233.85.

Item	Tender no	Description	Method	Category	Value (Ksh)
1	TSC/01/08/09	General Stationery	ONT	Goods	12,185,984.25
2	TSC/02/08/09	Computer Stationery	ONT	Goods	4,476,577.00
3	TSC/03/08/09	Printed Stationery	ONT	Goods	11,376,034.00
4	TSC/04/08/09	Electrical Accessories	ONT	Goods	1,160,400.00
5	TSC/06/08/09	Staff Uniforms	ONT	Goods	2,615,067.10
6	TSC/08/08/09	Equipment& Furniture	ONT	Services	19,258,167.65
7	TSC/11/08/09	Equipment & Furniture	ONT	Goods	2,147,630.00
8	TSC/12/08/09	Computer And Peripherals	ONT	Services	3,787,431.90
9	TSC/14/08/09	Motor Vehicle Accessories	ONT	Goods	7,606,941.95
10	TSC/15/08/09	Air Tickets	ONT	Services	5,600,000.00
					<b>70,214,233.85</b>

This arrangement was based on unwritten mutual understanding with suppliers to provide goods or services as and when required, over a specific period of time, with the quantity to be determined by issuing LPOs. The arrangements, which were solicited using open tendering system, have no written contracts. The PE solicited for prices by advertising the tenders using estimated quantities of goods and services required by PE over a period of one year. The bidders were evaluated on their prices and then ranked from the lowest to the highest. The TC awarded the tenders to the lowest evaluated prices but included a rider that in the event that the lowest fails to supply due to price change, the PU will issue the LPO to the next in the rank without seeking further quotations. This is continued up to the fifth lowest responsive listed supplier who is willing to supply. The LPO is raised as and when required on quantities required. In the event that the lowest responsive supplier is unable to supply, TSC raises the LPO to the second lowest.

The review team found that notification of award was sent to the lowest evaluated responsive tenderer. In the notification letters, tenderers were advised that contracts would be prepared after 14 days. There were no contracts prepared for all the long-term arrangements reviewed. There were no notification letters sent to the unsuccessful tenderers informing them that their tenders were unsuccessful

The notification of awards of these tenders contravenes Section 67(1) because they issue these letters with full knowledge that they were not going to prepare the contracts.

The unsuccessful tenderers were later considered for LPOs without fresh solicitation.

There were isolated cases where request for quotations were used for solicitation of bids above the threshold allowed:

Tender.	Item Description	Method used	Correct method	Category	Amount KSH
TSC/72/08/09	Printing Of Wealth Declaration Forms	RFQ	ONT	Goods	7,500,000.00
TSC/72/08/09	Printing	RFQ	ONT	Goods	7,500,000.00
TSC/49/08/09	Training	RFQ	RFP	Service	583,480.00
TSC/66/08/09	Computers and laptops	RFQ	ONT	Goods	6,183,000.00
TSC/61/08/09	ISO 900-2008 management	RFQ	RFP	SERVICE	788,880.00

The review team did not find any cases where procurements were split to evade the appropriate procurement method provided in the Act although there are rampant uses of request for quotations for procurements which fall within the threshold for open tendering.

The PE did not provide the review team with procurement proceedings using direct, restricted and low value procurement; as such, the team is not able to express an opinion on them.

### ***Recommendation***

- The present use of long term arrangements where orders are placed with suppliers who did not have the lowest evaluated prices, is highly irregular and inconsistent with the requirement of Section 66(4) and the employees involved should be held accountable for their actions;
- The employees within the User Department who initiated, processed and even amended the LPO for the purchase of the utility vehicles without involving the PU in contravention with the PPDA and PPDR should be held accountable for their actions;
- PU should prepare contracts for all procurement activities as required by Regulation 8(3)(k) ;
- In cases where the PE uses the alternative procurement methods allowed in the PPDA , written approval of the Tender Committee must be obtained and reasons recorded in writing justifying the choice of the method as stipulated in Part VI of PPDA;
- The TC should approve the amendment of contracts previously awarded by the tender committee, in accordance with the Act and Regulations;
- The PE should only use direct procurement method in accordance with Section 74 of the PPDA;
- The long term arrangement currently being employed by the PE does not fall under the provisions of Section 66 of PPDA and should be abandoned and the PE should adopt the use of framework contracts where appropriate; and

- Common user items with known market prices must be procured at that price and must be compared to the PPOA price index.

**Response**

- *The Commission commits to award future tenders to the lowest evaluated bidder and to the bidder with the lowest evaluated price as per Section 66(4). The Commission also undertakes to train all TC members on the procedures and processes of tender award to ensure compliance with the Act and Regulations;*
- *In cases where alternative methods, as allowed in the PPDA are used, the Commission will ensure that the TC approves the same in writing and reasons for the same recorded as per Part VI of PPDA. The Commission will also ensure that all amendments on specifications and contracts previously awarded are approved by the TC;*
- *All direct procurements will in future be done as stipulated in Section 74 of the Act; and*
- *The Commission shall use Frame work contracts for all common user Items with the price award guided by the PPOA Price Index.*

**3.16 Preference and reservations**

**Findings**

The PE does not undertake preference and reservations as provided in Section 39 (8) of the PPDA. There was no justification provided for not using the preference and reservations schemes.

**Recommendations**

The PE to consider preference and reservations as and when appropriate as provided in the PPDA.

**Response**

*The Commission undertakes to apply preferences and reservations as recommended in section 39(8) of the Act.*

**3.17 Preparation of tendering documents**

**Findings**

The appropriate standard tender documents as prescribed in Section 29(4) of PPDA, Third Schedule of the PPDR and General Manual are not used in all procurement processes reviewed. The review team acknowledged that most of the standard tender documents are presently under review by PPOA and that some existing documents do not conform to the present law. The PE should liaise with PPOA to agree on how to handle the documents required by Regulations but not operational.

The PE does not customise correctly the standard tender documents downloaded from the PPOA website. Several tender documents downloaded are issued to the prospective bidders with PPOA name and address.

The review team also found that PE does modify the General and Special Conditions to accommodate their requirements. The PU simply inserts the Request for Quotation form containing the listing of their requirements into the Tender Documents being sold.

**Recommendations**

The PE should adopt the recommended standard bidding documents and procurement forms that are relevant to the Commission procurement and disposal procedures, once the PPOA’s revision of these documents and forms has been completed. In the cases of where the document is still in preparation by PPOA, the Commission should liaise with PPOA and agree on the appropriate form to be used.

**Response**

*The Commission undertakes to adopt and apply the recommended standard PPOA bidding documents and procurement forms in its procurement and disposal procedures.*

**3.18 Modifications to tender opportunities**

**Findings**

There were cases when the procuring entity amended substantively the specifications of the tender for furniture before the deadline for submitting tenders.

This inadequate information resulted in the risk of loading of costs and variations in offers of Tender TSC/29/09/2010 for supply of bulk filling (BF2) and bulk filling (BF1):

Bidder no	Company	Qty	Unit price	Total	Rank
1	FAST CHOICE	15	199,500.00	2,992,500	1
6	BUDGET FURNITURE	15	846,000.00	12,690,000.00	3
9	DESIGN WEAR	15	2,878,848,00	43,182,717.00	2

Tender TSC/29/09/2010 for supply of bulk filling (BF1) was awarded to the third responsive tenderer resulting in significant additional cost;

Bidder no	Company	Qty	Unit price	Total	Rank
1	FAST CHOICE	8	199,500.00	1,596,000.00	1
6	BUDGET FURNITURE	8	377,000.00	3,016,000.00	3
9	DESIGN WEAR	8	1,645,057.00	13,160,454.00	2

This discrepancy was as result of modifying the specifications of the products required and not informing all the bidders.

**Recommendation**

- The award of bulk filling (BF1) and BF2 to Design Wear was irregular and the employees of the PE involved in the award should be held accountable for this irregular action and additional cost; and

- The PE should ensure that awarded tenders are not modified without the written approval of the TC.

**Response:**

- *The Commission undertakes to ensure that all modifications of awarded tenders are done only after the TC has given a written approval; and*
- *M/s Design Wear was awarded to supply the Bulk Fillers (BFI & BF2) due to the fact that they were the only bidders that understood the specifications required following post qualification report by a committee that visited the suppliers to gauge the capability of the firms to supply bulk fillers as per the Commission's specifications.*

**3.19 Formation of Contracts**

**Findings**

The following tenders had no binding contracts between the Commission and the various suppliers and contractors instead the PU used LPOs to commit all procurements.

In each case award letters stated that a contract would be signed between Commission and the respective awarded tenderer after 14 days.

<b>Tender</b>	<b>Item Description</b>	<b>Method</b>	<b>Category</b>	<b>Amount (Ksh)</b>
	Replacement of Vehicles	DP	Goods	6,990,609.00
TSC/29/09-10	Bulk fillers	ONT	Goods	64,657,703.00
TSC/32/09-10	Office chairs	ONT	Goods	24,604,145.00
TSC/08/08/09	Office Equipment& Furniture	ONT	Services	19,258,167.65
TSC/30/09-10	Workstations	ONT	Goods	16,215,598.00
TSC/17/08/09	Airtime Cards	ONT	Goods	15,029,956
TSC/01/08/09	General Stationery	ONT	Goods	12,185,984.25
TSC/03/08/09	Printed Stationery	ONT	Goods	11,376,034.00
TSC/28/08/09	Desktop Computers And Ups	ONT	Goods	10,650,000.00
TSC/14/08/09	Vehicle Accessories & Fuel	ONT	Goods	7,606,941.95
TSC/15/08/09	Air Tickets	ONT	Services	5,600,000.00
TSC/24/08/09	Consultancy	ONT	Service	4,895,432.00
TSC/02/08/09	Computer Stationery	ONT	Goods	4,476,577.00
TSC/34/09-10	Sofas and sofa tables	ONT	Goods	4,404,800.00
TSC/12/08/09	Computer and Peripherals	ONT	Services	3,787,431.90
TSC/06/08/09	Staff Uniforms	ONT	Goods	2,615,067.10
TSC/07/08/09	Cleaning Detergents	ONT	Goods	2,486,848.00
TSC/31/09-10	Office tables	ONT	Goods	2,200,923.00
TSC/11/08/09	Equipment & Furniture	ONT	Goods	2,147,630.00
TSC/05/08/09	Perishable	ONT	Goods	2,069,642.00
TSC/04/08/09	Equipment & Accessories	ONT	Goods	1,160,400.00
TSC/16/08/09	Microfilming Items	ONT	Goods	628,440.00
TSC/13/08/09	Service Of Microfilming	ONT	Service	531,842.00
TSC/09/08/09	Equipments & Accessories	ONT	Services	261,012.00
TSC/72/08/09	Printing	RFQ	Goods	7,500,000.00

The review team found isolated cases when the PE awarded the tenders to those that were not qualified, contrary to Section 31:

- Tender TSC/PFMR/40/2009/2010 for quantity 6 pieces heavy duty colour printers was awarded to Copy Cat Ltd at Ksh 2,386,520.00 each because the TC members agreed that the Nashuatec printers Model MPC 7500 could print 75 copies per minute compared to the lowest responsive bidder whose model could only do 40 copies per minute and quoted Ksh 1,388,500.00. The requirement of the number of copies per minute was not in the tender document and was introduced later. If the TC wanted the number of copies to be considered in the evaluation, the best practice was to return the tender to the evaluation committee for review and resubmission. The draft contract agreement made available to the review team has awarded to Copy Cat the printer with capability of 40 pages per minute instead of the 75 pages per minute.
- Mwalimu Welfare Club was wrongly awarded LPO for Ksh: 1,393,322.00 for supply of airtime without participating in the open tendering process. Out of seven bidders only three were cleared by the market survey committee:
  - ✓ Scarlet Procures and Printers;
  - ✓ Davetronic Company Ltd; and
  - ✓ Jufa Enterprises.

Members of the TC observed that the three firms were not giving good enough discount to the Commission although expected discount was not defined in the tender documents. The TC resolved that the provision of airtime should be awarded to Mwalimu Welfare Club though it did not participate in the tendering process, since it takes care of the welfare of secretariat staff. During the discussion with the members, the review team noted that the Chairman of TC influenced the decision as he was also the Chairman of the Welfare Club

### ***Recommendations***

- The staff involved should be held accountable for their actions on the purchase of printers and airtime cards;
- The PE must commence the preparation of written contracts for all procurements as stipulated in Section 68 of the PPDA and as set out in the General Manual. The contract must clearly set out the following aspects of the procurement cycle:
  - ✓ To be determined at the time of preparing the bid documents;
  - ✓ Templates of the contract included in the tender documents;
  - ✓ Data Sheet;
  - ✓ Special conditions of contract;
  - ✓ General conditions of the contract;
  - ✓ The bid document submitted by the bidder forms part of the procurement contract;
  - ✓ Signed copy of the notification of letter of award; and
  - ✓ Any other conditions stipulated in the PPDA, PPDR and General Manual.
- The procuring entity should restrict the use of purchase orders with the person submitting the successful quotations which have been solicited using the request of quotations method that conforms to the PPDA Section 88-89.
- The PE should only award of tenders to the lowest evaluated responsive tenderers that have satisfied the conditions in the tender document.

## **Response**

- *The commission nullified the purchase of printers and the same was re-advertised following a directive from PFMR;*
- *Mwalimu Welfare Association participated in the open tendering process and they did purchase the tender document which was recorded in the Tender Register. Therefore the TC awarded the purchase of airtime cards to the Association on consideration of corporate social responsibility. In addition, the club offered a better discount. The supply of Airtime has since been advertised in the Annual Tender;*
- *The Commission commits to draw written contracts for all procurements as stipulated in section 68 of PPDA and as set out in the General manual;*
- *The Commission commits to limit use of quotations to properly pre-qualified suppliers appraised through PPOA approved prequalification form; and*
- *The Commission commits to ensure that all awards are based on the lowest evaluated bidder.*

### **3.20 Terminated procurement proceedings**

#### **Findings**

The following proceedings were found to have been terminated. The review team found that TSC did not provide reasons to each tenderer within 14 days and there was no written report to PPOA.

<b>Tender</b>	<b>Description</b>	<b>Method</b>	<b>Category</b>	<b>Reason</b>
TSC/29/08/09	Consultancy	ONT	Service	Deferred
TSC/35/09-10	Glazing treatment	ONT	Service	Non responsive
TSC/36/09-10	Office accessories	ONT	Goods	Non responsive
TSC/38/09-10	Branding	ONT	Service	Non responsive
TSC /58/08/09	Audit software	RFQ	Goods	Deferred
TSC/25/08/09	Form A's	RFQ	Goods	Deferred
TSC/37/08/09	Photocopying Papers	RFQ	Goods	Deferred
TSC/38/08/09	Printing	RFQ	Goods	Deferred
TSC/40/08/09	Supply Of Toner	RFQ	Goods	Deferred
TSC/49/08/09	Training	RFQ	Service	Deferred
TSC/52/08/09	General Stationery	RFQ	Goods	Deferred
TSC/68/08/09	Books & Registers	RFQ	Goods	Deferred

#### **Recommendations**

The procuring entity should give prompt notice of a termination to each person who submitted a tender, proposal or quotation in accordance with Section 36 of PPDA and also give the PPOA a written report on the termination.

#### **Response**

*The Commission commits to abide by Section 36 of PPDA and to give a written report to PPOA on any termination.*

### 3.21 Reports not submitted to PPOA.

#### *Finding*

The following contracts over Ksh 5,000,000.00 were not reported to PPOA as required by Section 46 of PPDA and directives from PPOA:

TSC/29/09-10	Bulk fillers	ONT	Goods	64,657,703.00
TSC/32/09-10	Office chairs	ONT	Goods	24,604,145.00
TSC/08/08/09	Office Equipment & Furniture	ONT	Services	19,258,167.65
TSC/30/09-10	Workstations	ONT	Goods	16,215,598.00
TSC/17/08/09	Airtime Cards	ONT	Goods	15,029,956
TSC/01/08/09	General Stationery	ONT	Goods	12,185,984.25
TSC/03/08/09	Printed Stationery	ONT	Goods	11,376,034.00
TSC/28/08/09	Desktop Computers And Ups	ONT	Goods	10,650,000.00
TSC/14/08/09	Vehicle Accessories & Fuel	ONT	Goods	7,606,941.95
TSC/72/08/09	Printing	RFQ	Goods	7,500,000.00
TSC/72/08/09	Printing	RFQ	Goods	7,500,000.00
	Replacement of Vehicles	DP	Goods	6,990,609.00
TSC/66/08/09	Computers and laptops	RFQ	Goods	6,183,000.00
TSC/15/08/09	Air Tickets	ONT	Services	5,600,000.00
TSC/69/08/09	Photocopier	RFQ	Goods	5,302,000.00

#### *Recommendations*

The PE should notify PPOA of all the procurement contracts of Ksh 5,000,000.00 and above, as directed by the PPOA.

#### *Response*

*During the last financial year, the Commission submitted reports to PPOA as required. However, we have not been able to submit the said reports lately due to relocation and settling down. The Commission therefore commits to continue reporting all contracts of Kshs. 5.0 million and above to PPOA quarterly as required.*

### 3.22 Enquiries and Complaints Mechanism

#### *Findings*

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

### ***Recommendation***

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

### ***Response***

*Although the Commission has suggestion boxes at vantage points, it commits to develop documented systems and procedures for handling bid complaints, with the Accounting Officer to handle the same.*

## **3.23 Value for Money**

### ***Finding***

The PE being a public entity is expected to carry out its procurement and disposal proceedings with due regard to value for money. The following key deficiencies were found in the PE that will not enable the PE to enhance value for money in her procurement:

- Promoting value for money and compliance with PPDA in the use of funds raised from taxpayers is not explicitly articulated in the PE strategic plan;
- Lack of procurement planning represents a generic problem that is making the PE fail to obtain value for money in its procurement proceedings;
- Lack of the standing list of registered suppliers does not enable the PE to get sufficient responses of bidders when inviting bids and therefore result in poor value for money due limited competition;
- The deficiency of specification development fails to match the expectations of buyer and tenderer and therefore results in reduction for value for money; and
- The PE does not compare their prices for common user items with the PPOA index.

### ***Recommendations***

- The PE should enhance training to promote knowledge of the PPDA that will enhance value for money; and
- The PE should organize sensitisation, advanced and specialised training for all the PU staff, standing committee members and User Departments.

### ***Response***

*The Commission commits to enhance comprehensive training of all cadres of the procurement staff including staff from user departments, TC, PC, Evaluation Committee, Receiving and Acceptance Committee, Negotiation Committee and Tender opening Committee. The training will enhance value for money procurement through accurate procurement planning, a quality standing list of registered suppliers, accurate specifications, quality evaluation and receiving only as per specification.*

## **3.24 Integrated Management Information Systems**

### ***Finding***

The Commission is currently in the process of installing computerised management information systems. The comprehensive procurement module covers:

- Raise requisition by User Departments;
- Manage quotations, valuations and other procurement committees;
- Stocked items (Consumables);
- Local Purchase Orders (LPOs) awaiting goods delivery;
- Received Requisitions under tendering process;
- Raise GRN and link with LPO and Inspection certificates; and
- Procurement Reports.

### ***Recommendations***

The entity needs to consult with the PPOA on the key metrics of e-procurement systems being considered and to harmonise the IFMIS with the PPOA systems on the common areas of the procurement module.

The entity should ensure they strengthen the procurement modules to include the following, which are not in the present version:

- Active suppliers for the last three financial years;
- Preparation of departmental and procurement plans;
- Running Project and contracts;
- Update inspection and acceptance certificates from the systems;
- Automate counter requisitions and issue from stores;
- Manage inventory transactions;
- Track all expenses associated to a project;
- Link project and services with their contracts; and
- Contract management.

### ***Response***

*The Commission commits to consult with PPOA on e-procurement systems to harmonize our IFMIS system to be more comprehensive and include procurement Modules like:*

- *Active suppliers for the last three financial years;*
- *Preparation of department and procurement plans;*
- *Running project contracts;*
- *update inspection and acceptance certificates from the system;*
- *automate counter requisitions and issue from stores;*
- *manage inventory transactions;*
- *track all expenses associated to a project/department;*
- *link project and services with their contracts; and*
- *contract management*

## 4 SPECIFIC FINDINGS

### 4.1 Tenders without Purchase requisitions

Tender No	Requisiton No	Estimated Value	Method
PFMR/40/2010	Not Available	Not Available	ONT
TSC/01/08/08	Not Available	Not Available	ONT
TSC/02/08/09	Not Available	Not Available	
TSC/03/08/09	Not Available	Not Available	ONT
TSC/08/08/09	Not Available	Not Available	ONT
TSC/14/08/09	Not Available	Not Available	ONT
TSC/15/08/09	Not Available	Not Available	ONT
TSC/17/08/09	Not Available	Not Available	ONT
TSC/19/08/09	Not Available	Not Available	RFQ
TSC/24/08/09	Not Available	Not Available	RFQ
TSC/26/08/09	Not Available	Not Available	RFQ
TSC/28/09/09	Not Available	Not Available	ONT
TSC/29/09/2010	Not Available	Not Available	ONT
TSC/30/09/2010	Not Available	Not Available	ONT
TSC/31/09/2010	Not Available	Not Available	ONT
TSC/32/09/2010	Not Available	Not Available	ONT
TSC/33/08/09	Not Available	Not Available	RFQ
TSC/34/09/2010	Not Available	Not Available	ONT
TSC/35/09/2010	Not Available	Not Available	ONT
TSC/36/09/2010	Not Available	Not Available	ONT
TSC/38/09/2010	Not Available	Not Available	ONT
TSC/49/08/09	Not Available	Not Available	
TSC/53/08/09	Not Available	Not Available	RFQ
TSC/57/08/09	Not Available	Not Available	RFQ
TSC/66/08/09	Not Available	Not Available	RFQ
TSC/72/08/09	Letter	Not Available	RFQ

### 4.2 Tenders whose closing dates and/or opening dates are not available in file

Tender No	Method	Closing Date	Opening Date
TSC/08/08/09	ONT	29/5/08	Not Available
TSC/53/08/09	RFQ	Not Available	Not Available
TSC/72/08/09	RFQ	Not Available	Not Available
TSC/08/08/09	ONT	29/5/08	Not Available

#### 4.3 Tender whose Evaluation reports were not available in Procurement File

Tender No	Method	Technical Evaluation	Financial Evaluation
TSC/08/08/09	ONT	Not Available	Not Available
TSC/28/09/09	ONT	Not Available	Not Available
TSC/02/08/09	ONT	Not Available	Not Available
TSC/24/08/09	RFQ	Not Available	Not Available

#### *Response*

#### **Tenders without purchase requisitions (pg 42):**

*Purchases are normally done as per requisitions. However, due to the filing system that existed during the period of review, the requisitions may have been wrongly filed. This reason also applies to 4.2, 4.3 and 4.5.*

#### **Tender awarded by the TC (pg 43):**

*The TC awarded tenders which were below Kshs. 500,000.00 since the PC was not functional at the time. The Commission will however continue to award tenders as per the recommended ceilings in the threshold matrix.*

#### 4.4 Tender awarded by TC

The following tenders below the Ksh 500,000.00 were awarded by TC instead of PC

Tender No	Method	Tc No	Lpo No	Supplier	Amount
TSC/19/08/09	RFQ	TSC 40/08/09	0628742	UNICEF	228,000.00
TSC/57/08/09	RFQ	TSC28/08/09	0133722	BAMS (K) Ltd	307,000.00

#### 4.5 Tenders whose letters of award were not available in the Procurement File

Tender No	Method	Notification Letter	Supplier
TSC/08/08/09	ONT	Not available	Tekplus Services
TSC/08/08/09	ONT	Not available	Tekplus Services
TSC/08/08/09	ONT	Not available	Eco General Merchants
TSC/08/08/09	ONT	Not available	Tekplus Services
TSC/08/08/09	ONT	Not available	Tekplus Services
TSC/03/08/09	ONT	Not available	Alexa Stationers
TSC/14/08/09	ONT	Not available	Multiline Industrial
TSC/08/08/09	ONT	Not available	Tekplus Services
TSC/08/08/09	ONT	Not available	Pergume Ltd
TSC/01/08/08	ONT	Not available	Capricorn Stationers
TSC/17/08/09	ONT	Not available	Mwalimu Welfare Association
TSC/15/08/09	ONT	Not available	Akarim / Speedbird
TSC/28/09/09	ONT	Not available	MIBM
TSC/02/08/09	ONT	Not Available	Pacific Stationers
TSC/02/08/09	ONT	Not Available	Capricorn Stationers
TSC/02/08/09	ONT	Not Available	Pacific Stationers

<b>Tender No</b>	<b>Method</b>	<b>Notification Letter</b>	<b>Supplier</b>
TSC/02/08/09	ONT	Not Available	Pacific Stationers
TSC/02/08/09	ONT	Not Available	Swift Office Supplies
TSC/02/08/09	ONT	Not Available	Malia General Merchants
TSC/02/08/09	ONT	Not Available	Ricky Stationers
TSC/02/08/09	ONT	Not Available	Pacific Stationers
TSC/02/08/09	ONT	Not Available	Pacific Stationers
TSC/02/08/09	ONT	Not Available	Pacific Stationers
TSC/08/08/09	ONT	Not available	Tekplus Services

#### **4.6 Procurement of furniture for the new TSC office.**

Tenders were advertised in two daily Newspapers on 2<sup>nd</sup> and 3<sup>rd</sup> June 2009. After the 21 days allowed for national open tendering the tenders listed below were opened on 22<sup>nd</sup> June 2009 as listed below:-

- TSC/ 29/09/2010 - Supply of bulk Fillers (10 Bidders).
- TSC/30/09/2010 - Supply of Workstations and Desks (27 bidders)
- TSC/ 31/09/2010 - Supply of tables (22 Binders)
- TSC/32/09/2010 - Supply of chairs (28 Bidders)
- TSC/34/09/2010 - Supply of sofas and Sofa tables (11 Bidders)
- TSC/35/09/2010 - Supply of Glazing Treatment (2 Bidders)
- TSC/36/09/2010 - Supply of Office Accessories (3 Bidders)
- TSC/38/09/2010 - Provision for branding (4 binders)

Market Survey was conducted between 8<sup>th</sup> July 2009 and 17<sup>th</sup> July 2009. The report was submitted to the Tender Committee to facilitate adjudication and award of tenders.

There was attendance register signed by all members who participated including the representatives of the tenderers. The tender opening committee did not produce a comparison of the bidders who purchased the tenders with those who returned the bids. The minutes of the tender opening committee were made on 10 July 2009.

The evaluation team was recommended by the Head of the PU in accordance with the PPDR on 6 July 2009 and approved by the Mr Kavisi on the 7 July 2009 on behalf of the Accounting Officer. Some of persons appointed to the committee did not participate.

<b>Name</b>	<b>Approved</b>	<b>Survey</b>	<b>Preliminary</b>	<b>Technical</b>	<b>Financial</b>
S.Omare	Yes	Yes	Yes	Yes	Yes
R.Murungi	Yes	No	No	No	No
C.Mwakisha	Yes	No	No	No	No
G.Ngure	Yes	Yes	Yes	Yes	Yes
E.Msagha	Yes	Yes	Yes	Yes	Yes
D.Mwaita	Yes	Yes	Yes	Yes	Yes
W.Kigen	Yes	Yes	Yes	Yes	Yes
J.Ngunnzi	Yes	No	No	No	No
S.M.Magana	Yes	No	No	No	No
S.O.Kamwaro	Yes	No	No	No	No
F.Baituru	No	Yes	Yes	Yes	No

The Head of the PU did not explain why the persons not appointed by the Accounting Officer were allowed to participate in the evaluation process and why those appointed did participate.

There were no appointment letters to the persons nominated to the evaluation team. The evaluation committee undertook the preliminary, technical and financial evaluation of the furniture tenders.

The evaluation criteria were not set out in the tender documents and therefore the review team were unable to judge the objectivity of the criteria used for technical and financial evaluation. Technical evaluation focused mainly on financial stability of the tendered including accounts, experience including number of years in the furniture business, and memorandum of association of the renderers. The compliance to the technical specifications, which was given only 15 points, was not assessed for all tenderers.

The financial evaluation was based on the ranked the lowest, second lowest and third lowest responsive tenderer. The brief report was submitted to the Tender Committee to facilitate adjudication and award.

Before the awards were made a team of officers visited the bidders who passed the technical evaluation, to ascertain correctness of specifications and availability of samples. The visit was not set out in the tender documents. The report was submitted to the Tender Committee.

The various categories of furniture were awarded as shown below:-

1. Bulk Fillers – Awarded to Fast Choice Limited
  - ✓ BF 1 (8 Units)
  - ✓ BF 2 (15 Units)
  - ✓ 4 No. Deep Drawer Filing Storage
2. Workstations and desks –Awarded as follows:-
  - a. Budget Furniture's Limited
    - ✓ Executive L- Type Desks S-W1 (2 No.)
    - ✓ L-Type desks –W2 (367 No)
    - ✓ L-type DESKS –W3 (23 No)
    - ✓ Straight desks –W4 (103 No)
    - ✓ ¾ Circle desk extension ,W8 (56 No)
    - ✓ L-Type Desk –W9 (1 No)
    - ✓ L-type Secretarial Desk W11 (2 N0)
    - ✓ U- Type Desk-w 12( 2 No)
  - b. Jos Hansen East Africa Limited
    - Straight Desk- W6 (106 No)
  - c. Fast Choice Limited
    - Connector Corner Piece- W 7 (9No)
  - d. Design Wear Limited
    - Desk Mounted Screen –P2(513 No)
3. Tables awarded to :-
  - a. Fast Choice Limited
    - ✓ Credenza –CB1 ( 5 No)
    - ✓ Folding Table –T7 (46 No)
  - b. Jos Hansen E.A Limited
    - ✓ Low cabinet –CB 2( 52 No )

Budget Furniture Limited

- ✓ Executive Boardroom table – T1 ( 1 No)
  - ✓ Modular Meeting room tables –T3 (2No)
4. Chairs awarded as follows:-
- a. Jos Hansen E.A Limited
    - ✓ Executive High Back Swivel Chairs C1(50 N0)
    - ✓ Executive Mid BACK CHAIR –c2 ( 125 No)
    - ✓ Stackable Plastic chairs- C7 (1285 No)
    - ✓ Stackable plastic chairs –C8 (30 No)
    - ✓ Stackable Plastic chairs –C9 915 No)
  - b. Fast Choice Limited
    - ✓ Executive Mid back fabric – task chairs – C3 (15 70 No.)
    - ✓ Executive mid back fabric swivel chair- C4 (175 No.)
    - ✓ Mid back fabric Task chairs – (C5 9105 No.)
  - c. Design Wear Limited
    - Mid back secretarial Chairs- C6 (164 No.)
5. Sofas and sofa tables  
Both SF1 (60 No.) and STB 13(No 20) were not awarded to be floated
6. Glazing treatment  
Not awarded to be re- floated
7. Branding  
Not awarded - firms were pre- qualified

In accordance to section 66(4) of the Public Procurement and Disposal Act, 2005 the lowest evaluated price was awarded in each furniture category. However, provision was made to go to the second or third bidder in the event the first firm fails to supply. Both successful and unsuccessful; bidders were issued with letters of notifications on 28<sup>th</sup> August 2009. After the mandatory 14 days complaints period elapsed, local purchase orders were issued to each winning firm to supply as per specifications. The following irregularities were observed relating to this procurement proceedings:

- Two cheques 018344 and 018343 for amounts Ksh 48,500,000.00 and 99,500,000.00 were raised in the name of CASHIER –TEACHERS SERVICE COMMISSION purportedly to reserve the money from being returned to the treasury;
- The PE did not provide the team with explanation for raising a cheque for furniture which had not been bought and what happened to the cheque;
- The requirements are not mentioned in any procurement plan but were included in the Government remittance of FY2008-2009;
- There was no purchase requisition or any document initiating the procurement activity approved by Accounting Officer for these requirements in accordance Regulation 22(1-4) and First Schedule of PPDR;
- There were no realistic estimates of the value of the goods as required by Regulation 22(2) based on up-to-date information on economic and market conditions;
- The design specifications developed by Triad Architects did not incorporate functionality of the furniture and some were substantively modified during the procurement process;
- The tender documents did not contain enough information to allow fair competition among those who may wish to submit tenders as stipulated in Section 52(2);
- The modification of the specifications was not brought to the attention of the all potential bidders as required by Section 53 of the PPDA. The review team learned

that the commissioning of the Triad Architects was done verbally without setting out terms of reference for the firm. The firm has since submitted an invoice of Ksh 12,000,000.00 for the job. The Chief Executive refused to pay the invoice because the hiring of the firm was done without his knowledge and not in accordance with PPDA and PPDR.T. The issue is still pending and should be substantively concluded with the persons who engaged the firm. The Accounting Officer should return the invoice as there is no contract between TSC and Triad;

- There were no Bid Data Sheet, Evaluation Methodology, the Statement of Requirements, the Submission Forms, and the Special Conditions of Contracts;
- The tenders were not drafted from the Standard Tender Documents approved by the PPOA. They were drafted on the request for quotation forms which were inserted in the tender documents downloaded from the PPOA site. The downloaded forms were not comprehensively adapted to the specifics of the procurement. There was no tally of the description of the requirements to those on the specifications submitted by Triad Architects;
- Although, there was a tender opening committee meeting on the 22 June 2009, the review team was not provided with the letters appointing this team and who appointed them. It is noted that Mr. Kavisi whose is also the Chairman of the Tender Committee chaired the tender opening committee;
- Bidders' submissions were not provided to the review team to compare the statement of requirements with the bidders' submissions;
- Post-qualification, survey or negotiation terms were not set out in the tender documents;
- There were no contracts prepared for all the awards;
- There was no contract manager appointed for all the awards;
- There was no contract implementation plan and TSC interest was not protected in the event that the tenderer fails to perform;
- The PE did not request a performance bond for all the awards; and
- There was no Quality Inspection Report Form prepared for the Inspection and Acceptance Committee.

The TC met on 14 August 2009 and awarded the tenders to the lowest responsive tenderers as evaluated by the evaluation committee.

Tender TSC/29/09/2010 for supply of bulk filling (BF2) was awarded to the third responsive tenderer resulting into significant additional cost.

Bidder no	Company	Qty	Unit price	Total	Rank
1	FAST CHOICE	15	199,500.00	2,992,500	1
6	BUDGET FURNITURE	15	846,000.00	12,690,000.00	3
9	DESIGN WEAR	15	2,878,848,00	43,182,717.00	2

The lowest was not considered because they did not include VAT. No justification was provided for not considering the second lowest responsive bidder.

#### **Tender of Fast Choice including VAT**

Bidder no	Company	Qty	Unit price	Total	Rank
1	FAST CHOICE	15	231,420.00	3,471,300.00	1
6	BUDGET FURNITURE	15	846,000.00	12,690,000.00	3
9	DESIGN WEAR	15	2,878,848,00	43,182,717.00	2

The additional cost incurred by TSC if they could have considered including VAT for lowest (43,182,848.00-3,471,300.00) is Ksh 39,765,548.00.

Tender TSC/29/09/2010 for supply of bulk filling (BF1) was awarded to the third responsive tenderer resulting significant additional cost.

Bidder no	Company	Qty	Unit price	Total	Rank
1	FAST CHOICE	8	199,500.00	1,596,000.00	1
6	BUDGET FURNITURE	8	377,000.00	3,016,000.00	3
9	DESIGN WEAR	8	1,645,057.00	13,160,454.00	2

The lowest was not considered because they did not include VAT. No justification was provided for not considering the second lowest responsive bidder.

#### **Tender of Fast Choice including VAT**

Bidder no	Company	Qty	Unit price	Total	Rank
1	FAST CHOICE	8	231,420.00	1,851,360.00	1
6	BUDGET FURNITURE	8	377,000.00	3,016,000.00	3
9	DESIGN WEAR	8	1,645,057.00	13,160,454.00	2

The loss incurred by TSC if they could have considered including VAT for lowest (13,160,454.00-1,851,360.00) is Ksh 11,309,093.00.

The total additional cost incurred for the two purchases of bulk filling BF1 and BF2 from Design Wear is Ksh 51,074,641.00 (39,765,548.00 +11,309,093.00).

In conclusion the review team faults the PE in making award decisions that resulted in additional cost amounting to Ksh 51,074,641.00 by awarding the contract to the third responsive bidder without following the requirements of Section 64 of the PPDA.

#### **Recommendations**

The employees who made the PE incur this additional cost should be held accountable for their actions.

#### **Response**

#### **Flawed procurement of furniture for the new TSC House**

- *M/s Triad architects was contracted by the Commission as site agent to supervise the construction of the TSC House. Since the firm had the structural plan of the building and given that it had expertise in architecture and design, it was informally assumed that it could assist in giving specifications for Furniture at no cost.*
- *The lowest evaluated bidder recommended for award by the Technical Evaluation Committee (Fast Choice) did not clearly understand the specifications when submitting her bid. After being awarded, it was realized that she had submitted one single-4-bay as a unit Bulk Filer instead of the 24 and 42 bay Bulk Filer units as provided in the specifications. Further, Fast Choice Limited returned the L.P.O, seeking amendments and further negotiation of the same. This was not accepted and*

*therefore prompted the Commission to appoint a Committee to conduct a post-evaluation site visit to verify the capability of the bidders to supply the items.*

*The same Committee also visited Institutions where the bidders (Budget Furniture, Design Wear and Fast Choice) had supplied similar Bulk Filers to verify the quality and specifications. After this visit, the Committee recommended that M/S Design Wear was the only bidder who understood the specifications and recommended the Firm for award.*

*Consequently, the Tender Committee awarded the Contract as per the recommendation.*

- *The lowest and second evaluated bidders were not considered for award of tender no. TSC/29/09/2010 because of the recommendation of the Committee under reference.*

#### **4.7 Procurement of Utility Vehicles**

The User Department initiated the purchase of two utility vehicles using an internal memo addressed to the Accounting Officer.

The TC approved the purchase of the two vehicles vide minutes No: 133/08/09 dated 20<sup>th</sup> March 2009 from the long-term contracted prices on Government vehicles with various Suppliers covered by Supply Branch Circular No: R4/2008-2009

The TC considered following vehicles:

1. Executive Microbus, Petrol ,9 passengers  
Nissan E- 24 Petrol Japan  
Price- Kshs. 2,307.665.85  
Supplier –D.T. Dobie and Company Limited
2. Toyota Hake TRH Japan  
Spec. No: (MTD-980-046-08)  
Price Kshs.2.434.061.00  
Supplier –Toyota E.A Limited
3. Isuzu NQR 66 Japan  
Price Kshs. 3.629.000

The TC awarded the contract for the supply of the vehicles to Toyota East Africa at a price of Ksh 2,434,061.00 each without justification instead of accepting the lowest evaluated price of Nissan Urvan E- 24 Petrol at price of Ksh 2,307,665.00 each.

Local Purchase Order no 0628884 for was raised for one Toyota Hiace TRH at price of 2,434,062 inclusive of VAT. At the time of award the TC was not aware that price list they were using from Supplies Branch had expired and the new contracted prices were due to commence in July 2009.

On 9<sup>th</sup> April 2009, the Commission received a letter from Toyota East Africa requesting the Commission to amend the L.P.O to reflect the new price of Kshs 3,499,705.00 each because the price quoted was no longer valid. The TC meeting on 13 May 2009 recommended the

cancellation of the LPO and instead awarded the order for Nissan E- 24 Petrol from D.T Dobie at a price of Ksh 2,307,666.00 each.

Senior Deputy Secretary (Finance) instructed the User Department to issue a new L.P.O No: 0628909 were issued for Kshs. 6.990.609.90 to D.T Dobie for two vehicles. This was done without involving the PU.

A payment voucher No: A 291724 dated 4<sup>th</sup> June 2009 for Kshs. 6.585,741/2 payable to D.T Dobie and V.A.T on Nissan E 24 P for Kshs. 315.929.00 was presented to audit.

The review team observed that:

- i. The User Department who initiated the procurement activity was involved in processing the LPO and taking receipt of vehicles without involving the Procurement Unit contrary to Section 26(3)(c) of PPDA; and
- ii. The procurement activity was initiated without sufficient funds have been set aside in its budget to meet the obligations of the resulting contract as required by Section 26 (6);

### ***Recommendation***

- The employees of the PE who violated the provisions of the PPDA and PPDR should be held accountable; and
- The PE should prepare operational manuals to assist staff to implement the procurement law and regulations.

### ***Response***

- *Issues concerning the procurement of the Utility vehicles under reference were responded to through the Commission's response to PPOA's of 31<sup>st</sup>, July, 2009 which was a response to the Authority's letter Ref: PPOA.4/30/43 Vol.1161 of 27<sup>th</sup> July, 2009 ;and*
- *The Commission undertakes to prepare a Procurement operational Manual to assist in implementing the procurement Laws and Regulations with the help of PPOA within the current Financial year.*

## 5 COMPLIANCE RATING

Item	Performance Indicator	Indicates aspect of the procurement	Scores				Max score	Actual score
			3	2	1	0		
1	<b>Functions of Accounting Officer (1)</b>	The Accounting Officer is carrying out his responsibilities under Section 27 (2) of the PPDA and has ensured that the procuring entity fulfils its obligations by ensuring that all provisions of the PPDA, the PPDR and directives of PPOA are complied with		2			3	2
2	<b>Functions of Procurement Unit (3)</b>	The key procurement officials have professional qualifications in procurement and supply management from a recognised institution ( <i>Only two key officials out of eleven staff (9%) possesses professional qualifications in procurement</i> ).			1		9	3
		The Head of Procurement Unit and key staff with procurement responsibilities have received training in PPDA, PPDR, and General Manual.)			1	0	9	3
		The key procurement officials are members of a recognised institute of purchasing and supply. <i>Four are members of either KISM or KISM</i>			1		9	3
		The functions of the Procurement Unit as set out in Regulation 8 of the PPDR are satisfactorily complied with ( <i>See weighted performance range of 42.8% and See Appendix 7.1</i> )		2		0	9	6
3	<b>Functions of Tender Committee (3)</b>	Tender Committee is established in accordance with PPDA and PPDR and holds regular meetings with minutes that conform to Regulation 12		2			9	6
		The functions of the Tender Committee as set out in Regulations 10 of the PPDR and Chapter 4.5			1		9	3

		of the General Manual are satisfactorily complied with (See performance range of 28.6% and Appendix 7.2)						
		The approvals by Tender Committee conform to Regulation 11.(See performance range of 33.3%)			1		9	3
4	<b>Functions of Procurement Committee (3)</b>	Procurement Committee is established in accordance with Regulation 13 and holds regular meetings with minutes__that conform to Regulation 15		2			9	6
		The functions of the Procurement Committee as set out in Regulations 14 of the PPDR and Chapter 4.4 of the General Manual are satisfactorily complied with.		2			9	6
		The Procurement Committee has submitted quarterly reports to the Tender Committee on contracts it has awarded			1		9	3
5	<b>Functions of the Disposal Committee (3)</b>	The Disposal Committee is established in accordance with Section 128 and holds regular meetings with minutes.	3				9	9
		The functions of the Disposal Committee as set out in the PPDA, PPDR and Chapter 12 of the General Manual are satisfactorily complied with .	3				9	9
6	<b>Functions of evaluation Committee (3)</b>	Evaluation committees have been appointed as and when required within the threshold of the Tender Committee	3				9	9
		The evaluation committees have undertaken technical and financial evaluation of tenders or proposals strictly in accordance with the compliance and evaluation criteria set out in the tender documents			1		9	3
		No person has been appointed to serve in the Evaluation Committee if that person is a member	3				9	9

		of the Tender Committee of the procuring entity						
		Each member of the technical evaluation committee has evaluated independently from the other members prior to sharing his or her analysis in accordance with Regulation 16 (6)				0	9	0
		Evaluation committees have prepared a report analysing the tenders received and final ratings assigned to each tender and submitted the report to the Tender Committee in accordance with Regulation 16 (9)			1		9	3
		Tender evaluation has been completed within 30 days of tender opening (with a further 5 days allowed where there is separate financial evaluation)		2			9	6
7	<b>Functions of Inspection and Acceptance committee (3)</b>	The Inspection and Acceptance Committee has been established and undertakes its functions in accordance with Regulation 17 of PPDR and Chapter 4.7 of the General Manual and makes appropriate use of quality assurance organisations or specialists where appropriate (See performance range and Appendix )		2			9	6
8	<b>Systems and procedures for implementation of the procurement law and regulations (3)</b>	There are comprehensive and written operational procedures and systems which are updated regularly, setting out how the PPDA, PPDR and directives are being implemented in the PE, as stipulated in Section 26(1)			1		9	3
		The Head of the Procurement Unit is generally aware of updated publications, directives, manuals, and standard documents prepared and distributed by PPOA			1		9	3
		The procurement publications are in a central location that is accessible to all persons who want				0	9	0

		to refer to them, as provided in Chapter 1.8 of the General Manual						
		Manuals including the General Manual and guidelines are available to all persons involved in procurement related functions				0	9	0
9	<b>Threshold matrix and segregation of responsibilities (3)</b>	The threshold applied conforms to Section 26 of PPDA and the category determined by Gazette Notice No. 719 of 24 January 2007 and the First Schedule of Regulations.				0	9	0
		The person responsible for procurement initiation for each procurement method and threshold is as provided for in the First Schedule of the PPDR			1		9	3
10	<b>Record keeping of the procurement activities (3)</b>	Adequate and comprehensive procurement records are maintained in accordance with relevant provisions of PPDA, PPDR and the Procurement Records Management Procedures Manual throughout the procurement process and provide sufficient information to enable an audit or independent review			1		9	3
		The procuring entity maintains a comprehensive and individual file for each procurement requirement containing all information, documents and communications relating to that procurement proceeding with such files being marked with the relevant procurement reference number.				0	9	0
11	<b>Procurement planning (3)</b>	All procurements have been undertaken within the approved budget of the procuring entity and have been planned by the procuring entity through an annual procurement plan, as stipulated in Section 26 of PPDA			1		9	3

		The Heads of User Departments have submitted annual departmental plans to the Accounting Officer at least thirty days before the close of each financial year as stipulated in Regulation 20 (4)			1		9	3
		Where appropriate every significant procurement has an individual procurement plan in accordance with Chapter 6.5 of General Manual				0	9	0
		All procurements are undertaken on the basis of the consolidated procurement plan which is regularly updated and linked to the approved budget of the procuring entity and approved by the Head of the procuring entity and where applicable by the board of directors or a similar body			1		9	3
12	<b>Purchase requisition (2)</b>	Each procurement proceeding is initiated using an official procurement requisition form containing all necessary information pertaining to the procurement in accordance with Regulation 22				0	6	0
		The requisitions are generated from the consolidated procurement plan				0	6	0
13	<b>Prequalification and registration of suppliers (3)</b>	There is a standing list of registered suppliers prepared in accordance with Regulation 8 (3) (a)			1		9	3
		Prequalification for works, goods and services of complex and specialized nature is carried out in accordance with the procedures in Section 32 and Regulations 23-25 and the PE has ensured that tenders are sent to all pre-qualified suppliers and contractors				0	9	0

		Qualification to perform a contract is determined based on possession of the necessary qualifications, capability, experience, resources, equipment and facilities to provide what is being procured		2			9	6
		The PE has ensured a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c).				0	9	0
14	<b>Specifications (3)</b>	The procuring entity uses clear, objective, neutral and functional or technical specifications and in accordance with Section 34		2			9	6
15	<b>Choice of procurement method (3)</b>	Open tendering is the main procurement procedure as stipulated in Section 29	3				9	9
		Alternative procurement methods used by the PE are chosen in accordance with the criteria in Part VI of the PPDA			1		9	3
		Procurements are not split to evade the appropriate procurement method, in accordance with Section 30	3				9	9
16	<b>Preference and reservations (3)</b>	The PE has applied preferences and reservations in accordance with Section 39 and Regulation 28 and any Guidelines which may be issued				0	9	0
17	<b>Standard Tendering Documents (3)</b>	The prescribed procurement documents are used in accordance with Section 29 (4), Regulation 33 and the Third Schedule of the PPDR		2			9	6
18	<b>Advertisement of tender opportunities (3)</b>	The procuring entity has taken such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders, in accordance with Section 54	3				9	9

		Advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening	3				9	9
19	<b>Modifications to tender documents (2)</b>	Any modification to tender documents are set out in an addendum which is promptly provided to each person who obtained the tender documents, as required by Section 53 (3)					N/A	N/A
20	<b>Submission and receipt of bids (2)</b>	A secure facility for the receipt of tenders has been provided at the designated tender location, with two locks with keys for each lock kept by a different officer and box remaining locked until the time for tender opening.	3				6	6
		Tender opening procedures are carried out in accordance with Section 60 and Regulation 45		2			6	4
21	<b>Formation of contract (2)</b>	Notification of acceptance of tender is given to successful and unsuccessful tenderers in accordance with Section 67	3				6	6
		Written contract is entered into in accordance with Sections 68-70			1		6	2
		Bond security released and recorded in procurement file				0	6	0
		Performance bond raised and recorded in procurement file				0	6	0
		Any advance payment is adequately secured by the performance bond or bankers guarantee and recorded in procurement file					N/A	N/A
22	<b>Termination of proceedings (2)</b>	Any termination of procurement proceedings has been carried out in accordance with Section 36 and approved by the Tender Committee	3				6	6
23	<b>Notification to PPOA (1)</b>	Notification is provided to PPOA of (a) Contracts over Ksh 5 million				0	3	0

		(b) Direct procurement over Ksh 500,000				0	3	0
		(c) Termination of procurement proceedings				0	N/A	N/A
		(d) Disposals to employees					N/A	N/A
24	<b>Enquiries and Complaints mechanism (1)</b>	There are systems and procedures for handling bidders' enquiries and complaints				0	3	0
25	<b>Follow up of ARB decisions and recommendations (2)</b>	The PE has taken adequate remedial action on any ARB decisions and observations made following appeal					N/A	N/A
26	<b>Value for money (3)</b>	The PE has sought to maximize economy and efficiency and to obtain value for money in its procurements			1		9	3
		The PE has compared prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate, and has procured standard goods, services and works with known market prices at the prevailing real market price, as required by Section 30 (3)				0	9	0
27	<b>Contract management (2)</b>	Contract management, including amendments and variations, is carried out in accordance with Section 47, Regulation 31 and Chapter 9 of the General Manual			1		6	2
	<b>Total</b>						477	208

Compliance level  $208/477*100=43.6\%$

## 6 ACTION PLAN

	<b>TASK</b>	<b>BY</b>	<b>TIMELINE</b>
1	Reorganise the PU and engage key officers with adequate qualification, experience and training in the procurement law and regulations;	AO	By 31 <sup>st</sup> March 2011
2	Prepare annual procurement plans that are linked to the Commission's budgetary framework and that conforms to PPDA and PPR requirements.	AO/PU	By 30 <sup>th</sup> September 2010
3	Prepare annual disposal plans for all obsolete and surplus equipment and stores that is linked to the PE's procurement cycle and budgetary framework	PU	By 31 <sup>st</sup> December, 2010
4	Appoint alternate members for the TC as provided in PPDR	AO	Done
5	Implement all outstanding internal and external audit recommendations on procurement matters to a level that conforms to the requirements of the PPDA, Regulation and directives of PPOA	PU	By 31 <sup>st</sup> December 2010
6	Ensure that all updated publications, manuals, guidelines, and directives issued by PPOA are placed in a central location that is accessible to all persons who want to refer to them.	AO/PU	By 31 <sup>st</sup> August, 2010
7	Upgrade the filing systems and procurement records management to conform to the PPDA, PPDR, General Manual, and <i>Report on the Management of Records of the Teachers Service Commission</i> . The PE should where possible computerise the records management in the new IFMIS systems they are installing.	AO/PU	By 31 <sup>st</sup> December 2010
8	Organise sensitization training of all members of committees and personnel of the TSC in requirements of the procurement law and regulations, advanced training to improve skills of senior procurement practitioners and specialized aspects of procurement.	PU/AO	By 31 <sup>st</sup> December 2010
9	Prepare operational procedures and systems on how TSC will implement the PPDA and PPDR	AO	By 31 <sup>st</sup> March 2011
10	Prepare a standing list of registered suppliers as required in the PPDR	PU	By 30 <sup>TH</sup> October 2010
11	The estimate values in the requisition for common user items should be compared with the PPOA price index	PU	On-going
12	Use tender documents and procurement forms that conform to the requirements of the Regulations and General Manual in all procurement processes while waiting for the PPOA approved STDs and procurement forms	PU	Immediately (on-going)
13	Prepare contract documents, in line with the award decision and monitor contract	PU/AO	Immediately (on-going)

	management by user departments to ensure implementation of contracts in accordance with the terms and conditions of the contracts.		
14	Ensure that the Inspection and Acceptance Committee makes appropriate use of KEBS and other quality assurance testing organisations where appropriate. Develop interim certificates that conform to the requirements of the PPDA and PPDR, to be certified by the Inspection and Acceptance Committee members after inspection of the complex goods, works and services.	AO/PU	By 31 <sup>st</sup> August, 2010
15	Prepare official standard procurement requisitions to initiate all procurements in accordance with the PPDR	AO/ PU	By 31 <sup>st</sup> August, 2010
16	Develop control registers for all requisitions, tenders and Contracts/LPOs.	PU	In place
17	The secretary should develop standard template for Tender Committee submissions and reporting with comprehensive pertinent information to guide the members in making informed decisions conforming to the Act and regulations.	PU	By 31 <sup>st</sup> August, 2010
18	Procurement Committee to submit quarterly reports to the Tender Committee.	PU/PC/CT C	In place
19	Prepare and submit all reports for procurements and disposal proceedings to PPOA as required by the PPDA and regulations.		By 30 <sup>th</sup> September, 2010
20	Introduce Preference and Reservations schemes where appropriate		By 30 <sup>th</sup> September 2010
21	Introduce measurable value for money practices in all procurement proceedings.		In place
22	Introduce a complaints/protest log for providing necessary information internally as well as to all interested stakeholders	AO/PU	By 30 <sup>th</sup> September 2010

## 7 CONCLUSION

The major challenges in the Commission are in the areas of recordkeeping, data and documentation controls, lack of procurement planning, sensitisation training in procurement law, regulations and inadequate contract management. Retrieving records for review purposes was slow, time consuming and even for the files made available, some records pertaining to fulfilment of the procurement process were incomplete, limiting the review scope.

We did commence our review against the background of other comparable past audits. We found that the recommendations of the previous external and internal audits have not been implemented. It is important to note that most of the findings and recommendations we have made have been made before but have not been implemented by the Commission.

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

The office of the internal auditor needs to be strengthened through capacity building to verify, examine, and determine that individual transactions comply with the Act and regulations.

We are pleased that the Teachers Service Commission management welcomed the review exercise as a mechanism to identify and address any pending shortcomings and weaknesses in compliance with Act and associated regulations. They have started implementing some of the recommendations when the draft report was released. They noted that the period being reviewed was a transitional period, as staff were moving to the new offices, so that any failure to provide documents was due to this interruption.

We are pleased to note the high proportion of TSC's spend covered by open tendering (73% by value) and we encourage the management to continue this practice.

Overall, TSC have demonstrated a low level of compliance at 43.6% (against the expected 60%) with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions for the period reviewed.

Although the TSC has taken a number of reasonable steps to comply with the provisions of the procurement law, there remain a number of issues that need to be addressed. The issues raised are important and warrant immediate attention by the procuring entity. Most of the deficiencies represent generic or systemic compliance problems but can be fixed by TSC through training in procurement law, regulations, General Manual and firm supervision in areas related to procurement functions.

## 8 APPENDIX

### 8.1 The staff of the Procurement Unit

S/No	Name Of Staff	Designation	Current Qualifications	Current Training
1.	Austin M. Mlawi	Deputy Secretary	Med. Education MBA, DBM	CIPS Level 4 training
2.	Hezbon O. Oyugi	Assistant Deputy Secretary	B.COM, MBA, MCIPS	FCIPS at the Chartered Institute of Purchasing and
3.	Santau Ole Kamwaro	Senior Principal Administration Officer	B.ED	CIPS section 4 at Institute of Purchasing and Supply
4.	Kellen Muthoni	Chief Accountant	CPA Graduate	Diploma in Purchasing and Supplies at KIM
5.	Francis Baituru	CPO Chief Procurement Officer	PCISM – Final Diploma	Full member of KISM
6.	Philemon Chemoiywo	Procurement Officer	Graduate Diploma in CIPS	Bachelors degree in Business Administration at KEMU
7.	Patrick Mbithi	Procurement Officer I	CIPS Graduate Diploma -Foundation Stage Diploma in Business Administration	-
8.	Saciline M. Magana	Personal Secretary II	Full Secretarial Course Diploma in Business Management at KIM	Degree in Business and Office Management – JKUAT
9.	Jaqueline Nyaga	Personal Secretary II	Diploma in Secretarial Course	-
10.	Duncan Korir	Senior Clerical Officer	Advanced Certificate in Purchasing and Supplies (KIM)	Diploma in purchasing and supplies at KIM
11.	Baraka Namaiyan Ritey	Assistant Human Resource Officer	Diploma in Business Administration	Bachelor of Purchasing Business Logistics at Daystar University
12.	Jane Waititu	Procurement Assistant II	Diploma in Purchasing and Supplies	Bachelor of Purchasing and Supplies Management at (JKUAT)
13.	Loise Kabubii	Human Resource Officer	CIPS Level 4 Foundation Diploma	CIPS level 5 at the Chartered

<b>S/No</b>	<b>Name Of Staff</b>	<b>Designation</b>	<b>Current Qualifications</b>	<b>Current Training</b>
				Institute of Purchasing and Supplies
14.	Carren Mondo	Procurement Assistant	Diploma in Purchasing and Supplies	Bachelors Degree of Purchasing and Supplies at MOI University
15.	Isaiah Kigen	SCO	KCSE	Diploma in Supplies Management at KIM
16.	Charles Otworu	Human Resource Officer	Diploma in HR	Higher Diploma in Human Resource at Foundation Institute
17.	Pauline Obuon	Computer Operator II	Foundation Diploma CIPS	CISPS Level 6 at the Chartered Institute of Purchasing and Supplies
18.	Paul Koskey	Senior Clerical Officer	Advanced Certificate in Purchasing and supplies	Diploma in Purchasing and Supplies at KIM
19.	Gerald Lesoloyia	Procurement Assistant	Diploma in Supplies Management	Seminar in Supplies Chain Management
20.	Anne Nyawira	Senior Support Staff	Diploma in Purchasing and Supplies - KIM	-
21.	Collins Maina	Senior Support Staff	Diploma in Human Resource	-
22.	Lucy Wangari	Senior Support Staff	KCSE	-
23.	Lincoln Ireri	Senior Support Staff	KCSE	-
24.	Gideon Mutune	Senior Support Staff	KCSE	-



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