



FINAL REPORT

**MINISTRY OF STATE FOR DEVELOPMENT OF NORTHERN KENYA AND
OTHER ARID LANDS**

PROCUREMENT REVIEW

28 September 2010

KENYA ARID AND SEMI ARID LANDS

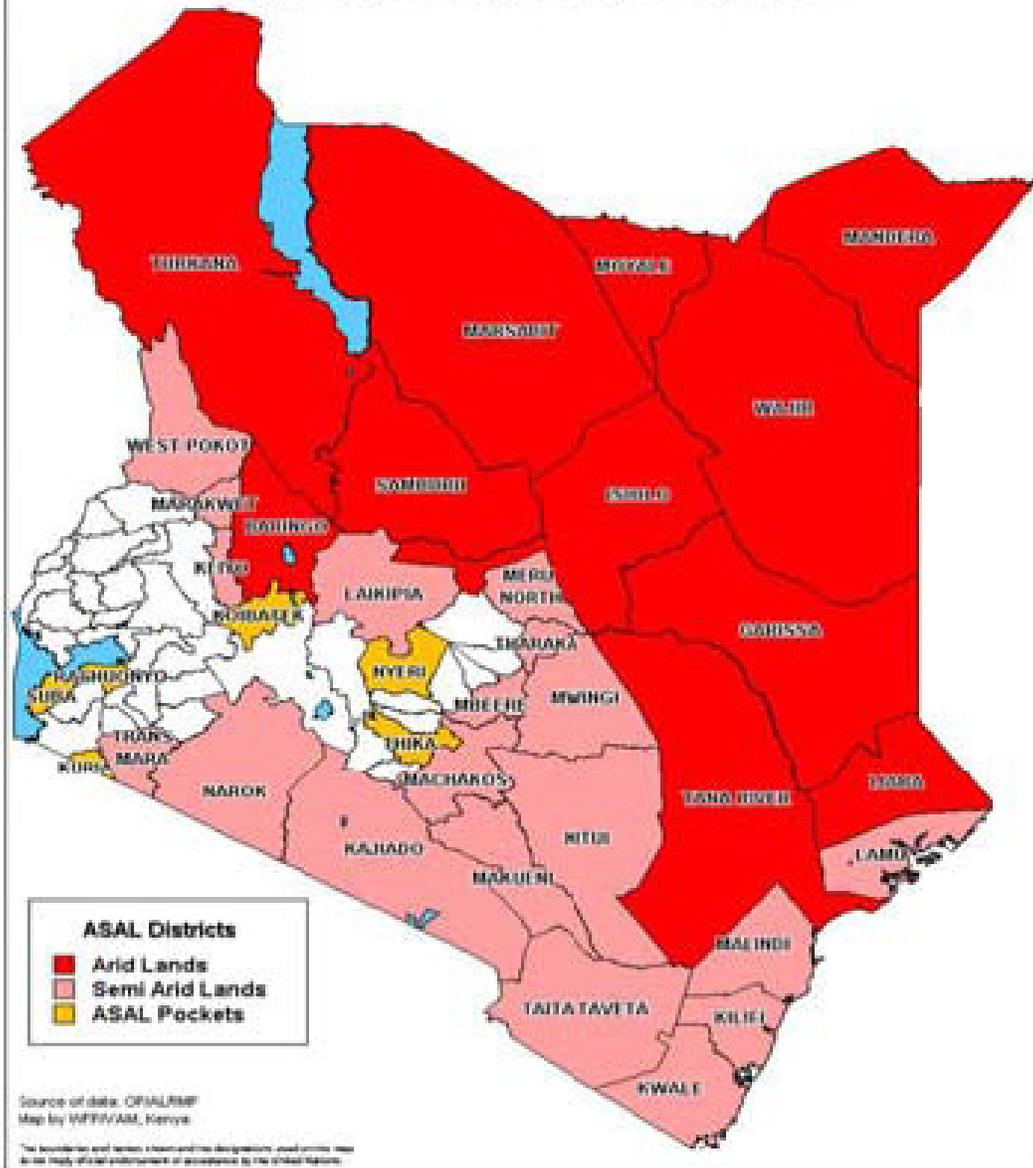


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ACRONYMS

AO	Accounting Officer
ARLMP II	Arid Lands Resource Management Project II
CPO	Chief Procurement Officer
FY	Financial Year
GOK	Government of Kenya
GRN	Goods Receipt Note
HQTS	Headquarters
IA	Internal Auditor
ICB	International Competitive Bidding
ICT	Information, Communications and technology
IDA	International Development Association
IFMIS	Integrated Financial Management Information Systems
KACC	Kenya Anti Corruption Commission
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNAO	Kenya National Audit Office
LOE	Level of Effort
LPO	Local Purchase Order
LSO	Local Service Order
LTA	Long term arrangement
MD	Minor Deviations
MDD	Moderate Deviations
MDDD	Major Deviations
MDONK	Ministry of State for Development of Northern Kenya and other Arid Lands
N/A	Not Applicable
NCB	National Competitive Bidding
ONT	Open National Tender
PC	Procurement Committee
PE	Procuring Entity
PI	Proforma Invoice
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
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

This report presents the findings of the procurement review of the Ministry of State for Development of Northern Kenya and other Arid Lands (MDONK), carried out from 12 April 2010 to 18 May 2010. The main objective of the exercise was to review the status of the Ministry's procurement, contracting and implementation processes and systems, in order to determine the Ministry's level of compliance with the Public Procurement and Disposal Act 2005 and the associated regulations, circulars, directives issued by PPOA, and generally accepted principles of good practice. Consideration was also given to the relationship between procurement and overall service objectives of the MDONK.

The review considered performance of procurement functions for the period 1 July 2008 - 30 June 2009. The review procedures performed included the examination of selected samples of the open tenders, restricted tenders, direct procurement, request for proposals, and request for quotations. The review also considered the disposal proceedings undertaken by MDONK during the period.

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

The fieldwork included an examination of the files and documents pertaining to the MDONK's procurement systems and processes and, where appropriate, was supplemented by discussions with the key persons involved in the functions related to procurement. The work was then finalized in consultation with the Accounting Officer, members of standing committees, Head of Procurement Unit and other persons involved in management and oversight of the procurement functions.

The team also reviewed the implementation of the findings and recommendations of prior internal and KNAO audit reports carried out in 2008. The team observed that the Ministry is adequately implementing the recommendations of these prior assessments and audit reports that relate to procurement functions.

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

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

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

- The tender, procurement and evaluation committees have been established in accordance with the regulations;
- Procurements are not split to evade the appropriate procurement method;
- Advertisement indicate the closing date, and time ,with an invitation to bidders to attend the bid opening;

- Tender opening procedures are carried out in accordance with regulations;
- There is a standing list of registered suppliers;
- MDONK uses open tendering as the main procurement method and adequately follows the requirements of the regulations. Open tendering (both OIT and ONT) together account for some 68% of procurement expenditure;
- MDONK has taken such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to participate;
- Fair and impartial procedures were in place in relation to receiving and opening of tenders;
- A secure facility for the receipt of tenders has been provided by MDONK;
- The evaluation criteria are the same as those in the tender document and conform with the requirements; and
- The termination of procurement proceedings have been done in accordance with the PPDR.

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

- The PU-HQ is not performing all their functions as stipulated in the regulations satisfactorily;
- Procurement Committee is not submitting their quarterly reports to Tender Committee;
- Absence of an Award Letter in procurement file;
- Absence of authorisation date of LPO;
- 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 Request in the procurement file;
- Date of evaluation committee report or recommendation letter missing;
- Evidence of award by Tender Committee not in file;
- Goods or Services Received Note missing in file;
- Inadequate monitoring of contracts awarded;
- Incomplete procurement plan;
- Methods and criteria for selecting firms and for awarding contracts are not documented; and
- Records are available but not in the procurement file

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

- The consolidated procurement plan is not updated regularly;
- MDONK have 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 RFQ (currently 74 of the total number of procurement transactions) should be placed under framework contracts in order to obtain the better prices associated with large volume procurements and to reduce administrative costs;
- The prices of common user items have not been compared with the PPOA price index;

- Lack of evidence of commencement and completion certificates for complex dam projects in Marsabit;
- No tender committee authorisation for using direct procurement methods;
- Insufficient documented contract management procedures in place which monitor progress and conformity with the terms of contract;
- No schedules of duties for initiating, certifying and approving officers; and
- The Ministry does not file all procurement and disposal reports with PPOA as stipulated in the Regulations.

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

- There are two parallel Procurement Units handling similar procurement activities within same geographic areas;
- The Head of Procurement Unit and key staff with procurement responsibilities have not received sensitisation, advance and specialised training in PPDA, PPDR, and General Manual;
- The Disposal Committee had not been established, as there was no disposal undertaken during the period, though this omission has subsequently been rectified. It would be appropriate for the Ministry to review its disposal requirements on a regular basis and prepare an annual disposal plan, as required by Chapter 12 of the Public Procurement and Disposal General Manual;
- The tender evaluation reports are not dated and therefore it is not possible to ascertain whether or not the evaluation was done within the thirty days period required by the Act;
- There are no 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;
- The procurement publications are not placed in a central location that is accessible to all persons who want to refer to them;
- The PE undertook large procurement of works in Marsabit and Wajir amounting to Ksh 287,602,201.50 which are not linked to the Consolidated Procurement Plan;
- The Heads of User Departments have not submitted annual departmental plans to the Accounting Officer;
- There are no individual procurement plans for specialised and complex works and services as set out in the General Manual;
- Lack of official standard purchase requisitions for initiating procurement activities;
- Prequalification is not undertaken for works, goods, and services of complex and specialized nature in accordance with the Regulations. The aircraft leasing services are undertaken using Akarim Travel Agents and Charleston Travel agents instead aircraft leasing companies;
- The direct procurements are commenced without the approval of the TC;
- The state of procurement filing and contract documentation is very deficient. The procurement and contracting records are mostly fragmented among various files, departments and even between the Ministries;
- There are no comprehensive procurement files opened for all procurement activities;
- Each member of the technical evaluation committee has not evaluated independently from the other members prior to sharing his or her analysis;

- The PE is not adhering to the threshold matrix set out in the First Schedule for all its procurement proceedings and have used RFQ to procure furniture for the Minister, Assistant Minister and the Permanent Secretary's offices;
- There are no realistic estimates in all the internal memos used for initiating procurement processes;
- Direct procurement method is being misused in the Ministry. In the period under review the PE undertook 52 direct procurement proceedings of total value Ksh 55,011,394.00 for both GOK and donor funded procurement activities;
- There are no documented contract management procedures in place which monitor progress and conformity with the terms of contract;
- There is no schedules of duties for initiating, certifying and approving officers leading to inadequate and weak internal controls;
- There is insufficient staff awareness of updated publications, directives, manuals, and standard documents prepared and distributed by PPOA;
- The PE has not applied preference and reservations as provided in Section 39 of the PPDA;
- Contract agreements are not prepared for all tenders above Ksh 500,000.00 as required by section 7.5 (r) of the Public Procurement and Disposal General Manual;
- Payment terms of the MODK/4/2008-2009 set out in the contract was changed without the approval of Tender Committee;
- There is no documented complaints mechanism for handling bidders' enquiries and complaints; and
- The inspection and acceptance committee is not doing its work adequately as their reports do not relate to any delivery notes or invoices;

We recommend that the MDONK management put in place the following measures in order to reduce future non-compliance in the procurement functions in the Ministry:

- Integrate Government funded procurement functions, with the donor funded procurement in order to strengthen the MDONK's ability to promote planning, efficiency and coordination;
- Prepare and implement a comprehensive records retention and disposal schedule covering all categories of records as recommended in the Report on the Management of Records of the Ministry of State for Development of Northern Kenya and other Arid Lands and that conforms with the PPDA, Regulation and General Manual;
- Develop written operating systems and procedures for implementation of the Act and Regulations;
- Clarify accountability for project management and delivery of major projects by establishing a point person to manage the linkages across functional areas and between MDONK and its partners;
- Develop a procurement tracking schedule to support the better management of the community procurement function for the donor funded projects;
- All future procurement requests should be initiated through the consolidated procurement plan. The timing of both the PU's activities and the development of document content by others should be driven from this plan;
- Organise training of all management staff on sensitisation, advanced, and specialised aspects of procurement law and regulations;
- Introduce measurable mechanisms that promote value for money in its procurement of goods, works and services by ensuring that procurement is done in an open and

transparent manner and through the development of contracting arrangements that leverage the best value from suppliers and service providers;

- Reorganise procurement functions, processes and structures so that procurement decisions are not dominated by an individual or a small group of persons;
- Reassess current procurement and technical personnel for consideration as to internal skill, expertise, and capability. MDONK should review all upcoming scheduled both Government and donor funded procurements and establish whether there are certain skills that could be honed internally in the organization or whether they have to recruit new staff with adequate skills that would match the volume and complexity of the anticipated procurement. Working to increase and rely on internal skill sets will reduce the dependence on outside consultants, saving MDONK money and increasing the value and accountability of staff;
- Introduce standard tender documents and procurement forms for procurement processes and contracting;
- Compare all prices of common user items with the PPOA price index;
- Prepare and update Consolidated Procurement and Disposal Plan regularly;
- 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 of the law and regulations.

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

The team's overall assessment of the compliance level for Ministry of State for Development of Northern Kenya and other Arid Lands is calculated to be 42.1% (against the minimum threshold of 60%) with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions. This is below the minimum acceptable level of compliance of 60%. Thus, the overall performance of the Ministry in procurement and disposal is not satisfactory and has significant weaknesses that need to be addressed.

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

1 INTRODUCTION

1.1 Purpose

This procurement review is one of eight reviews to be carried out by ARD, Inc as part of the Reforming the Public Procurement System Phase II project. The Ministry of State for Development of Northern Kenya and other Arid Lands (MDONK) 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 13 January 2010 to discuss the scope of the review, the review plan, the reviewers' expectations, access to documentation and other administrative issues. Mr M. J. Juma, the Ag. Director General, PPOA led the joint ARD/PPOA review team to the entry meeting. Mr Mwaluma, the Deputy Secretary, and Chairman of Tender Committee led the Ministry team on behalf of the Accounting Officer. The Ministry team comprised of 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 the contractor shall cooperate with and assist whoever does such an inspection.

1.3 Role of the PE

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

1.4 Objectives

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

The specific objectives of this procurement review were:

- To verify whether the procurement and contracting procedures, processes and documentation followed by MDONK were in accordance with the Public Procurement Act and the associated Regulations;

- To establish MDONK adherence to the generally accepted principles of economy and efficiency, equal opportunities, transparency, integrity and fairness and promotion of local industry;
- To determine technical compliance, physical completion and price competitiveness of each contract in the selected representative sample;
- To review the capacity of MDONK to handle procurement efficiently; comment on the quality of procurement and contracting, and identify reasons for delays, if any;
- To establish whether adequate systems are in place for procurement planning, implementation and monitoring and whether reliable documentation is maintained, as required by the regulations;
- To establish whether remedial actions taken on recommendations made in the previous reviews have been implemented successfully;
- To make recommendations for improvement in an action plan which will be followed up within a specified time frame to establish whether these improvements have been implemented;
- To determine the extent to which MDONK has provided value for money in executing its procurement functions;
- To assist in clarification of areas where MDONK may have misunderstood the requirements of the legislation; and
- To determine challenges faced by the MDONK in the implementation of the Act.

1.5 Expectations

The review expected:

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

1.6 Procurement Profile

The MDONK undertook the 242 procurement proceedings of total value Ksh 430,326,722.80 during the period under review.

Procurement method	Number	Value(Ksh)
ICB	2	16,979,298.80
ONT/NCB	5	289,849,286.00
RFQ/Shopping	176	48,979,608.00
DP	52	55,011,394.00
LTA	6	16,783,886.00
QCS	1	2,723,250.00
	242	430,326,722.80

1.7 Sample

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

Item	Tender	Description	Method	Category	Value	Contractor
1	ALRMP II/HQRS/1/2 008-09	radio equipment	ICB	Goods	10,724,298.80	Media Max Ltd
2	ALRMP II/HQRS/3/2 008-09	motor vehicle and motorcycle	NCB	Goods	2,247,084.00	Toyota East Africa Ltd
3	ALRMP II/HQRS/RF P/1/2008-09	Consultancy	QCS	Services	2,723,250.00	Deloitte Touche
4	ALRMPII/HQRS/2/2008-09	Supply of computers	ICB	Goods	6,255,000.00	Compuswift Business
5	ALRMPII/HQRS/RFP/3/2 008-09	Consultancy of Baseline data	Direct	Services	22,904,760.00	ILRI
6	MDONK/01/08-2009	Guyo Dam	ONT	Works	30,659,090.00	Frontier Eng. Co
7	MDONK/01/08-2009	Registration of Suppliers	ONT	Services	0.00	Various
8	MDONK/02/08-2009	Gortu Gardi Dam	ONT	Works	44,971,613.50	Midroc Drilling Co
9	MDONK/03/08-09	Suyen II Dam	ONT	Works	59,753,072.00	Nakuru Express Supplies
10	MDONK/04/08-2009	Wajir II Dam	ONT	Works	152,218,426.00	Reliance City Housing Co
11	MDONK/12/08-2009	CLEANING SERVICES	RFQ	Services	90,380.00	Bryron Truskett
12	MDONK/13/08-2009	Telecom Equipment	RFQ	Services	195,450.00	Adriso Gen Merchants
13	MDONK/20/08-2009	Server	RFQ	Goods	Terminated	
14	MDONK/25/08-2009	Uniforms	RFQ	Goods	Terminated	
15	MDONK/36/08-2009	Flower arrangement	RFQ	Services	67,860.00	Muamystic
16	MDONK/52/08-2009	Office Equipment	RFQ	Goods	486,500.00	Nality Supplies
17	MDONK/05/08-2009	Desks	RFQ	Goods	0.00	
18	MDONK/08/08-2009	Furniture	RFQ	Goods	7,263,000.00	
19	MDONK/27/08-2009	T-shirts	RFQ	Goods	1,100,000.00	
20	MDONK/34/08-2009	ICDL Training	RFQ	Services	Terminated	

Item	Tender	Description	Method	Category	Value	Contractor
21	ALRMPII/H QRS/093/2008	Polo T shirts	RFQ	Goods	375,000.00	Sweng Enterprises
22	ALRMPII/H QRS/21/2008	T-Shirts	RFQ	Goods	495,900.00	Bingwa dIST
23	ALRMPII/H QRS/10/2008	Printer	RFQ	Goods	Terminated	
24	ALRMPII/H QRS/49/2008	Fuel	RFQ	Goods	454,350.00	Stiff Enterprises
25	ALRMPII/H QRS/59/2008	Laptops	RFQ	Goods	490,000.00	
26	ALRMPII/H QRS/61/2008	Charter of planes	RFQ	Services	1,836367.00	ALS
28	ALRMPII/H QRS/76/2008	GPS	RFQ	Goods		
29	ALRMPII/H QRS/87/2008	Curtains	RFQ	Goods		
30	ALRMPII/H QRS/89/2008	Air conditioner	RFQ	Goods		
					345,311,401.00	

1.7.1 Sample Profile

Description of proceedings	No of transactions	Value of proceedings
Total procurement proceedings	242	430,326,722.80
Sample of procurement	30	345,311,401.00
Percentage of sample to total procurements	12.3%	80.3%

The review team did not visit any of the MDONK physical facilities outside the Headquarters due to insecurity on the road to Marsabit and Wajir.

The MDONK did provide the review team with inventory reports to determine if the PE does conduct periodic and annual stocktaking in accordance with the PPDR.

1.8 Methodology

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

1.9 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 MDONK over the review period were assessed using the criteria in Chapter 5 of this report.

Other background documents used by the team included but were not limited to the following: PPDA 2005, PPDR 2006, General Manual, Post Procurement Review Report Aide Memoire, and prior internal and external audit reports. The review team observed that the MDONK staff had not undergone sensitization training organised by PPOA/ARD, on aspects of Public Procurement management including the implementation of PPDA and PPDR.

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

	Title	Name
1	Accounting Officer	Ngari M.W (Ms)
2.	Chairman of TC	D. Mwaluma
3.	Head of PU	F.Gitobu
4	Head of User department	Alex Mwangi
5	Chief Finance Officer	Kennedy Nyamao

We were not able to meet the following despite several requests.

	Title
1	Chairman of PC
2.	Member of Inspection & Acceptance
3	Chief Accountant

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 MDONK.

1.10 Key Performance Indicators and rating criteria

The 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** - Procurements where serious weaknesses could cause material financial, regulatory or reputational risks warranting immediate attention by senior management;
- **Moderate Risk** - 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** 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,” if there were sufficient evidence of management action to rectify the deviation and to monitor compliance.

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

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

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

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

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

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

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

1.11 Limitation of scope

Our scope was limited by the following:

- Some records, data and documentation relating to the procurement processes selected were not made available and others took time to retrieve; and
- Lack of documented internal control manuals relating to initiation, certification, and approvals at various levels.

2 ORGANIZATION OF MDONK

2.1 Mandate

The Ministry of State for Development of Northern Kenya and other Arid Lands was established in April 2008 in line with Agenda 4. Its purpose is to fast-track the development of the ASALs, reducing inequality and releasing the region's potential.

The Northern Kenya and other Arid lands Development Policy includes among other things:

- Infrastructural Development;
- Planning and encouragement of townships along main roads;
- Livestock Development;
- Livestock Industries;
- Water supply;
- Natural Resources Management;
- Mineral Resources Exploration and development;
- Tourism Development;
- Human Resources Development;
- Irrigation Development; and
- Tapping of Solar and Wind Energy.

The Ministry oversees the Arid Lands Resource Management Project II (ARLMP II) which is charged with:

- Overseeing implementation of Community driven development;
- Sector based investments and micro projects implementation;
- Natural resource and environment management; and
- Drought management and food security.

2.2 Vision of MDONK

The vision of the Ministry is:

“A secure, just and prosperous Northern Kenya and other Arid Lands where people achieve their full potential and enjoy high quality of life.”

2.3 Mission of MDONK

To provide policy direction and leadership in planning, implementation and coordination of development in Northern Kenya and other Arid Lands

2.4 The organisation of MDONK

Not provided by the Procurement Unit.

2.5 Operational income and expenditure

Description	2008-2009
Development	2,395,400,000.00
Recurrent expenditure	228,700,00.00
Total Budget	2,624,100,000.00
Procurement Expenditure	430,326,722.00

Source – MDONK *Expenditure estimates budget revision*

Note: Budget includes Arid Lands Resource Management Project contribution of Ksh 1,763,000,000.00.
The actual expenditure on procurement is approximately 16% of total planned operational income.

3 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

3.1 Functions of Accounting Officer

Finding

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

- Establishing procedures to provide for the making of decisions, on behalf of the public entity, relating to procurement as required by Section 26(1) of the Act;
- Ensuring that all procurement plans defined in the Regulation and General Procurement Manual are prepared as required by Regulation 7 (d); and
- Ensuring that the PE properly documents procurement and disposal proceedings and manage records in accordance with Regulation 7 (e).

The Accounting Officer was supportive of the procurement review and has started implementing the recommendations made during the review.

Recommendations

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

Response:

3.1.1 Number of trained persons and sensitized to the Procurement Procedures

Findings

The PE does not liaise with PPOA for sensitisation, advanced, and specialised training in the Act and the associated regulations particularly in General Manual, procurement planning and newly developed procurement guidelines issued by PPOA. PPOA has not so far invited the PE for any training workshops being carried out by ARD/PPOA.

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

Recommendation

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

- Sensitization of new personnel of the PE in requirements of the procurement law and regulations;
- Advanced training to improve skills of senior procurement practitioners in
 - Procurement planning;
 - Writing specifications;
 - Qualifying potential suppliers for complex and specialized services;
 - Evaluating bids; and

- Contract management;
- Specialized aspects of procurement in areas of:
 - Records management;
 - Framework contracting;
 - ICT Manual;
 - Consultancy manual; and
 - Works manual.

The PE should improve liaise with PPOA to link the Ministry's training strategy with PPOA training priorities.

Response

3.2 Functions of Procurement Unit

Findings

MDONK established the PU in accordance with the PPDA and PPDR with a total staff of six officers. Mr P.M.Gitobu, the Head of PU is responsible for day-to-day management of the Procurement Unit and is the Secretary to the TC.

The PE has a parallel specialised procurement unit led by Mr S.V.N. Wambugu and is responsible for carrying out procurement functions for the Arid Resource Management Project funded by IDA/World Bank. The procurement activities of the Arid Lands Resource Management Project Phase Two (ALRMP II) is carried out according to Schedule 3 of the Development Credit Agreement (DCA) which was signed on 26th June 2003 between the International Development Association (IDA) of the World Bank and the Government of Kenya. The DCA requires that the Project apply the Bank's *Guidelines for Procurement under IBRD Loans and IDA Credits* and *Guidelines for Selection and Employment of Consultants* dated May 2004 as revised in October 1, 2006. Where there is a conflict between the Government regulations and the World Bank Guidelines the Bank's guidelines prevail.

The World Bank requires that before it's concurrence of procurement decision is sought, after following the World Bank Procurement and Consultant's Guidelines, the Project obtains approval from the designated procurement decision making body. They therefore submit their applications to the Ministerial Tender Committee for adjudication before seeking concurrence from the World Bank.

The World Bank did carry out the Implementation Review for the Arid Resource Management Project last year together with Post Procurement Review. The PPOA/ARD review team did not see the Post Procurement Review Report. From the *aide memoire* made available to the review team, the donors are willing to extend their funding to continue this project. Three other development partners namely DANIDA, DfID, and EU in addition to World Bank have shown interest in joining a sector wide approach, both to address the long-term development of the arid and semi arid region of Kenya as well as to support the institutionalisation of the drought management system.

In order to benefit from this expanded funding the PE has to reorganise the PU so that it has the adequate staff to mitigate the challenges observed by the Mission review namely no strict adherence to the procurement plans, ensuring that all procurements are linked to the approved procurement plan, insufficient capacity of the implementing agency to follow and implement the procurement functions.

The senior staff of PU are all members of KISM

	Name	Designation	Qualifications
1	P.M.Gitobu	Head of PU	B.A,MKISM
2	M.W.Njoroge (Ms)	Asst Head of PU	MKISM
3	C.Lugongo (Ms)	Procurement Officer II	MKISM
4	P.Thairu	Procurement Asst.	MKISM

The team noted the following weaknesses in the PU:

- Does not maintain comprehensive procurement and disposal filing systems and records in accordance with Section 45 of PPDA and Regulation 34 of PPDR;
- Does not update the consolidated procurement plans to include changes;
- PU does not prepare disposal plans in accordance with Regulation 8(3)(w);
- Does not prepare contract documents, in line with the award decision in accordance with Regulation 8(3)(k)and General Procurement Manual
- Does not prepare contract variations and modifications documents, in line with the award decision in accordance with Regulation;
- Does not advise the procuring entity on aggregation of procurement to promote economies of scale in areas of the stationery and office supplies;
- While the unit maintains standing lists of registered tenderers required by the procuring entity, there is no evidence that the list is updated annually as provided in Regulation 8(3)(a);
- The PU does not ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect to giving the requests for quotations as required by Regulation 59(2)(c);
- Does not prepare quarterly reports on the awards by Procurement Committee as required by Regulation 10(2)(n);
- Does not monitor contract management by User Department (Regulation 8(3)(t)); and
- Does not conduct periodic and annual stock taking in accordance with Regulation 8(3)(aa).

Recommendation

- PU should improve on all the identified deficient areas of its functions;
- Integrate Government funded procurement functions with the donor-funded procurement in order to strengthen the MDONK’s ability to promote planning, efficiency and coordination. Some of the significant advantages of unified Procurement Unit are:
 - Definite economies of scale resulting from the pooling and integrated overall planning of the common requirements of various departments and similar activities;

- Development of standard specifications for the common commodities purchased, resulting in more uniform quality and less variety of materials, services, supplies, and equipment;
- Better budgetary and financial control of Ministry's expenditures on procurement;
- Development of qualified personnel through specialization in procurement;
- Reduction in administrative costs through elimination of multiple procurement staff, records and procedures;
- Reduction in inventories because of closer supervision regarding the quantity of materials on each purchase order and greater utilization of the available supply of materials through transfers and substitutions;
- Prompt delivery and better service by suppliers, resulting from more careful selection and better follow-up systems; and
- Benefits of competition, because of improved market studies and other research.

Response:

The Procurement Unit of Arid Lands Resource Management Project Phase Two (ALRMP II) was deliberately formed in early 2003 as part of the negotiations between the World Bank and the Government. During negotiations in May 2003 it was agreed that for the project to be effective there would be a Project Coordinating Unit reporting directly to the Permanent Secretary. The Project was then in the Office of the President, Provincial Administration and Internal Security. The Project Supplies and Procurement Officer is one of the officers in the Project Coordination Unit. He is responsible to the National Project Coordinator for the control and management of the supplies and procurement function both at the headquarters and in 28 arid and semi arid districts. The procurement staff, like all other Project staff, are recruited from various ministries and other organizations and are seconded to the Project and employed on contract basis. They will revert to their parent ministries or organizations when the project closes.

During the negotiations for the Arid Lands Resource Management Project Phase Two it was agreed that key staff acceptable to the World Bank will be in place, and the procurement staff will implement the Procurement Plan, whose draft was presented during the negotiations. The ALRMP II comes to a close on 31st December, 2010. The reason for the Project to have its Project Coordination Unit was to fast track decision making processes since the Project have predetermined deliverables and time-frame in which to implement its activities according to the Project Implementation Plan (PIP).

The Arid Lands Resource Management Project Procurement Unit submits its applications to the Ministerial Tender Committee for adjudication and it's not a parallel specialized procurement unit. It was created to deal with Project specific procurement activities and has been in existence since 1993 under various ministries like, Office of the President (Provincial Administration and Internal Security), Office of the President (Special Programmers) and currently in the Ministry of State for the Development of Northern Kenya and Other Arid Lands.

3.3 Tender Committee

Findings

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

Name	Designation
D.M.Mwaluma	Chairman
J.A.M.Nyakawa	Member
P.Musichi	Member
J.Ndungu	Member
P.Wanjohi	Member
P.Obunde	Member
J.G.Dido	Member
P.Gitobu	Secretary

The review team observed the following weaknesses and deficiencies:

- The PE did not appoint alternate members for the TC for the period under review but this anomaly has been rectified in the current financial year;
- There is no evidence that the Tender Committee verified the availability of funds set aside for the procurement activity before recommending the award of the contract as required by Regulation 10(2)(d);
- There is no reference of the budget line, and approved funds availability in the minutes.
- The TC did not verify that tender no MDONK/04/08-2009 for precast concrete pipes were procured at the prevailing market price therefore contravening Section 30 (3) of PPDA
- Extracts of TC minutes are not filed in the procurement file;
- There was no external observer invited for the following tenders as required by Regulation 12(8) and 12(9);

Tender	Description	Method	Cate	Value	Contractor
MDONK/03/08-2009	Suyen II Dam	ONT	Works	59,753,072.00	Nakuru Express Supplies
MDONK/04/08-2009	Wajir II Sewerage	ONT	Works	152,218,426.00	Reliance City Housing Co

- There is no evidence TC verified that market prices were not exceeded;
- Does not review the quarterly reports on quotations that have been awarded by the Procurement Committee in accordance to Regulation 10(n); and

Recommendation

The identified weaknesses in TC procedures should be addressed.

Response

At the beginning, the ministry had a limited number of staff. However the Ministry has now enough staff and alternate members to the Tender Committee have been appointed.

3.4 Functions of the Procurement Committee

Findings

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

Name	Designation
R.Nderitu	Chairman
C.Lugongo	Secretary
M.Njoroge	Member
J.Chepkorir	Member
M.Njoroge	Member
R.W.Mungai	Member
S.V.N.Wambugu	Member
J.Onyari	Member
A.Marenye	Member
G.Kmunguyi	Member

The review team was not provided with the PC files and therefore was not able to comment on the functions of the Committee.

3.5 Functions of the Disposal Committee

Findings

The PE had not appointed a Disposal Committee as required by Section 128 of the Act during the period under review but it is now appointed and functional. There were no disposal proceedings undertaken during the period under review.

Recommendations

The MDONK should ensure that the Committee conducts its meetings in accordance with Section 128 (2).

Response

3.6 Functions of Evaluation Committee

Findings

One evaluation committee was established for the following four tenders within the threshold of the Regulation 16 for the purposes of carrying out the technical and financial evaluation of the tenders:

TENDER	DESCRIPTION	METHO D	CAT.	VALUE (Ksh)
MDONK/01/08-09	Guyo Dam	ONT	Works	30,659,090.00
MDONK/02/08-09	Gortu Gardi Dam	ONT	Works	44,971,613.50
MDONK/03/08-09	Suyen II Dam	ONT	Works	59,753,072.00
MDONK/04/08-09	Wajir II Dam	ONT	Works	152,218,426.00

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

- The evaluation reports were not dated therefore the review team could not ascertain that they were concluded within 30 days as set out in the Regulation 16(5)(b); and
- There were no records to ascertain 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).

Recommendation

The identified weaknesses in procedures should be addressed to conform with the Act and Regulations.

Response

It's true that individual files were not used. However the evaluation report was signed by all members. Future evaluations will have individual files and scores.

3.7 Functions of Inspection and Acceptance committee

Finding

There is one standing committee appointed for all inspection of all activities under Regulation 17.

Name	Designation
P.Koros	Chairman
P.Thairu	Member
E.Okwayo	Member
F.Nyamai	Member

The following weaknesses were found in the functions of the committee:

- The verification report for the pre-cast pipes does not mention the Delivery note nor the Proforma invoice number from the supplier;
- Does not ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- Does not issue interim or completion certificates or Goods Receipt Notes ; and
- The team did not find any certificate of completion of project or consultancies issued by the inspection and acceptance committee as provided by Regulation 17(4) (a).

Recommendations

- The inspection and acceptance committee members should rectify the weaknesses observed; and
- While the review team noted that the standard *Inspection and Acceptance Report Form* would shortly be released by PPOA, the Procurement Unit should meantime develop interim certificates that conform to the requirements of the PPDR, to be certified by the inspection and acceptance committee members after inspection of the complex goods, works, and services.

Response

The inspection and acceptance report form will be used once released.

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

Findings

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

Recommendations

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

Response

It's true that most of the mentioned manuals were not available in the Ministry. However there are manuals already given from PPOA. Operational manuals are in the process of being incorporated.

3.9 Threshold matrix and segregation of Responsibilities.

Findings

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

The procurement MDONK/08/08-2009 for Purchase of Furniture of Ksh 7,685,500.00 was above the threshold allowed for RFQ method (Regulation 59(1), and First Schedule of the Regulation).

Recommendations

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

Response

It's true that a single quotation was raised for all these items. In future separate quotations will be raised for different line items as per the first schedule of PPOA.

3.10 Poor record keeping and filing systems of the procurement documents

Findings

The procurement data provided has several gaps could not provide sufficient procurement expenditure analysis information including:

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

The files sampled are not complete, as they do not contain all the documents used in a procurement activity as provided in the Regulation 34(3) including the following documents:

- Procurement initiation requisition;
- All internal and external correspondence on the procurement;
- Bid documents;
- Bids received;
- Bids analysis or evaluation and award of the contract; and
- Information on the award of the contract and particulars of the contract.

The procurement records were fragmented and different documents relating to procurement are kept by different offices, e.g. User departments, Finance, and Accounts.

Recommendation

- The PE should strengthen the process of collecting, collating classifying and analyzing procurement expenditure data with the purpose of reducing procurement costs, improving efficiency and monitoring compliance. This will also 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?
- The Procurement Unit should upgrade the filing systems and records management to conform to the provisions of Section 45, Regulation 34(3), General Manual, Procurement Records Management Procedures Manual and recommendations of in the associated *Report on the Management of Records of the Ministry of State for Development of Northern Kenya and other Arid Lands*, prepared by ARD; and
- The PU should ensure that a complete procurement 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

It's true that the Ministry maintained a single file for all procurement processes carried out within the financial year. This has however been rectified and files are being opened for specific procurement process.

3.11 Procurement Planning

Findings

The Ministry has two separate consolidated procurement plans for the Government funded procurements and for the donor funded ALRMP procurements. The former is prepared by the mainstream PU as required by PPDA, while the special PU responsible for the ALRMP project prepares the latter in accordance with IDA regulations.

The review identified the following weaknesses in procurement planning prepared by the mainstream PU:

- The procurement plan is not linked the budgetary and financial framework in accordance with Regulation 20(2); and Chapter 6.2 of the General Manual;
- The Consolidated Procurement Plan does not cover the following sampled major procurements undertaken by the Ministry during the period under review:

Tender No	Description	Method	Category	Amount
MDONK/01/08-2009	Guyo Dam	ONT	Works	30,659,090.00
MDONK/02/08-2009	Gortu Gardi Dam	ONT	Works	44,971,613.50
MDONK/03/08-09	Suyen II Dam	ONT	Works	59,753,072.00
MDONK/04/08-2009	Wajir II Dam	ONT	Works	152,218,426.00
Total				287,602,201.50

The PE explained that these dams were conceived in the first Strategic Plan in the first year of the establishment of the Ministry. There was no capacity to develop a procurement plan. The dams were considered flagship project to fast track the activities in the arid land policy.

- There are no individual procurement plans for general services, consultancy services procured KIPPRA and civil works for the three earth dams as provided in the General Manual Chapter 6.5;
- Multi-annual, rolling work plans for procurement are not prepared by each User Department and there is no indication whether the requirements should be procured under single-year or multi-year arrangement (Regulation 20(3));
- There is no schedule of the planned delivery, implementation or completion dates for all goods, works, services and consultancies sampled;
- There is no indication of which items should be aggregated for procurement as a single package or for procurement through any applicable arrangements for common user items to derive savings;
- There is no indication of the rules applicable to the procurement: in the case where a procurement is not subject to the Public Procurement and Disposal Act and Regulations but to specific rules dictated by an international agreement as in the case of a Donor funded procurement taking in consideration that the Ministry is largely funded by donors;
- There is no indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements;
- There is no evidence that the procurement plans are regularly updated to accommodate changes during the year; and
- The review team were not provided with user departmental annual procurement plans, which were submitted and approved by the Accounting Officer at least thirty days before the close of each financial year (Regulation 20(4)).

Recommendation

- Planning is essential for effective procurement. Procurement planning entails more than the development of estimates for various goods, civil works, and services. It combines the legal and institutional frameworks within which procurement must be carried out. The PE should address all the weaknesses identified and develop procurement plan for 2010-2011 that conforms with the requirements of the Act, associated regulations and General Manual;
- The Procurement Unit should not commence any procurement activity, which is not in the procurement plan;
- 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 preparation and updating of the procurement plan in regular progress reports (giving status of procurement progress, reasons for delay and revised procurement schedule).

Response

During the period under review, the Ministry was unable to have planned procurement plans since the Ministry had just been created. Currently the Ministry is preparing comprehensive procurement plans.

3.12 Purchase requisitions

Findings

- The PE does not initiate procurement proceedings using the standard purchasing requisition forms as provided for by Regulation 22(1). Procurement processes are initiated by internal memos from user departments, which do not indicate that they have been originated by the authorized official and approved by the official within the threshold for procurement being considered (First Schedule of PPDR);
- The PE did not provide any support document of how the procurement for works for all the following procurements were initiated:

Tender No	Description	Method	Category	Amount
MDONK/01/08-2009	Guyo Dam	ONT	Works	30,659,090.00
MDONK/02/08-2009	Gortu Gardi Dam	ONT	Works	44,971,613.50
MDONK/03/08-09	Suyen II Dam	ONT	Works	59,753,072.00
MDONK/04/08-2009	Wajir II Dam	ONT	Works	152,218,426.00

- There is no budget line indicated on the memos to show source, allocation, and availability of funds in the budget for particular procurement as required by Section 26(3), or authority to incur expenditure for the purchases requested; and
- Not all memos except MDONK/27/08-2009 indicate the estimated value of the goods, works or services are realistic and based on up-to-date information on economic and market conditions as provided in Regulation 22 (2).

Recommendation

- The review team noted that the Standard Purchase Requisition Form is expected to be released by PPOA shortly. In the meantime, the Procurement Unit should develop an interim purchase requisition form that conforms to the requirements of the PPDR, General Procurement Manual and directives or guidelines from PPOA;
- The Standard Purchase Requisition Form for works, which initiates the procurement process for procurement for works, should be in accordance with the Procurement Works Manual which has been prepared by PPOA and should specify as a minimum the following information:
 - State the objective of the works;
 - Establish the preliminary specifications;
 - Confirm budget availability;
 - Indicate authority for the procurement; and
 - Allocate a unique Procurement Number to be used for procurement tracking and monitoring;
 - 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 Ministry does not have standard purchasing requisition form. This is because none has been provided by the relevant body. However there are several requisition forms which are dully authorised by the accounting officer. Meanwhile the ministry is liaising with the relevant body to have a Standard Purchasing Requisition Form (SPRF).

3.13 Prequalification and registration of suppliers

Findings

- There is an approved standing list of registered suppliers in place developed during the period under review as required by Regulation 8(3)(a) but there was no evidence that the standing list is being updated annually to allow new bidders to be included and to remove those who are no longer qualified;
- There was no evidence that the entity undertook evaluation of the suppliers to ascertain:
 - The person being qualified has the necessary qualifications, capacity, experience, resources, equipment and facilities to provided the goods and services if awarded;
 - The person has legal capacity to enter into legal contracts;
 - The person is not debarred from participating in procurement proceedings under Section 115 of the Act and Regulations 90 and 91;
 - The person is solvent; and
 - The Ministry is not precluded from entering into the contract with the person under Section 33 of the PPDA.
- The review team observed that Akim Agencies and Charleston travel agents who are travel agents are being used to solicit bids for chartering aeroplanes by the mainstream PU while the specialised procurement unit is hiring planes directly from the leasing companies;
- There is no prequalification undertaken for specialised, complex, and high value services required by the entity for solicitation of restricted goods or services.

Recommendation

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

Response

The evaluation of prequalified suppliers is set out in the documents. However when sending out quotations to the prequalified bidders, performance of the eligible bidders is considered.

3.14 Specifications

Findings

- The User Departments did not prepare the terms of reference for the cleaning services for MDONK/12/08-2009;before submitting the request to the Procurement Unit; and
- The PE does not use clear, objective, neutral and functional or technical specifications for all its requirements. For the open tender for pre cast pipes, the PE did not indicate the lengths of the pipes besides the diameter. They did not indicate that the pipes being ordered comes with rings as required by BIS 5911 which was quoted by User department.

Recommendations

The PE should organise training in specifications development for all persons involved in procurement related functions.

Response

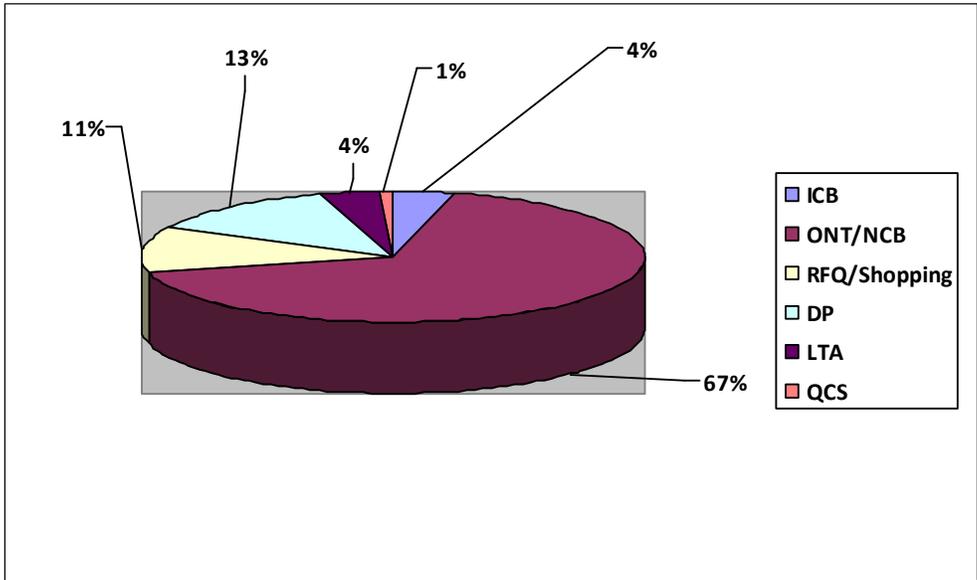
3.15 Choice of procurement method

Findings

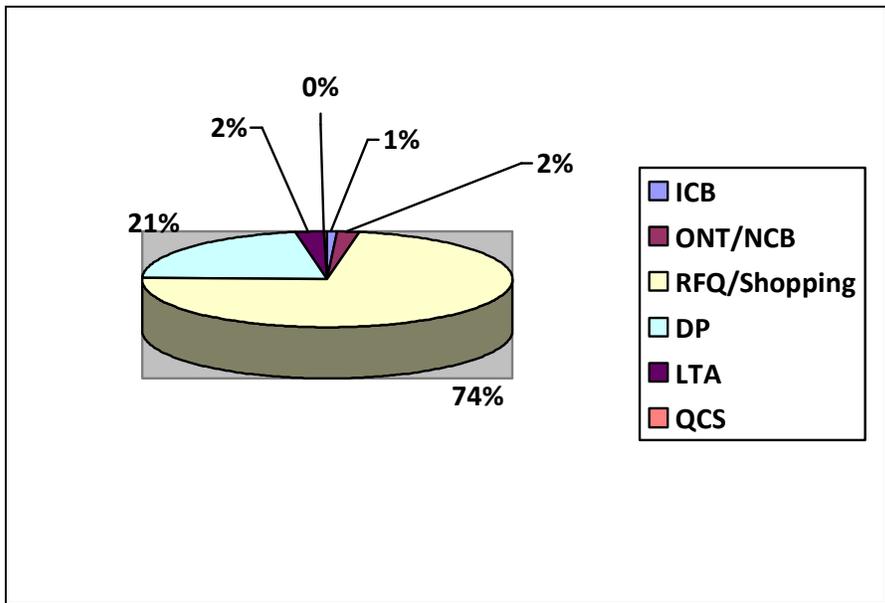
The PE employs various procurement methods as required by PPDA and IDA procurement rules and regulations.

Procurement method	Number	Value(Ksh)
ICB	2	16,979,298.80
ONT/NCB	5	289,849,286.00
RFQ/Shopping	176	48,979,608.00
DP	52	55,011,394.00
LTA	6	16,783,886.00
QCS	1	2,723,250.00
Total	242	430,326,722.00

Open tendering is the main procurement procedure as stipulated in the PPDA at 67% of the expenditure on procurement Government funded and donor-funded projects for the period under review.



The team observed that many common user goods and services currently being procured on RFQ/Shopping methods take a lot of the level of effort, currently standing at 74%.



3.16 Direct procurement

The PE undertook 52 direct procurement transactions of total value Ksh 55,011,394.00 without obtaining the approval of the TC for choice of procurement methods, namely direct in accordance with Section 29(3)(a); (See Appendix 8.1).

Recommendation

The PU should seek the TC approval for the choice of direct and restricted tendering method before using the methods as required by PPDA.

Response

3.17 Preference and reservations

Findings

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

Recommendations

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

Response

3.18 Preparation of tendering documents

Findings

The preparation of tender documents for the work projects for the MDONK/01/2008-2009 MDONK/02/2008-2009, MDONK/03/2008-2009, and MDONK/04/2008-2009 for the dams did not start after the Bill of Quantities have been completed and approved by the end user as set out in Chapter 4.3.8 of the Procurement Manual for Works.

The appropriate standard tender documents as prescribed in Section 29(4) of PPDA, Third Schedule of the PPDR and General Manual are not used in all procurement processes reviewed. The PE has not adopted the following key standard bidding documents as specified in the Third Schedule of the Regulations namely:

- Request for quotation form;
- Procurement requisition form;
- Tender register;
- Application for adjudication of tenders/quotation;
- Standard tender document for request for proposals
- Standard tender document for procurement of general services
- Contract Agreement for goods;
- Contract agreement for consultancy services;
- Contract agreement for general services;
- Standard tender document for maintain services;
- Standard tender document for small works;
- Standard tender documents for management contracts;

- Application for adjudication of tenders/quotation; and
- Standard tender documents for preference and reservations.

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 how to handle the documents required by Regulations but not operational.

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

Recommendations

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

Response

The Ministry will adopt the standard bidding documents and procurement forms that are relevant to procurement and disposal procedures once the PPOA revision of these documents and forms have completed.

3.19 Advertisement of tender opportunities

Finding

- The PE has taken reasonable steps to bring the invitation to open tender to the attention of those who may wish to submit tenders, in accordance with Section 54 of PPDA; and
- Advertisements indicate the closing date and time, with an invitation to bidders to attend the bid opening.

3.20 Modification to tender documents

Finding

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

3.21 Submission and Receipt of Bids

Finding

- There is a secure facility for the receipt of tenders provided at the designated tender location, with two locks with keys for each lock kept by a different officer; and

- Bid opening procedures are carried out in accordance with Sections 60 and 89 of PPDA and Regulations 45 and 61.

3.22 Formation of Contracts

Findings

- There were no records to ascertain that notifications of award letters were sent out to all the successful bidders in accordance with Section 67 of PPDA and copies filed in the procurement file;
- There were no records to ascertain that the unsuccessful bidders were notified at the same time when the notification of award was sent out and copies recorded in the procurement file;
- The release of security bonds was not recorded;
- The PE did not prepare formal contract agreements for the following tenders in contravention of Section 68 (2 and 3) and Chapter 7 of General Manual

Tender	Description	Method	Category	Amount(Ksh)
MODNK/ONT/04/08-2009	Wajir Sewerage	ONT	Goods	152,218,426.00
ALRMPII/HQRS/RFP/3/2008-09	Consultancy	Direct	Services	22,904,760.00
MDONK/01/08-2009	Guyo Dam	ONT	WORKS	30,659,090.00
MDONK/02/08-2009	Gortu Gardi Dam	ONT	WORKS	44,971,613.50
MDONK/03/08-09	Suyen II Dam	ONT	WORKS	59,753,072.00
720535	Vehicles	LTA	Goods	12,026,390.00
ALRMP II/HQRS/001/08-2009	Radio equipment	ICB	Goods	10,724,298.80
A817200	5No. Toyota corollas	DP	Goods	10,614,375.00
ALRMPII/HQRS/002/08-2009	Computers	ICB	Goods	6,255,000.00
720502	Landrover 110	DP	Goods	3,885,000.00
720503	Toyota Hilux	LTA	Goods	3,087,500.00
A817198	Toyota bus	DP	Goods	3,024,449.00
A817197	Landcruiser p/up	DP	Goods	2,734,099.00
ALRMP II/HQRS/003/08-2009	Vehicle	NCB	Goods	2,247,084.00
	Laptops	„	„	2,125,000.00
	Copiers	“	“	1,890,000.00
ALRMP II/HQRS/061/08-2009	Air charter services	Shopping	Services	1,836,367.20
720517	Furniture	RFQ	Goods	1,528,250.00
	Printers	“	“	1,515,900.00
A969064	Accommodation	DP		1,080,000.00
D817157	Photocopier Dp 8060	LTA		990,000.00

Tender	Description	Method	Category	Amount(Ksh)
720518	Furniture	RFQ	Goods	951,000.00
720522	Furniture	RFQ	Goods	951,000.00
720501	Assorted water tanks	DP	Goods	926,680.00
720645	chairs	RFQ	Goods	827,900.00
720614	sofa sets, fireproof	RFQ	Goods	810,000.00
720637	Toners	RFQ	Goods	800,000.00
720610	Furniture	RFQ	Goods	779,566.00
199731	Air ticket			774,600.00
MODNK/RFQ/09/08-2009	Computers	RFQ		699,750.00
720615	Furniture	RFQ	Goods	695,840.00
720506	Computers,	RFQ	Goods	675,000.00
720609	Furniture	RFQ	Goods	628,300.00
720641	Stationery	RFQ	Goods	577,000.00
720602	Furniture	RFQ	Goods	565,000.00
720640	Fax machine	RFQ	Goods	505,000.00
720649	Lcd TV 32"	RFQ	Goods	504,000.00
Total				387,741,310.5

- Contracts were awarded to qualified bidders who had met the requirements of Section 31 and 66 (4) of PPDA;
- Some of the signed 'Acceptance of offers' were filed in the procurement files;
- Performance bonds were found to have been requested and filed for only one contract reviewed;
- The PE does not record all advance payment or progress payments secured by the performance bond or bankers guarantee in procurement file;

Recommendations

The identified weaknesses in procedures should be addressed to conform with the Act and Regulations.

Response

The Project notified the successful bidders through letters signed by the Permanent Secretary. The following are examples:

<i>No.</i>	<i>Successful Bidder</i>	<i>Subject</i>
<i>1</i>	<i>M/s Compuswift Business Equipment Ltd.</i>	<i>Supply of Desktop Computers and Lap Top Computers</i>
<i>2</i>	<i>M/s Media Max</i>	<i>Supply, delivery, installation and commissioning for</i>

		<i>Wajir Community Radio Station as specified</i>
3	<i>M/s The Copy Cat Ltd</i>	<i>Supply of Laser Printers and Photocopiers.</i>
4	<i>M/s International Livestock Research Institute (ILRI)</i>	<i>Developing and carrying out an Impact Evaluation of the Project</i>

The successful bidders accepted the offers in writing and then Contract Agreements were signed between the successful bidder and the Government as shown in the enclosed Contract Agreements. For the purchase of one vehicle for Wajir Radio Broadcasting station and for air charter services the omission of entering into contract is regretted. The vehicle was supplied as required and the air charter services were also provided as necessary.

3.23 Termination of Proceedings

Findings

During the period under review, the PE terminated the following tenders:

Tender	Description	Method	Category
MODNK/RFQ/14/08-2009	Colour Printer	RFQ	Goods
MODNK/RFQ/20/08-2009	Mid-range server	RFQ	Goods
MODNK/RFQ/34/08-2009	ICDL Training	RFQ	Services
ALRMP II/HQRS/010/08-2009	Printer	Shopping	Goods
ALRMP II/HQRS/012/08-2009	Toilet paper	Shopping	Goods
ALRMP II/HQRS/013/08-2009	Toner	Shopping	Goods
ALRMP II/HQRS/015/08-2009	Printing of brochure	Shopping	Goods

There were no records to ascertain that the PE undertook the termination in accordance with Section 36(1) of the PPDA and informed the PPOA as required by the Section 36(7).

Recommendations

The identified weaknesses in termination procedures should be addressed to conform with the Act and Regulations

Response

We shall ensure that all future termination of proceedings are in accordance with Section 36(1) of the PPDA and informed the PPOA as required.

3.24 Notification to PPOA

Finding

The following contracts over Ksh 5,000,000.00 were reported to the PPOA as required by directives from PPOA and supported by copy of a memo to PPOA was shown to the review team but PPOA do not acknowledge having received them.

Tender	Description	Method	Cat	Value	Notification
ALRMP II/HQRS/1/2008-09	radio equipment	ICB	Goods	10,724,298.80	
ALRMPII/HQRS/2/2008-09	Supply of computers	ICB	Goods	6,255,000.00	
ALRMPII/HQRS/RFP/3/2008-09	Consultancy of Baseline data	Direct	Services	22,904,760.00	
MDONK/01/08-2009	Guyo Dam	ONT	WORK S	30,659,090.00	23.06.2009
MDONK/02/08-2009	Gortu Gardi Dam	ONT	WORK S	44,971,613.50	23.06.2009
MDONK/03/08-09	Suyen II Dam	ONT	WORK S	59,753,072.00	23.06.2009
MDONK/04/08-2009	Wajir II Sewerage	ONT	WORK S	152,218,426.00	
DP	Consultancy to KIPPRA	DP	Services	10,018,250.00	23.06.2009

The following direct procurement were not reported to PPOA

Quotation No	Method	Amount	Contractor
ALRMPII/HQRS/RFP/3/08-2009	DP	22,904,760.00	ILRI
A817200	DP	10,614,375.00	Toyota E.A Ltd
720502	DP	3,885,000.00	CMC Nairobi
A817198	DP	3,024,449.00	Toyota E.A Ltd
A817197	DP	2,734,099.00	Toyota E.A Ltd
A969064	DP	1,080,000.00	Sarova Shaba Game Lodge
720501	DP	926,680.00	Roto moulders

The following terminated records were not reported to PPOA:

Tender no	Item description	Method
MODNK/RFQ/14/08-2009	Colour Printer	RFQ
MODNK/RFQ/20/08-2009	Mid-range server	RFQ
MODNK/RFQ/34/08-2009	ICDL Training	RFQ
ALRMP II/HQRS/010/08-2009	Printer	Shopping
ALRMP II/HQRS/012/08-2009	Toilet paper	Shopping
ALRMP II/HQRS/013/08-2009	Toner	Shopping
ALRMP II/HQRS/015/08-2009	Printing of brochure	Shopping
ALRMP II/HQRS/072/08-2009	Publishing supplement	Shopping
ALRMP II/HQRS/076/08-2009	GPS Equipment	Shopping
ALRMP II/HQRS/087/08-2009	Curtains	Shopping
ALRMP II/HQRS/089/08-2009	Air conditioners	Shopping

Recommendations

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

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

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

Response

We shall ensure that all procurement and disposal is notified to PPOA as required by the Act and the Regulations.

3.25 Enquiries and Complaints Mechanism

Findings

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

Recommendation

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

Response

The Ministry is in the process of setting up bid enquiries and complaints of setting up bid enquiries and complains/ protest log. However the Ministry has so far not received any bid complaint.

3.26 Follow up of ARB decisions and recommendations.

Findings

There was no procurement taken to the review board for the period under review so the PE was not evaluated on this indicator.

3.27 Value for Money

Finding

The PE does not consider value for money in its procurement functions:

- The high value procurements for water dam projects were undertaken without linkage to the Consolidated Procurement plans;

- There are no realistic estimates on for large Wajir procurement activities; reviewed;
- There is no proper integration and coordination of the two procurement units in the Ministry;
- The degree to which RFP's identify the scope of work required, including an assessment of contract change orders or scope changes is deficient, and
- The effectiveness of the procurement process post-procurement, including the degree to which deliverables are aligned with strategic plan is deficient.

Recommendations

The PE should seek to enhance value for money.

Response

3.28 Contract Management

Findings

The team observed the following weakness in the contract management:

- Contract file were not opened for all the contracts reviewed;
- There is no contract management plan;
- There is no file record relating to the release of bond security;
- Advance payment are not reflected in the procurement records;;
- Inception report for projects delivered not filed in the procurement file;
- Progress reports/works complete/time period completed are produced but not filed in the procurement file;
- Final report/completion of works/installation and Ministry not filed in the procurement files;
- Final payment records made are not recorded in the file; and
- There is no contract register maintained by PU.

Recommendations

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

Response

Contracts are available for projects reviewed. The minutes of site meetings are also available. We also have in place completion certificates dully signed.

4 SPECIFIC FINDINGS

4.1 MDONK/4/2008-2009 WAJIR SEWERAGE PROJECT

Category: Goods

Procurement Method: Open National Tender

Total Value: Ksh: 152,218,426.00

Key flaws identified

- Not mentioned in the procurement plan. The PE explained that the project was conceived in the interim strategic plan;
- There is no realistic estimate made by the User department;
- Specifications not comprehensive as it did not mention the complete technical specifications of the BS5911 mentioned;
- The PU did not undertake the market survey for the pipes as there was only one manufacturer;
- Each member of the technical evaluation team did not undertake independent evaluation of the tender
- The Evaluation report not dated. The PE asserts that the date was on the forwarding letter.
- The TC committee failed to notice that the prices were in excess of the market prices of the pipes. The PE explained that the Manufacturer did not respond to the tender advertisement. The winner had manufacturer's letter. The PE considered factors like packaging loading, transfer, security, and flooding.
- Contract agreement was not prepared by the PU for the accounting Officer;
- The payment terms in the Contract was changed without the approval of the TC;

Recommendation

There were many errors in this tender from the inception to the completion and the PE should improve the tendering processes and receipt of goods and services to ensure that they adhere to all requirements of the PPDA and PPDR.

Response

Contract available.

Supply of Pre-cast Concrete pipes for Wajir Sewerage. Tender No. MDONK/4/2008-09

Background.

Wajir town is the only town of its size in Kenya that still uses the bucket system for human waste disposal to-date. This outdated and un-hygienic sanitation system has led to under-development of this important town due to low investment and continues to pose serious health and environmental risks to the residents.

The sewerage project is therefore a high priority project identified in the Kenya Vision 2030 first medium term plan with a view to increase access to safe sanitation. This will in turn lead to further economic growth in the town.

The project was conceived as a priority flagship project for the ministry and incorporated in the Ministry's strategic plan of 2008-2012. It was also included in the Ministry's Performance Contract for 2008-09 financial year.

The Ministry of Water & Irrigation carried out a feasibility study on the project in 2005 and which outlined the requirements for development of the project. The same Ministry further undertook detailed designs for Wajir sewerage project in March 2009 on request and facilitation by the Ministry of State for Development of Northern Kenya and other arid lands. The total capital requirement for the project based on the design estimates is approximately Ksh 1.5 billion to complete all the components to meet the wastewater production in the year 2028.

It is on this basis that the decision to phase the works was arrived at while considering the funds allocated to MDONK during 2008-09 financial year.

The procurement and delivery of primary trunk sewers pipes constituted the first phase of the project. The second and third phases would entail laying of the sewers and construction of waste stabilization ponds respectively.

Tendering

The tender for supply and delivery of pre-cast concrete pipes for Wajir sewerage project was advertised in the Daily Nation newspaper of 10th March 2009 and the Standard newspaper of 11th March 2009.

- 1. Two bidders returned their bids by the tender closing/opening date.*
- 2. Evaluation team evaluated the tender on the basis of the criteria set out in the advert. It is evident that of the two tenderers one did not meet the very basic requirements while the second had satisfied them.*
- 3. On market price of the pipes the supply and delivery of PCC pipes to Wajir was an open tender. The procuring entity expected to get the most competitive prices as this is the method most recommended and invitation was open to all interested parties in the country.*
- 4. The specifications for the pipes referred to compliance with BS 5911 which clearly describes all parameters of the pipe required and the corresponding performance information. The PE had further to be furnished with a manufacturer's authorization letter clearly outlining the product's details.*

Whereas the pipe lengths are standardized at 1.2m long for 225mm-375mm and 1.5m for 450-600mm pipes, the bidders were at liberty, as spelt out in the tender documents, to seek for clarification on any aspects of the product in writing during the 21 day advertisement period.

The pipe diameters and total lengths and jointing requirements were and remain the key parameters that need to be spelt out to bidders. The BS 5911 document is readily available for any interested party for purposes of getting specific requirements spelt therein. It would be practically impossible to include all specifications in the tender documents.

5. *The standard contract agreement form was duly prepared and signed by both parties. The agreement form clearly outlines the documents that constitute a binding agreement between the parties. LPOs for the various categories of pipes were then raised to the contractor.*

Further to the above it is important to note the following:

- (a) The materials are specialized and delicate and required special packaging, loading and unloading to ensure safe delivery. This was all part of the contractor's responsibility. Further the transport quantity per trip is not based on tonnage due to the above factors.*
- (b) The speed of trucks is relatively slow to safe-guard against breakages.*
- (c) The 300km stretch between Wajir and Garissa is rough and bound to make transportation of such products challenging.*
- (d) The security concerns on the road make it less attractive to transporters and the contractor has to take this into consideration and make own security arrangements.*
- (e) Some sections of Garissa – Wajir road are rendered impassable in the rainy season leading to long delays in turn-around times and overall delivery time. This indeed was a factor in the long time taken to complete the delivery.*
- (f) All damaged pipes on arrival were replaced at the contractor's own costs.*

It is therefore not easy to realistically value the logistics involved in executing the contract as it was 'supply and delivery'. The breakdown of the costs into specific items is not reasonable when evaluating the costing of the contract. The manufacturer's profits and overheads are not considered in the cost breakdown while all the other factors stated in (a) to (f) are not considered in the table at 8.1. The implied cost difference is therefore, in our view, misleading since the PE and the evaluation team are not well placed to itemize and cost each element that went into the 'supply and delivery' of the pipes. The comparison would only be reasonable if the manufacturer had independently 'loaded' all the other cost inputs on the factory price.

The inspection and acceptance committee could only verify the safe delivery of wholesome products in Wajir.

The PE therefore disagrees with the suggestion that there was huge financial loss in the procurement of the pipes.

The open tendering system is the most reliable mode of getting competitive market rates for undertaking a contract of this nature.

The major manufacturer of the pipes in the country did not bid for the tender even after the advertisement in the national dailies.

The winning tenderer, however, got the manufacturer's letter of authorization confirming conformity to specified standards and quality.

Conclusion.

Wajir sewerage project is an important and yet challenging project that has taken a long time to take off. This first phase, initiated by MDONK is therefore the first and crucial step towards the realization of the project.

The project, as mentioned earlier, is intended to be undertaken in phases as it requires substantial capital to complete. Construction of sewage pumping stations is currently ongoing.

The tendering for laying of the sewer pipes is currently underway in order to realize the second phase as envisaged in the implementation strategy by this ministry. It is therefore crucial that the review takes cognizance of the genesis, background and overall purpose of the contract and its intended ultimate objective. It should also address the unique challenges of implementing this important project and the ultimate benefit to the residents of Wajir town. This project is an important Kenya Vision 2030 flagship project.

It is the Procuring Entity's considered opinion that the offer got from the winning bidder was the lowest evaluated and the best based on the specifications of the tender as advertised through Open National Tender.

4.2 MDONK/8/2008-2009 – PURCHASE OF OFFICE FURNITURE

Total Tender Value: Ksh 7,685,500.00

Procurement Method: Request for Quotation

We noted the following anomalies in the procurement of furniture for the offices of the Minister, the Assistant Minister, and the Permanent Secretary:

- The procurement method used contravened provisions of the Act Section 54 (2) and Section 88 because Request for Quotation (RFQ) method was used instead of Open National Tender (ONT) while the value of goods being quoted for was above the threshold of Ksh.1,000,000.00 in the first schedule;
- It was observed that, M/S Clipper Enterprises quoted the lowest prices for 42 items out of 45 items and was generally only a few shillings lower than the next lowest bidder. It appears that M/S Clipper Enterprises had insider information before bidding;
- Out of the five bidders, three bidders namely, Lyrester Business Systems, Archial Trading Company and Edmatex Tucks Enterprises are not listed as furniture suppliers (Category A3) for the Ministry for the year 2008/2009;
- Copies of Local Purchase Order, Inspection and Acceptance Committee Certificate, Delivery Note, Invoice, Goods Received Note (S13) and Payment Voucher were not available for our examination.

Recommendation

The PE address the weakness identified in the choice of procurement method.

Response

The quotations were for consolidated list of various items for furniture requirements for the offices of the minister, Permanent Secretary and the Assistant minister.

This was not a single item but various line items with cumulative value of ksh. 7, 685, 500.

No single item was above the threshold for a request for quotations. Moreover the Ministry placed an order for Ksh. 4, 007,500 following measures from treasury, whereby votes for purchase of furniture were drastically reduced. Furniture for Assistant Ministers office was not purchased.

5 COMPLIANCE RATING

Item	Performance Indicator	Indicates aspect of the procurement	Scores				Max score	Actual score
			3	2	1	0		
1	Functions of Accounting Officer (1)	The Accounting Officer is carrying out her responsibilities under Section 27 (2) of the PPDA and has ensured that the procuring entity fulfils its obligations by ensuring that all provisions of the PPDA, the PPDR and directives of PPOA are complied with		2			3	2
2	Functions of Procurement Unit (3)	The key procurement officials have professional qualifications in procurement and supply management from a recognised institution.		2			9	6
		The Head of Procurement Unit and key staff with procurement responsibilities have received training in PPDA, PPDR, and General Manual.				0	9	0
		The key procurement officials are members of a recognised institute of purchasing and supply.	3				9	9
		The functions of the Procurement Unit as set out in Regulation 8 of the PPDR are satisfactorily complied with		2			9	6
3	Functions of Tender Committee (3)	Tender Committee is established in accordance with PPDA and PPDR and holds regular meetings with minutes that conform to Regulation 12	3				9	9
		The functions of the Tender Committee as set out in Regulations 10 of the PPDR and Chapter 4.5 of the General Manual are satisfactorily complied with.			1		9	3
		The approvals by Tender Committee conform to Regulation 11.	3				9	9
4	Functions of Procurement Committee (3)	Procurement Committee is established in accordance with Regulation 13 and holds regular meetings with minutes that conform to Regulation 15		2			9	6
		The functions of the Procurement Committee as set out in Regulations 14 of the PPDR and Chapter 4.4 of the		2			9	6

		General Manual are satisfactorily complied with.						
		The Procurement Committee has submitted quarterly reports to the Tender Committee on contracts it has awarded				0	9	0
5	Functions of the Disposal Committee (3)	The Disposal Committee is established in accordance with Section 128 and holds regular meetings with minutes.		2			9	2
		The functions of the Disposal Committee as set out in the PPDA, PPDR, and Chapter 12 of the General Manual are satisfactorily complied with.				0	9	0
6	Functions of Evaluation Committees (3)	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 of the Tender Committee of the procuring entity	3				9	9
		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)		2			9	6
		Tender evaluation has been completed within 30 days of tender opening (with a further 5 days allowed where there is separate financial evaluation)			0		9	0
7	Functions of Inspection and Acceptance	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			1		9	6

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

		procurement reference number.						
11	Procurement planning (3)	All procurements have been undertaken within the approved budget of the procuring entity and have been planned by the procuring entity through an annual procurement plan, as stipulated in Section 26 of PPDA			1		9	3
		The Heads of User Departments have submitted annual departmental plans to the Accounting Officer at least thirty days before the close of each financial year as stipulated in Regulation 20 (4)				0	9	0
		Where appropriate every significant procurement has an individual procurement plan in accordance with Chapter 6.5 of General Manual				0	9	0
		All procurements are undertaken on the basis of the consolidated procurement plan which is regularly updated and linked to the approved budget of the procuring entity and approved by the Head of the procuring entity and where applicable by the board of directors or a similar body				0	9	0
12	Purchase requisition (2)	Each procurement proceeding is initiated using an official procurement requisition form containing all necessary information pertaining to the procurement in accordance with Regulation 22				0	6	0
		The requisitions are generated from the consolidated procurement plan			1		6	2
13	Prequalification and registration of suppliers (3)	There is a standing list of registered suppliers prepared in accordance with Regulation 8 (3) (a)	3				9	9
		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				0	9	0

		suppliers and contractors						
		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).			1	0	9	3
14	Specifications (3)	The procuring entity uses clear, objective, neutral and functional or technical specifications and in accordance with Section 34			1		9	3
15	Choice of procurement method (3)	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		2			9	6
		Procurements are not split to evade the appropriate procurement method, in accordance with Section 30	3				9	9
16	Preference and reservations (3)	The PE has applied preferences and reservations in accordance with Section 39 and Regulation 28 and any Guidelines which may be issued				0	9	0
17	Standard Tendering Documents (3)	The prescribed procurement documents are used in accordance with Section 29 (4), Regulation 33 and the Third Schedule of the PPDR		2			9	6
18	Advertisement of tender opportunities (3)	The procuring entity has taken such steps as are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders, in accordance with Section 54		2			9	6
		Advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening	3				9	9

19	Modifications to tender documents (2)	Any modification to tender documents are set out in an addendum which is promptly provided to each person who obtained the tender documents, as required by Section 53 (3)					N.A.	N.A.
20	Submission and receipt of bids (2)	A secure facility for the receipt of tenders has been provided at the designated tender location, with two locks with keys for each lock kept by a different officer and box remaining locked until the time for tender opening.	3				6	6
		Tender opening procedures are carried out in accordance with Section 60 and Regulation 45	3				6	6
21	Formation of contract (2)	Notification of acceptance of tender is given to successful and unsuccessful tenderers in accordance with Section 67		2			6	6
		Written contract is entered into in accordance with Sections 68-70		1		0	6	2
		Bond security released and recorded in procurement file				0	6	0
		Performance bond raised and recorded in procurement file				0	6	0
		Any advance payment is adequately secured by the performance bond or bankers guarantee and recorded in procurement file				0	6	0
22	Termination of proceedings (2)	Any termination of procurement proceedings has been carried out in accordance with Section 36 and approved by the Tender Committee				1	6	2
23	Notification to PPOA (1)	Notification is provided to PPOA of		2			3	2
		(a) Contracts over Ksh 5 million						
		(b) Direct procurement over Ksh 500,000				0	3	0
		(c) Termination of procurement proceedings				0	3	0
	(d) Disposals to employees				NA	3	N/A	
24	Enquiries and Complaints mechanism (1)	There are systems and procedures for handling bidders' enquiries and complaints				0	3	0
25	Follow up of	The PE has taken adequate remedial action on any ARB					N.A.	N.A.

	ARB decisions and recommendations (2)	decisions and observations made following appeal							
26	Value for money (3)	The PE has sought to maximize economy and efficiency and to obtain value for money in its procurements				0	9	0	
		The PE has compared prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate, and has procured standard goods, services and works with known market prices at the prevailing real market price, as required by Section 30 (3)				0	9	0	
27	Contract management (2)	Contract management, including amendments and variations, is carried out in accordance with Section 47, Regulation 31 and Chapter 9 of the General Manual				0	6	0	
	Total						492	207	

Compliance level $207/492 * 100 = 42.1\%$

6 ACTION PLAN

Item	Task	By	Review Date
1	Implement all recommendations of previous audit reports on matters relating to compliance with PPDA and PPDR	PU	90 days from the date of publication of final report
2	The Ministry increase sensitization and advance training to all those staff responsible for key stages of the functions relating to procurement processes and records management. The senior management should be included in the training to acquaint themselves with the procurement law and regulations	AO/PU	90 days from the date of publication of final report
3	Merge Procurement Units to enhance centralised coordination of their functions. The new PU should improve on all identified deficient areas of its functions	AO/PU	90 days from the date of publication of final report
4	TC should improve on all identified deficient areas of its functions and ensure that its undertakes its functions in accordance with Regulations 10-12 and General Manual	PU/TC	90 days from the date of publication of final report
5	PC should improve on all identified deficient areas of its functions and ensure that its undertakes its functions in accordance with Regulation 13 and General Manual	PU/PC	90 days from the date of publication of final report
6	The Disposal Committee should undertake all functions as set out in the Section 128(2). Regulation 92, Regulation 8(3)(p-q) and General Manual. An annual disposal plan should be prepared.	AO/PU	90 days from the date of publication of final report
7	All identified weaknesses in tender evaluation procedures should be addressed	PU/TC	90 days from the date of publication of final report
8	Establish IAC and ensure that the committee conducts its functions in accordance with Regulation 17 and General Manual. The inspection and acceptance committee should start verifying and issuing certified goods receipt notes or certificates of completion for all procurements of goods, works and services	AO/PU	90 days from the date of publication of final report
9	Develop operational systems and procedures for implementation of the PPDA and Regulations in the Ministry in accordance to Section 26 (1)	AO/PU	90 days from the date of publication of final report
10	The Ministry to prepare the schedules of duties handbook to reflect the approval of procurement processes as set out in the First Schedule of PPDR	AO/DA	90 days from the date of publication of final report
11	The Ministry should upgrade their record keeping and filing systems for the procurement	AO/PU	90 days from the date of publication

Item	Task	By	Review Date
	documents as set out in the baseline report on management of records in the MDONK to conform to the requirements of the Act and Regulations.		of final report
12	PE should prepare consolidated procurement plan in accordance to the requirements of the PPDA, PPDR, and General Manual and ensure that all procurements are generated from the procurement plan. The Procurement Unit should not commence any procurement activity, which is not in the procurement plan. Head of departments to prepare their annual plans and submit to AO within 30 days before close of financial year.	CPO/AO	90 days from the date of publication of final report
13	Introduce purchase requisition forms that meet the requirements of PPDR and General Manual for user departments to initiate procurement processes.	PU	90 days from the date of publication of final report
	Endorse budget line on all procurement documents for cross reference to the budgets	CPO/USERS	90 days from the date of publication of final report
14	Prepare a prequalified list of all lawyers providing specialised services to the Ministry to be used for restricted tendering. The PE should ensure a fair and equal rotation amongst the persons on the standing list of registered suppliers in respect of requests for quotations, as required by Regulation 59 (2) (c).	AO/PU	90 days from the date of publication of final report
15	Organise training in the development of specifications for complex and specialised services.	PU/UD	90 days from the date of publication of final report
16	Adopt open tendering as the main procurement procedure as set out in Section 29 and use alternative procurement methods strictly in accordance to Part VI of the PPDA.	AO/PU	90 days from the date of publication of final report
16	Apply preferences and reservations in accordance with Section 39 and Regulation 28 and any guidelines which may be issued by PPOA	AO//PU	90 days from the date of publication of final report
17	The Ministry to start using standard tender documents to initiate and process all procurements as provided in the PPDR and General Manual	AO/PU	90 days from the date of publication of final report
18	Take such steps that are reasonable to bring the invitation to tender to the attention of those who may wish to submit tenders, in accordance with Section 54 and ensure that all advertisements indicate the closing date, and time, with an invitation to bidders to attend the bid opening	PU	90 days from the date of publication of final report

Item	Task	By	Review Date
19	Ensure that tender opening procedures are carried out in accordance with Section 60 and Regulation 45	PU	90 days from the date of publication of final report
20	Ensure that the PE undertakes formation of contracts in accordance with Section 67,68-69, Regulations and General Manual	AO/PU	90 days from the date of publication of final report
21	Ensure that all termination of procurement proceedings are done in accordance with Section 36 of PPDA and that notification is sent to PPOA as stipulated in the directives issued by PPOA.	PU	90 days from the date of publication of final report
22	Prepare notification to PPOA for all: <ul style="list-style-type: none"> • Contracts over Ksh 5 million • Direct procurement over Ksh 500,000 • Termination of procurement proceedings • Disposals to employees 	PU	90 days from the date of publication of final report
23	Develop systems and procedures for handling bidders' enquiries and complaints	AO/PU	90 days from the date of publication of final report
24	Develop measurable mechanisms that seek to maximize economy and efficiency and to obtain value for money in the Ministry's procurements. Compare prices of common user items with the PPOA price index and Supplies Branch long-term contracted prices, where appropriate.	PU	90 days from the date of publication of final report
25	Develop comprehensive contract management systems and procedures that comply with Section 47 of PPDA, Regulation 31 and Chapter 9 of General Manual	PU	90 days from the date of publication of final report

7 CONCLUSION

We have reviewed procurement functions and procedures to verify whether they conform to the Public Procurement and Disposal Act 2005 and the related regulations. We have also assessed whether the functions comply with generally accepted good practices. We have identified deviations in general areas and procurement stages and attached ratings to them. These findings have been shared with the PE who have provided their responses. The responses have been included in this report.

The major challenges in the Ministry are in the area of training in the procurement law, recordkeeping, data and documentation controls, and 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 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 Ministry of State for Development of Northern Kenya and other Arid Lands management welcomed the review exercise as a mechanism to identify and address any shortcomings and weaknesses in the compliance with Act and associated regulations. They have committed themselves to undertake remedial measures in all identified deficient areas

Overall, MDONK have demonstrated an unsatisfactory level of compliance at 42.1% (against the minimum threshold of 60%) with relevant PPDA, and the regulations and guidelines in respect of the sampled procurement transactions. The procurement team should endeavour to improve their performance so that the PE will become compliant.



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