

PUBLIC PROCUREMENT REGULATORY AUTHORITY

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31 MAY 2019

ACE II
RECEIVED
CENTER OF EXCELLENCE
23rd May, 2019

PPRA/COMP/30/228 VOL. IV (25)

Vice Chancellor
Moi University
P.O. Box 3900-30100
ELDORET

**RE: ANNUAL PROCUREMENT / CONTRACT / PERFORMANCE AUDIT OF
EASTERN AND SOUTHERN AFRICA HIGHER EDUCATION CENTRES
OF EXCELLENCE (ACE II) PROJECT AT MOI UNIVERSITY**

As you are aware, the Authority conducted a Procurement / Contract Audit of the above cited project which is being implemented by your institution to establish its status of compliance with the Procurement Law.

Enclosed herewith, please find a copy of the final report of the Procurement / Contract Audit which incorporates the response received from the university.

You are advised to ensure full implementation of the recommendations made in the report taking cognizance the provisions of the **Public Procurement and Asset Disposal Act, 2015**. The Authority will at an appropriate time visit your organization to monitor the implementation of the recommended corrective measures.

P.O. OPIYO (MS)
FOR: DIRECTOR GENERAL
(Encls)

✓ **Cc Centre Leader**
ACE II PTRE Project,
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ELDORET



PUBLIC PROCUREMENT REGULATORY AUTHORITY

**PROCUREMENT/CONTRACT AUDIT FOR
ACE II PROJECT - MOI UNIVERSITY
2017-2018 FINANCIAL YEAR**

FINAL REPORT

MAY, 2019

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LIST OF ACRONYMS/ABBREVIATIONS:

AO	Accounting Officer
AGPO	Access to Government Procurement Opportunities
BOQs	Bill of Quantities
DG	Director General
FY	Financial Year
GRNs	Goods Received Notes
HOPF	Head of Procurement Function
ITT	Invitation To Tender
KISM	Kenya Institute of Supplies Management
KES	Kenya Shillings
LPO	Local Purchase Order
LSO	Local Service Order
MU	Moi University
N/A	Not Applicable
ONT	Open National Tender
PE	Procuring Entity
PF	Procurement Function
PPADA	Public Procurement and Asset Disposal Act, 2015
PPDR	Public Procurement and Disposal Regulations, 2006
PPRA	Public Procurement Regulatory Authority
PF	Procurement Function
PPRMPM	Public Procurement Records Management Procedure Manual
RFQ	Request for Quotation
STD	Standard Tender Documents
SCM	Supply Chain Management
TORs	Terms of Reference
VC	Vice Chancellor

EXECUTIVE SUMMARY

This report is a product of Procurement/Contract Audit conducted by the Public Procurement Regulatory Authority (the Authority) pursuant to its mandate under the Public Procurement and Asset Disposal Act, 2015 (the Act). Part IV of the Act requires the Authority to ensure that the procurement procedures established under this Act are complied with. Specifically, Section 43 (2) of the Act bestows on the Authority the responsibility to conduct audits on contracts during tender preparation, contract execution and after contract completion.

In view of the above, procurement/contract audit for Moi University was conducted from 16th to 18th October, 2018. The audit covered the institutional arrangements and eight (8) contracts concluded during the period 1st July, 2017 to 30th June 2018. The main objective of the audit was to determine the extent to which the Procuring Entity (PE) followed the procedures and rules established in the Act and the applicable regulations; circulars and directives issued by the Authority and other generally acceptable professional best practices, in conducting their procurement processes and contract management activities with reference to selected contracts. In addition, the audit helped to identify strengths and weaknesses, as well as risks inherent in the procurement and contract management system and propose measures to mitigate weaknesses and irregularities identified.

An entry meeting with the PE's management team was held on 16th October, 2018 to discuss the scope of the audit, the audit plan, the auditors' and PE's expectations, access to documentation and other administrative issues. The audit exercise involved examination of relevant procurement and contract management records from the selected contracts to verify their compliance with the Act, the attendant Regulations and other directives issued by the Authority and other relevant bodies from time to time. The auditors used qualitative and quantitative data collection methods including interviews, observation, confirmation, analysis and audit of records.

The audit was mainly limited / constrained by delay in retrieval of some procurements records including incompleteness of procurement records and time limit since only three days were allocated for the exercise.

The summary of the key findings based on the three broad indicators were as follows:

Summary of key findings on institutional arrangements:

A procurement function is established with approved establishment of thirty seven staff with thirty at main campus and seven at the school of Health Sciences. The function is Headed by a Principal Procurement Officer who reports directly to the Accounting Officer. Key procurement officers are members of Kenya Institute of Supplies Management (KISM). A Disposal Committee was proposed to the Accounting Officer by Head of Procurement Function via an internal memo and was approved by the Accounting Officer. However, there was no formal appointment letters for the disposal committee. A disposal plan for year 2017-2018 was prepared and the procurement function conducted disposal and prepared minutes indicating the items which were disposed and the ones pending disposal. An approved procurement plan with an estimated budget of Kshs. 921, 366, 775.00 was in place out of which procurements worth Kshs. 276, 379, 945.00 equivalent to 30% were reserved for the groups under the AGPO category. Further, the University had a secure tender and quotation boxes which are located at the main administration block. The two are easily accessible and have two locks each with keys for each lock kept by different offices. The university had a

secure storage facility with shelves and pallets for keeping of materials and standard store records are used. An inventory management system is also in place. Individual procurement files were maintained and documents in the file were allocated folio numbers.

Some of the weaknesses noted under the institutional arrangement were that; the University does not have an Internal Procurement and Asset Disposal Manual to guide its procurement and asset disposal activities, some documents were not in the individual procurement files an indication that the files were incomplete and the documents were not filed in sequential manner. Further, there was no records to show that the part in the procurement plan demonstrating application of reservations schemes was submitted to the Authority as required in procurement law. In most of the sampled procurements, the estimated budget in the procurement plan were far much below the tendered prices thus leading to termination of some of the procurements as a result of inadequate budget. For the subject period, the University submitted some of the reports on contract awards to the Authority. However, none of the sampled procurements were reported to the Authority, contract awards were also not publicized in the website and the notice boards as required in procurement law. Stores records are not well updated, as there were some variances between ledger balances and physical balances for some of the sampled items. Asset register is maintained but some of the important information of the asset for example physical location were not recorded for some of the assets.

In view of the above weaknesses, the Accounting Officer should note the following: Regulation 34(3) of the Public Procurement and Disposal Regulations, 2006 (PPDR) and the PPRMPM requires for maintenance of individual and complete procurement files. In addition, procurement and disposal manual/policy should be developed as required by Section 45 of the PPADA to facilitate the making of procurement decisions in a structured and systematic way. Procurement law also requires that all the reports on contract awards to be submitted to the Authority and be publicized in accordance with Section 138(2) of the PPADA and the directives issued by the Authority on reporting via PPRA Circular No. 1/2016 dated 16th December, 2016. Further, the part in the procurement plan demonstrating application of reservations schemes should be submitted to the Authority as required under Section 158(2) of PPADA. Regular stocktaking should be conducted for purposes of inventory accountability and a report submitted to the Accounting Officer for necessary action.

Summary of key findings on procurement processes:

The subject procurements were planned for in the procurement plan for 2017-2018 FY as required under Section 53 of PPADA and were initiated via purchase requisitions as required under Regulation 22 of PPDR. The procurement were processed through open tender method and request for quotations, which were appropriate, and in accordance with Section 91 of the PPADA. The University used standard tender documents in the processing of the subject procurements and evaluation and award criteria were set out in the tender documents as required in procurement law. Relevant information was contained in the tender notices such as name and address of the PE, tender number assigned, description, place of submission and deadline, bid bond and applicable tender fee provided. Sufficient time was allowed for submission of tenders as required.

The Accounting Officer appointed tender opening committee, duly constituted in accordance with Section 78 of PPADA, the committees opened tenders immediately after closing as

required in procurement law where the committee assigned identification numbers to each bid received and signed them as required, opening minutes were also maintained. Evaluation committees were appointed by the Accounting Officer and constituted as required under Section 46 of PPADA. For majority procurements sampled, the committee carried out evaluations in adherence to evaluation criteria specified in the tender documents and prepared evaluation reports signed by all members. This met the requirements under Section 80 of PPADA. However, in some of the evaluations e.g. Tender No. MU/ONT/11/2017-2018 for supply and delivery of desktop scanning electron microscope the evaluation committee assigned scores on specifications and used them to evaluate tenders-criteria which was not specified in the tender document, additionally, some evaluations were completed beyond the prescribed period of thirty days. The committees recommended awards of the tenders to the bidder who quoted the lowest price which was consistent with Section 86(1) (a) of PPADA and the award criteria specified in the STDs.

Upon completion of the evaluations, professional opinions were written by Senior Procurement Officer as required in Section 84 of PPADA. The tenders were awarded by the Accounting Officer as required and the successful and unsuccessful bidders were also notified simultaneously. The University disclosed the successful bidder to the unsuccessful bidder, citing specific reasons for rejection of their tenders as required by Section 87(3) of the PPADA. The contracts were entered into between the Accounting Officer and the successful bidders where the 14 days appeal window was observed pursuant to Section 135 of PPADA.

Some of the weaknesses noted under procurement processes were that some of the specifications had provided for a brand name which should not be the case in line with the requirements of Section 60(4) of PPADA, further it was noted that the requisitions were transmitted directly to the procurement department instead of passing through the Accounting Officer for necessary approval. Other weaknesses noted were; the tender documents were not appropriately amended e.g. some clauses allowed for correction of arithmetic errors inconsistent with Section 82 of PPADA, the bid documents also required bidders to submit a tender security equivalent to 2% of their tendered sum, this was inconsistent with Section 61(2) (b) and (c) of the PPADA which instructs that tender security should be stated in absolute value which should not exceed 2% of the tender sum as estimated by a Procuring Entity, bidders were not instructed to paginate tender documents as required in Section 74(1) (j) of PPADA. Further, some of the tender opening procedures were not observed e.g. the prices quoted by bidders were not recorded in the tender opening registers and all pages of the tender opening minutes were not initialed as required in Section 78(11) of PPADA. Further, in some procurements members of the evaluation committees did not prepare individual evaluation score sheets. Therefore, it could be ascertained whether each member evaluated the tender independently as envisaged under Regulation 5(5) of the Public Procurement and Disposal (Amendment) Regulations, 2013.

It was also noted that some of the professional opinions were written outside the tender validity period and that the award of tenders and notifications were done outside the tender validity period specified in the STDs in some procurements inconsistent with the requirements under Section 87 of PPADA. Similarly, some of the contracts were signed outside the tender validity period inconsistent with the requirements under Section 135 of PPADA. Contractual terms and conditions were also not indicated in the contract document. In some procurements, evaluation of tenders was completed outside the prescribed period of 30 days e.g. Tender No. MU/ONT/12/2017-2018 inconsistent with Section 80(6) of PPADA.

Where the choice of the procurement method was RFQs, the weakness noted was that no criteria was specified to determine eligibility of bidders to participate in the tendering process as required under Section 55 of PPADA. Further, there was no record to demonstrate that market survey was conducted to establish whether the prices quoted by the lowest bidder/s were within the market rates as required in Sections 106 (4) and 54(2) of PPADA. Unsuccessful bidders were also not notified.

Another weakness was that the University did not publish or publicize the contract awards in its website and the notice board which was inconsistent with Section 138(1) of the PPADA. The Procurement Function maintained a procurement file. However, the file was incomplete because documents like a copy of the invoice, a copy of the performance bond (where applicable) and extract of the procurement plan were not in the file. It was also established that some of the procurements were terminated on grounds of non-responsiveness even in cases where there was a response from one bidder which should not be the case. Further, in cases where some procurements were terminated, a report on termination of procurement proceedings was not submitted to Authority as required in Section 63 of PPADA.

Summary of key findings on contract management:

Inspection and acceptance committee appointed by the Accounting Officer for purposes of conducting the inspection of the deliverables was in place. The committee carried out the inspections and reports were prepared and signed as required in procurement law. The suppliers invoiced the University and paid as per the evaluated prices and LPOs amount, there were no complaints on delayed payments. However, one of the weaknesses noted was that the procurement function did not prepare progress reports for purposes of updating the Accounting Officer on the implementation status of the contracts as envisaged under Section 152 of the PPADA. Further, some of the contracts were signed outside the tender validity period inconsistent with the requirements in Section 135 of PPADA, in addition, contractual terms and conditions were not indicated in the contract documents. Another weakness was that the University did not publish and publicize the contract awards in its website and the notice board which was inconsistent with Section 138(1) of the PPADA. The major weakness noted was that the awards and signing of contracts were not done within the tender validity periods hence procurement cycle was taking too long before deliveries were made, received and accepted by the users. Some of the procurements had been characterized by delayed procurement cycle (lengthy procurement process) some taking up to one year to conclude. In some procurements, the contractors were not required to avail performance security to cushion the University of risks of non-performance by the contractors and in some cases where performance security was availed, it was availed after signing of contract inconsistent with Section 142(1) of PPADA. Contract files were also not maintained.

In view of the above, the Accounting Officer should establish controls to ensuring that the future contracts awards and contract signing are made within the specified tender validity period such that the procurement process is not unreasonably delayed, and in so doing ensure that the procurements are concluded within reasonable time. Further, the Accounting Officer should ensure that the weaknesses cited above are addressed by ensuring compliance with Sections 54(2), 55, 60(4), 61(2) (b) and (c), 63, 74(1) (j), 78(11), 82, 87, 106 (4), 135, 152 of the PPADA and Regulation 5(5) of the Public Procurement and Disposal (Amendment) Regulations, 2013 and the procurement law to its entirety.

In spite of the weaknesses noted above, we established that apart from Tender No. MU/ONT/8/2017-2018 for supply and delivery of atmospheric Dyeing machine for which extended delivery period had already lapsed, other various contracts/LPOs issued had been serviced and the equipment were actually delivered, received and assigned asset identification numbers and recorded in the asset register maintained by the University. We visited the School of Biological and Health Sciences where the equipment are being used and found the equipment in good working condition.

Upon conclusion of the audit, the overall compliance and risk rating of the PE's procurement and contract management system was determined based on compliance and risk rating criteria defined in the Authority's Compliance Monitoring Manual. To this end the University has attained an average compliance level of 58.29% in respect of procurement processes with a risk of 41.71% which is rated as moderate, and a non-compliance level of 44.50% with compliance risk at 55.50% in respect of contract management which is also rated as moderate an indication that weaknesses, although less likely to lead to material, financial, regulatory or reputational risk, warrant timely and immediate management action using the existing legal framework.

The procuring entity should ensure that the recommendations given in regard to institutional arrangements, procurement processes and contract management are implemented in order to improve the procurement system. Detailed recommendations for addressing the weaknesses are captured in Section two (2) of this report. The procuring entity should implement the recommendations contained in this report and update the Authority on the same for purposes of follow up.

SECTION ONE: INTRODUCTION

This section presents the background of the contract audit, its scope and nature, sampling, the limitations encountered during the audit, a brief on mandate and organization of the PE, and any other matters that are essential to understand the context and circumstances under which the audit was carried out.

Background Information

The Authority's contract audit function is derived from Section 43 of the Act, which provides that; *"(1) the Authority or anyone authorised by the Authority, may inspect, assess, review or audit at any reasonable time, the records and accounts of the procuring entity and contractor relating to the procurement or disposal proceeding or contract and the procuring entity and contractor or tenderer shall co-operate with and assist whoever does such an inspection. (2) the Authority shall conduct Procurement Audits during the tender preparation, contract audit in the course of execution of an awarded tender, and Performance Audit after the completion of the contract in respect of any procurement or asset disposal as may be required."*

In this regard, the Director General (DG) vide his letter Ref: PPRA/COMP/04 VOL. IX (44)/ () dated October, 2018 informed the Vice Chancellor of the University that the PE had been scheduled for contract audit under Section 43 of the Act. In preparation for the audit, the DG requested the procuring entity to submit specific information in respect of the contract(s) to be audited.

Objective and Scope of Contract Audit

The main objective of the audit was to determine the extent to which the Procuring Entity (PE) followed the procedures and rules established in the Act and the applicable regulations; circulars and directives issued by the Authority and other generally acceptable professional best practices, in conducting their procurement processes and contract management activities with reference to selected contracts. In addition, the audit helped to identify strengths and weaknesses, as well as risks inherent in the procurement and contract management system and propose measures to mitigate weaknesses and irregularities identified.

The audit covered eight (8) contracts concluded during 2017-2018 financial year. From the summary of all contracts undertaken during the period under audit by the University, the Authority sampled eight contracts in order to do a detailed audit of each transaction. The numbers of contracts audited are as indicated in Annex 2. This audit was undertaken between 16th and 18th October, 2018.

Purpose of Contract Audit

The Authority undertakes periodic contract audits as a requirement under section 43 of the Act. Contract audits mainly focus on high value contracts with a view of establishing how the procurement processes and contract management were conducted. The findings of the audits lead to conclusions as to whether the Procuring Entity implemented the contract in accordance with the procurement law and the contractual terms.

1.2.3 Methodology of Conducting Contract Audit

Contract audit involves analysis of documentation provided pertaining to the subject contract and, where necessary, discussions with the persons involved in the implementation of the contract. Data was collected by use of a standard contract audit template and a scoring guide was used to gauge the extent to which the various procurement and contract management processes complied with the Procurement Law and the terms of the contract. The data collected was analyzed and a compliance rating assigned to each contract audited and thereafter an aggregate score for the PE was generated. Further, the areas of weakness and strengths were identified to inform the recommendations necessary to address the weak areas in order to enable the PE to improve its compliance with the Procurement Law.

SECTION TWO: SPECIFIC FINDINGS AND RECOMMENDATIONS

2.1 INSTITUTIONAL ARRANGEMENTS

This sub-section contains the findings and recommendations on the institutional arrangements of the procuring entity as summarised below.

An overview/ brief summary in paragraph form on findings and recommendations on the institutional arrangements:

Procurement Function

A procurement function is established with approved establishment of thirty seven staff; thirty at main campus and seven at the school of Health Sciences. The function is headed by a Principal Procurement Officer who reports directly to the Accounting Officer. Key procurement officers are members of Kenya Institute of Supplies Management (KISM).

Documented internal procurement policy/manual

The University does not have an Internal Procurement and Asset Disposal Manual to guide its procurement and asset disposal activities.

Disposal Committee

The University had a Disposal Committee proposed to the Accounting Officer by Head of Procurement Function vide memo Ref: MU/PUR/03 dated 20th December, 2017. This was approved by the Accounting Officer but no formal appointment letters. A disposal plan for year 2017-2018 was prepared. The procurement function conducted disposal and prepared minutes dated 26th June, 2018 indicating items which were disposed and the ones pending disposal.

Procurement Record Keeping

Individual procurement files were maintained and documents in the file were allocated folio numbers. A few documents were not in the file, the files were minimally incomplete. The documents were not filed in sequential manner.

Procurement Planning

The University had an approved procurement plan with an estimated budget of Kshs. 921, 366, 775.00. Out of which procurements worth Kshs. 276, 379, 945.00 (30% were reserved). No records to show that the plan was submitted to the Authority as required in procurement law. In most of the sampled procurements, the estimated budget in the procurement plan were far much below the tendered prices thus leading to termination of some of the procurements.

Filing Reports to PPRA as required by law

For the subject period, the University submitted some of the reports on contract awards to the Authority. However, none of the sampled procurements were reported to the Authority. Contract awards were also not publicized in the website and the notice boards.

Security of Tenders

The University had a secure tender and quotation boxes which are located at the main administration block. The two are easily accessible and have two locks each with keys for each lock kept by different offices.

Inventory Management

The university had a secure storage facility with shelves and pallets for keeping of materials. Standard store records are used. An inventory management system is also in place. Stores records are not well updated as there were some variances between ledger balances and physical balances for the sampled items. Asset register is also maintained but some of the important information of the asset were not recorded for some of the assets.

Recommendations based on the weaknesses identified above:

The Procurement Function should be staffed in accordance with Sections 2 and 47 of the PPADA.

The University should develop a Procurement and Asset Disposal pursuant to Section 45 of the PPADA. The manual should be aligned to the Public Procurement and Asset Disposal Act, 2015 and the attendant Regulations.

The University should always maintain complete procurement files in accordance with Regulation 34(3) of the PPDR and the PPRMPM. The records should be arranged in sequential manner.

At least 30% of the procurement budget should be allocated to enterprises owned by Youth, Women and Persons Living with Disability and a copy of the procurement plan should be submitted to the Authority in accordance with Section 158(2) of the PPADA. Estimated costs in the procurement planning should be realistic pursuant to Section 53(2) of the PPADA and Regulation 22(2) of the PPDR.

Reports on contract awards should be submitted to the Authority in accordance with Section 138 of the PPADA and PPRA Circular No.1/2016 of 16th December, 2016. Publishing of contract awards should also be done pursuant to Section 138 of PPADA.

Stores records should be properly updated, regular and comprehensive stocktaking should be conducted and a stock taking report prepared. The report should be submitted to the Accounting Officer for appropriate action. Pursuant to Section 44(1) of the PPADA, the Accounting Officer should ensure that the weakness cited above are addressed.

FINDINGS ON SPECIFIC CONTRACTS

This sub-section presents a summary of the specific findings on the procurement processes and contract management of the sampled contracts.

1. Contract No. MU/ONT/06/2017-2018 for Supply & Delivery of High Performance Liquid Chromatography (HPLC), Fourier Transform Infrared Spectrometer (FTIR) & Rotary Evaporator

Procurement Process

Procurement Initiation (Procurement Planning, Requisitioning, Choice of Procurement Method, Preparation of Bid Document)

All the three (3) items were in the procurement plan with estimated costs of Rotary evaporator- USD. 9,450.00; CHT HPLC- USD.58, 421.00 and Spectrometer –USD. 12, 000.00. The procurement was initiated by the user vide memo Ref: MU/ACEHADM/4 dated 24th July, 2017. The memo was accompanied by the specifications but estimated cost were not indicated in the requisition as envisaged by Regulation 22(1) of the PPDR. It was also noted that the requisition was addressed to the head of the Procurement Function and not the Accounting Officer for approval as envisaged by Regulation 22(3) of the PPDR.

The procurement was processed through ONT which was appropriate procurement method for procurement and bidders were given adequate time for preparation and submission of tenders. The tender was advertised mygov.go.ke on 11th August, 2017 among other tenders. A standard tender document was used. The document had most of the key information which included evaluation criteria. However, some section of the tenders such as manufacturer's authorization form and performance security form were not part of the document that was issued to the bidders. Thus the bid documents was not properly amended thus prompting several clarifications.

Tendering Processes (Invitation to Tender, Tender Opening, Tender Evaluation, Professional Opinion)

The tenders was advertised in the mygov.go.ke of 11th August, 2017. The deadline for submission of tenders was 31st august, 2017 at 11.00 a.m. The notice met the requirements for invitation to tenders except for serialization of tender documents by bidders prior to submission.

The head of Procurement Function proposed the members of the tender opening committee to the Accounting Officer vide memo Ref: MU/PUR/109 dated 24th August, 2017. The Accounting Officer approved the names but there no formal appointment letters. Nevertheless, the committee opened tenders on 31st August, 217 as scheduled and three (3) tenders were received. The committee prepared tender opening minutes recording bidders' names, prices and bid bonds but the no of pages for each tender that were received were not recorded in the tender opening minutes; one person did not sign the minutes; a person who was not appointed in the tender opening committee participated in the tender opening. The tender opening committee did not initial each page of the tender opening minutes.

The names of the tender opening committee were proposed to the Accounting Officer by head of Procurement Function vide memo Ref: MU/PUR/109 dated 24th August, 2017. The Accounting Officer approved the list but did not issue formal appointment letters to the members. The committee evaluated the tender using the criteria and specifications set out in the tender document. However, the committee also came up with score of three (3) for each technical specifications and used them to evaluate the tenders. The committee also assigned a score of 3 marks for "super products" which was not provided in the tender documents. Super products was ambiguous and was not provided in the tender document. The committee members did not also evaluate the tender independently as envisaged by Regulation 5(5) of the Public Procurement and Disposal (Amendment) Regulations, 2013.

The evaluation committee prepared an evaluation report dated September, 2017 with a recommendation to award the tender for supply of HPLC to Educational Scientific Technology at Kshs. 5, 997, 200.00; Spectrometer at Kshs. 4, 259, 520.00; Rotary Evaporator at Kshs. 522, 000.00. The report was signed by all members but was not dated and therefore it could not be verified whether the tender was evaluated within the prescribed period of 30 days after tender opening. The evaluation report was submitted the head of Procurement Function who prepared a professional opinion and concurred with the recommendations of the evaluation committee. The Accounting Officer approved the professional opinion.

Tender Award and Contract Signing (Tender Award, Notification, Performance Security, Contract Signing, Publishing and Publicizing of Contracts, Contract Reports to the Authority)

The three items were awarded by the Accounting Officer vide letters Ref: MU/ONT/06/2017-2018 dated 17th October, 2017. However, before the letters were released, the coordinator informed the head of Procurement Function vide memo Ref: MU/ONT/06/2017-2018 that the department had received a donation for two items and thus the award should only be on evaporator. To that effect, notification letters dated 16th January, 2018 were issued to the successful bidders which was outside the 120 days tender validity period.

The successful bidder submitted a performance security of Kshs. 26, 100, 00 from DTB Bank Ref: RC/BG/044/2018 dated 31st January, 2018. The successful bidder and the hospital entered into a written contract dated 20th February, 2018 with a contract sum of Kshs. 522, 000.00. The key documents that were mentioned in the contract were not annexed to the contract. Further, the contract was signed after lapsing of the tender validity period of 120 days. The supplier was also issued with LPO no.P00000021330 dated 12th March, 2018 was issued to the supplier. It was noted that the contract award was not publicized as envisaged by Section 138 of the PPADA and PPRA Circularly No.1/2016 of 16th December, 2016.

The equipment was delivered vide delivery note No.19483 dated 14th June, 2018. The equipment was inspected as evidenced by the inspection and acceptance minutes and certificate dated 14th June, 2018. Job card No.9185 dated 25th June, 2018. The equipment entered into store requisition note (S3) No.364107 dated 28th August, 2018 and GRN No.044193 dated 26th June, 2018. It was also recorded in the asset register. However, the delivery was not done within 30 day provided in the tender document. The technicians informed the audit team that the equipment is functioning well.

The payment for the equipment was processed through payment vouchers No.140732 dated 27th June, 2018 for Kshs. 426, 724.14 and No.147624 dated 2nd October, 2018 for Kshs. 68, 276.00. Payment was done within a reasonable time.

The Procurement Function did not prepare monthly progress reports to update Accounting Officer on the implementation of the contract. Contract file was also not maintained.

2. Contract No. MU/ONT/13/2017-2018 for Supply of Solar Module Quantum Efficiency Measurement System (with all accessories)

Procurement Process

Procurement Initiation (Procurement Planning, Requisitioning, Choice of Procurement Method, Preparation of Bid Document)

The procurement was in the procurement plan with estimated cost of USD. 50, 000.00). The estimated budget included other items. The procurement was initiated through memo Ref: ACEIL/PTRE_T & I/01 dated 17th July, 2017. The specifications were attached to the memo but estimated cost was not indicated in the memo as envisaged by Regulation 22(2) of the PPDR. The procurement was processed through open tender and a standard tender document was used. The evaluation criteria for preliminary evaluation and technical specifications were set out in the tender documents. However, the tender documents was not amended using the instruction given in the standard tender document as it did not have manufacturers Authorization form; special conditions of contract and appendix to ITT.

Tendering Processes (Invitation to Tender, Tender Opening, Tender Evaluation, Professional Opinion)

The tender advertised in the mygoce.go.ke on 11th August, 2017. The deadline for submission of tenders was 31st August, 2017 at 11.00 a.m. The advertisement notice met all requirements except the requirement for serialization of tender documents by the bidders.

The head of the Procurement Function proposed six (6) members and a secretary to the Accounting Officer through a memo Ref: MU/PUR/109 dated 24th August, 2017. The Accounting Officer approved the names but no formal appointment letters were issued to the members. The committee opened tenders on 31st August, 2017 as scheduled and three (3) bids were received from Netline Technologies Ltd, Estec Ltd and Vertis Group Ltd. The committee signed the tender documents and assigned them identification numbers. It also prepared tender opening minutes recording tenderers' names, prices and bids bonds. However, it did not record the number of pages for each tender in the minutes opening minutes; the committee did not initial each page of the minutes; One member did not sign the minutes and one person participated in the opening of tenders but was not among the person nominated to open tenders.

The head of the Procurement Function proposed to the Accounting Officer three (3) members and a secretary to be appointed as the members of the evaluation committee. The Accounting Officer approval the names but there were no formal appointment letters. The committee conducted evaluation using the criteria that was set out in the tender document. However, the

committee allocated scores to the technical specifications and used them to evaluate the tenders. Scores were not provided in the tender documents. The evaluation committee prepared an evaluation report dated 21st September, 2017 with recommendations for award for each of the seven (7) items to the bidders which were determined lowest evaluated bidder on each item. The report was signed by all members on 13th November, 2017. In this regard, the evaluation was not concluded within the prescribed period of 30 days after tender opening. Further, the members of the evaluation committee did not prepared individual evaluation scores sheets.

Head of Procurement prepared a professional opinion dated 30th January, 2018 in which he concurred with recommendation of evaluation committee. The opinion was approved by the Accounting Officer.

Tender Award and Contract Signing (Tender Award, Notification, Performance Security, Contract Signing, Publishing and Publicizing of Contracts, Contract Reports to the Authority

Tender for supply of high performance desktop was awarded vide letter dated 14th February, 2018. The award was made after lapsing of the tender validity period of 120 days. Bidders were notified vide letters dated 14th February, 2018 and the successful bidder accepted the offer by signing the notification letter on 28th February, 2018 and returning it to the University as instructed. Vertis Group was not informed the outcome of the tender. This was inconsistent with Section 87(3) of the PPADA. According to notification letter, the successful bidder was required to submit a performance bond of 5% of the contract sum in form of bank guarantee. However, the bidder did not submit the performance bond.

By memo Ref: ACEII/PTRE/RE/01 dated 12th January, 2018, the Renewable Energy Coordinator instructed the head of Procurement Function to procure only one item (high performance desktop PC) and re-tender the other items since estimated budget was far much below the tendered prices. Solar Module Quantum Efficiency was also to be re-tendering since the tender was not responsive. This was demonstration that the estimated budget in the procurement plan was not realistic as envisaged by Section 53(2) of the PPADA. No records were availed to demonstrate that the Procurement Function conducted a market survey pursuant to Regulation 8(3) (z) of the PPDR to establish the prevailing market price for the subject items.

The Hospital and the successful bidder entered into a written contract dated 10th March, 2018 with a contract sum of Kshs. 585, 565.00. The contract signed outside tender validity period and the attachments that were deemed to form part of the contract were not annexed to the contract. Further, some of the documents that deemed to form part of contract as per c.g. TORs such description of services, reporting requirements; key personnel and sub-consultants were not relevant to a contract for supply of goods.

Members of the inspection and acceptance committee were proposed to the Accounting Officer by head of Procurement Function vide memo Ref: MU/PUR/109 dated 24th August, 2017. The Accounting Officer approved but did not issue formal appointment letters to each of the members of the inspection and acceptance committee.

The payment for the high performance desk top PC of Kshs. 555, 277.00 was processed through payment voucher No.132960 dated 19th June, 2018. 6% (Kshs. 30, 288.00) was processed through payment voucher No.132961 dated 19th June, 2018. Payment done through cheque No.230.

There were no monthly progress reports and contract file was not maintained. Some of the documents like delivery notes and invoices and inspection and acceptance certificate were kept by Finance.

3. Contract No. MU/ONT/11/2017-2018 for Supply & Delivery of Desktop Scanning Electron Microscope, Electric Muffle Furnace

Procurement Process

Procurement Initiation (Procurement Planning, Requisitioning, Choice of Procurement Method, Preparation of Bid Document)

The procurements were in the procurement plan but the estimated budget was above the contract sum by more the 10%. The procurement was initiated through a memo Ref: ACEII/PTRE_T& I/01 dated 17th July, 2017. Specifications were attached in the memo but the estimated cost was not indicated in the memo that initiated the procurement process. The procurement was processed through open tender which was in accordance with Section 91 of the PPADA.

A standard tender documents was used. The evaluation criteria for preliminary evaluation and technical specifications were set out in the tender documents. However, but special conditions of the contract; no manufacturer's authorization. The tender document required bidders to submit a tender security of 2% of the tendered prices contrary to Section 61 of the PPADA which requires a tender security to be expressed as an absolute figure which does not exceed 2% the tender as valued by the procuring entity.

Tendering Processes (Invitation to Tender, Tender Opening, Tender Evaluation, Professional Opinion)

The tender was advertised in the mygov.go.ke on 11th August, 2017. The deadline for submission of tender was 31st August, 2017 at 11.00 a.m. The advertisement notice complied with requirements except the requirement for serialization of tender documents by the bidders.

The names four (4) members of the tender opening committee and a secretary were proposed by the head of the Procurement Function vide memo Ref: MU/PUR/109 dated 24th August, 2017. The names were approved by the Accounting Officer but no formal appointment letters were issued. The committee opened tenders on 31st August, 2017 and three (3) bids were received from Gelsup Laboratory Equipment, Nirvana Technologies Ltd and ESTEC Ltd. The committee assigned identification numbers to the bid documents and signed them. It also prepared tender opening minutes were prepared indicating bidders names, prices and tender

securities. However, the minutes did not record the number of pages for each tender. The committee did not initial each page of the minutes and one person did not sign the minutes.

The head of the Procurement Function proposed the names of members of the evaluation committee and were approved by the Accounting Officer but there were no formal appointment letters. The committee evaluation tender using mandatory requirements and technical specifications. However, the committee assigned scores on specifications and used them to evaluate the tenders. Gelsup Lab. Equipment was disqualified at preliminary evaluation for subsisting incorrect tax compliance. Narvina Technologies and ESTEC this stage of evaluation.

The committee prepared evaluation report which was signed by all members. The report was dated 8th November, 2017. The committee took more than the prescribed of period of 30 days to evaluate the tender and did not prepare individual evaluation scores sheets.

Head of Procurement Function prepared a professional opinion Ref: MU/ONT/11/2017-2018 dated 31st January, 2018. Concurred with recommendation of the evaluation committee with respect to the eleven items being tendered for.

Tender Award and Contract Signing (Tender Award, Notification, Performance Security, Contract Signing, Publishing and Publicizing of Contracts, Contract Reports to the Authority)

The tender was awarded vide letters dated 8th February, 2018 to ESTEC Ltd and Nirvana Technologies Ltd at Kshs. 858, 760.00 and Kshs. 4, 800, 425.00 respectively. Awarded outside tender validity period.

Successful and unsuccessful bidders notified vide letters dated 8th February, 2018. Notification letter required successful bidders to submit a performance bond of 5% of contract files from reputable bank within 21 days after notification.

Educational Scientific and Technical Equipment Co. Ltd (ESTEC) submitted a performance bond of Kshs. 42, 940.00) under Ref: RC/BG/093/2018 dated 19th February, 2018. Nirvana Technologies did not submit performance bond as instructed in the notification letter and the tender documents.

Estec Ltd and the University entered into written contract with a contract sum of Kshs. 858, 760.00). Contract is undated and the documents mentioned in paragraph 1 were not annexed. Others like description of services and reporting requirements were not applicable to supply of goods. Contract was signed after lapsing of tender validity period since the draft contract was forwarded to the contractor on 2nd March, 2018 and was expected to sign and return it to the University. Contractor issued with LPO No.032498 dated 23rd May, 2018.

Nirvana Technologies Enterprises and the University signed a contract with contract sum of Kshs. 4, 800, 425.00). Contract was signed after lapsing of tender validity period.

The University did not submit report on contract awards to the Authority neither did the University publicized the contract award in its website and the notice board. This was inconsistent with Section 138 of the PPADA and PPRA Circular No1/2016 of 16th December,

2016. The procurement having been processed through PPADA, the University should have publicized the contract award.

Contract Management:

The University and the successful bidder entered into a written contract dated 10th March, 2018 with a contract sum of Kshs. 585, 565.00. The key documents were not attachments and the contract was signed after lapsing of the tender validity period. Inappropriate documents were deemed part of contract e.g. TORs such description of services, reporting requirements, key personnel and sub-consultants. The successful bidder was required to submit a performance bond of 5% of the contract sum in form of bank guarantee. The bidder did not submit the performance bond.

Four (4) members were proposed by the head of Procurement Function vide memo Ref: MU/PUR/109 dated 24th August, 2017 for appointment in the inspection and acceptance committee. The names were approved by the Accounting Officer but there were no formal appointment letter. Nevertheless, the inspection committee inspected the goods and issued an inspection and acceptance certificate to ESTEC Ltd dated 25th July, 2018 confirming that the goods acceptable. Goods were delivered vide delivery note No.19554 and invoice No.17565 &17495 dated 20th July, 2018. Goods were received at the store vide GRN. 044299 dated 26th July, 2018. Payment voucher not availed.

Payment for the high performance desk top PC of Kshs. 555, 277.00 was processed through payment voucher No.132960 dated 19th June, 2018. 6% (Kshs. 30, 288.00) was processed through payment voucher No.132961 dated 19th June, 2018. Payment done through cheque No.230.

The head procurement did not prepare monthly progress of the subject contract. Contract file was not maintained for filing all the contract implementation records.

4. Contract No. MU/ONT/12/2017-2018 for Supply and Delivery of PECVD Split Tube Furnace Systems

Procurement Process

Procurement Initiation (Procurement Planning, Requisitioning, Choice of Procurement Method, Preparation of Bid Document)

Procurement was in the procurement plan for 2017-2018 financial year. The procurement process was initiated through a memo Ref: ACIL/PTRE_T&L/01 dated 17th July, 2017. Specifications were attached for all items. The memo had description of the items but did not have their estimated cost as envisaged by Regulation 22(2) of the PPDR. A standard tender document was used and had the evaluation criteria. However, the tender document had some weaknesses which included expressing of the tender security as 2% of the tender sum instead