

KENYA ANTI-CORRUPTION COMMISSION



EXAMINATION REPORT INTO THE SYSTEMS, POLICIES, PROCEDURES AND PRACTICES OF THE ROADS SUB-SECTOR

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July 2007

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LIST OF ACRONYMS

AIE	Authority to Incur Expenditure
Arcview-GIS	Arc View Geographic Information System
BOQ	Bills of Quantities
CDF	Constituency Development Fund
CE	Chief Engineer
DG	Director General
DRC	District Roads Committee
DRE	District Roads Engineer
DTC	District Tender Committee
DWO	District Works Officer
GVW	Gross Vehicle Weight
HDM	Highways Design Model
KeRRA	Kenya Rural Roads Authority
KG	Kilogram
KeNHA	Kenya National Highways Authority
KRB	Kenya Roads Board
KTDA	Kenya Tea Development Agency Ltd
KURA	Kenya Urban Roads Authority
LPO	Local Purchase Order
LSO	Local Supply Order
MoLG	Ministry of Local Government
MoRPW	Ministry of Roads and Public Works
NEMA	National Environmental Management Act
PPOA	Public Procurement Oversight Authority
PS	Permanent Secretary
PSC	Public Service Commission
PWO	Provincial Works Officer
RMI	Road Maintenance Initiative
RMLF	Roads Maintenance Levy Fund
VAT	Value Added Tax
VO	Variation Order

ABSTRACT

This Report contains findings arising from the Examination into the systems, policies, procedures, practices and methods of work in the roads sub-sector. The Report includes recommendations on ways to seal loopholes, weaknesses and opportunities for corruption and increase sustainable accountability, transparency and integrity in the roads sub- sector.

The purpose of the Examination was to identify corruption loopholes in the Roads Sub-Sector and to make recommendations on how to seal the identified corruption loopholes. In order to achieve this objective, the Examination Team conducted literature review of reports and documents available at the Ministry of Roads and Public Works, Kenya Roads Board, Local Authorities, Kenya Wildlife Service, Kenya Tea Development Agency (KTDA) and tea factories under its management, Kenya Sugar Board (KSB) and Sugar Companies and other stakeholders in the roads sub-sector. In addition, the Examination Team interviewed selected officials in all the foregoing institutions, visited sites of on-going road work projects and weigh bridge stations and made vital observations. This Report covers all the core aspects of the roads sub-sector and the views of all persons interviewed.

Findings arising from this Examination indicate that there are weaknesses and opportunities for corrupt practices that can be exploited to perpetuate corruption. These findings have been categorized in eight sections as summarized below:

Section one covers weaknesses arising out of the existing policy and legal framework. First, there is lack of coordination among the various players in the roads sub-sector. This undermines proper maintenance and rehabilitation of the road network. Secondly, the Kenya Roads Board Act requirement that at least 50% of the MPs from the district be present for there to be sufficient quorum to hold any meeting of the district roads committee makes it difficult for some districts to hold meetings to prepare annual roads programme. Consequently, road programmes in such districts are prepared and forwarded to Kenya Roads Board (KRB) in contravention of the laid down procedures.

Section two highlights human resources management problems. These include shortage of Engineers in the Ministry of Roads and Public Works, lack of a harmonized training programme and weaknesses in communication to staff.

The **third section** deals with weaknesses in the funding of the roads sub-sector. These include delays in disbursements by KRB, lack of funds for unclassified roads within National Parks and pending Bills in 2005/2006 financial year.

The **fourth Section** deals with weaknesses in planning, design, contracts management and maintenance. These weaknesses include lack of adequate road condition and traffic data, inadequacies in carrying out feasibility studies, poor project planning and supervision, deficiencies in project design, non-adherence to KRB work plans, failure to test materials by some resealing units, among others.

The **fifth section** covers weaknesses in procurement. Most of the weaknesses highlighted were found in District Tender Committees. They include lack of uniformity in operations, lack of procurement planning for road works, poor preparation of tender documents, lack of tender evaluation committees, irregularities in conducting market price surveys, order splitting, and conflict of interest, among others.

The **sixth section** discusses challenges in axle load control unit. They include old malfunctioning equipment, lack of uniformity in operations among various stations, lenient fines, outright corruption, poor monitoring and evaluation, among others.

The **seventh section** deals with weaknesses in technical and financial audits. They include lack of post-construction environmental audits and monitoring and evaluation mechanism. Others include a non-operational Audit Committee in the Ministry of Roads and Public Works, failure to prepare audit programmes and audit reports by some District Internal Auditors.

The **eighth section** deals with problems in record keeping. These include poor storage of records and failure to maintain previous years' records.

Recommendations have been suggested for all the findings. The recommendations take cognizance of the proposed reforms underway in the roads sub-sector that are contained in Sessional paper No. 5 of 2006. These reforms contain proposals to separate roles of policy formulation from implementation, through creation of three new authorities namely; Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority. The Kenya Roads Bill which is seeking to operationalize these changes has been passed by Parliament and is awaiting Presidential assent. It is expected that the recommendations in this Report will be incorporated in the reform process underway.

The Commission is mandated to advise and secure the revision of methods of work that in the opinion of the Commission may be conducive to corrupt practices. Accordingly, the Commission expects the Permanent Secretary, Ministry of Roads and Public Works and Senior Managers in the Roads Sub-Sector to prepare an implementation matrix to effect recommendations of this Report. The Commission will continuously monitor and assess progress in the implementation of the recommendations.

1.0 INTRODUCTION

The Transport Sector in Kenya comprising roads, rail, air, maritime and inland waterways and pipeline transport modes, is the engine of the country's economic growth. Road transport is the predominant mode of transport in the country, accounting for over 80% of the land Freight and Passenger Traffic. Roads are therefore the primary communication links to all sectors of the economy and the population. It is widely recognized that an efficient road infrastructure is a prerequisite for economic and social development.

Kenya's economy is 80% agricultural oriented. A well developed road network provides a facilitating role of transportation for both production and marketing activities. The road network contributes significantly to the cost of transportation of farm inputs and produce. A poor road network denies farmers access to markets, reduces agricultural productivity and increases the cost of farm inputs and produce.

Roads have a direct impact on the welfare of the rural population as they are critical for development and poverty eradication. Poor roads deny many citizens access to essential services such as health facilities, schools and emergency responses in case of disaster. The road infrastructure has implications in the maintenance of security. Areas with poor road infrastructure have been characterized by several incidences of crime and general insecurity. This is notable in the North Eastern Province and parts of Rift Valley Province where rescue operations are delayed due to poor road network.

The responsibility for roads infrastructure development, rehabilitation and maintenance is fragmented among different government ministries, departments and levels of government. These include the Ministry of Roads and Public Works through the Roads Department, Kenya Roads Board (KRB), Kenya Wildlife Service (KWS), Local Authorities and District Roads Committees, among others.

The Roads Department was established in 1956 and is charged with the responsibility of formulating policies, developing, maintaining and rehabilitating roads. The

department is responsible for 63,000 km of classified roads. KWS is in charge of 8,900 km of roads in National Parks and Game Reserves while the Ministry of Local Government through various local authorities is in charge of 10,000 km of urban roads and 124,000 km of rural roads.

KRB is responsible for overseeing the road network and thereby coordinating its development, rehabilitation and maintenance. Towards this end, KRB has appointed agencies and sub agencies to carry out the actual development, rehabilitation and maintenance of roads. They include the Roads Department in the Ministry of Roads and Public Works (MoRPW), District Roads Committees, Kenya Wildlife Service and Local Authorities. However, all these agencies are not well linked to the MoRPW and do not cover all roads. These weaknesses have created a vacuum for other institutions to fill.

Other players in the roads sub-sector by virtue of the nature of business conducted and the importance of roads in their trade include Kenya Sugar Board (KSB) through sugar companies and Kenya Tea Development Agency (KTDA) through tea factories. The Kenya Sugar Board finances sugar companies to undertake road works. The sugar companies undertake road works due to the fact that some of the roads they use are not covered by the existing framework. They also attribute their participation to bureaucracy in undertaking emergency road repairs by government departments. The tea factories finance road works through tea cess due to similar arguments advanced by sugar companies.

The introduction of the Constituency Development Fund (CDF) in the year 2003 brought on board another important player in roads maintenance. The Constituency Development Committees (CDCs) allocate part of the CDF to roads maintenance projects. Although this has helped to address shortfalls in the existing road maintenance works, there is a risk of duplication of road works between CDCs and other players.

Approximately 47% of the classified road network is in a failed condition. The Kenya Poverty Reduction Strategy Paper attributes the poor condition of Kenya's road network to lack of periodic and routine maintenance, rampant corruption in road construction contracts, collusion between contractors and government officials leading to approval of substandard work, increased traffic volume, overloading and non prioritization of roads in government expenditure. Overloading on roads is attributed to failure by the Axle Load Control Unit to steadfastly enforce sanctions against offenders. For this reason, institutions responsible for ensuring effective utilization of resources in the roads sub-sector have to enforce ultimate efficiency and proactively eliminate corruption at both national and district levels.

Investment in the road infrastructure requires massive financial and human resources. In the 2006/2007 Financial Year budget, MoRPW received 30.25 Billion Kenya shillings for development expenditure and 10 billion Kenya Shillings from the Roads Maintenance Levy Fund for the maintenance of roads. This is not sufficient to rehabilitate and maintain all roads that are in a poor state. It is estimated that Kshs. 150 Billion is required to rehabilitate roads in poor condition, while periodic and routine maintenance requires Kshs. 15 Billion per year. Development Partners have assisted in the development and maintenance of roads in the country. Apart from financing the rehabilitation of major road works, the agencies support the Government of Kenya in addressing the underlying causes of widespread network deterioration, by supporting capacity building, efficient and effective planning and administration of the roads sub-sector under the Road Maintenance Initiative (RMI).

The Government has initiated a number of road rehabilitation projects aimed at addressing the poor state of roads. Some of the major ongoing road rehabilitation projects include Maji-ya-Chumvi to Miritini section, Mai Mahiu-Naivasha-Lanet section, Lanet-Njoro turnoff dual carriage, among others.

In spite of the aforementioned interventions, the Roads Sub-sector has continued to experience challenges that have contributed to the current poor state of the road network in the country. Some of the major challenges facing the sector include:

- Weak policy and institutional framework that is cumbersome for the efficient and effective delivery of road works.
- Inadequate funding for road rehabilitation, repairs and maintenance
- Poor axle load enforcement.
- Failure of the rail transport in Kenya.
- Shortage of engineers and other technical personnel at the Ministry
- Encroachment on road reserves.

The Government has sought to address some of these challenges through a variety of reforms. To achieve this, the Roads Sub-sector has since the mid nineties embarked on a reform process in line with the Sub Saharan Road Maintenance Initiative (RMI) in order to improve the delivery and sustenance of road infrastructure. Major reform achievements include the establishment of the Road Maintenance Levy Fund (RMLF) in 1993 to ensure a sustainable source of maintenance funds. This led to establishment of the Kenya Roads Board (KRB) in 1999. The purpose of establishment of KRB was to:

1. Separate the roles of financing and implementation.
2. Co-ordinate the implementation of all policies relating to the development, rehabilitation and maintenance of the road network;
3. Determine the allocation of financial resources derived from the fuel levy and any other sources that are required by roads agencies for the development, rehabilitation and maintenance of the road network.

Due to the enormous size of the road network and inadequacies in funding and fragmentation of the institutional framework within which it is managed, the network has suffered from poor maintenance, repairs and rehabilitation. As a result, it has been acknowledged that there is need for further reforms in the Sub-sector with a view to

separating the Policy and Supervision roles from the implementation roles. It is imperative that issues of good governance form part and parcel of these reforms in view of the significance of the roads infrastructure. This Examination Report has made findings and recommendations that will contribute to the reform process underway.

2.0 BACKGROUND

The Kenya Anti-Corruption Commission conducted an Examination of the systems, policies, practices and procedures of the roads sub-sector between October 2006 and December 2006. This was in fulfillment of the mandate as set out in section 7(1) (d), (e) and (f) of the Anti-Corruption and Economic Crimes Act, 2003 which stipulates the functions of the Commission. According to this section, the Commission is empowered to:

- At the request of any person, to advise and assist the person on ways in which the person may eliminate corrupt practices;
- Examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures that in the opinion of the Commission may be conducive to corrupt practices;
- To advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such bodies that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt practices.

2.1 PROBLEM STATEMENT

The Examination Assignment into the Roads Sub-Sector was triggered by complaints by members of the public through the media and persistent reports to the Kenya Anti-Corruption Commission, which alluded to prevalence of corrupt practices in the Sub-Sector. The corruption reports indicated:

- Irregularities in planning,
- Breach of procedures in procurement,
- Questionable dealings,
- Payment for work not done,
- Incomplete or substandard work
- Variation of project costs, among others.

The National Corruption Perception Survey carried out by the Kenya Anti Corruption Commission in 2006 ranked the Ministry of Roads and Public Works as the seventh most corrupt ministry out of thirty three. It is against this background that the Commission found it necessary to carry out an Examination of the Roads Sub-sector to identify the avenues and loopholes that allow corrupt practices to thrive and to propose ways and means of sealing them in order to enhance efficiency, accountability and transparency.

2.2 OBJECTIVES

The objectives of the study were:

- a) To examine the systems, policies, practices and procedures used by the Roads sub-sector in its operations /management and identify weaknesses, loopholes, avenues and opportunities for corruption.
- b) To make recommendations on the ways and means of sealing the corruption loopholes so identified.

2.3 TERMS OF REFERENCE AND SCOPE

The Terms of Reference for the study were:

- a) Study systems applied in the Roads Sub-Sector targeting all players, including the Ministry of Roads and Public Works, Kenya Roads Board, Kenya Wildlife Service, Local Authorities, Kenya Tea Development Authority and tea factories under its management, Kenya Sugar Board and Sugar Companies, with a view to identifying loopholes that allow for corrupt practices.
- b) Review Secondary data relevant to the carrying out of the Examination
- c) Prepare and present a Report detailing the findings and recommendations for sealing the loopholes.

2.5 METHODOLOGY

In order to effectively address the above objectives, the following methods were applied:

- a) Formal and informal interviews of all stakeholders

- b) Focus group discussions
- c) Observation of physical facilities, surroundings, methods and systems of work at road projects, Axle Load Control Units (Weigh Bridges), emergency repair sites, among others
- d) Review of accounting and other organizational records
- e) Content analysis of various documents including policy documents, research reports, various studies on the roads sub-sector, memos, circulars, audit reports, contract documents and various internal and external correspondence..

2.6 CONSTRAINTS

During the examination, the Team was faced with various constraints, namely:

- a) Inclement weather that made it difficult to reach some project sites.
- b) Unavailability of MoRPW officers in some stations visited.

3.0 FINDINGS AND RECOMMENDATIONS

The findings contained in this Report are divided into eight sections. The findings have been serially numbered for ease of reference. Each finding denotes a weakness or corruption loophole that requires a remedy. There is a suggested recommendation for each finding to remedy the identified weakness/corruption loophole.

3.1 POLICY AND LEGAL ENVIRONMENT

The Roads Sub-sector operates within the existing policy and legal framework. The most important pieces of legislation regulating this Sub-Sector are:

- Kenya Roads Board Act No. 7 of 1999
- The Road Maintenance Levy Fund Act No. 9 of 1993
- The Traffic Act, Chapter 403 Laws of Kenya
- Ministerial Circulars

In addition, the Ministry of Roads and Public Works has published Sessional Paper No.5 of 2006 and a Bill that is intended to harmonize operations in the Roads Sub-Sector has been passed by Parliament.

The Examination Team noted the following weaknesses in the context of the prevailing policy and legal environment:

3.1.1 District Roads Committees

The Kenya Roads Board Act, 1999 establishes the District Roads Committee (DRC) and stipulates its membership to include all members of Parliament from the district, chairman or mayor of every local authority in the district, the district roads engineer, among others. The representation of local authorities by Chairmen or Mayors to the exclusion of local authorities' engineers is inappropriate as most civic leaders are

not well versed with technical issues on roads. This makes harmonization of roads programmes by various actors in the roads sub-sector in the districts difficult.

Section 17(6) of the KRB Act requires at least 50% of the members of Parliament from that district to be present for there to be sufficient quorum to hold any meeting of the District Roads Committee. DRCs as agents of KRB are supposed to prepare annual road works programmes and submit the same to KRB for approval. Notwithstanding the lack of quorum in some districts as stipulated by the KRB Act, road programmes are prepared and forwarded to KRB in contravention of the laid down procedures.

The Permanent Secretary, Ministry of Roads and Public Works and the Executive Director KRB in consultation with the Attorney General should review the Kenya Roads Board Act with a view to:

- i. Allow MPs to appoint technically qualified representatives to attend DRC meetings on the MPs' behalf in cases where they are unable to personally attend meetings.*
- ii. Expanding the membership of DRCs to include Engineers of Local Authorities.*

3.1.2 Road Reserves

Currently, there is no system of securing road reserves, apart from gazettelement. As a result, unscrupulous individuals and firms have encroached onto the road reserves. The Team found that the Survey Section at MoRPW is currently in the process of developing a data base of all road reserves with a view to securing them. It is also in the process of acquiring scanners for the purpose of capturing all its road drawings and maps dating from 1959 to date. Further more it is in the process of acquiring the survey software (Arc-View GIS) to enhance efficiency. In the meantime the Ministry has issued public notices to all persons encroaching on road reserves countrywide to vacate them voluntarily or be forcibly evicted.



An example of Road Reserve encroachment

The PS-MoRPW should:

- a. Expedite the process of developing the data base of the entire road network reserves.*
- b. Work closely with the PS, Ministry of Lands by regularly exchanging information to curb road reserves encroachment.*
- c. Ensure regular surveillance of all road reserves and preservation of the same.*

3.2 HUMAN RESOURCE MANAGEMENT

Institutions in the roads sub-sector require the right mix of personnel to effectively carry out roads development, rehabilitation, repair and maintenance. The Examination Team noted the following weaknesses that affect delivery of services in the roads sub-sector.

3.2.1 Staffing

There is a shortage of engineers, technicians, plant operators and other support staff in the Ministry of Roads and Public Works. This inhibits the Ministry from carrying out essential tasks in design and implementation of road works. The government has attempted to address part of this problem by hiring of consultants for design and supervision of capital projects. During the Examination, it was observed that some vital tasks such as materials and pavement testing were performed by staff appointed on short term contracts commonly referred to as casuals. Such staff can not be held responsible for irregularities and substandard work.

The PS MoRPW in conjunction with the Directorate of Personnel Management (DPM) should carry out a staff needs assessment to determine the exact number of engineers, technicians and other support staff required. Upon Completion of this task, corrective action should be taken to rationalize the staffing situation.

3.2.2 Training

An item for training is normally included in Capital Projects' Contracts. The component is aimed at assisting to enhance the technical capacity of the staff in the Roads Department. The training component under Prime Costs sums in the works contracts is currently managed independently of the Training Committee at the Ministry of Roads and Public Works. Consequently, there is lack of coordination in the training functions at the Ministry. This creates a loophole for misappropriation of funds allocated for training.

The PS MoRPW should harmonize training in the Ministry by ensuring that the training component in contracts is transferred to the Ministry's Training Committee so as to ensure transparency in the allocation of training opportunities for staff.

3.2.3 Communication

During the Examination, it was found that official information that should be made available to all officers in the Ministry had not been disseminated. For example, procedures and systems for hiring out plant and equipment under the Mechanical Transport Fund are not communicated to all users. In addition, some staff were not well informed about the forthcoming reforms in the Roads Sub-Sector.

The PS MoRPW should put in place structures for disseminating general information to all officers in the Ministry. In addition, the PS should ensure that there is wide consultation in the development and dissemination of policy documents.

3.3 FUNDING

One of the major sources of funding for road works in the country is the fuel levy fund which was introduced in 1993 and is mainly used for the maintenance of roads. The fuel levy fund is collected by KRA and administered by KRB, which was established by an Act of Parliament in the year 2000, with the responsibility of presiding over planning, development and maintenance of roads. The KRB has three main agencies through which funds for roads rehabilitation, maintenance and repair are disbursed. These are:

1. The Department of Roads at the Ministry of Roads and Public Works, which deals with Class A, B & C roads. These are international highways, the national highways and trunk roads.
2. The District Roads Committees (DRC), which deals with Class D, E, and other roads. These are rural access roads and feeder roads.
3. The Kenya Wildlife Service (KWS), which deals with all the construction and maintenance of roads in the national parks and game reserves.

KRB has also designated selected local authorities as sub-agencies.

The fuel levy fund that the KRB administers is distributed amongst these agencies, in accordance with a formula that is spelt out in the Act: 57% goes to the Department of Roads of the Ministry of Roads and Public Works; 24% goes to the District Roads Committees, Roads Department, Local Authorities and Kenya Wildlife Service; 16% goes to Constituencies through District Roads Committees and 3% goes towards the overhead costs of the KRB.

The other major source of funds for road works is budgetary allocation by the Exchequer. This is directly allocated to the Ministry of Roads and Public Works. The Government also receives substantial amounts of funding for road works from development partners.

In addition to disbursements from KRB, KWS also occasionally receives funds from development partners for specific road projects and allocates part of the internally

generated funds for road works. Local authorities allocate part of their LATF and internally generated funds to road works. Other players in the roads sub-sector such as KTDA and tea factories, KSB and sugar companies do not receive any government funding.

The Examination Team noted the following weaknesses in the area of funding for road works.

3.3.1 Disbursement of Funds

Kenya Roads Board (KRB) manages road maintenance funds from the Fuel Levy Fund by disbursements in tranches to appointed agents for roads maintenance. Disbursement of funds to districts by the Ministry of Roads and Public Works is done via cheques after receiving funds from KRB. Upon receiving the funds, the Ministerial allocation committee sits to deliberate on its distribution. Copies of the allocation committee minutes with the PS' instructions are forwarded to the Chief Engineer (Roads) to requisition Authority to Incur Expenditure (AIEs) from the Chief Finance Officer (CFO). The AIEs are then forwarded to the Principal Accounts Controller for commitment, where they are captured in the Integrated Financial Management Information System (IFMIS).

Many of the districts visited complained of delay in the disbursement of funds. The delays in disbursement of funds are due to:

- Delays in requisitioning of AIEs by the roads department.
- Frequent breakdown of the IFMIS system.
- The District Works Officers physically collecting AIEs and cheques from the Ministry Headquarters.
- KRB allocation of funds only after the Board meetings, leading to funds being withheld by KRB before being released to the agents.
- KRB releasing the 12th tranche in mid June. The funds released reach the Districts a few days before closure of the financial year.

As a result, implementation of the work plans is delayed causing a rush towards the end of the financial year. This can lead to emergency purchases, repairs, and rushed expenditure of funds. In addition, this creates a loophole for irregularities in procurement.

The PS MoRPW should:

- *Change the mode of disbursement of funds from issuance of cheques to Electronic Funds Transfer (EFT) to the designated bank accounts of the various districts.*
- *Ensure that the roads department requisition AIEs within three days after receiving PS' instructions.*
- *Ensure that AIEs are prepared and released to Districts within 12 days of requisitioning.*

The Executive Director KRB should review the release of the 12th tranche to be effected at the beginning of the new financial year.

3.3.2 Pending Bills

In 2005/2006 financial year, Authority to Incur Expenditure (AIEs) totaling Kshs.3,399,809,521.20 from the Ministry of Roads and Public Works were forwarded to Districts and the matching funds remitted to Treasury for onward transmission. However, Treasury failed to forward funds to some of the districts. After receiving the AIEs, the Districts issued LPOs and LSOs to suppliers and contractors, expecting that funds would be availed to pay for them. This resulted in pending Bills at the end of 2005/2006 financial year. This affected the implementation of the 2006/2007 financial year Work Plans as the funds were utilized to offset the pending Bills in the affected Districts. No reconciliations have been carried out between the Ministry of Roads and Public Works and Treasury to establish the exact amount that was not remitted to districts. In addition, the ministry has not yet established the exact figure of pending bills. This can lead to creation of fictitious pending bills.

The PS MoRPW should ensure that as AIEs are dispatched to Districts, matching funds are electronically transferred to the designated district bank accounts. In addition, the PS should write to all District Works Officers requiring them to state the total amount of pending bills in respect of 2005/2006 financial year.

The PS MoRPW in conjunction with the PS Ministry of Finance should ensure that reconciliations are carried out to establish the exact amount of funds not remitted to districts.

3.3.3 Kenya Wildlife Service

KWS maintains both classified and unclassified road networks in the parks and game reserves. KRB funds the maintenance of classified roads only, leaving the task of funding the maintenance of unclassified roads to KWS. KWS funds the maintenance of unclassified road network covering approximately 6,000 Kms using in-house funds. The unclassified road network within the parks and game reserves is too large for KWS to fund from its own sources. This has made it difficult for KWS to maintain the unclassified road network sufficiently, hence the poor state of roads. The Team found that negotiations between KWS and the Ministry of Roads and Public Works are on-going to re-classify the roads within the parks and reserves.

The PS-MoRPW should fast track these negotiations and re-classify park and game reserve roads as special roads as they contribute to the National economy, and provide adequate funds for their maintenance.

3.4 PLANNING, DESIGN, CONTRACTS MANAGEMENT & MAINTENANCE

Good planning ensures that implementers of road works get accurate and reliable technical information for use in informing the selection and prioritization decisions on road works, scheduling and budgeting of maintenance activities and in monitoring and evaluation of performance among others. Getting technical information entails the collection, analysis and database management of actual, regularly measured roads condition and traffic data. During the Examination, the following observations were made:

3.4.1 Planning Process

The Roads Department has not been able to adequately collect, analyze and maintain road condition and traffic data due to inadequate funding, lack of equipment and minimal staff. Other hurdles are use of largely insufficient manual traffic counters and lack of up to date computer software. There are only 1,800 traffic counters spread across the entire road network against the required number of 8,600.

The traffic data collected does not adequately capture seasonal and daily traffic variations. Most of the data management is done manually as the Highway Design Model (HDM III) software used for data analysis is outdated.

Non availability of accurate and reliable technical database to aid in the selection and prioritization of road works in maintenance and rehabilitation activities in the planning function can lead to the dubious origination, poor planning and prioritization, as well as inadequate financial control which may open loopholes and opportunities for corruption.

Cases of poor planning were evident in the field. For example, Bungoma – Bokoli - Kimilili Road D279 was planned for gravelling and was implemented under Contract No. RG 910-03. However, before completion of the said road works, a tender was

advertised for upgrading of the same road to bitumen standard. This will definitely create overlap of works resulting into wastage of public resources.



A section of Bokoli-Kimilili Road gravelling project.

The PS – MoRPW should ensure that the planning section is adequately funded, staffed and equipped with the relevant up to date software and traffic counters among other facilities, to facilitate capture and analysis of data to inform the planning process. In addition, a sound technical database should be established for the roads sub sector. Furthermore, the PS should ensure there is proper planning for road works in a manner that best utilizes the scarce resources available by avoiding duplication of works.

3.4.2 Feasibility Studies

Feasibility studies for road works include Engineering, Environmental and Economic analyses. The analyses indicate the Preliminary Cost Estimates, Cost Benefit Analyses, Internal Rates of Return, and Environmental Impact Assessments of selected road alignments. The Examination Team witnessed material weaknesses in this area as outlined below:

It is a requirement to carry out feasibility studies for donor funded projects. Yet, feasibility studies for some of the road construction projects fully funded by the government are not carried out. As a result some of the technical, economic and time frame options adopted in the designs turn out to be non feasible at the implementation stage leading to negotiations and unjustifiable variations in the contracts. This creates a loophole that can be exploited by unscrupulous contractors and ministry personnel. For instance, in Contract No.RD.0415 Keroka –Nyangusu Road (C16) and Kiamokama loop (C16/D208 junction-D207/B3 junction), the land for the road was not compulsorily acquired in advance as the most feasible route location had not been pre-determined. This resulted in amounts in Bill No. 1 (Preliminary items in the Contract Bills) being increased while the sub-base, base and bitumen layers' provisions were hugely reduced, altering scope of works from the tendered contract (*Refer to table 1 overleaf*).

Table 1: Contract No. Rd 0415 Breakdown of Bill No.1

BIL L	DESCRIPTION	CONTRACT	PROVISION	VARIATION
		TENDERED (Kshs)	REVISED VO No.1 (Kshs) 18 th April 2005	
1	Preliminaries	72,580,268.40	96,290,268.00	23,709,999.60
4	Site Clearance and Top soil stripping	14,250,000.00	30,000,000.00	15,750,000.00
5	Earthworks	124,020,000.00	174,250,000.00	50,230,000.00
7	Excavation and Filling for structures	13,227,000.00	13,227,000.00	0.00
8	Culverts and Drainage Works	89,492,000.00	90,659,500.00	1,167,500.00
9	Passage of traffic	8,900,000.00	34,400,000.00	25,500,000.00
12	Natural material sub base & base	111,050,000.00	94,300,000.00	(16,750,000.00)
14	Cement and lime treated materials	174,250,000.00	110,500,000.00	(63,750,000.00)
15	Bituminous surface treatment and surface dressing	183,995,000.00	149,270,200.00	(34,724,800.00)
16	Concrete Works	2,109,660.00	2,109,660.00	0.00
20	Road Furniture	35,932,270.00	34,572,270.00	(1,360,000.00)
22	Day works	1,691,200.00	1,691,200.00	0.00
	TOTAL OF WORKS	831,497,398.40	831,270,098.00	(227,300.40)



A section of Keroka Nyanguso Road. Work in progress

The Permanent Secretary should ensure that comprehensive feasibility studies are carried out on all road works. This will promote best practice in planning for road works.

3.4.3 Project Planning

Project planning is the initial phase of the project in which the project scope and constraints are defined. During this phase, the activities are identified, estimation and allocation of resources required for each task is undertaken and scheduling of the tasks done. The following observations were made by the Examination Team:

Many of the road projects commenced with inadequate project planning processes and procedures. As a result, project documents are drawn with insufficient project briefing, site and pavement investigations and preparation of inadequate Bills of Quantities. This leads to concept and design changes, unjustifiable variations and inability to effectively control and monitor works progress. This is an indication of underlying corruption in the planning process and an avenue for wastage of government funds. For example Contract No. RD 00400 for the re-carpeting of Nakuru - Marigat road (B4), the Tender was awarded without comprehensive site

investigations having been carried out. During implementation, it was found that some problem sections of the road could not be adequately addressed by the ongoing re-carpeting as it required total reconstruction.

The Permanent Secretary should ensure that adequate project briefing, requirements analysis and site investigation functions are carried out in accordance with laid down procedures and guidelines.

3.4.4 Design

The Design process involves the preparation of blueprints for specific road alignments, pavement layers' quality and dimensions of road works among others. Comprehensive road designs lead to preparation of accurate contract documents which are important tools during construction works implementation. Accurate contract drawings and Bills of Quantities assist Surveyors, Contractors, Engineers, and Audit teams in setting out, controlling progress and auditing of road works. The Design Section of the department of roads lacks adequate technical personnel and is inadequately computerized to adopt best practices. The Examination Team observed that:

Many road projects have commenced on the basis of preliminary designs that turn out to be inadequate. Other projects have inadequate designs leading to redesign as construction progresses. These lead to work progressing without adequate drawings to guide the construction process, inability for supervisors to control progress and quality of works. These create an avenue for abuse by the supervisors and contractors in the implementation process, which may be in the form of unwarranted variations. In addition, the anomalies lead to delays in implementation of road works.

The Permanent Secretary should ensure that only properly designed road projects are approved for commencement of works. In addition, the PS-MORPW should equip and enhance the capacity of the Design Section to enable it execute mandatory comprehensive designs before works go to tender.

3.4.5 Design Reviews

In some instances the Ministry prepares road designs which take a long period of time to be implemented. As a result, at the time of implementation, the road conditions are found to have changed substantially necessitating design reviews. In such cases, consultants are commissioned to review the designs. However, the reviews are open to abuse through over or under-design or replicating the previous designs, which do not address the prevailing conditions. This necessitates further redesign during implementation stage, which leads to delays, variations and wastage of public funds. For example, the Examination Team came across a project in which there was over five year time lapse from the time of design up to the time of implementation. A consultant was engaged to conduct design review which was still found to be insufficient. A redesign was still necessary at the implementation stage.

The Permanent Secretary should ensure that adequate clauses are included in the tender documents to hold design consultants responsible for inadequacies in the designs. The clauses should be enforced against consultants when inadequacies are discovered.

3.4.6 Bills of Quantities

Variation orders are sometimes raised due to omissions in the Bills of Quantities at the documentation stage. This creates an avenue for escalation of project costs that can easily be exploited by unscrupulous contractors and engineers. For instance, in contract No. RD 0380 – Rehabilitation of Sultan Hamud-Mtito Andei Section of Nairobi to Mombasa Road (A109), an addendum was necessitated by the omission of Kiboko lorry parking / service road already considered in the design but omitted in the Bills of Quantities.

The Permanent Secretary should ensure that tender documentation is properly carried out to include comprehensive Tender Drawings, Specifications, Conditions of Contract and Bills of Quantities that are responsive to the proposed works with a view to minimize variations later in the Contract and improve Contracts management.

3.4.7 Preliminary items and Prime Cost Sums

Bill no. 1 (Preliminary items), on most government funded projects was found to be high relative to the contract sums, as depicted in table 2 below. Further, most of the Prime Cost (P.C) Sums under the Bill No 1 in the Contract documents are not itemized. The P.C Sums normally indicate lump sum figures which do not specify the breakdown of works to be done. This may give rise to a loophole which can be exploited leading to misappropriation of funds.

Table 2: Evaluation of Bill No. 1 on selected Projects

PROJECT	CONTRACT SUM (excluding vat, variation of prices and contingencies)	BILL NO 1	Percentage (%) Bill No 1 / Contract Sum
Meru – Maua road C91 Kianjai loop Rd	399,375,290	56,663,000	14.2
Mweiga -Endarasha	142, 713, 350	27, 834,000	19.5
Bungoma-Bokoli-Kimilili D279 Contract no RG910-03	110,398,435	22,595,000	20.5
Kisii-Chemosit C21 road Contract no Rd 0414	633,036,600	95,594,500	15.1
Bondo-Usenge-Osieko road C27	539,687,050	93,730,000	17.4
Bumala Ruambwa C30 and D251 Contract no Rd 0437	650,139,000	112,084,000	17.2

The PS-MoRPW should prepare guidelines to be employed in preparation of Bill No. 1 based on scope of works, contract sum, among others to foster responsible and transparent use of public money. In addition, the PS should ensure that most of the components of Bill No. 1 should be itemized clearly describing the Prime Cost Sums.

3.4.8 Resident Engineers

The Roads Department posts Resident Engineers to each of its project sites to supervise road constructions. The Resident Engineer acts as a representative of the

Chief Engineer – Roads as stipulated in the Contract. The Team observed cases where Resident Engineers held other positions of responsibility in the Ministry such as Provincial Roads Engineers, District Works Officers and District Roads Engineers. It is difficult for a Resident Engineer with other responsibilities to give full attention to a project; a situation the contractor can easily take advantage of leading to poor work. The situation was attributed to the under-staffing of Engineers at the Department.

In addition, the Team came across a Ministry of Local Government Infrastructure Project under the Urban Development Department that had generated many complaints with substandard works being carried out due to inadequate supervision. This was attributed to the Resident Engineer being stationed elsewhere other than the project site.

The PS-MoRPW and PS Ministry of Local Government should ensure that Resident Engineers are permanently stationed at the project sites to guard against contractors doing substandard work. In addition, the PS-MoRPW and PS Ministry of Local Government in consultation with the Ministry of State for Public Service and Public Service Commission (PSC) should explore possibilities of recruiting more Engineers as recommended elsewhere in this Report.

3.4.9 Project Engineers

The Project Engineers are based at the headquarters and are entitled to a project car from each project. Project Engineers in charge of more than one project receive a car from each of the projects. This leads to availability of surplus cars to a single officer whose use may be abused.



Sample of Project vehicles

The PS-MoRPW should come up with criteria to streamline Projects' vehicle allocation to project engineers.

3.4.10 Annual Public Road Works Programme

The Examination Team observed that the Annual Public Roads Program as prepared by the District Roads Committees and approved by the Kenya Roads Board was not adhered to in most Districts. In some cases, road projects were removed from the work program and replaced by others. District Road Committees made approvals for the changes to the Annual Public Road Program but without the approval of the Kenya Roads Board.

However, the Team observed that the Kenya Roads Board had captured this shortcoming in the Technical Performance and Financial Audit Reports for the financial years of 2003/2004 and 2004/2005, where it recommended among other things that approved work plans and KRB prioritization criteria should be strictly followed.

The Executive Director, Kenya Roads Board should implement the recommendations on the adherence to the Annual Public Roads Program and approvals for changes in the Annual Public Road Program as outlined in the Technical Performance and Financial Audit Reports of 2003/2004 and 2004/2005 financial years.

3.4.11 Variations

The Team came across a road on which construction had commenced before design works were complete. As a result, the road was being designed as construction progressed impacting negatively on the Contract period. An example is contract No.RD 0415 ((Keroka - Nyangusu road) (C16)).

In the above contract, prime cost sums were initially tendered at some values but were revised upwards as shown in Bill items 1.07, 1.09 and 1.27 in table 3. Subsequent calculations on revisions of inclusion of percentages of the prime cost (PC) sums for the contractor's overheads and profit were irregularly calculated at 100% rate other than at the tendered rate of 18% as depicted in the tendered Bills.

Table 3: Contract No. Rd 0415 - Revisions

			CONTRACT	PROVISION
BILL ITEM	DESCRIPTION	UNIT	TENDERED	REVISED VO No.1 18th April 2005
1.07	Allow a Prime Cost sum of Kshs. 8 million for RE's supervisory staff including overtime.	Kshs	8 ,000, 000	16, 000, 000
1.08	Include percentage of P.C. sum in item 1.07 for contractor's overheads and profit.	Kshs	8 ,000, 000	16,000, 000
1.09	Allow prime cost sum of Kshs 2 500 000. for removal and reinstatement of services	Kshs	2, 500, 000	15, 000, 000
1.10	Include percentage of PC sum in item 1.09 for contractor's overheads and profit	Kshs	2, 500, 000	15, 000, 000
1.27	Allow prime cost sum of Kshs 3,000,000 for the RE's miscellaneous account.	Kshs	3,000,000	6,000,000
1.28	Include percentage of PC sum item 1.27 for contractor's overheads and profit.	Kshs	3,000,000	6,000,000

The PS-MoRPW should deal with the anomalies in Table 3 above and ensure that approvals for variations are properly done through sanctions from a constituted committee who will check on the technical and financial impacts of these variations. Further, the limit on variations in contracts should be adhered to as stipulated in the Public Procurement and Disposal Act.

3.4.12 Liquidated Damages

Some projects take long to complete due to poor planning and poor performance by contractors. The liquidated damages clauses which provide for compensation to affected parties due to delays in the contracts are not normally enforced. This could be attributed to the Client breaching some of the Conditions of Contract (e.g delays in advance payments and payments for interim certificates). As a result,

some contractors breach the conditions of contract and delay on projects without the client invoking the remedial measures available to him as per the contract. This creates an avenue to charge for additional claims which can be negotiated with the Client and thereby increase Project Costs (for example, the Murang'a-Sagana-Marua Road (A2), RD0401).

The PS-MoRPW should ensure that Contract Conditions are strictly adhered to by both parties and those in breach penalized in accordance with the Contract terms and Conditions.

3.4.13 Irregular Payments

Progress report No 31 dated 31st October 2006 of Contract No. Rd 0413 for reinstatement of Kisian - Bondo road (C27) indicates the percentage of contract sum certified to date as 94.38% while percentage of work done is 71.86%. Payments were ahead of pending works to be executed as at the time of inspection.

PS MoRPW should investigate this anomaly and take remedial action based on proper Contract Management Practices and ensure that Contractors are paid based on evaluation of works completed.

3.4.14 Materials

The Materials Department in the Ministry of Roads and Public Works is charged with the responsibility of pavement design, testing material qualities and pavement strengths. This Department is widely utilized as a quality control tool during the implementation of construction projects.

Materials testing

Resealing Units in some locations do not get materials tested before being utilized. Some of the other roads sub-sector actors such as Local Authorities, Tea Factories and Constituency Development Fund Committees do not undertake the mandatory tests on the materials used on the roads.

The Team came across materials being used in construction of roads without carrying out of the mandatory tests to ascertain quality. An example is the Proposed Rehabilitation and Reconstruction of Nyeri Township Roads, Contract No. MOLG/NYERI/2005/20A1 being carried out by the Urban Development Department of the Ministry of Local Government. Lack of materials testing may lead to contractors defrauding the government large sums of money by using substandard materials.



Soil sample testing in materials laboratory

The PS-MoRPW should ensure that all Road Works implementing agencies guarantee that materials for use on all road projects are tested in accordance with the standard specifications.

3.4.15 Local Contracting Capacity

The capacity of local contractors to carry out large road construction works is low. The local contractors have got low capacity of plant and equipment in working condition, sufficient cash flow and technical expertise. Some of the plant and equipment break down frequently on project sites. In addition, some local contractors mobilize non-functional equipment on some project sites. This

contributes to delays in execution of road works. However, the contractors indicate in the contract documents that they possess and will avail on site the required plant and equipment in working condition. For example, on the project site of Contract No. RD. 0415, Keroka –Nyangusu Road (C16) and Kiamokama loop (C16/D208 junction-D207/B3 junction) the contractor had a broken down grader. The progress of work on this project was slow.

Extracts from the above project's progress report no. 30 of October 2006 highlights some of the causes of delay as being due to:

- a. Inadequate number of plant on site.
- b. Frequent breakdown of plant and equipment available on site (e.g 3 graders were broken down throughout the month and two were frequently unserviceable)
- c. Inadequate supply of automotive diesel fuel.
- d. Understaffing at all levels of production.
- e. Poor planning and programming.



Broken down plant and equipment at one of the road project sites

The PS MoRPW should ensure that the contractors commit themselves to avail the plant and machinery for each project as indicated in the contract documents.

The contract evaluation teams should conduct due diligence during tendering to ascertain that capacity information availed at tender stage by contractors like financial position, available serviceable equipment, staff among others is credible.

The PS MoRPW should continue to support the capacity enhancement of local contractors by encouraging them to merge or form Joint ventures in undertaking road works projects to enhance efficiency and local capacity.

3.4.16 Enforcement of Contractual Obligations

The Team came across contractors who had been awarded more than one contract with insufficient financial, plant and technical capacity to handle all the works simultaneously. As a result all the works were progressing very slowly and were behind schedule as per the works program and yet the roads department continued to award the contractors more contracts. However, the normal practice is that the technical evaluation team looks into the ongoing projects being undertaken by a contractor to ascertain the contractor's capability and availability for additional works. This could be an indication of collusion in the award of works.

The PS-MoRPW should ensure that:

- *Prior to awarding an additional contract to a contractor with an on-going project, the Project team should give a report indicating the contractor's capability to undertake the projects simultaneously. The project team should attach copies of monthly progress reports in support of their advice. Contractors who are currently not performing satisfactorily on the assigned contracts should not be awarded new works before completing the ones in progress.*
- *Bid documents are strictly evaluated to establish the maximum number of jobs a contractor can handle at any one time based on the contractor's competence, ability and capacity. Under no circumstances should a contractor be awarded contracts beyond the contractor's capacity.*

3.4.17 Maintenance

The basic objective of road maintenance is to ensure that the road that has been constructed or improved is maintained in its original condition. It is accepted that over the life of the road, it will deteriorate due to various factors. Nevertheless, maintenance is intended to begin on the first day after the road improvement works are completed. The effect of regular and timely maintenance is to prolong the life of the road by putting off the date at which it needs to be reconstructed. This stretches the period over which the benefits of the investment made are available and therefore provides a higher rate of return on the initial investment.

To maintain a good road network condition, routine and periodic maintenance needs to be carried out. Routine maintenance is a continuous activity involving grass cutting, drain clearing, culvert cleaning, leveling of shoulders etc, while periodic maintenance is done in intervals of several years involving resealing, regravelling of shoulders or replacement of unbound macadam. This is done through force accounts or contracting out. The Team found that a large portion of the road network in the country has deteriorated to a state of disrepair. This is attributed to inadequate funding for road maintenance activities.



Resealing unit with minimal equipment for pothole patching

The Permanent Secretaries, Ministries of Roads and Public Works and Finance, in conjunction with the KRB should make a case for enhanced funding allocation for routine maintenance works to facilitate timely maintenance of roads.

3.5 PROCUREMENT

The procurement function at the Ministry of Roads and Public Works Headquarters is coordinated through the Procurement Department in conjunction with the user departments while approvals and awards of the tenders are adjudicated by the Ministerial Tender Committee (MTC).

In the Districts, the Procurement function is handled by the District Procurement Officers who serve all the Ministries and Departments represented at the District level. The approving authority is the District Tender Committee.

The Examination Team found various irregularities in procurement matters as outlined below:

3.5.1 Procurement Policy

A procurement policy states in broad terms the objectives and responsibilities of procurement function and its application to specific activities and situations, for instance, what items to buy in bulk and which items will be procured just to meet immediate demand and what procedure to adopt in the procurement process. It seeks to facilitate the development and implementation of consistent procurement and contract administration activities throughout the entire organization.

The purpose of a policy is to ensure that standard processes, procedures and deliverables are consistent and meet the needs of the organization. In the absence of a procurement policy personnel are tempted to circumvent the procurement procedures.

It was noted that there exist disparities in various District Tender Committees (DTC) operations in the procurement of some road works materials. Some Districts were procuring some materials directly while other Districts stated that the same materials are supposed to be procured centrally at the Headquarters. It was also observed that while some Districts procure materials for stocking, other Districts were procuring on '*just in time*' basis. This was attributed to lack of a clear

procurement policy. This leads to abuse of the procurement process by the procurement officers and incurring unnecessary expenditure by the Ministry.

The PS-MoRPW should oversee the development of a Procurement Policy so as to give direction and specific guidelines on items to be procured centrally by the Ministry Headquarters and at the District level. The procurement policy of the Ministry should be clear on what should be procured for stocking and 'just in time' basis and what procurement procedure should be adopted.

3.5.2 Procurement planning

The Public Procurement and Disposal Act 2005, makes it mandatory for Public Procuring Entities to engage in the procurement process only after the preparation of the Annual Procurement Plan. This is to ensure that procurement is done in a coordinated and a proactive approach such that the Procurement Unit in conjunction with users commences with planning for the organizational requirements and linking it with the budgetary allocation before initiation of the procurement process.

However in most of the districts visited, the Team noted that Procurement Plans for road works are non existent. This has resulted in *ad hoc* procurement of materials and works, allegations of delays by the Procurement Department and in some instances, procurement of excessive quantities of slow moving materials. For example, the Ministry procured huge quantities of aggregates, chippings and paints in the year 2005. At the time of the Examination approximately 5,000 tons of aggregates and several tins of paint still remained unused. Some of these materials are stored at Wilson Airport, Athi River and Ruiru stores.

The PS-MoRPW should ensure that all procurement is done strictly in accordance with the provisions of the Public Procurement and Disposal Act, 2005 and the Regulations. The PS MoRPW should ensure that that there is an Annual Procurement Plan at the Headquarters and at the District level. Further the PS-MoRPW should investigate

cases of wasteful procurement and take appropriate disciplinary action against officers involved in the malpractice.

3.5.3 Prequalification and Appraisal of Contractors/Suppliers

Prequalification and appraisal of contractors/suppliers is a very important stage in the procurement process, since it enables an organization to identify capable potential suppliers of goods and services. However, in some of the Districts visited registered contractors/suppliers are unable to perform or supply when awarded the tender leading to delays in the procurement of materials or works. This is attributed to the fact that the Districts do not carry out performance appraisal of suppliers / contractors to weed out non performers.

The PS-MoRPW in conjunction with the Director General, Public Procurement Oversight Authority (DG-PPOA) should ensure that performance appraisals of contractors/suppliers are carried out on an annual basis and the appraisal reports should be utilized in evaluation of subsequent tenders. This will ensure that the Districts award tenders to competent and reputable contractors/suppliers.

3.5.4 Prequalification of Consultants

In an effort to bridge the shortage of Engineers in the Roads Sub-sector, the Ministry has allowed participation of private and individual Consultants to serve as Resident Engineers. These categories of consultants are classified under Class C. Although this is a commendable step, the Examination Team observed that, Consultant Engineers wishing to be engaged by the Ministry apply to the Chief Engineer Roads directly. The latter exercises unchecked discretion in determining who to assign as Resident Engineers. This is a loophole that can be exploited through favouritism, nepotism and bribery.

The PS-MoRPW should ensure that a formal procedure of pre-qualifying and registering such consultants is established in line with the Public Procurement Regulations. Further the PS should ensure that criteria and guidelines for allocation of projects to such Consultants are put in place.

3.5.5 Preparation of Tender Documents

The Examination Team noted that there is poor preparation of tender documents in most Districts visited. This is due to the fact that some districts have not implemented the use of the Standard Tender Documents. Furthermore, inadequate preliminary investigations and consultations between District Procurement Officers and District Works Officers results in incomplete Bills of Quantities being prepared among others. This leaves room for discretion and manipulation of works by contractors and engineers during the implementation process.

There is no mechanism of ensuring that the tender bid documents are full proof after preparation. This is due to the fact that the tender bid documents are not discussed at the District Tender Committee before advertisement as it was done previously.

The PS-MoRPW should ensure that the Ministry reverts to the process of seeking approval of tender bid documents by the District Tender Committee before advertising.

3.5.6 Tender evaluation

Most districts visited did not have Tender Evaluation Committees for procurement of road works. After the opening of tenders, bid documents are given to the District Works Officer or the District Roads Engineer to carry out the evaluation and forward the evaluation report to the District Tender Committee (DTC) for adjudication and award.

It was also observed that the evaluation process takes long to be completed. The Ministry is compelled to extend the validity period of the tenders as a result of delays. The perceived integrity of the evaluation process may suffer as a result of these delays.

In most of the materials, works and services tender documents examined, the evaluation criteria are not comprehensively stipulated as required by the procurement regulations. This leaves the evaluators to design evaluation criteria, after the tenders have been opened. This creates a loophole that can easily be manipulated to favour certain contractors/suppliers.

It was also noted that due diligence is not carried out during the evaluation process resulting into the likelihood of awarding contracts to contractors/suppliers from related firms at uncompetitive prices. For example in Nyeri District two LPOs Nos. 924367 and 924366 for the supply of cement, chippings and building sand were issued to two related firms that share the same postal address and mobile numbers.

The PS-MoRPW in conjunction with the DG-PPOA should ensure that:

- *All Districts establish Evaluation Committees as stipulated in the Procurement Regulations.*
- *The evaluation criteria are indicated in all tenders as required by Procurement Regulations.*
- *Evaluations are completed within the validity period of the tenders as stipulated in the tender bid documents and the evaluation duration provided is strictly adhered to. In situations where it is necessary to extend the validity period the Public Procurement Regulations guidelines must be adhered to.*
- *Due diligence is carried out during the evaluation process so as to limit the procurement irregularities as observed above.*

3.5.7 Term contracts

Procurement of goods, works or services in most Districts is carried out through the use of Term contracts. Term contracts are contracts in which sources of supply of goods, works or services are established for a specific period of time at a predetermined unit price. The unit rates are evaluated and the awarded contractors/suppliers are engaged as and when need arises.

In all the Districts visited, the Team noted anomalies in the Term Contracts used for the procurement of materials, works and services. The tender documents used do not have estimates of the annual consumption quantities. As a result, the bidders are unable to estimate the expected quantity and factor it in the pricing for the Ministry to enjoy volume discounts and economies of scale.

The District Tender Committees allow counter offers from the bidders and enter into negotiations, thus compromising the procurement process. This is un-procedural and against the Public Procurement Regulations.

In some Districts, the current Term Contracts for the period 2006/2007 were awarded after the 90 days Tender validity period. For example, in one of the Districts visited, the closing date of the tenders was 25th May 2006 and yet the award was made on 18th September 2006.

At the time of the Examination, the Procurement Section under the Provincial Works Officer (PWO) had not received the Minutes of the District Tender Committees yet it was already engaging the suppliers without the minutes. Ideally, the minutes of the awards should be availed to the departments immediately after the award.

The PS-MoRPW in conjunction with the DG-PPOA should ensure that:

- *All tender documents used in the Districts have annual estimates of quantities of materials.*
- *Breach of procurement procedures is stopped forthwith.*
- *All tenders are evaluated, adjudicated and awarded within the validity period of the tenders. Minutes of the District Tender Committee should be circulated to all the users immediately after the awards.*

3.5.8 Market Price Surveys

The Team was informed in various Districts that as part of the technical and financial evaluation of annual tenders, market price surveys are carried out by the District Procurement personnel after the opening of the tenders. The findings of the market survey are used as a benchmark in the adjudication and award of the tenders by the District Tender Committees. However prices have remained far above the prevailing market price. Carrying out market surveys after the tenders have been opened has the risk of compromising the objectivity of the participants on price recommendations.

The PS-MoRPW in conjunction with the DG-PPOA should ensure that: -

- *The market price surveys are carried out before the tenders are opened in line with the Procurement Regulations.*
- *A Team comprising the Procurement, Works, Accounts and other users is tasked to carry out the market price survey and submit its report directly to the District Tender Committee.*

3.5.9 Discretion in the Allocation of Jobs

It was noted in all Districts visited that the District Tender Committees approve several suppliers to supply same works/materials at a uniform price. These approvals by the District Tender Committees are forwarded to the District Works Officers who have the discretion to choose which firm should supply and perform the works. This creates a loophole of abuse of discretion since there is no established criterion for the allocation of supply contracts. This also compromises the objectivity of the Works Officers in supervising the works of selected contractors. This anomaly has created friction and misunderstanding between the Works Officers and the Procurement personnel.

The PS-MoRPW should initiate consultation with the DG-PPOA to ensure that a clear criterion is developed to address job allocations in cases where most of the suppliers quote the same price. Advice resulting from the consultations should be forwarded to the District Tender Committees for their action.

3.5.10 Pricing

Documents inspected in all the Districts visited showed that the same suppliers/contractors are used every year. It was also clear that most of the suppliers/contractors quote the same price on several items every financial year. For example, Tender No. NY1/10/006-07, for the supply and delivery of road maintenance and construction materials in Nyeri where some of the contractors/suppliers were unable to perform or supply when awarded the Tender. It is also an indication of collusion among suppliers and with Ministry staff. There is also a possibility of leakage of the Engineer's Estimates which are supposed to be confidential. This has resulted in overpricing of road works and materials. The suppliers/contractors attempt to justify the high prices by linking them to delay in receiving payments in the past from the Ministry and to the delay in the refund of VAT, by the Kenya Revenue Authority. However the Team observed that currently all suppliers/contractors are paid on time.

The PS-MoRPW in conjunction with the DG-PPOA should ensure that: -

- *Invitations to bid for annual tender opportunities in the Districts are circulated and made widely available so as to attract more potential competitors through use of advertisements in area local publications, and by placing advertisements on public notice boards, in addition to the current advertisements in the daily Newspapers of nation wide circulation.*
- *Tender documents should contain a condition stipulating the time limit in which payments are to be made. Further the Ministry should inform the public including suppliers and contractors about the provisions of the new Procurement Regulations, regarding the period within which payments must be made.*

The Commissioner General, Kenya Revenue Authority should accelerate the refund of VAT on materials and road works to the suppliers and contractors.

3.5.11 Use of Quotations

In most of the districts visited, the Team noted that Quotations are still being used despite a Ministerial Order Ref. No. OP/PA.6/23A to all Departmental Heads to

cease use of quotations. For example in the procurement of grading works for Marsabit - Isiolo Road (A2) and works and gravelling of Mugoya - Kipewi (E629).

The PS-MoRPW should ensure full compliance with Procurement Regulations and the Ministerial Order at the Headquarters and District level. Quotations should only be used as per the applicable thresholds stipulated by the Public Procurement and Disposal Act and the Regulations there under.

3.5.12 Splitting of Orders

The Team noted cases of order splitting to defeat the public procurement requirement of open tender, for the procurement of goods, services or works, whose value exceeds the Kshs.5,000,000 threshold..

Orders are split among different contractors in small sums of less than five million Kenya shillings yet the total contract value is in excess of the five million Kenya shillings threshold as outlined in the Procurement Regulations. For example; the tenders for grading works of Marsabit - Isiolo Road (A2) and gravelling of Mugoya-Kipewi (E629) were split as illustrated in table2.

Table 4: Marsabit - Isiolo Road (A2) Grading Works.

Date	L.S.O No.	Contractor	(Kenya shillings) Contract Sum
15-Jun-06	742031	Gurumessa	2,808,000.00
15-Jun-06	742032	Rungare	3,180,000.00
15-Jun-06	742039	Babylon	4,635,000.00
14-Jun-06	757203	Cresta	3,132,500.00
14-Jun-06	757204	Kiu	3,200,000.00
15-Jun-06	965296	Mugaa-ini	3,900,000.00
Totals			20,855,500.00

The total value of grading works on the Marsabit –Isiolo road (A2) was Kshs.20,855,500.00. This is in excess of Kshs.5,000,000.00 threshold, that should have been procured through open tender in line with the Procurement Regulations. Instead, the works were split into six orders of less than 5 000 000.00 Kenya shillings each as tabulated above in Table 4 above and procurement was irregularly executed through Quotations.

Table 5: Mugoya - Kipewi (E629): Supply, spread, water, process and compaction of gravel.

Date	L.S.O No.	Contractor	(Kenya shillings) Contract Sum
8-Jun-06	252759	Jutex Auto Hardware	564,250.00
8-Jun-06	252756	Jutex Auto Hardware	3,996,000.00
8-Jun-06	252755	Mbeere Auto	3,996,000.00
Totals			8,556,250.00

Total cost of works on Mugoya - Kipewi (E629) road was Kshs.8,556,250. To circumvent the Public Procurement Regulations the procuring entity split the sum into three parts at a cost of less than the Kshs.5,000,000 threshold and then proceeded to procure the works using LSOs as indicated above in table 5.

The PS-MoRPW should ensure full compliance with the Procurement Regulations. He should further take disciplinary action against the officers who perpetrate this malpractice.

3.5.13 Use of LSOs/ LPOs

The use of LSOs / LPOs on roads improvement and maintenance works is inappropriate. LSOs / LPOs do not define the scope of works in detail and are subject to a lot of abuse. The Ministry has realized the shortcoming of use of these documents and has directed the use of Standard Contracts Document for

Procurement of Small Works as used in the Roads 2000 Program vide Ministerial circular No.A84.02/AVOL26/106 of 7th June 2006.

The advantages of Standard Contracts Document for Procurement of Small Works are:

- Proper and detailed description of the scope of works
- Delivery of quality road works as outlined in the general and special specifications.
- Competitiveness and value for money
- Timely delivery of road works
- Ease of management and supervision of road works
- Reduction of wastage in implementation of road works

Despite the above instructions, most districts visited were still using LSOs/LPOs for the award of roads improvement and maintenance works. The Team noted that there is lack of co-ordination in the implementation of Ministerial Circulars due to:

- The misunderstanding between the District Works Officers/ Districts Roads Engineers and the District Procurement Officers as to which Ministry is charged with the responsibility of issuing directives on procurement matters and responsibility of preparation of the tender documents.
- Different interpretations of the Circular by various officers interviewed. This was attributed to inadequate direction on how the Circular should be implemented. Lack of clarity on how the circular should be implemented creates an avenue for abuse of the procurement process by the procurement officers.

The PS-MoRPW in liaison with the DG-PPOA should develop comprehensive guidelines on the implementation of Ministerial circular No.A84.02/AVOL26/106 of 7th June 2006. The DG-PPOA should thereafter issue a Circular to this effect to all District Procurement Officers, Districts Works Officers/ Districts Roads Engineers and other users.

In addition, the PS-MoRPW in liaison with the DG-PPOA should ensure all concerned staff are adequately sensitized on the implementation of the Circular.

3.5.14 Engineers' Estimates

The Engineers' Estimates are not utilized as a guide in the evaluation of bids and in budgeting for road projects at prices which differ from the prevailing market rates. The Team came across under and over quoted contracts awarded to contractors. The projects were at the implementation stage. In some instances, the Ministerial Tender Committee awarded contracts to the lowest financial bidders other than to the lowest evaluated bidders due to the absence of dependable Engineers' estimates which should be used in guiding the process.

The situation culminates into contractors facing cash flow problems during the implementation stage, which slows progress of works and creates room for negotiations that can lead to irregular variations, inferior works, excessive time extensions, laxity in enforcement of termination and liquidated damages clauses of the contract and incomplete projects among other shortcomings.

Further, confidentiality of the Engineer's Estimates is lacking and leakage to the bidders is probable as most of the bid rates examined were similar to the Engineer's Estimate.

The PS-MoRPW should ensure that the Engineer's Estimates are accurate and derived from first principles to aid in decision making. Further, the PS should stress the need for maintaining confidentiality of Engineer's Estimates which should only be released during the evaluation process.

3.5.15 Unit Costs of Works

The cost of installing culverts in one Province was found to be three times higher than the cost of installation of similar culverts in a neighboring Province. This is an indication of a possibility of corrupt practices as regards costing of works.



Culverts assembled for laying

PS-MoRPW should embark on the development of standard and up to date unit costs catalog to be distributed at the Ministry Headquarters, provincial and district levels which should guide the pricing processes and control unwarranted variances.

3.5.16 Conflict of interest

In some Districts visited, the District Works Officer doubles up as the District Roads Engineer. The officer serves as the Secretary to the District Roads Committee and is also a member of the District Tender Committee. The officer is also expected to supervise, monitor and approve payments for materials and works. This creates conflict of interest in the adjudication, award and execution of the road works. It also compromises the internal checks in procurement of materials and road works. Such conflict of interest no doubt opens a gaping loophole for corruption.

The PS-MoRPW should ensure that there is proper segregation of duties by ensuring that various officers available at the district level are designated to carry out different duties. Under no circumstances should an officer perform multiple tasks that are bound to put him in a situation of conflict of interest.

3.5.17 Debarment and Blacklisting of Contractors/Suppliers

The Examination Team found that incompetent contractors who execute poor works as reflected in delays in completion of projects, deployment of inadequate machinery at project sites and cash flow problems are still being awarded new tenders.

While the Ministry has stepped up its efforts by ensuring compliance in terms of timely completion of projects and adherence to Contract Conditions, some contractors whose performance has been found wanting are being dealt with administratively by ensuring that the firms are not considered for more projects; the glitch is yet to be exhaustively dealt with. Currently, there is no well stipulated, documented and transparent mechanism of blacklisting contractors who do not abide by the Contract Terms.

The PS-MoRPW should develop and implement a documented criterion to be employed uniformly in the debarment of incompetent contractors.

3.5.18 Stores Management

The Examination Team noted several anomalies with regard to stores management in the Districts visited, for example:

- Stores are managed independently of Procurement. The procurement personnel do not receive returns from stores before making purchase decisions. This may lead to overstocking through overstatement or exaggeration of physical requirements, thus leading to waste.
- There are weak procedures in receipt and issuance of materials. For example in Nyeri, the Ruringu storekeeper receives materials from suppliers, issues to his resealing unit and signs for them, he also authorizes the gate passes for materials leaving the yard. The gate records do not indicate the materials entering or leaving the yard. This creates a fertile ground for fictitious deliveries and issuance of materials.

The PS-MoRPW should ensure that: -

- *There is segregation of procurement, storage, records and issue functions of road-work materials.*
- *There is proper coordination between Procurement and Stores such that Stores perform a proactive role of informing procurement on the stock levels and lead times, so as to minimize overstocking and waste.*
- *There are adequate gate records on materials and equipment movement.*

3.5.19 Payment for Materials before Delivery

The Team noted that due to poor coordination of procurement, storage and payment for road works materials, there is a likelihood of payment for materials not delivered. For example in Nyeri, the Provincial Works Officer issued two Local Purchase Orders Nos. 924367 for the supply of cement and 924366 for the supply of chippings and building sand on 9th November 2006 to M/s Double M Enterprises and Three Horns both of P.O. Box 904 Nyeri. Both materials were purported to have been received on 17th November 2006 *vide* Counter Receipt Vouchers Nos. 0487626 and 0487625 respectively. The Stores Ledger and Control Cards of the respective materials were updated with the receipt on the same day. The above cards also indicated that the materials were issued for use on the same day *via* Voucher Nos. 1136298 and 1136297 respectively. The suppliers raised invoices Nos. 169 and 032 for payment on the same day. However on physical verification the Team established that no actual delivery had been made.

The PS-MoRPW should ensure that: -

- *No payment for materials is made before deliveries.*
- *There is segregation of procurement, storage, records and payment functions.*

Kenya Anti-Corruption Commission on its part will investigate the criminal aspects of the above matter and ensure that the offenders are punished in accordance with the Anti-Corruption and Economic Crimes Act, 2003.

3.5.20 Security of Stores Premises

Most of the stores and yards visited by the Examination Team had inadequate physical security. For example at Wilson Airport stores and yard where materials worth millions of shillings are kept, the premise is secured by a low perimeter wall, has no security lights and overgrown bushes. There have been cases of theft of equipment, as evidenced by the theft of 16 weighbridge laptops from the store.

The barbed wire fence in Nyeri - Ruringu stores, which is situated in a residential area, has collapsed at various points. Further, the security firm which has been contracted does not keep elementary records on items entering or leaving the stores.

The PS-MoRPW should enhance the security of all stores and yards by ensuring that:

- They have secure perimeter walls, intruder alarm systems, adequate security lighting, robust gates and sentry boxes where necessary*
- The company providing security services maintains proper records of vehicles and goods entering and leaving stores premises.*
- Police personnel are deployed to guard large stores with high value items like Wilson Airport.*

3.6 AXLE LOAD CONTROL

This is the most challenging Section in the Ministry of Roads and Public Works with several cases and allegations of corruption. The Ministry has attempted to stem the vice using several approaches including the rotation of staff, staff sensitization, but all have not helped reduce corruption at the weigh bridges.

A donor funded study on weigh bridges in the country, named The Axle Load Control Best Options Study has been completed and a Report handed over to the Government. The study makes wide ranging recommendations that are currently being implemented.

Proposed changes in the management of weigh bridges include:

- involvement of the private sector
- installation of a weigh in motion weighbridge at the port
- introduction of instant fines
- centralization, legislation against seven axle vehicles
- Improving the railway system, among others.

The Ministry has started to implement some of the above recommendations, for example:

- Procurement of weigh - in motion modern weighbridges which will be used alongside static weigh bridges at Mariakani, Athi River and Gilgil before the end of the 2006/2007 financial year.
- The Ministry is considering legislation against licensing of vehicles with more than 6 Axles.

The Examination Team visited various weigh bridges across the country and witnessed the following anomalies:

3.6.1 Weigh Bridges Equipment

The weigh bridges have old and malfunctioning equipment. Two weighbridges at Mariakani and Gilgil indicated different weights for the same vehicle and consignment. The variances in the gross vehicle weight in some cases were as high as 5,000kg. For example, axle weights and gross vehicle weights (GVW) of lorries

KAS 997A and KAU 836N obtained at Mariakani on 12th December and Gilgil on 13th December are indicated in tables 6 and 7 below.

Table 6: Differences in Weigh Bridges Readings (Bulk Cargo) in Kilograms of Lorry registration number KAS 997A

Axle	Mariakani (12.12.06)	Gilgil(13.12.06)	Diff
A1	6,475.00	6,055.00	420.00
A2	2,430.00	700.00	1,730.00
A3	6,895.00	6,445.00	450.00
A4	7,050.00	6,335.00	715.00
A5	5,180.00	4,330.00	850.00
A6	4,030.00	2,325.00	1,705.00
GVW	32,060.00	26,190.00	5,870.00

Table 7: Differences in Weigh Bridges Readings (Petroleum) in Kilograms of Lorry registration number KAU 836N

Axle	Mariakani (12.12.06)	Gilgil(13.12.06)	Diff
A1	5,810.00	5,660.00	150.00
A2	6,250.00	6,025.00	225.00
A3	6,255.00	10,290.00	(4,035.00)
A4	8,110.00	7,420.00	690.00
A5	4,745.00	7,305.00	(2,560.00)
A6	7,845.00	7,125.00	720.00
A7	7,760.00	6,910.00	850.00
GVW	46,775.00	50,735.00	(3,960.00)

In an effort to address this problem, six modern static and sixteen mobile weigh bridges have been procured and are awaiting installation. However, the warranty period of this equipment had expired at the time of carrying out this Examination. In addition, 16 laptop computer components of the mobile weigh bridges were stolen from the Wilson Maintenance Stores. This has hampered effective use of the new weigh bridges. Installation of the modern static weigh bridges has been delayed by the on-going roads construction on sites where the weighbridges facilities are to be installed at Mariakani and Gilgil.

- New weigh bridge machines were installed at Busia and Athi River but without the computer and printer components. As a result, the data including the vehicle weights is being captured manually. This leaves room for manipulation of records.
- The weigh bridge installed at Busia is not utilizable in rainy conditions, yet this aspect was not factored in during installation.
- The weigh bridge premises lack telephone communication between the weigh bridges and the Head Office for proper control and monitoring.
- The working conditions at some weighbridges are poor with lack of essential services such as air conditioning, toilets, water and protective clothing.

The PS-MoRPW should:

- *Hasten the implementation of the Recommendations made by the Axle Load Control Best Options Study.*
- *Ensure that the stolen lap tops are replaced and promptly installed to eliminate the manual capture of data*
- *Procure and install weighbridges at Busia and other stations that are utilizable in all weather conditions*
- *Install telephone facilities at all weighbridges to facilitate faster communication, control and monitoring*

- *Improve working conditions at weigh bridges by providing necessities such as protective clothing, water, toilets and air conditioning.*



Trucks being weighed at the weighbridges

3.6.2 Malpractices at the Weigh Bridges

Staff at different weigh bridges make different entries of vehicle specifications and weights for the same vehicle. For example, weigh bridge printouts from Mariakani

indicated that a custom sealed containerized truck was a five axle vehicle weighing 33,535 kg. However on inspection of the same vehicle at Busia, it was found to be a seven axle and weighed 50,010kg. The manipulation of weight is done to circumvent the penalties for violating axle load requirements. The fact that overloaded vehicles are cleared at different points of the journey indicates bribery of the staff managing the weighbridges. This practice results in damage to our roads.

The Examination Team also observed that it was possible for trucks to pass through several weigh bridges without the prerequisite weigh bridge tickets. For example, Vehicle registration No. UAG 480Y originated from Namanga, through Gilgil and Kisumu weigh bridges, without a weigh bridge ticket yet it had been cleared by the three stations and its Delivery Note stamped with the Official weigh bridge stamps. The same vehicle, when weighed in the presence of the Examination Team at the Busia weigh bridge, was found to be overloaded by 12 tons.

The Team noted from the records at the weigh bridges visited, that there were very few overloading cases reported and in some cases none at all. However, when the Team participated in the weighing for a few minutes and taking the weights, most vehicles were found to be overloaded. The Team witnessed transporters employing unscrupulous methods of positioning the wheels partly on the weighing machine pad and partly off in an attempt to transfer weights and distort the axle loads.

The PS-MoRPW should:

- *Ensure that all eligible vehicles are inspected, weighed and weigh bridge tickets issued. No truck should be allowed to pass through a weigh bridge station without a ticket indicating that it has been inspected and has complied with the axle load requirements.*
- *Ensure that officers deployed at the weigh bridges are vetted to ascertain they are of integrity and are properly trained to discharge their duties effectively.*
- *Enhance supervision of officers at the weigh bridges.*
- *Ensure compliance to the Ministry's Code of Conduct and to the Public Officers Ethics Act, 2003*

- *Investigate the above cases and take disciplinary action against officers responsible for the malpractice.*

3.6.3 Non - Uniformity in Operations

Operations at different weigh bridges are not uniformly applied. At the Mariakani weigh bridge, vehicles with axle loads beyond the allowable limits are charged with overloading, even if the Gross Vehicle Weight is within the allowable limit as stipulated in the Axle Configuration Limits. The Busia weigh bridge on the other hand, instructs vehicles with axle overloads but within the allowable Gross Vehicle Weight to re-distribute the loads and proceed without being charged, which is against the operational procedures. At Athi River, overloaded vehicles are charged according to the group axle totals.

The PS-MoRPW should ensure that:

- *All weigh bridge operations are uniformly carried out, as per the documented procedures and to be uniformly applied at all weighbridges and as per the Traffic Act on Axle Load.*
- *Adequate training and induction is given to staff before deployment to the weigh bridges.*

3.6.4 Handling of Detained Vehicles

Operations at the weigh bridge are manned by Ministry of Roads and Public Works staff and the Kenya Police Officers. Ministry staff weigh the vehicles and hand over overloaded vehicles to the Police. The Police divert eligible trucks to the Weigh Bridge and detain and charge overloaded ones. The detained vehicles are supposed to be released on the authority of the Ministry of Public Works officials through the issuance of a Compliance Certificate after the offender proves that the court fine has been paid. Cases of Police releasing overloaded vehicles without the involvement of Ministry staff were reported making it difficult to establish whether the vehicle drivers were actually charged in Court.

The PS-MoRPW and the Commissioner of Police should ensure that officers adhere to the laid down rules and disciplinary action taken against officers found to be involved in the malpractice. In addition, the PS-MoRPW and the Commissioner of Police should ensure that all drivers arrested are charged in a court of law. Further, a register of vehicles handed over to Police for charging is maintained. The register should reflect the following details, among others:

- *Date of handing over and registration number of the vehicle*
- *Signature of Police officer receiving the vehicle*
- *Case reference number*
- *Receipt number and amount of court fine paid*
- *Date of issuing compliance certificate*

Cases of vehicles in the register without an indication of court fine paid and compliance certificate issued should be promptly investigated.

3.6.5 Handling of Overloaded Vehicles

Drivers of overloaded custom sealed containerized vehicles are charged in court and turned back to offload the excess weight at the point of origin. Some overloaded trucks on the other hand offload excess weight at the Weigh Bridges before being allowed to proceed. Overloaded vehicles carrying perishable goods, petroleum, gas and other inflammable products are charged / bonded and allowed to proceed with the journey, thereby damaging more sections of roads. The three different axle load offenders are fined equally by the Courts without considering the double damage caused by the vehicles on driving back to the point of origin to offload.

The PS-MoRPW in conjunction with the Attorney General should review the Traffic Act to institute stiffer penalties for overloaded vehicles based on the excess weights and distances covered from point of origin.

3.6.6 Issuance of Warnings

A lot of discretion is exercised with respect to the power to issue warnings on slightly overloaded vehicles. At Mariakani for instance, a driver of a vehicle found to have excess weight of 1000kg was charged in court while some with excess weight of more than 3000kg were let off with warnings. This illustrates abuse of discretion. Furthermore, the officers do not prepare the warning returns as required by the operational procedures for submission to the Ministry Headquarters.

The PS-MoRPW should ensure that:

- *There are clear guidelines on issuance of warnings and strict adherence to the same.*
- *Returns on warned vehicles should be prepared and submitted as required.*

3.6.7 Weighbridge Monitoring and Evaluation

Monitoring and Evaluation at the weigh bridges is coordinated from the Ministry Headquarters. The monitoring activity is sometimes carried out by one officer. The Examination Team noted that the section has not been very effective in carrying out its duties, since there is no feedback on the findings to the officers manning the weigh bridges.

The PS-MoRPW should ensure that Monitoring and Evaluation is carried out by more than one officer for impartiality and the findings communicated to all the sections in charge of weighbridges in order to guide them in effecting corrective measures.

3.7 TECHNICAL AND FINANCIAL AUDITS

3.7.1 Technical Audits

The Examination team found that Internal Auditors do not have the technical knowledge, competence and experience to carry out technical audits on road works. There are no engineers among internal auditors. As a result, the Internal Auditors fully rely on the presentations made by the Ministry engineers. This compromises the requirement of an independent assessment during audits.

The Internal Auditor General in conjunction with the Public Service Commission should recruit a multi-disciplinary workforce, including engineers to assist in the audit process.

3.7.2 Environmental Audit

Road projects are supposed to be designed with due consideration to environmental concerns as per the Environmental Management and Coordination Act, (EMCA) 1999. Necessary environmental deterioration mitigation measures are then supposed to be incorporated in the design process. EMCA also requires that environmental audits be executed on completion of projects. The Team found that post-construction environmental audits are not carried out on all completed road works.

The PS-MoRPW in consultation with the Director General NEMA should ensure that environmental audits are carried out after road projects are complete and in line with the Environmental Management and Coordination Act.

3.7.3 Audit Work Plans

The District Internal Auditors' Work Plans do not include the weigh bridges even though weighbridges are considered to be among the very high risk areas in the Ministry. The Ministry Headquarters audits all the weighbridges once annually. This leads to laxity in the monitoring of the weighbridge operations.

The Internal Auditor General should ensure that all the District Internal Auditors include audit of weigh bridges in the annual audit work plans.

3.7.4 Audit Programs

The District Internal Auditors do not prepare audit programs for road works. This creates a possibility of critical areas being excluded during the audit exercises. However, internal auditors in the Ministry Headquarters do prepare comprehensive audit programs in auditing of road works.

The Internal Auditor General should ensure that:

- a. *All the District Internal Auditors are trained on how to prepare detailed audit programs.*
- b. *All District Internal Auditors adopt audit programs used by Auditors at the Ministry Headquarters.*

3.7.5 Pre–Auditing of Documents

The Internal Auditors pre–audit documents that commit Ministry funds such as LPO's, LSO's and payment vouchers, among others. This is done in compliance with the Treasury Circular No. 4 of March 1997 which states the duties and responsibilities of Internal Auditors to include among others, pre-auditing of all documents used in initiating commitment and expenditure and effecting payments such as AIEs, LPOs and contract documents. Although Treasury Circular No. 21/2003 of 7th October 2003 encouraged Internal Auditors to refrain from wholesale pre-auditing of payment vouchers, the practice still continues. This is due to insistence by some Accounting Officers that Internal Auditors pre-audit documents to ensure that documents with irregularities are not processed. It is also a requirement in bilateral agreements that Internal Auditors pre-audit payment vouchers for Donor funded road works. Later, the Internal Auditors are required to review the same documents that they have pre-audited. This is a loophole as the Internal Auditors objectivity will be impaired at the review stage.

The Internal Auditor General should liaise with the Permanent Secretary Ministry of Finance to review the circular on pre-auditing and exclude the Internal Auditors from the activity. Further the Examination Sections in Ministries should be strengthened to carry out pre-auditing functions which are now being performed by Internal Auditors.

3.7.6 Audit Reports

The District Internal Auditors do not prepare audit reports on inspections carried out on road projects in the Districts visited. Without the Audit Reports, it is not possible to ascertain the audit work carried out. Every audit engagement requires a written report as evidence of work done. Failure to prepare reports on inspections is a loophole that can be exploited to hide malpractices in the road projects. Consequently, unscrupulous persons will continue perpetuating them.

The Internal Auditor General should ensure that all the District Internal Auditors:

- c. Are trained on how to prepare audit reports on audit assignments.*
- d. Document audit evidence on all assignments.*
- e. Prepare audit reports on all audit assignments undertaken.*

3.7.7 Linkages with other Audit Units

There are no linkages between the Ministry Headquarters Internal Auditors and the District Internal Auditors on audit of road works. The District Internal Auditors forward audit reports to the Permanent Secretary with copies to the Internal Auditor General. Internal auditors at the Ministry headquarters do not get copies of the district audit reports. This results in non uniformity of the internal audit operations, duplication of effort and in other instances failure to cover some vital areas. These are fertile grounds for discretion, waste of resources and failure to disclose malpractices observed during the audit process.

The Internal Auditor General should ensure that copies of audit reports sent by District Internal Auditors are availed to Internal Auditors based in Ministry Headquarters.

3.7.8 Internal Audit Committee

The Internal Audit Committee at the Ministry of Roads and Public Works is not operational. This is in contravention of Treasury Circular No. 16/2005 on Establishment and Operationalisation of Audit Committees in the Public Service. This has further negated the objectives of this Committee such as enhancing objectivity, efficiency and effectiveness in the management of public resources.

The Permanent Secretary, Ministry of Roads and Public Works should ensure that the Ministerial Audit Committee is operational as per Treasury Circular No. 16/2005.

3.7.9 Funding of Audit Activities

Audit activities in both the Ministry Headquarters and the Districts are not adequately funded. Currently, districts receive Kshs.24, 000 per quarter for transport expenses to cover all departments in the district. This is not adequate to enable auditors carry out audit assignments on all road works in progress and also cover other areas. In addition, District Internal Auditors lack vehicles and rely on District Road Engineers to provide them with transport to various road works sites. This negatively affects the implementation of audit work plans.

The Internal Auditor General should liaise with the Permanent Secretary, Ministry of Finance with a view to enhancing the budgetary allocation to the Internal Audit Section so as to enable it to carry out its functions effectively.

3.7.10 Monitoring and Evaluation

The Monitoring and Evaluation section at the Ministry of Roads and Public Works has recently been reconstituted. The section is responsible for monitoring and evaluation of road works in the country.

Resident Engineers prepare monthly progress reports which are forwarded to the Monitoring and Evaluation section in hard copies for evaluation. The section is unable to conduct timely progress reviews and as a result, interventions on non-procedural construction activities are not undertaken. The personnel are unable to

visit all projects countrywide to verify details in the progress reports received from construction sites due to inadequate capacity and resources.

The PS - MoRPW should enhance the capacity of this section and ensure that it is well equipped to carry out its functions efficiently and effectively.

3.8 RECORDS MANAGEMENT

The Ministry generates various records such as maps, contracts documents, correspondences, among others. The Ministry has made positive efforts in management of the records. However, the Examination Team noted the following weaknesses:

3.8.1 Records Policy

The Ministry of Roads and Public Works does not have a records management policy that is vital in guiding records creation, maintenance, retrieval and disposal in all its departments. This leads to loss of vital records. For example, previous years' records were not available at most of the weigh bridges visited. Records for the new weights of vehicles ordered to off load are not kept at the weigh bridge. Furthermore, the weigh bridges do not maintain reconciled records of vehicles forwarded to the police and finally charged. This creates a loophole that can be exploited by officers to release overloaded vehicles in exchange of bribes from drivers who wish to avoid being charged and punished for overloading their vehicles. It also undermines the ability of law enforcement agencies to rein in notorious drivers.

The Permanent Secretary should develop a records management policy guiding the records creation, maintenance, retrieval and disposal.

3.8.2 Records storage space

The Ministry of Roads and Public Works does not provide appropriate storage for its records. This leads to poor record keeping. For example, old records at some weigh bridges were stored in disused stores which lacked adequate storage facilities like shelves and cabinets. The documents were not orderly stored. This makes retrieval of documents very difficult.

The Permanent Secretary should provide appropriate storage facilities including cabinets and shelves for proper storage of records. In addition, the PS- MoRPW should liaise with the Director, Kenya National Archives and Documentation Services to assist

the Roads Department in streamlining its records creation, management, retrieval and disposal

CONCLUSION

The responsibility for roads infrastructure development, rehabilitation and maintenance is fragmented among different Government Ministries and Departments. This has led to inadequate coordination among the various players thereby undermining proper maintenance and rehabilitation of the road network in the country. To address this shortcoming, the government has proposed reforms in the Roads Sub-sector. Of special interest are the Integrated National Transport Policy and the Sessional Paper No. 5 of 2006 on the Development and Management of the Roads Sub-Sector for Sustainable Growth.

The Integrated National Transport Policy is intended to address modalities for the reorganization of the entire Transport Sector in Kenya and encompasses all modes of transport in the country as well as providing linkages with other sectors in the economy. The Policy also provides for the creation of various institutions and the necessary regulatory and legal framework for the entire Transport Sector.

The Sessional Paper No. 5 of 2006 aims to bring about adequate and consistent maintenance and development of roads by creating a conducive environment for all players in the Roads Sub-Sector to contribute effectively. The Policy aims to address the needs of all stakeholders including road users, investors and financiers. It also allows for the participation of Public Private Partnerships in the Roads Sub-sector through concessions and road tolls.

The Sessional paper proposes to restructure the Roads Sub-Sector by establishing three new autonomous road agencies that will implement road works namely; Kenya National Highways Authority (KeNHA) catering for the highways, Kenya Urban Roads Authority (KURA) catering for the urban roads and Kenya Rural Roads Authority (KeRRA) catering for the rural roads. KWS will continue handling road works in national parks and game reserves. A Bill providing for the creation of these agencies has been passed by Parliament. In so doing, the Ministry of Roads and Public Works expects to

concentrate on policy formulation and transfer the role of direct involvement in the implementation of road operations and maintenance to the autonomous agencies in order to enhance efficiency.

The Axle Load Unit (Weigh Bridges) is also to be reformed. This will involve upgrading of the weigh bridges to international standards to include computerized Weigh in Motion and Static Weigh Bridges as well as the revamping of the Mobile Weigh Bridge Unit. This follows recommendations of the Axle Load Control Best Options Study for Kenya, which was funded by the European Commission. The Study Report proposes a wide range of recommendations that if implemented will streamline the operations, management and control of the axle load on the Kenyan road network. The government has already embarked on piece-meal implementation of the recommendations. For example, the Mariakani and Gilgil weigh bridges are currently undergoing reconstruction and modernization under the donor funded Northern Corridor Transport Improvement Project (NCTIP).

Most of the above proposed reforms are at different stages of implementation by the Government. It is important that the implementation of the policy and institutional reforms is clearly defined and structured and draws lessons from similar successful models. There is also considerable scope for improving systems, procedures and processes in the roads sub-sector and to adopt best practices which will assist in the sealing of corruption loopholes.

Findings contained in this Report indicate that there are systemic weaknesses and loopholes that allow corrupt practices to thrive in the Roads Sub-sector. The weaknesses and loopholes include;

- weak regulatory framework,
- poor project management practices
- inadequate designs prior to tendering of works
- malpractices in the axle load control
- low capacity levels of the local contracting companies
- poor communication of policies and procedures within the whole project cycle

- shortage of skilled technical staff to undertake the assignments
- breaches in the procurement procedures and stores management.

This Report has proposed far reaching recommendations which should be incorporated in the on-going reforms to strengthen the systems, policies and procedures in the roads sub-sector. The Report recommends among other things that, the PS MoRPW should ensure that detailed designs and comprehensive feasibility studies are carried out before tendering; Public Procurement rules and regulations are adhered to; Contract Conditions are strictly adhered to by both parties and those in breaches penalized in accordance with the Contract terms and conditions; and embark on implementation of all the recommendations of the Axle Load Control Best Options Study.

The Report also recommends that the Ministry should establish an authentic technical database to appropriately inform the planning process and shield it from exposure to corruption at the project prioritization and selection phase.

Effective implementation of the recommendations will require the support of the Minister and Permanent Secretary; Heads of Department and staff in the Ministries of Roads and Public Works and Local Government, as well as other stakeholders including the public. The Kenya Anti-Corruption Commission expects the Permanent Secretary, Ministry of Roads and Public Works to coordinate deliberations on this Report by all the stakeholders, preparation of an Implementation Plan and spearhead the implementation of these recommendations. The Kenya Anti-Corruption Commission will monitor implementation of planned activities and will be on hand to assist in any way deemed necessary by the implementing agencies.

APPENDIX 1

LIST OF OFFICERS INTERVIEWED

1. Permanent Secretary, Ministry of Roads and Public Works
2. Chief Engineer, Roads
3. Principal Superintending Engineer-Planning
4. Principal Superintending Engineer- Design
5. Principal Superintending Engineer-Construction
6. Principal Superintending Engineer-Northern Corridor Transport Infrastructure Program
7. Principal Superintending Engineer-Maintenance
8. Principal Superintending Engineer-Quality Assurance
9. Internal Auditor General, Ministry of Finance
10. Executive Director, Kenya Roads Board
11. Head of Engineering Department, Kenya Sugar Board
12. Chief Executive Officer, Kenya Wildlife Service
13. Axle Load Control Unit
14. Finance and Accounts Department
15. Procurement Department
16. Chief Engineer, Materials Testing
17. Chief Engineer, Mechanical and Transport
18. Ministry of Local Government – Urban Development Department
19. Provincial Works Officers
20. Provincial Roads Engineers
21. District Works Officers
22. District Roads Engineers
23. District Accountants
24. District Internal Audits
25. District Procurement Officers
26. Kenya Tea Development Authority
27. Momul Tea Factory
28. Town Clerks of selected Municipal Authorities
29. Municipal Engineers of selected Municipalities
30. Stakeholders:
 - Institute of Engineers of Kenya
 - Kenya Association of Building and Civil Engineering Contractors

LIST OF PROJECTS VISITED

1. Mai Mahiu - Naivasha-Lanet Road
2. Sultan Hamud -Mtitio Andei Road
3. Keroka - Nyangusu Road
4. Bumala- Busonga-Port Victoria Road
5. Kipsigak – Serem Road
6. Muranga –Sagana - Marua Road
7. Sagana - State Road Access Roads
8. Nakuru – Marigat Road
9. Bondo Usenge Road
10. Bungoma – Bokoli – Kimilili Road
11. Mweiga Endarasha, Endarasha –Watuka Road
12. Thuchi- Nkubu Road
13. Embu- Thuchi Road
14. Kisian – Bondo Road-Makutano Embu Road
15. Nabkoi – Kapsabet Road

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