PERFORMANCE AUDIT ON THE MANAGEMENT OF PROCESS OF
AWARDING EXPLORATION AND DEVELOPMENT CONTRACTS AND
LIENCES FOR NATURAL GAS

MINISTRY OF ENERGY AND MINERALS

AND

TANZANIA PETROLEUM DEVELOPMENT CORPORATION

REPORT OF THE CONTROLLER AND AUDITOR GENERAL OF THE
UNITED REPUBLIC OF TANZANIA

MARCH, 2016
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MARCH, 2016
THE UNITED REPUBLIC OF TANZANIA
NATIONAL AUDIT OFFICE

Vision
To be a centre of excellence in public sector auditing

Mission
To provide efficient audit services, in order to enhance accountability and value for money in the collection and usage of public resources

Core Values
In providing quality service, NAO shall be guided by the following Core Values:

Objectivity
To be an impartial entity, which offers services to our clients in an unbiased manner

We aim to have our own resources in order to maintain our independence and fair status

Excellence
We are striving to produce high quality audit services based on best practices

Integrity
To be a corrupt free organization that will observe and maintain high standards of ethical behaviour and the rule of law

Peoples’ Focus
We focus on our stakeholders needs by building a culture of good customer care, and having a competent and motivated workforce

Innovation
To be a creative organization that constantly promotes a culture of developing and accepting new ideas from inside and outside the organization

Best Resource Utilization
To be an organization that values and uses public resources entrusted to us in an efficient, economic and effective manner
PREFACE

The Public Audit Act No. 11 of 2008, Section 28 authorizes the Controller and Auditor General (CAG) to carry out Performance Audit (Value for-Money Audit) for the purposes of establishing the economy, efficiency and effectiveness of any expenditure or use of resources in the MDAs, LGAs and Public Authorities and other Bodies which involves enquiring, examining, investigating and reporting, deemed necessary under the circumstances.

I have the honor to submit to His Excellency the President of the United Republic of Tanzania, Dr. John Pombe Magufuli and through him to Parliament the Performance Audit Report on the Management of the Process of Awarding Exploration and Development Licenses and Contracts in Natural Gas.

The report contains conclusions and recommendations directed to the Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC).

The Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC) were given the opportunity to scrutinize the factual contents and comments on the draft report. I wish to acknowledge that the discussions with the visited audited entities have been very useful and constructive.

My office intends to carry out a follow-up at an appropriate time regarding actions taken by MEM and TPDC in relation to the recommendations in this report.

In completion of the assignment, the office subjected the draft report to the critical reviews of the following subject matter experts namely, Dr. Ramadhani S. Mlinga, Senior Lecturer from the University of Dar es salaam and Dr. Albogast Msabila Procurement Specialist from Mzumbe University who came up with useful inputs on improving this report.

This report has been prepared by Ms. Anna Minja - Team Leader, Ms. Janeth Rutagengwa and Mr. Melchades C. Lwamlema - Team
Members under the supervision and guidance of Mr. George C. Haule - Assistant Auditor General and Ms. Wendy W. Massoy - Deputy Auditor General. I would like to thank my staff for their assistance in the preparation of this report. My thanks should also be extended to the entities reviewed for their fruitful interactions with my office.

Prof. Mussa Juma Assad
Controller and Auditor General
United Republic of Tanzania
March, 2016
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<tbody>
<tr>
<td>AG</td>
<td>Attorney General</td>
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<tr>
<td>BRDP</td>
<td>Bid Round Data Package</td>
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<td>BOT</td>
<td>Bank of Tanzania</td>
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<td>GNT</td>
<td>Government Negotiating Team</td>
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<td>INTOSAI</td>
<td>International Organization of Supreme Audit Institutions</td>
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<td>IOC</td>
<td>International Oil Company</td>
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<td>LGAs</td>
<td>Local Government Authorities</td>
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<td>MDAs</td>
<td>Ministries, Departments and Agencies</td>
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<td>MEM</td>
<td>Ministry of Energy and Minerals</td>
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<td>MOF</td>
<td>Ministry of Finance</td>
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<td>MPSA</td>
<td>Model Production Sharing Agreement</td>
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<td>NEMC</td>
<td>National Environmental Management Council</td>
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<td>PPRA</td>
<td>Public Procurement Regulatory Authority</td>
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<tr>
<td>PSA</td>
<td>Profit Sharing Agreement</td>
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<tr>
<td>RFQ</td>
<td>Request for Qualification</td>
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<tr>
<td>RMF</td>
<td>Risk Management Framework</td>
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<tr>
<td>TCF</td>
<td>Trillion Cubic Feet</td>
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<td>TEITI</td>
<td>Tanzania Extractive Industries Transparency Initiative</td>
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<td>TPDC</td>
<td>Tanzania Petroleum Development Corporation</td>
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<tr>
<td>TRA</td>
<td>Tanzania Revenue Authority</td>
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<tr>
<td>TUPEM</td>
<td>Software to calculate government take in the contracts entered</td>
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<tr>
<td>URT</td>
<td>United Republic of Tanzania</td>
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<tr>
<td>VAT</td>
<td>Value Added Tax</td>
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MESSAGE FROM THE CONTROLLER AND AUDITOR GENERAL

Exploration of oil and gas in Tanzania began since 1952. So far there have been several discoveries in areas such as Songosongo, Mnazi Bay, Mkuranga, Kiliwani and many others. These discoveries showed that, Tanzania has great potential of increasing its wealth through the extraction of its natural gas. An adequate process of awarding exploration and production contracts are key in maximizing government revenues while minimizing the negative (environmental) effects.

In the near future, the exploration and production activities shall increase substantially after the recent discoveries of new significant reserves of natural gas.

Based on this new found wealth and the need for Tanzania to raise fair and equitable revenues from the extraction of natural gas, I decided to audit the Process of Awarding Exploration and Development Contracts and Licenses. I would like to share some of my observations in particular.

My overall conclusion is that the government ought to have a proper system in place to efficiently, effectively and ethically manage the process of awarding contracts and licenses for exploration and development of natural gas.

Therefore I believe that our government should apply a number of principles to strengthen its position in the contract awarding process.

First, the government should provide adequate information on contract awarding procedures; contracts awarded, including fiscal and tax terms; the beneficiaries owner such as the number of all license holders; the agreed work program; and financial commitments and any other fiscal terms that relate to the license.

Second, the government should pre-qualify bidding companies to ensure that potential license-holders have sufficient technical and financial capacity to execute a resource development program,
and sufficient experience in managing the environmental risks associated with the project and related infrastructure.

Third, the government should position itself so that there is a balance between prescribing and defining all terms in full detail in model contracts and non-prescribing terms, and to leave those open ones for the best bidder. Competition or negotiation need not focus on the price alone, but too many variables increase complexity, erode the transparency of the selection process and increase administrative cost for government as well as bidders. With an adequate balance, a level playing field will be availed to all bidders ensuring a fair and transparent competition.

Fourth, the government should undertake careful assessments of the value of services or infrastructure given as part of barter trade in exchange for extraction rights. Where there is significant uncertainty, the government should consider avoiding such deals. Barter trade are often opaque and prone to opportunities for corruption.

Finally, I call for the harmonization of procurement law with the Petroleum Act of 2015. This is due to the fact that Procurement Law is not applicable for granting of exploration and development contacts and licenses. Due to this shortcoming the Government had included various procurement related provisions in the Petroleum Act of 2015 so that the provisions of the procurement law are fully used during the acquisition of IOC services for extraction of natural gas products.

In conclusion, I believe that our country has the opportunity to benefit from the existing national natural resources. To make that happen, we need to cooperate closely with global companies in a way that ensures that our nation gets the best possible deal. An adequate contract awarding process is precondition in this respect. Therefore I strongly call upon the government to further improve the contract awarding process by addressing the issues mentioned above.
EXECUTIVE SUMMARY

Historically development of the Extractive Industry in Tanzania started over fifty (50) years ago. The industry is under the Ministry of Energy and Minerals and Tanzania Petroleum Development Corporation (TPDC) act as a National Oil Company. According to Section 14 of the Petroleum Act of 1980; the Minister has a mandate to enter into an agreement and grant the exploration or development licenses on behalf of the Government of the United Republic of Tanzania to the person, or any person identified in the agreement.

The contracts and licenses were granted on the bases of First Come First Saved up to 2000. Thereafter, TPDC adopted a new method through competitive bidding (Procurement processes) so as to procure best companies and in a way that promotes value for money.

The National Audit Office, based on its legal mandate decided to conduct a Performance Audit on the Management of the Process of Awarding Contracts and Licenses of Natural gas in Tanzania; with the intention of analyzing the process to identify areas of weakness and make necessary recommendations for improvement to enhance efficiency and effectiveness of the process.

The overall objective of the audit was to assess whether MEM and TPDC have efficient, effective and ethical Management process of awarding contracts and licenses of the Natural Gas in Tanzania. Moreover, the audit focused on whether MEM and TPDC have a system in place to identify areas for improvement in the process.

The audit covered four financial years from 2010/11 to 2013/14. Moreover, the study focused on the last two licensing rounds, the 3rd round which was conducted from May 2004 to May 2005 and the 4th round conducted in 2013, for comparison purpose. The 2nd and the 1st rounds were also considered when necessary.
Data was collected through interviews and document reviews mainly from the Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC). Both entities are responsible for procuring, contracting and awarding exploration and development licenses. This is because the Ministry of Energy and Minerals (MEM) is the overseer of the process and TPDC the procuring entity under the Ministry.

The study, through document reviews, interviews and focus group discussions came up with the following findings:

**Major Findings**

**Inefficient Management of the contracting and licensing process**

**Needs analysis were not conducted in a proper way.** This was noted due to absence of criteria for conducting needs analysis to meet social requirements such as environmental, health and safety requirements and needs of communities. Despite of TPDC and MEM saying that they conduct needs analysis before licensing round, there were no reports showing such criteria was considered in the preparation of such needs.

**Absence of procurement strategy;** It was noted that, both TPDC and MEM do not have a procurement strategy apart from the annual plans. The procurement strategy help to make proper allocation of available resources, efficient measurement of the performance and implementation of the activities proper and timely decision making of the activities in order to achieve the organization objectives timely within the complexity of the process.

**The procuring process is not properly organized to take into account the complexity of the procurement.** It was noted that the Procurement Management Unit at TPDC is not multi-disciplinary contrary to Section 37 (2) of the PPA 2011 which requires the Procurement Management Unit to consist of procurement and other technical specialists together with the necessary supporting and administrative staff. It was noted that Licensing round was not structured to address impending risks of fluctuation in oil
and gas prices, delays and costs. Furthermore, it was noted that there is inadequate coordination between TPDC and MEM as far as procurement of IOC for exploring and developing natural gas in the country is concerned.

There are no adequate controls in place to ensure that procurement complies with the relevant legislations. It was noted that there are inadequate controls in place to ensure that awarding process complies with the relevant legislations. Moreover, it was noted that there is no Legal, Regulatory Institution Framework to manage procurement in the extractive industry.

There is no formal risk management to provide reasonable assurance regarding the organization’s awarding objectives. There is no formal risks management conducted within the licensing rounds, even though there is existence of the Risk Management Unit. TPDC could not produce any risk assessment report or any kind of document with risks developed and analyzed.

The goal of awarding is not met accordingly. The TPDCs goal of procuring, contracting and awarding licenses was not successfully met due to lack of proper time frame, absence of proper policies, strategies and guidelines.

Inadequate ex-post assessment of the contracting and licensing process; There are no reviews and evaluation of the process quarterly or annually conducted by either MEM or TPDC. The adequacy of the procurement process and its results is not assessed ex-post to benchmark the performance against other comparable entities.

Main Conclusions
Based on the above findings and objective of the study, it was concluded that the Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Cooperation (TPDC) do not have the proper system in place to efficiently, effectively and ethically manage the process of awarding contracts and licenses for exploration and development of natural gas. This is because the outcome of the procurement has not been beneficial to the
government taking into account that some of the procurement processes are still on-going while they were supposed to be completed and the contract could have been in the implementation stage at the moment.

Furthermore, despite the notable areas for further improvements, MEM and TPDC have not tried to institute adequate learning environment that could assist them to learn from the previous mistakes and through that improve the way things are operating. Areas such as needs analysis, preparation of specifications for tender, advertising for tender, evaluation of the received bids and negotiation with the prospective IOCs have been observed to have a lot of deficiencies and yet MEM and TPDC have not done much to address them.

**Recommendations**
The Ministry of Energy and Minerals should:

1) conduct and document the needs analysis in a proper manner before announcement of a licensing round to facilitate the achievement of objectives;

2) evaluate the TPDC’s objectives as far as licensing process is concerned together with organization strategy to ensure attainment of the intended objectives;

3) establish proper timeframe in the activities within the process for issuance of licenses and contracts;

4) establish clear and more defined control mechanisms on how corruption, fraud and generally malpractices are to be controlled especially to the major players within the process, covering the whole process of awarding contracts and licenses and strengthen follow-up to ensure its implementation. The Ministry should involve TPDC in such plans (Anti-corruption) for the effective results;

5) periodically monitor and evaluate corruption prone areas in order to report on the overall performance for the benefit of people of Tanzania; and
6) establish policy which indicates the regular assessment/evaluation of TPDC’s operations and ex-post assessment of licensing process. Regular review of the performance of the procurement entity (TPDC) is an important area.

**Recommendation to TPDC**

The Tanzania Petroleum Development Corporation should:

1) establish the controls relating to needs analysis and timeframe for issuance of licenses and contracts;

2) conduct and document the needs analysis in a proper manner before announcement of the licensing round to facilitate the achievement of objectives;

3) make fully implementation and utilization of the Risk Management Framework;

4) ensure that PMU is composed with multidisciplinary professionals who can guarantee availability of required technical skills during the processes for awarding contracts and licenses;

5) prepare and maintain procurement strategy/Policy to ensure proper allocation of the resources; and

6) make ex-post assessment/evaluation of the process to identify areas for further improvement.
CHAPTER ONE

INTRODUCTION

1.1 Background to the Audit

East Africa is widely touted as one of the emerging hydro-carbon provinces of the 21st Century. East Africa region was considered highly prospective by the world’s leading oil companies in the mid-20th Century.

The exploration of natural gas in Tanzania has been underway since 1952, with the first natural gas discovery made in 1974 at Songosongo Island (Lindi region) and the second discovery at Mnazi Bay (Mtwara region) in 1982 (Ministry of Energy and Minerals [MEM], 2012).

In the past few years, petroleum sector experienced an increase in exploration along the coastal line. Current estimates indicate that there are over 1 Trillion Cubic Feet (TCF) of proven reserves, whereas the recent large discoveries in the deep off-shore gas are estimated at 13 TFC. These discoveries require the presence of proper control and monitoring so that the government benefit from her natural resources.

Extractive Industry is the processes that involve the extraction of raw materials from the earth to be used by consumers. The extractive industry consists of operations that remove metals, minerals and aggregates from the earth.

It is not known whether oil or gas is present until after an exploration have been conducted. The government (The Ministry of Energy and Minerals) enters in to Production sharing Agreement with the Oil company and TPDC and award license to a potential Exploration company.

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1 Oil and Gas Exploration in East Africa : A brief History Peter Purcell P&R Geological Consultants Pty Ltd, Istanbul September 2014
2 http://www.tpdct-z.com/exploration_history.htm on 23rd of march 2015 at 03:10 pm
3 www.teiti.or.tz/wp-content/uploads/2014/03/second-report.pdf on 28th of april2015 at 10:51 am
4 http://www.eiti.org/tanzania on 31st of March 30, 2015 at 05:02 pm
Once successful promising amounts of hydrocarbons, the company which is the registered holder of exploration license may apply for the development license to the Minister.

Production Sharing Agreement is the major tool used as a form of agreement, explaining the rights and duties of the parties involved in the industry. And a license is an instrument which grants exclusive rights to explore/develop area for oil and gas.

Petroleum exploration and development licenses and contracts are important instruments in initiating the actual industrial work and associated activities.

1.2 Justification of the Audit

The audit was motivated by four main factors. These factors include:

First, the Minister of Energy and Minerals (MEM) is responsible for entering into PSA agreement on behalf of the Government of the United Republic of Tanzania. According to chapter 328 of the Petroleum (exploration and production) Act 1980; the Minister has discretion of entering into agreement and grant license to anyone identified in the agreement.

It is therefore important to assess the efficiency and effectiveness of the whole management of the process of awarding exploration and development licenses and contracts to the International Oil Companies (IOCs). Identification of efficiency and effectiveness of the process will help to identify areas for further improvement for even better processes.

Second, proper assessment of the process will help the establishment and increase the exploration and production investment opportunities in the country’s oil and gas sector. It also enhances sustainability of petroleum production and thus contributes to the country’s economy through generating revenue to support other productive sectors of the economy.
Third, there have been several parliamentary discussions on the contracts entered in the extractive industry sector specifically in the oil and gas exploration. There are worries of repeating mistakes made with contracts in the Mineral sector to the PSA contracts, where the mineral resources have not been transformed into wealth in a satisfactory manner. As such the contribution of the mining sector to the national economy and social development does not meet the expectations of the people\(^5\).

Finally, public outcry is also one of the motivations for doing this audit. A clear message from Tanzania’s recent experience is that transparency is fundamental to ensure that natural resources are managed in the public interest. The Tanzanian public is hungry for information on the topic. Tanzania is rich in petroleum resources. Gas revenues if managed well could support economic development and poverty reduction. To exploit these resources efficiently and sustainably, the energy sector requires robust legal and regulatory framework as well as sound institutional set up. Hence, the reason for looking at the efficiency, ethical and effectiveness of the awarding process of the contracts and license to oil companies\(^6\).

### 1.3 Audit Design

#### 1.3.1 Objective of the Audit

The objective of the audit was to assess whether the Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Cooperation (TPDC):

- have systems in place to efficiently, effectively and ethically manage the process of awarding contracts and licenses for exploration and development of natural gas in Tanzania; and
- identify areas for improvements in the management of the process for awarding contracts and licenses for exploration and development of natural gas in Tanzania.

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1.3.2 Scope of the Audit

The Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC) are the main audited entities. Both entities are responsible for procuring, contracting and awarding exploration and development licenses. The Ministry of Energy and Minerals (MEM) being the overseer of the process and TPDC the procuring entity of the IOCs by conducting licensing rounds under the ministry.

The petroleum industry consists of petroleum upstream, mid and downstream activities. In the Petroleum Sub-sector, upstream activities consist of exploration, development and production of petroleum as well as decommissioning of the facilities. This audit focused on the exploration and development stages.

The audit focused mainly on the management of the procurement process of IOC’s and awarding of contracts and licenses for exploration and development of natural gas in Tanzania. This entails the whole process from needs analysis, development of specifications and tender documents, advertisements, evaluation, negotiation and award of contracts and licenses.

Similarly, the focus was on the improvements made in the management of the process for awarding contracts and licenses for exploration and development of natural gas. Furthermore, the audit focused on the assessment of the licensing and contracting procedures in order to identify causes for inefficiencies and ineffectiveness during the procuring process of IOC’s and awarding exploration and development licenses and contracts.

For the purpose of addressing the objective of this audit, the audit covered licenses and contracts that were awarded to the IOCs which conduct their activities on off-shore and on-shore areas. The audit covered four financial years from 2010/11 to 2013/14. Moreover, the study focused on the last two licensing rounds, the 3rd round which was conducted from May 2004 to May 2005 and the 4th round conducted in 2013, for comparison purpose. The 1st and 2nd rounds were also considered.
Therefore, data were collected at the Ministry of Energy and Minerals, Tanzania Petroleum Development Corporation (TPDC), Public Procurement Regulatory Authority (PPRA), TEITI, Academicians and Subject Matter Experts, documents regarding extractive industries, Researchers and Institutions.

1.3.3 Audit questions

The audit work was designed by using the two main audit questions. The questions were based on the managing, monitoring and evaluation of the process of awarding exploration and development contracts and licenses to International Oil Companies.

The audit questions used in this audit are:

Audit question 1: Is the process for awarding exploration and development contracts and licenses of natural gas to the IOC’s managed efficiently, effectively and ethically?

Audit question 2: Are the areas for further improvements on the process of awarding exploration and development contracts and licenses identified and acted upon?

For more details regarding audit questions and sub-questions refer appendix three of this report.

1.3.4 Assessment Criteria

As explained in Section 1.3.3 above, the audit questions were answered basing on the assessment criteria drawn from various sources, i.e. legislations, policies, guidelines and best practices.

The Public Procurement Act (2011) requires the procuring entities and bidders under public financed contracts to be executed in a transparent and accountable manner during the procurement and execution of such contracts. It further stresses that processes for
awarding contracts and licenses should be adequately followed and abided by both parties.

*Regulation 114 of the Public Procurement Regulations of 2013* requires the procuring entity to institute effective management of any procurement of services or works for which it is undertaking.

*The Petroleum Exploration and Production) Act 1980* requires the Ministry of Energy and Minerals to periodically monitor and evaluate the performance of TPDC’s activities and when appropriate, take necessary action to rectify identified challenges and shortcomings.

*ISO 31000* requires that a good standard of the risks management should contain a risk management check list containing risk architecture, risk strategy, and risks protocols. According to the *Poverty Reduction and Economic Management Policy of the World Bank (2009)*, the licensing procedures and contract terms should take into account the geological, financial, country risks, country sector, and market knowledge. The same should be used to define appropriate licensing and contractual terms.

Furthermore, World Bank stresses that efficient and effective award policies should exhibit the following characteristics: (1) transparent, competitive and non-discretional procedures for the award of exploration, development rights; (2) clear legal, regulatory and contractual framework; and (3) well defined institutional responsibilities.

*TPDC’s Strategic Plan 2007 - 2017* requires the Project Manager for each project or activity to undertake the project performance monitoring and evaluation and report to the Project Sponsor, and present the progress report to the Board or management team of TPDC at regular intervals.

### 1.4 Methods and Implementation of the Audit

The process of awarding exploration and development contracts and licences was studied mainly at the Ministry of Energy and
Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC).

Interviews and documentary reviews were used as the main methods for data collection. All the identified methodologies intended to make the evidence more concrete and collaboration of information were gathered.

The audit team analyzed data gathered through computation and comparison approach to support the findings and evidence in order to give out a logical reasoning.

*More detailed methods for Data collection are provided in Appendix Two.*

### 1.5 Data validation process

The audited entities, the Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC) were given an opportunity by the Audit Team to go through the draft report. They confirmed the accuracy, commented on figures and the information presented in this report.

Also, the audit team gave the draft to the subject matter experts for their opinion on the matters to ascertain the accuracy and validity of the information.

### 1.6 Standards used for the Audit

The audit was conducted in accordance with the International Standards for Supreme Audit Institutions (ISSAI) issued by the International Organization of Supreme Audit Institutions (INTOSAI).

These standards require that the audit is planned and performed in order to obtain sufficient and appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives.
1.7 Structure of the Audit Report

This audit report is built up as follows:

Chapter One provides the background of the audit, justification of the audit, audit objective, scope, assessment criteria, methodology of the audit and validation process.

Chapter Two contains the detail description of the system and process of awarding exploration and development contracts and licenses to the International Oil Companies (IOC’s), legal and regulatory framework, key actors and responsibilities, resources used, contracting and licensing in natural gas, developments in natural gas sub-sectors. It intends to give a clear description of the audited area, how the system should work while explaining on the function, roles and responsibilities of the audited entities and how they relate.

Chapter Three aims at answering the main two audit questions. It also explains the findings and giving out evidence against the criteria. Moreover, the chapter tries to explain the possible causes and consequences of the problems.

Chapter Four provides the audit conclusions and Chapter Five outlines the audit recommendations for the audited entities to implement so as to improve the current situation.
CHAPTER TWO

SYSTEM AND PROCESS FOR AWARDING EXPLORATION AND DEVELOPMENT CONTRACTS AND LICENSES

2.1 Introduction

This chapter describes the system for the award of contracts and licenses for the exploration and development of natural gas, relationship of concerned actors and how the process for the award of contracts and licenses for the exploration and development of natural gas is managed.

It also shows the governing policies, legislations and guidelines that drives this system. Roles and functions of the key players in the process for the award of contracts and licenses for the exploration and development of natural gas are also covered.

2.2 Legal and Regulatory Frame work

*The Petroleum (Exploration and Production) Act 1980*

The Petroleum (Exploration and Production) Act 1980 is the principle legislation in the oil and gas industry. The Act vests ownership of any petroleum resources to the government of the United Republic of Tanzania. Moreover, the Act lays down the mechanisms for granting licenses for exploration and development of oil and natural gas in the country. It also empowers the Minister of Energy and Minerals to enter into Production Sharing Agreements ("PSAs") on behalf of the government of the United Republic of Tanzania.

*The Procurement Act 2011 and its Regulations 2013*

The awarding process is also governed by the Procurement law, regulations and guidelines. The Public Procurement Act 2011 and its regulations 2013, are used as a guiding tool in the process of awarding contracts and licenses.
The Procurement law and guidelines gives out standards to be observed in each of the procurement procedures conducted by the entity. It also gives out authority to the procuring entity to customize their documents, and put them into use after the approval from the Public Procurement Regulatory Authority (PPRA); according to their needs and requirements whenever necessary.

**Model Production Sharing Agreement (MPSA)**

The MPSA is the major tool used as a form of agreement on rights and duties of the parties involved in the industry. TPDC provides five PSAs models (MPSAs) dated 1989, 1995, 2004, 2008 and 2013. The one in use to date is the 2013 MPSA.

The change of terms in MPSA is basically due to factors like the development and updating of the data and other geological information which makes the blocks more attractive to the investing company.

**The Petroleum Act, 2015**

The Petroleum Act, 2015 is the newly established law repealing the Petroleum (Exploration and Production) Act 1980. The Petroleum Act, 2015 has been established and in operation from October, 2015.

The Act provides for regulations of upstream, midstream and downstream petroleum activities. It also establishes the Petroleum Upstream Regulatory Authority, the National Oil Company, sets out the security of the accountability of petroleum entities and related matters.

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An area with a sedimentary rock basin demarcated for exploration purpose
2.3 Key Actors in the Process of awarding contracts and licenses and their responsibilities

The Ministry of Energy and Minerals (MEM)

The legal mandate of MEM is stipulated under Section 4 of the Petroleum (Exploration and Development) Act of 1980 which vests the entire property and control over oil and gas in any land to the United Republic of Tanzania. Through the Ministry of Energy and Minerals, the Energy Department is mandated to administer the petroleum exploration and production in Tanzania. The Act lays down the machinery for the granting of licenses for exploration and development. It also empowers the Minister of Energy and Minerals to enter into Production Sharing Agreements (PSAs) on behalf of the government of the United Republic of Tanzania.

The Energy Division in the ministry deals with all the Petroleum issues. The department is responsible for supervising operations of energy sector. It specifically oversees management, regulations and provision of services in the energy sector through various agencies and institutions established under the ministry such as TPDC.

The Ministry’s main objectives as far as the procurement of IOCs and awarding of exploration and development contracts and licenses are concerned include:

- promoting, developing and monitoring the energy sector to maximize national benefits and ensure energy security;
- awarding exploration and development licenses of natural gas, making follow up on the exploration and development activities.

Tanzania Petroleum Development Corporation (TPDC)

Tanzania Petroleum Development Corporation (TPDC) is the National Oil Company through which the Ministry of Energy and Minerals implements its petroleum exploration and development...
policies¹⁰. TPDC is a wholly owned Government parastatal, with all its shares held by the Treasurer Registrar.

TPDC was set up in 1969 and its objectives and responsibilities as far as oil and gas is concern includes to:

- explore and produce petroleum;
- hold exploration and production rights;
- contract, hold equity or participate in oil concessions, franchises and licenses;
- develop an adequate industrial base for the oil industry; and
- enhance TPDC’s role in oil and gas exploration, development and production in the country¹¹.

TPDC’s roles and responsibilities regarding the awarding process include:

a) to develop and produce oil and gas;
b) conducting research and development of the oil and gas industry;
c) managing the exploration and production data; and
d) advising the government on petroleum related issues.

The main objective of awarding exploration and development contracts and licenses is to get the right bidder from the competing IOCs for the purpose of exploration and development of oil and gas. Moreover, TPDC’s and MEM’s target as far as the process is concerned is to award the contracts and licenses to the lowest evaluated company so as to obtain the most out of it from the Petroleum resources.

**The Oil and Gas Companies (IOCs)**

The oil and gas companies are key actors in the licensing process; the company’s interest is to get the best deal and maximizing their profits. As part of the MPSA, the IOCs have to participate in implementing terms and conditions of the contracts.

¹⁰ http://www.tpdc-tz.com/tpdc/ accessed at 27th November 2015 at 2200 pm

¹¹ http://www.tpdc-tz.com/tpdc/ accessed at 27th November 2015 at 2200 pm
2.4 Resources used during the process of awarding

**Staffing level**

According to the Ministry of Energy and Minerals, the main department involved in this process within the ministry is the Petroleum Section.

The whole process of awarding licenses and contracts is managed by TPDC whereby all departments are involved in one way or another since it is one of the core activities of the corporation. Nevertheless, the basic and main units responsible for awarding licenses and contracts within TPDC are the Upstream Department and the Procurement Management Unit (PMU).

The Upstream Department is responsible for the technical aspects throughout the licensing period (i.e. pre-licensing activities and licensing round). Normally, the department is responsible for defining the blocks, set-up technical specifications to be presented in the tender documents, participate in the evaluation of tenders and negotiation process.

The PMU is responsible for preparation of tender documents and ensures that tender documents are approved by tender board and being submitted to PPRA for approval and giving a go ahead for further processes. Moreover, the Unit is responsible for coordinating the tender board meetings, advertising the tenders, receiving the bids, coordinate the evaluation and negotiation processes and awarding of the contracts and licenses.

Furthermore, PMU is the main custodian of all procurement documents including contracts, tender documents and minutes of tender board meetings.

Summary of the number of staff involved from year 2010 - 2014 is indicated in Table 2.1.
### Table 2.1: TPDC’s Number of staff

<table>
<thead>
<tr>
<th>Year</th>
<th>Staffing Level</th>
<th>PMU</th>
<th>Upstream</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>65</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>2011</td>
<td>78</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>2012</td>
<td>84</td>
<td>4</td>
<td>25</td>
</tr>
<tr>
<td>2013</td>
<td>101</td>
<td>4</td>
<td>28</td>
</tr>
<tr>
<td>2014</td>
<td>352</td>
<td>5</td>
<td>59</td>
</tr>
</tbody>
</table>

*Source: TPDC’s Human Resource Department*

### Funding

The main sources of funds for TPDC includes actual funds allocations from the Government which are personal emolument, development funds, other charges and internally generated funds which are obtained from rental charges on corporation’s properties, sale of data, training fees received from PSA, sale of condensate, profits from gas explorations and miscellaneous incomes.

During the budget process TPDC allocates funds to enhance the effectiveness of the licensing process in the promotion of blocks.

### 2.5 Contracting and licensing in natural gas sub-sector

#### 2.5.1 Type of Agreement issued

**Model Production Sharing Agreement (MPSA)**

The 2013 Model Production Sharing Agreement is currently in use. Rights to explore for and produce petroleum in Tanzania are obtained by entering into a PSA with the government of Tanzania\(^\text{12}\). Under the agreement, the Tanzanian government grants petroleum exploration and development licenses to TPDC, which in turn engages the oil company to carry-out petroleum exploration and production operations on its behalf.

The main difference between PSA and the awarded License is that, License is being applied to the Minister by TPDC not later than 30 days before signing of the PSA; The License is then attached as “annex C” to the contract. PSA is signed after a successful negotiation. PSA is the main document containing terms and conditions for the contracted activity.

\(^\text{12}\) The parties to the agreement (PSA) are the Government of the United Republic of Tanzania, which is represented by the Minister of Energy and Minerals, the Tanzania Petroleum Development Corporation (TPDC), and the oil company (IOC).
2.5.2 Types of License issued

Exploration Licenses

Exploration licenses give exclusive right to explore for oil and gas in the identified area. TPDC apply for exploration license to the Minister after the PSA being signed.

TPDC is entitled to apply for the exploration license to the Minister after a successful negotiation with the Petroleum Company. The license awarded gives the company a right to conduct exploration for 11 years. The period is divided into three phases - first phase involve four years starting from the date when license was granted, second phase involves four years in respect of a first extension and third phase is three years in respect of a second extension.

Development license

If exploration is successful, registered holder of an exploration license (TPDC) may request for the development license to the Minister. The application for a development license must be made (subject to certain permitted extensions) within two years of the date that the relevant blocks are declared to be a ‘location’.

The exploration company is required to produce a report regarding the discovery and the economic development plan to the Minister. If the Minister is satisfied, he may grant the license to the company. The development license granted is for the period of twenty-five years, commencing on and including the date on which the development license was granted. A development license gives exclusive rights to carry on exploration and development operations in the development area and to sell or otherwise dispose of the petroleum recovered to the holder.

Key stages in the process of awarding exploration and development Contracts and Licenses:
(i) Licensing stage

Licensing stage involves a number of activities including the bidding process, selling of data, evaluation, negotiations, signing of contracts and awarding of licenses. Before announcing a bidding round, the procuring entity (TPDC) prepares a bidding document containing all the specifications of that particular tender.

TPDC then announces the launching of the Licensing Round. This is followed by public invitation for bids; the invitation is advertised in various media outlets including public newspapers.

The advertisement provides details such as the name and approximate area of the blocks. Other information provided in the advertisement include: instruction to the bidder on how to bid for the blocks, costs for the Bid Round Data Package (BRDP) which contains among other things maps for the blocks under the bid, preliminary acquired data from resonances conducted by TPDC etc.

(ii) Evaluation stage

The aim of the evaluation is to get the lowest evaluated bidder. The evaluation is conducted in two stages: the preliminary examination and the detailed examination.

The preliminary examination is conducted to identify bids that were responsive and non-responsive. Responsive bids are ones which are substantially responsive and are recommended for invitation for pre-contract PSA negotiations.

Detailed examination aims at determining bids responsiveness to the minimum work programmed, technical capability, financial strength, health safety and environment protection policy (HSE), TPDC’s share of profit in oil and gas, TPDC’s participation and training funds as per point system for the evaluation of the proposal for major Production Sharing Terms as provided in the bidding documents\(^\text{13}\).

\(^{13}\) Part I Bid Evaluation Report & Recommendation for tender No. PA/031/2013-14/PSA/01
(iii) Negotiations stage

The negotiations are being conducted between the Government Negotiation Team (GNT)\textsuperscript{14} and the winning evaluated company. The negotiation is based only on the negotiable terms within the PSA namely, Work program (affects costs of the Projects), TPDC participation interest of greater than 25% (Improves government take) and profit split (minimum set is 50% of the profit).

(iv) Signing of Contracts and awarding of Licenses stage

The Contract is signed by the Ministry of Energy and Minerals on behalf of the government of Tanzania; TPDC also signs the contracts as the license holder and the National Oil Company.

Table 2.3: Summary of the process of the licensing and awarding contracts and each responsible part

<table>
<thead>
<tr>
<th>Process</th>
<th>MEM</th>
<th>TPDC</th>
<th>IOCs</th>
<th>GNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing stage</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Evaluation stage</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Negotiation stage</td>
<td>X</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Signing of PSA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Awarding of Exploration license</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Awarding of Development License</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

\textsuperscript{14} Negotiation Team The Government Negotiation Team (GNT) is mainly composed of officials and stakeholders from Ministry of Energy and Minerals (MEM), Tanzania Petroleum Development Corporation (TPDC), Ministry of Finance (MoF), Attorney General Chamber (AG), Tanzania Electricity Supply Company (TANESCO), Planning Commission, STAMICO, Bank of Tanzania (BOT), Tanzania Revenue Authority (TRA), Ministry of Industry and Trade, National Environmental Management Council (NEMC) and University of Dar es Salaam.
2.6 Developments in Natural Gas sub-sector

Before the year 2000 the exploration license was awarded by the method of first come first saved basis. Licensing round was introduced through competitive bidding.

So far there have been four licensing rounds carried out in Tanzania, which are:

- **First Round** was launched in June, 2000 and closed on 19th April, 2001, using MPSA 1995;
- **Second Round** was launched on 3rd June, 2001 and closed on 5th July 2002, using MPSA 1995;
- **Third Round** was launched in May, 2004 and closed in May, 2005, using MPSA 2004; and
- **Fourth Round** was launched in October, 2013 and closed in May, 2014 (**the process is still on-going**) using MPSA 2013.

Figure 2.2: Shows the trend of received bids for the tendered blocks\(^{15}\) within the 4 licensing rounds conducted

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\(^{15}\) A Block is the area with a sedimentary rock basin demarcated by TPDC for exploration purpose
Figure 2.3: Indicates the number of blocks awarded to the oil companies

<table>
<thead>
<tr>
<th>Awarded Blocks</th>
<th>KEY</th>
</tr>
</thead>
<tbody>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt; Round (2000)</td>
<td>1&lt;sup&gt;st&lt;/sup&gt; round - 1 awarded company</td>
</tr>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt; Round (2002)</td>
<td>2&lt;sup&gt;nd&lt;/sup&gt; round - 1 awarded company</td>
</tr>
<tr>
<td>3&lt;sup&gt;rd&lt;/sup&gt; Round (2005)</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt; round - 3 awarded companies</td>
</tr>
<tr>
<td>4&lt;sup&gt;th&lt;/sup&gt; Round (2013)</td>
<td>4&lt;sup&gt;th&lt;/sup&gt; round - on going</td>
</tr>
</tbody>
</table>
CHAPTER THREE

AUDIT FINDINGS

3.1 Introduction

This chapter presents findings as answers to the audit questions, appearing in chapter one of this audit report. The findings relate to the following two aspects:

- Management of the contracting and licensing process for exploration and development of natural gas; and
- Identification of areas for further improvements in the management of contracting and licensing process.

3.2 Management of the contracting and licensing process for exploration and development of natural gas

3.2.1 Needs analysis Conducted

Needs analysis process is not conducted in a proper way by both TPDC and MEM. Section 69 of the Public Procurement Regulation of 2013 states that the procurement planning shall commence at the design stage during the identification and preparation stages of the project cycle. A procuring entity shall forecast its requirements for services and works already programmed in the annual work plan and included in the annual estimates.

Establishment of needs may originate from criteria aiming to meet social requirements such as meeting environmental requirements, needs of communities etc., in response with particular needs\(^\text{16}\).

During the interviews held with MEM’s officials, it was noted that needs analysis is being conducted by both TPDC and some officials from MEM. In this process they mainly look at availability of preliminary data, ability of government to manage MPSA, demand of oil and gas, availability of sedimentary basins, availability of promising basin, as well as price fluctuation of oil and gas in the world.

The Technical Assessment of the Petroleum Potential of the Blocks was reviewed. According to TPDC this document was considered as needs analysis report. But the report provided only summary to an insight of the technical assessment of hydrocarbon potential of the deep offshore basins prior to licensing of the bid blocks;

leaving out other key aspects such as environmental needs, community requirements etc.

PMU noted that in order to ensure that the right companies are contracted to carry out exploration activities, TPDC normally ensured that all necessary conditions are in place such as specifications, bid evaluation criteria, preparation of fiscal terms etc before floating invitation for any licensing round.

Furthermore, it was noted that when the bid round data package are in place, preparation of other necessary requirements such as preparation of the statement of requirements, bid evaluation criteria, preparation of fiscal terms as well as bidding documents are all in place before commencement of licensing round.

However, TPDC failed to show evidence on the various aspects such as environmental issues, local content etc. were these issues are expected to be clearly analysed and documented. Moreover, the reasons as to why a certain licensing round is to be launched at a particular time were not clearly shown and documented by TPDC.

It was also noted that without thorough identification of needs the procuring entity (TPDC) may not be able to undertake effectively the followings;

- Carry-out proper analysis and identification of how the government can benefit from the procurement contract
- Assess how the whole process will be conducted in efficient and effective manner, identification of area of weakness and see how can be resolve through the procurement contract,
- Identify the possible risks and challenges
3.2.2 The Procurement Strategy for contracting and licensing process for exploration and development of natural gas

During the audit it was observed that both TPDC and MEM do not have a developed procurement strategy for procuring International Oil Companies or even managing the whole contracting and licensing process for exploration and development of natural gas in the country. The interviewed officials from TPDC and MEM indicated that they only have general strategic plans for the whole organization whereby to a small extent issues regarding management of contracting and licensing have been covered.

According to the World Bank and Public Procurement — an Independent Evaluation indicated the importance of having a sound procurement strategy. It showed that having a sound procurement strategy helps the organization to investing up-front in well-defined bid criteria, good terms of reference, and negotiating favorable contract terms in any procuring entity.\(^\text{17}\)

The interviews held with the staff from the Procurement Management Unit (PMU) at TPDC indicated that they have an Annual Procurement Plan but so far not a procurement strategy.

Moreover, further interviews with the same officials showed that they cannot differentiate between Procurement Strategy and an Annual Procurement Plan. They regard them as one and the same. The reasons given for this thinking include: inability to differentiate the importance and usage of annual procurement plans and strategic plans. Also, lack of directives from PPRA enforcing procurement entity in having procurement Strategic plans.

The auditors went further to analyze and differentiate roles and needs of the Procurement Strategy and that of the Annual Procurement Plan in ensuring that the Procuring Entity is achieving its set objectives in the contracting and licensing process for exploration and development of natural gas.

Therefore, it was further noted that the Annual Procurement Plan contains all procurement activities forecasted to be conducted

by the procuring entity during a specific financial year. This is according to Public Procurement Act 2011 and its Regulations. While Procurement Strategy provides an overview of the governance framework and roadmap for the way the procurement activities are intending to achieve and conducted.\(^{18}\)

It was also noted that during the interviews with staff from TPDC and MEM that depending on the scale of the project (the awarding process) and absence of proper legislations and guidelines that fits the practice within the industry, it was well expected that TPDC would have developed Procurement Strategy which would be explaining a wide range of potential solutions and approaches the industry’s need, how to reach the performance targets for the various procuring units and ethical issues related to public procurements (the environment, creation of employment to the locals etc.), and a number of ways of researching the market and selecting a company.

On the other hand, the audit team found-out that the Procurement Management Unit relies on PPRA Legislations in managing their procurement activities. This is despite the fact that those PPRA Legislations and its regulations do not cover key aspects related to the contracting and licensing processes for exploration and development of natural gas to the International Oil Companies (IOCs).

In reviewing *Public and Project Procurement for Beginners and Aspiring Procurement Practitioners-On Procurement Strategy Development* it was further noted that it is important to have a specific procurement strategy that explains “what”, “how”, “where” and “why”, the procurement is conducted. This is because the contracting and licensing processes for exploration and development of natural gas to the International Oil Companies (IOCs) is one of the key activities performed by TPDC and when it is adequately planned, conducted and take into account national interest, it assists both TPDC and MEM in achieving their core objectives as far as natural gas is concerned.

\(^{18}\) Chartered Institute Procurement & Supply (CIPS)
Further analysis to establish main causes for lack of procurement strategy in this area of contracting and awarding licenses to IOC, revealed the following causes:

First, the available legislations on different procurements in the country do not compel the procuring entity to develop a procurement strategy. Hence, it is done on the voluntary basis despite the fact that for huge and high value procurements like the ones for the natural gas having a strategy is vital;

Second, they do not know the importance of the Procurement strategy and how to develop such a document.

Third, the idea and importance of having the procurement strategy is not well emphasized. The procurement procedures of the IOCs and allocation of exploration blocks is still confusing and not well covered by the Procurement Laws.

Moreover, through the reviewed Public and Project Procurement for Beginners and Aspiring Procurement Practitioners-On Procurement Strategy, not having a Procurement Strategy to guide contracting and licensing processes for exploration and development of natural gas might lead into:

First, failure to make proper allocation of available resources: it was noted that lack of Procurement Strategy to a large extent contributed to the inadequate allocation of resources. This was mainly noted when the PMU was found to be staffed by only one kind of professions i.e. Procurement specialists while the complexity of the task requires the involvement of geophysicists, lawyers, other related expertise in taxation and engineering.

Similarly, problems in terms of setting aside funds for the procurement activities had been noted. While it is well known that the contracting and licensing process for exploration and development of natural gas involves a long and multi-activities yet the TPDC set only TZS. 2.492 Billion.
The interviewed staff from PMU indicated that the amount is quite minimal and cannot suffice the implementation of all activities. The funds set aside do not take into account the verification activities, which sometimes require staff to travel outside the country in order to seek for more details, or the high cost for communication with various parties during the procurement process particularly during the evaluation of submitted bids and negotiations.

Second, failure to make efficient measurement of the performance and implementation of the procurement activities: the audit further learnt that, due to lack of procurement strategy on natural gas, there are no strong and well developed performance indicators to measure the performance implementation of the contracting and licensing process for exploration and development of natural gas.

There is no evidence showing that objectives and targets were set for procurement of International Oil Companies for exploring and developing natural gas in the country. Those targets could be used as the benchmark for assessing the performance of TPDC and MEM in this specific area. The only benchmarks used at the moment are those cited in the MPSAs.

Third, failure to make proper and timely decision making in the procurement activities: during the audit it was noted that MEM and TPDC in different occasioned failed to make timely decision during the processes for awarding contract and licenses for exploration and development of natural gas in the country.

For instance, during the 4th licensing round MEM took up to nine months for them to make a decision on signing the PSA contract on tendered block at the Lake Tanganyika North.

The analysis made by the audit team noted that the main contributory factor for those untimely decisions was the lack of Procurement Strategy which would have provided guidance on how to deal with various aspects, the reasons for that and who should do it and when. That would enhance coordination and also make
issues regarding the performance more clearly and understandable by everyone among the concerned actors.

**Fourth, failure to achieve the organization’s objectives timely:** it was noted during the audit that MEM and TPDC have specific objectives regarding contracting and licensing process for exploration and development of natural gas. These objectives are: Promoting, developing and monitoring the energy sector to maximize national benefits and ensure energy security

Also TPDC is to award exploration and development licenses of natural gas, making follow up on the exploration and development activities; to explore and produce petroleum, hold exploration and production rights, contract, hold equity or participate in oil concessions, franchises and licenses, develop an adequate industrial base for the oil industry, enhance TPDC’s role in oil and gas exploration, development and production in the country.

According to the Evaluation of MPSA 2013 conducted by TPDC, it is specifically noted that bid submissions were well below expectations. Out of eight (8) blocks, six blocks remained untouched which is 75% of total blocks on the bid. Only 25 percent of blocks attracted investors.

The analysis of the level of implementation of those objectives indicated that to some extent they have not been met. Table 3.1 provides details regarding the level of implementation of those objectives and reasons for non-attainment of the set objectives.
Table 3.1: Level of implementation of those objectives and reasons for non-attainment

<table>
<thead>
<tr>
<th>Set Objective</th>
<th>Level of implementation/ attainment</th>
<th>Reasons for unsatisfactory implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>To attract hydrocarbon Exploration in offshore areas</td>
<td>Partially fulfilled</td>
<td>Low prospectivity of the Industry in the country</td>
</tr>
<tr>
<td>To invite international oil companies to bid for exploration rights in the remaining deep-sea blocks 1-4, 6-12</td>
<td>Partially fulfilled</td>
<td>Low prospectivity of the Industry in the country</td>
</tr>
<tr>
<td>Enhance sustainability of petroleum production and thus contribute to the country’s economy through generating revenue to support other productive sectors of the economy.</td>
<td>Partially fulfilled</td>
<td>Low technical and financial Capacity</td>
</tr>
<tr>
<td>Attract Oil and Gas exploration in the 7 deep-sea Blocks which are sitting in ultra-deep sea of Tanzania</td>
<td>Partially fulfilled</td>
<td>MPSA 2013 was prepared when the oil price was $100 per barrel. The TPDC could not predict that few months later the price would go down by more than 50%</td>
</tr>
</tbody>
</table>

Source: MEM and TPDC’s Strategic Plans

Table 3.1 shows that to some extent MEM and TPDC have not achieved their organization’s objectives timely on contracting and licensing process for exploration and development of natural gas (See Appendix Five for more details).

The main reasons cited during the audit for not achieving the set objectives on contracting and licensing process for exploration and development of natural gas include:

- Low prospectivity of the industry: Few discoveries of oil and gas in Tanzania.
- Low technical and financial capacity to assist TPDC in enhancing the exploration: it was noted that TPDC is
lacking some technical staff in the areas of economist, accounting etc., and it is very expensive to conduct exploration activities.

3.2.3 Organization of the procuring process within TPDC

During the audit, it was noted that TPDC has got the Procurement Management Unit which is responsible for all issues regarding contracting and licensing process for exploration and development of natural gas. This unit was also working in close collaboration with Upstream Department. But, further analysis of the whole procurement process within TPDC has indicated that, the procurement process is not properly organized to take into account the nature and complexity of the procurement on the area of natural gas.

This was mainly due to the following reasons:

First, it was noted that the Procurement Management Unit at TPDC is not multi-disciplinary while the nature of procurement and involved processes call for involvement of various disciplines such geophysicists, lawyers, taxation and accounting with knowledge of oil and gas. This is according to Section 37 (2) of the PPA 2011 which requires the Procurement Management Unit to consist of procurement and other technical specialists together with the necessary supporting and administrative staff.

During the audit, it was further noted that Procurement of IOCs has various challenges such as fluctuation of demand and oil prices on the World Market. This needs a technical eye in observing appropriate time to initiate the tenders. Capacity to understand and interpret the specifications for required IOCs calls for multi-disciplinary professions whereby various technical personnel work together to fulfill the procurement objective and through that maximize the expected output.

Therefore, due to aforementioned complexities, the audit team noted that it requires more technical eyes unlike other types of procurement which are not very specialized. This was also
enhanced by the fact that the procedures for awarding contracts and licenses for exploration and development of natural gas to the International Oil Companies are not completely defined and covered by the current procurement and petroleum legislations. The fact that it falls in neither of the types of procurement led to term it as a complex procurement and hence involvement of different professionals is of paramount importance.

Through the reviewed staff compliment within TPDC it was noted that PMU has got a total of seven officials who are Procurement Professional. There are no other professions within the Procurement Management Unit at TPDC.

From the interviews held with staff from PMU they indicated that because of the nature and complexity of the procurement of IOCs in exploring and developing natural gas, it is essential to incorporate other professions in the entire procurement process.

These are staff expected to work within PMU and they will be involved in the activities such as development of Procurement Strategy, Needs analysis for the procurement of IOC and other activities which might require technical personnel who are conversant with technical aspects of natural gas such as geophysical data etc. Moreover, it was acknowledged by the same officials that involvement of other professions make the procurement activities and underlying processes to be more efficient and effective towards meeting the set objectives and targets.

Similarly, to deal with this challenge TPDC decided to outsource and Contract ION GXT Company to undertake jointly with TPDC pre-licensing commitment. The contracted company undertook to support marketing and technical issues.

Second, the audit observed that there was no logical flow of activities. This was due to a number of factors such as:
Postponement of Licensing Round

The audit found-out that the tender of procurement in the fourth licensing round in 2013/14 was implemented without being included in the Annual Procurement Plan of that specific financial year (2013/14). This is contrary to Regulation 69 (7) of Procurement Regulations 2013 which requires the procuring entity to draw-up procurement plans for those requirements for which sufficient funds have been included in the approved budget in the current financial.

Further analysis of non-inclusion of the 4th licensing round in the Annual Procurement Plan of 2013/14 included: the fact that formerly the round was planned to be conducted in 2012/13 but it was postponed to give more time for the Government to prepare and ratify the National Gas Policy.

Procurement was not structured to address impending risks of delays and costs

Moreover, the audit found-out that the procurement was not structured to address impending risks of delays, costs and not getting the right IOCs. It was further observed that there are delays in procuring IOC but the auditors got no specific answers when they sought for explanations regarding the impending reasons for those delays from TPDC officials.

The officials had no documented reasons for the extent of those delays (How the procurement was delayed and the corresponding reasons for the delays) in the entire procurement process. Hence, the officials failed to give proper reasons on why there were such delays in completing the procurement of IOCs in both licensing rounds.

One of the examples is the procurement of IOC for the North Lake Tanganyika block, in the 4th licensing round TPDC was able to successfully accomplish the negotiations with RAK GAS LTD, the company that bided for Lake Tanganyika North block. After that TPDC wrote to the Ministry indicating that the negotiation stage
has been completed and hence TPDC was seeking for approval from the Ministry for further procedures.

The Ministry’s response letter to TPDC identified some areas from which the Ministry was seeking further clarifications from TPDC and areas to rectify the anomalies which occurred during previous procurement stages to enable the approval process to proceed.

There is no response what so ever regarding the status of this tender. The tender is still pending and no contract has been signed to this block to-date.

**Inadequate coordination between TPDC and MEM as far as procurement of IOCs is concerned**

It was also observed that there is inadequate coordination between TPDC and MEM as far as procurement of IOC for exploring and developing natural gas in the country is concerned. The audit team observed that there is no good flow of information from MEM to TPDC. A good example was observed by the auditors regarding the status of the 4th licencing round on Lake North Tanganyika block (RAKGAS Company). From the Evaluation of MPSA 2013 conducted on November 2015 by TPDC state that RAKGAS has informally informed TPDC of the intention to withdraw from signing the Lake Tanganyika North PSA. During the factual clearance conducted in March, 2016 with TPDC, they further explained that RAKGAS had already with draw itself.

However, during the factual clearance with MEM in March, 2016 MEM explained to the auditors that, the PSA Contract was at the Attorney General’s Office for review and RAKGAS is still interested on the block.

This proves that there is inadequate coordination between TPDC and MEM, consequently leading to untimely decision making and to a large extent contributing to delays in completing tendering process.
The analysis on the reasons for this indicated that, unavailability of procurement strategy and lack of common implementable procurement plans agreed upon by both TPDC and MEM were contributing factors.

The audit team also analyzed the consequence of existence of this problem of inadequately organized procurement function within TPDC. The main consequences noted during the audit were:

First, delays in proceeding with exploration and development of natural gas in various parts of the country discovered to have natural gas deposits. The delays in completing procurement process led into failure to start the actual extraction work. This in turn has denied Tanzanians employment and other economical opportunities which are always accompanied by the implementation of the related extraction activities.

Second, the risk of not achieving the intended goals such as; to explore and produce Petroleum, to contract, hold equity or participate in oil concessions, franchises and licenses, enhance TPDC’s role in oil concessions franchises and licenses, enhance TPDC’s role in oil and gas exploration, development and Production in the country. To award exploration and development licenses of natural gas which are vital for the country’s economy and sustainable development.

3.2.4 Controls to ensure Procuring process complies with the relevant Legislations

The audit noted that there are no adequate controls in place to ensure that awarding process complies with the relevant legislations. This is according to Section 63 (2) of the Public Procurement Act which requires that procurement be conducted in a manner that maximizes competition and achieve economy, undertaking, and value for money.

Through the interviews held with TPDC’s officials it was found-out that the process is very challenging as the principal legislations namely Public Procurement Act and Petroleum Act have not covered
the process of allocations of blocks to International Oil Companies.

For instance, the Petroleum Act of 1980 is silent on application of competitive methods that can be used to allocate Blocks to IOC through procurement procedures. This was noted through the interviews held with officials from TPDC, MEM and Public Procurement Regulatory Authority (PPRA). Even-though TPDC and MEM tried to use the procurement processes as defined in the Public Procurement Act but specific aspects and procedures of the allocation of blocks have not been covered.

No formally stated time lines for each stage of awarding contract and licenses

The audit noted that there are no clearly stated time lines for each stage in the process of awarding contracts and licenses to IOCs for exploration and development of Natural gas in the country. The only available standard timelines is on the tendering stage where by the duration it takes to advertise, receiving and opening of tenders deadlines have been specified as provided under the Public Procurement Act 2011 and in the the 4th Tanzania Deep Offshore Licensing Round 2013.

Similarly, it was noted that the procurement and petroleum legislations do not provide the duration which might take for all activities conducted during the process of awarding contracts and licenses to IOCs. On the other hand, it was noted that there are no legal instruments which explain the duration timeline for negotiation stage.

No clearly stated procurement procedures for awarding contracts and licenses for exploration and development of oil and natural gas

The analysis of the procedures used by TPDC in awarding contracts and licenses indicated that it is not clearly stated in the main Petroleum (Exploration and Production) Act of 1980.
All the studied licensing rounds conducted have been covered by the Petroleum (Exploration and Production) Act 1980. Therefore, it was observed that the Act does not cover the procurement procedures as conducted by TPDC. Furthermore, the Public Procurement Act No. 7 of 2011 does not effectively cover issues regarding the process of awarding contracts and licenses to IOCs for exploration and development of natural gas conducted by TPDC (procurement of petroleum companies).

The audit team found-out through the interviews held with officials from TPDC that due to lack of formally stated procedures for awarding contracts and licenses to IOC for exploration and development of natural gas in the country, TPDC is not having effective control over the process.

**Inadequate measures in monitoring and evaluation of activities for awarding contracts and licenses**

**(i) Monitoring and Evaluation by MEM**

Although the monitoring and evaluation obligation of the TPDC’s performance is vested to the Ministry of the Energy and Minerals as the overseer, the audit noted that there is no evidence showing that MEM has tried to monitor and evaluate the performance of TPDC’s as far as the process for awarding contract and licenses to IOCs on exploration and evaluation of natural gas is concerned.

It was further noted that despite seeing couple of weaknesses in the whole procurement process no effort was taken to study and come-up with suggestions for further improvements.

A couple of reasons were pointed out by interviewed officials from MEM on why M&E in this area have not been conducted:

*First, lack of well-defined Monitoring and Evaluation framework for this area;* Despite the fact that MEM has got Planning and Policy Directorate which is tasked to conduct these activities, they were found to lack basic components which are necessary for effective M&E. These include: guidelines on how to conduct and report on
the results of M&E on the area of awarding contracts and licenses for natural gas and staff who are trained to do that.

Second, there are no readily developed performance indicators to be used to assess the adequacy of the whole process for awarding contracts and licenses to IOCs for exploration and development of natural gas; and

Third, Lack of accountability among MEM’s officials as far as the implementation of responsibilities related to monitoring and evaluation of the TPDC’s activities are concerned. It was noted that the responsibility of the M&E activities is not clear regarding the exact responsible department within the Ministry.

(ii) Monitoring and Evaluation by TPDC

The audit team also analyzed the adequacy of Monitoring and evaluation within TPDC as far as the procurement of IOCs for the exploration and development of natural gas is concerned and found-out that there is no regular monitoring and evaluation of the procurement activities (procurement of the petroleum companies) conducted by TPDC.

It was also noted that TPDC does not have a workable Monitoring and Evaluation system in this particular area. This is despite the fact that as a whole organization they have a functioning M&E Unit. In those instances, procurement of IOCs activities were not monitored and evaluated to establish their efficiency and effectiveness. Therefore, TPDC failed to use this opportunity to learn and improve.

Factors such as lack of performance indicators geared to address procurement of IOCs, dedicated personnel with proper technical capability to conduct M&E and also no clear distribution of responsibilities including monitoring and evaluation of the procurement of awarding exploration and development contracts and licenses in natural gas contributed to non-conducting of Monitoring and Evaluation.
Non preparation of performance reports

No performance reports were prepared by either MEM or TPDC to highlight periodical progress made on the area of procurement of IOCs for the exploration and development of natural gas.

The main reason for non-production of the performance reports on the activities carried-out during the process for awarding contracts and licenses to IOCs for exploration and development of natural gas is the failure to periodically conduct Monitoring and Evaluation of those activities.

TPDC provided evaluation report of MPSA 2013 which explained the fourth licensing round and its impacts to future rounds. But the presented report is too brief on the procurement process of IOCs. It has been explained in detail through the terms of 2013 MPSA. The interviewed officials from both TPDC and MEM admitted that apart from the Evaluation of MPSA 2013 no such monitoring and evaluation activities have been conducted in their entities.

It was further noted that the presence of a weak monitoring and evaluation mechanism in the process for awarding contracts and licenses to IOCs for exploration and development of natural gas brings some problems such as lack of efficiency and effectiveness of the whole process, hence causing things like misuse of funds, unnecessary delays etc., to remain un-reported.

Similarly, MEM and TPDC do not get an opportunity to clearly understand impending challenges, obstacles and how to overcome them as far as the process for awarding contracts and licenses to IOCs for exploration and development of natural gas is concerned.

3.2.5 Risk Management within TPDC

The audit found-out that there is no formal risk management developed to provide reasonable assurance regarding the organization’s procurement and bidding objectives for the IOCs.
According to ISO 31000, a good standard of the risks management should contain a risk management check list containing risk architecture, risk strategy, and risks protocols.

During the audit it was noted that there is no formal risks management conducted by TPDC on processing for awarding contracts and licenses to IOCs for exploration and development of natural gas within four different licensing rounds already executed by TPDC. This is despite the fact that TPDC has got a fully-fledged Risk Management Unit.

Through the interviews held with TPDC’s officials it was noted that most of the officials within TPDC were not exposed fully on the existence and importance of risks management in the area of awarding contracts and licenses to IOCs for exploration and development of natural gas.

It was further learnt that the Risks Management Unit is the newly established department which was set in 2013. Its first task was to develop Risk Management Framework. This was developed in June, 2014. The framework explains various issues such as risk Management Policy, Risk Management Guidelines (roles, responsibilities and governance architecture) and risks management checklists, which was developed in order to have a sound business practices necessary for achievements of the organizational strategic objectives.

Moreover, the framework contains various tools such as Risks Identification and Assessment Work sheet, Guide lines to understand Risks Assessments, Heat Map (Risks Assessment Matrix) which are useful in the management of risks, as per the ISO 31000. But the audit found-out that none of these useful tools within the framework were being used by TPDC.

Interviewed TPDC’s officials stated that, before the establishment of the Risk Management Unit and the framework, risks were being identified and managed although not in a formal way as per the requirement. But, upon auditors’ request, TPDC could not provide us with reports or any kind of documents containing the risks developed before the establishment of the Unit.
It was further noted that the late adoption of the ISO 31000 by TPDC is seen to be among the causes of inadequate management of risks within the organization. Another cause cited by the TPDC staff is inadequate knowledge on the identification of possible risks that are likely to occur.

Through the reviewed Risk Management Framework, 2014; it was noted that having no effective risks management system in place might pose a challenge to TPDC not being able to see the possibility of the occurrence of delays during the issuance of petroleum exploration and development licenses. A good example is during 4th licensing round where there was a delay in signing of the PSA contract since February 2015 to-date. Hence, this might be the cause of inefficiencies or even failure of the whole process for awarding contract and license to the IOC. This could lead to low investments in the petroleum industry in the country.

3.2.6 The goal of procuring, contracting and awarding of contract and license

The TPDC’s goal of procuring, contracting and awarding licenses was not effectively met. This was because for the procuring goal to be successfully met it needs to be completed with due consideration to cost of running the particular activities and also the expected revenues, time it takes to complete the task or even the production time, quality and expertise of the procured firm, consideration of meeting TPDC’s needs etc.

The main procurement goals are: to explore and produce petroleum, to contract, hold equity or participate in oil concessions, franchises and licenses, to enhance TPDC’s role in oil and gas exploration, development and production in the country and to award exploration and development licenses of natural gas.

From the interviews held with officials from TPDC and MEM and the review of TPDC’s and MEMs Strategic plans it was observed that the goal set by the Ministry and TPDC are not effectively met as expected.
During the first licensing round in June 2000, six off-shore licensing blocks were auctioned for water depths of between 200 and 2000 metres but only one bid from Petrobras was received. Petrobras was awarded a PSA for Block 5.

In the 2nd licensing round eleven off-shore blocks were offered for water depths of between 200 and 2000 metres. Two separate bids were received from Shell International and Global Resources. Both companies had bid for the same blocks 9-12. Shell International was awarded blocks 9-12.

3rd licensing round involved seven blocks in water depths between 200 - 2000m and three blocks (1, 2 and 6) were awarded. Block 1 was awarded to Ophir Energy, Block 2 to Statoil and Block 6 to Petrobras.

The fourth licensing round covered the on-shore North Lake Tanganyika block and seven off-shore blocks in waters of between 2,000m and 3,000m depth. In this round 21 companies bought the bidding document, and 5 companies responded the bid. From the evaluation provided by TPDC, it showed that after the completion of evaluation only two companies were found to be responsive enough and were allowed to the next stage of negotiation. One negotiation failed and another company succeeded in negotiation since February 2015 but no further procedures have been conducted to-date. Table 3.2 summarizes the relationship between number of received and responsive bids in each of the advertised block.

<table>
<thead>
<tr>
<th>Round</th>
<th>Number of blocks offered</th>
<th>Received bids</th>
<th>Responsive Bids</th>
<th>Awarded companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Round</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2nd Round</td>
<td>11</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3rd Round</td>
<td>7</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>4th Round</td>
<td>8</td>
<td>5</td>
<td>2</td>
<td>NIL</td>
</tr>
</tbody>
</table>

Source: Analysis of the interviews with the TPDC's officials
Also, during the interviews held with officials from TPDC and reviewed the Deloitte Guide to Oil and Gas in East Africa, 2014, the reasons for the change of the MPSAs were provided. Among the reasons given include: the demarcation of new blocks with more prospect of having oil and gas. Discovery of gas in some of the blocks for example, the discovery at Songo Songo and Mnazi Bay and a number of promising gas discoveries in the deep water offshore blocks causes the industry to be more promising.

The officials at TPDC and MEM also added that due to geographical perspective of Tanzania, such as full commercial operation in 2004 and 2006 at Songo Songo and Mnazi Bay discovery which suggest more promise to the tendered blocks, therefore it led to the drafting of the new and improved terms of MPSA 2013.

From the interviews held with officials from TPDC the officials argued that the 2013 MPSA do not attract IOC to explore bided blocks. TPDC officials commented that, before the approval of the MPSA 2013, there have been several attempts of providing advise on the possible risks and impacts of changing the 2008 MPSA.

The advice was made by those officials based on the geographical characteristics of the blocks, accuracy of the available geophysical data and comparison of the new fiscal regimes enshrined in the MPSA 2013 with those existing in other countries.

The assessment of Fiscal terms report was provided to the audit team by the TPDC officials to show interpretation of fiscal terms of draft MPSA 2013\textsuperscript{21}. In the assessment TUPEM\textsuperscript{22} was used to generate government take to understand the implication of the improved terms of MPSA 2013.

Moreover, the research conducted by Deloitte was considered by the audit team\textsuperscript{23}. The research showed the general overview of the oil and gas industry in the country. The report shows industry overview and the revolution of the petroleum industry in Tanzania.

\textsuperscript{21} Interpretation of Fiscal terms of draft MPSA 2013 Using TUOE and Comparison with terms of other neighboring Countries
\textsuperscript{22} A software developed and used to generate and predict Government take in MPSA.
\textsuperscript{23} The Deloitte Guide to Oil and Gas in East Africa Uniquely structured,2014 Edition
On the other hand, the audit team compared various African countries conducting activities in oil and gas. The comparison is based on issues such as tax issues, royalty, bonuses, vat exemptions, local content and so on.

All the information and analysis brought almost the same results. The terms from MPSA-2013 seem to be tough compared to other countries. The same interviewed officials from TPDC commented that the MPSA 2013 include tough fiscal terms which are less attractive to oil companies hence being the reasons for poor response from IOC’s to the bided blocks.

In the Evaluation of MPSA 2013, the 4th Tanzania Licensing round and its impact to future Licensing Rounds, November 2015 by TPDC explained the reasons that influenced migration from 2008 to 2013 and its implications and impact of the terms in MPSA 2013. It also shows that STATOIL of Norway are among the few companies expressed their inability to participate to fourth licensing round due to MPSA 2013 terms.

The last reason cited is the price fluctuation in the oil market was given to be another reason for the low response from bidders and not accomplishing the procuring objective.

3.3 Further areas for improvements on the process of awarding exploration and development contracts and licenses identified and acted upon

3.3.1 Regular review and ex-post assessment of the award and its result

The audit found-out that there are no regular reviews and the assessments conducted after the completion of the awarding process.

The adequacy of the procurement process and its results is not assessed ex-post. Neither TPDC nor MEM conducted evaluations on the contract and license for exploration and development of
natural gas awarding process to IOCs and through that benchmark the performance against other comparable entities.

According to TPDC’s Strategic Plan 2007 - 2017 it requires that the Project Manager for each project or activity undertake the project performance monitoring and evaluation and report to the Project Sponsor, and present the progress report to the Board or management team of TPDC at regular intervals.

Also, Sect. 38 of PPA 2011 the Procurement Management Unit shall prepare and submit to the management meeting quarterly reports on implementation of annual procurement plans, and other reports as may be required from time to time.

During the audit it was noted that no performance monitoring and evaluation of the whole process of awarding exploration and development contracts and licenses have been conducted by neither TPDC nor MEM specifically on the four conducted licensing rounds. The only available evaluation is on the 2013 MPSA where TPDC-(DOU) reported on the response from the bidders and the impact of the MPSA 2013, leaving out the entire objectives of the 4th licensing round, reasons for non-achievement other stages such as evaluation and negotiations.

However, Sect. 30 (2) of PPA and Regulation 86 of 2013, the Head of Internal Audit is required to conduct on quarterly basis internal audits and issue report to the Management of TPDC regarding the compliance of the TPDC's operation to the Public Procurement Act and its regulations but no audit have been conducted thereon.

Although some of the officials from MEM and TPDC stated that the assessment of the procurement processes to identify areas for further improvements was conducted; however, they were not able to provide the supporting documented evaluation reports of the entire process of the launched rounds to the audit team.

Furthermore, officials from MEM said that TPDC is supposed to conduct its own reviews and evaluation of the awarding processes, and then submit evaluation reports to the Ministry. Once again
no assessment reports were provided by TPDC proving that the evaluation was conducted.

Despite the Ministry’s officials stating that TPDC is responsible for conducting their own evaluation and issue the report, it was noted that the Ministry is legally responsible to do so.

The Project Team Members are responsible for executing tasks and activities required to deliver project outputs. The TPDC’s performance review report for FY 2013/14 showed only the launching of the 4th licensing round but does not give feedback in details on the succession and failure of the project to justify if TPDC has reached the objective or not.

Table 3.3 shows the trend of the assessment made in accordance to the licensing rounds.

<table>
<thead>
<tr>
<th>Round</th>
<th>Ex-post assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st licensing round</td>
<td>NO</td>
</tr>
<tr>
<td>2nd licensing round</td>
<td>NO</td>
</tr>
<tr>
<td>3rd licensing round</td>
<td>NO</td>
</tr>
<tr>
<td>4th licensing round</td>
<td>ON GOING</td>
</tr>
</tbody>
</table>

Source: TPDC’s P MU Department

The evaluation and benchmarking of the performance of the procuring entity is not being conducted. There are no reports as to this type of evaluations, showing the performance of TPDC regarding a particular licensing round, and therefore grading the performance of TPDC regarding to that specific licensing round.

The noted causes of the problems include: lack of proper evaluation criteria to guide the evaluation process, unavailability of specific departments both within TPDC and MEM tasked to monitor the process of evaluation and assessment, and lastly, unclear roles and responsibilities regarding evaluation issues.

The absence of evaluation for the licensing rounds has made TPDC not to be in a position to identify areas compounded with challenges
and problems. Also, it cannot assess whether it has achieved its objective or nor regarding the licensing round.

Again it is difficult for the Ministry to assess the performance of TPDC with regard to the achievement of the underlying objectives on award of contract and licenses. Furthermore, the weaknesses occurred and noted on previous licensing round may re-occur in the next rounds and the government ending-up losing revenue instead of achieving its objectives of generating more revenue, provide employment and promote economic development.

It was also noted that the government may not be in the position to capture the trend and progress of the process and hence leaving it with a little chance of making further improvements.

### 3.3.2 System for recording and monitoring malpractice and fraud during the procurement, contracting and awarding licenses

There is no system for recording and monitoring malpractice and fraud during the procurement, contracting and awarding licenses.

In reviewing MEMs strategic plan for the year 2011/12-2015/16 several objectives have been established. One of them was the implementation of national anti-corruption strategy that is fully effective, enhanced and sustainable.

For this specific objective, the Ministry created an action plan (Anti-corruption action plan) which was to be implemented in the financial year 2014/15. The plan indicated areas prone for malpractice and fraud. They indicated that awarding contract and license is an area which is most likely to be faced by the corruption and malpractices.

However, many of the interviewed officials within the Ministry were not aware of the existence of the action plan regarding the strategy to curb malpractice and fraud in the process for awarding contract and license to IOCs for the exploration and development of natural gas.
Moreover, the responsible Human resource (training) Department commented that not much has been done regarding the action plan created by them.

The auditors went further to seek for the clarification on what have been achieved from the 2011/12 - 2015/16 Strategic Plan.

The audit team noted that the national anti-corruption strategy was not effectively implemented.

Further analysis of the prepared action plan indicated that the action plan did not explain the exact system that will be used to identify and assess the malpractices in the process of awarding petroleum contracts and licenses in the country. The action plan showed only awareness trainings as the main way of solving malpractices.

Also the ministry explained that they have an Integrity Committee, which works more like a rehabilitation committee to the workers. However, the Ministry failed to produce any of the reports neither annually nor quarterly prepared by the committee (rehabilitation committee) to explain the status regarding the issues of malpractices.

According to the Anti-corruption Action Plan of 2014/15, the Ministry identified several areas prone to corruption. The action plan concentrated on only one stage of the procurement process that is the Negotiation stage.

The Anti-corruption Action Plan left out other stages such as preparation of tenders, evaluation of tenders etc. Such stages have been noted to have equal risks of corruption hence deserve an observing eye to capture any malpractices involved. Not only that but also although the plans are specifically identified, they have no time frame explaining how long will the activities take.

Moreover, it was noted that MEM is supposed to implement the plan in collaboration with key stakeholders such as TPDC and Government
Negotiation Team\textsuperscript{24} members. But, it was noted during the audit that MEM has so far not involved any of those stakeholders in its implementation of the activities identified in the plan.

The implementation of the Anti-corruption Plan is not satisfactory although the activity was budgeted for; due to lack of sufficient time among MEM’s staff to conduct and monitor the activities assigned to them.

There was lack of proper communication of the objective within the identified parties in their action plan and other key stakeholders such as TPDC and other stakeholders such as the Ministry of Finance, Tanzania Revenue Authority, Attorney General and Tanzania Petroleum Development Corporation involved in the process. Unavailability of clear systems and means on how to deal and capture those who practice malpractices was also noted to be one of the reasons for failure to improve in this area.

\textsuperscript{24} Government Negotiation Team involves members from the Ministry of Finance, Tanzania Revenue Authority, Attorney General and Tanzania Petroleum Development Corporation, Tanzania Electricity Supply Company (TANESCO), Planning Commission, STAMICO, Bank of Tanzania (BOT), Ministry of Industry and Trade, National Environmental Management Council (NEMC) and University of Dar es Salaam.
CHAPTER FOUR

CONCLUSION

The audit findings presented in the previous chapters led to the conclusions detailed in this chapter.

4.1 Overall Conclusion

The Ministry of Energy and Minerals (MEM) and Tanzania Petroleum Development Corporation (TPDC) do not have the proper system in place to efficiently, effectively and ethically manage the awarding process of contracts and licenses for the exploration and development of natural gas. This is because of existence of inadequate controls to ensure that the process complies with the relevant legislations. Also the presence of weak monitoring and evaluation of activities for awarding contracts and licenses, lack of risks management of the process and lack of the procurement strategies for IOCs are considered as main reasons for the problem. In addition the delays within the procurement processes are not sufficiently addressed by the responsible entities hence causing inefficiency and ineffectiveness of the procurement process of the IOCs.

Furthermore, it is concluded that there is lack of proper systems in identifying areas for further improvements in the management of the process of awarding contracts and licenses for exploration and development of natural gas in the country. This is because both MEM and TPDC do not perform regular reviews and ex-post assessments to evaluate the performance of the process of awarding exploration and development contract and license in natural gas. There is also no system for recording and monitoring malpractice and fraud during the procurement/contracting and awarding licensing although it has been identified in the strategic plans and action plans.
4.2 Specific Conclusions

4.2.1 The system for awarding exploration and development contracts and licenses of natural gas to the IOC is not managed efficiently, effectively and ethically

*The Procurement of IOCs is not managed by a known procurement strategy*

The audit concluded that the procurement activities of the International Oil Companies are managed without clearly established and known strategy. This is because the importance of the Procurement strategy is not known and how to develop such documents and the importance of having the procurement strategy in place is not emphasized.

TPDC depends on procurement legislations which do not cover much on the procurement conducted by them. Considering the complexity of the procurement it was expected that TPDC would have guidelines/strategy/policy which have been accepted by the PPRA. There should be a strategy/policy/guideline indicating how they plan to reach their goal of procuring oil companies while attaining value for money.

*Non-adherence of the scheduled timeline*

There is inadequate time management resulted to delays and led to improper organisation of the procurement activities, TPDC had prepared plan for 4th Tanzania Deep offshore Licensing Round 2013, which anticipated all seven blocks announced could be negotiated and PSAs to be signed in the mid 2016.

However, only five companies returned the tenders out of which only 2 companies qualified after evaluation, however one out of two companies withdrew their bid and according to Evaluation of MPSA 2013 RAKGAS has also informally informed TPDC the intention to withdraw from signing of the Lake Tanganyika North PSA. This is caused by various reasons including oil price fluctuations which could have been predicted by the entities.
Inadequate risk management

There is no proof on identification of risks and mitigation measures of risks within the procuring entity.

Inefficient Monitoring and Evaluation from TPDC&MEM

It has been revealed that so far only one evaluation report has been processed by TPDC to assess the past licensing round (4th licensing round). MEM has no reports regarding the performance and evaluation of TPDC on the process. Lack of monitoring and evaluation denies the government an opportunity to learn from past experience so as to foster improvement in the public procurement practices.

4.2.2 Inadequate procurement process management

A number of factors which contributed to procurement process not being organized in proper way were identified. These factors are categorized in three parts namely, planning, execution, monitoring/inspection. Most of the findings in this audit lead to the conclusion that the process is not effectively and efficiently organized.

Planning factors: activities were conducted without being included in the respective annual procurement plan e.g. the 4th round. The plans on anti-corruption mechanisms have been organized with consideration of only one stage (negotiation stage) without including other stages within the procurement process. The procurement is not structured to address impending risks of delays and costs.

Execution factors: failure in the implementation of the strategic plan (2011/12-2015/2016) is one of the main reasons to conclude that the process is not organized in a proper way. Furthermore, the Ministry failed to clearly and exactly explain what has been done in the financial years regarding anti-corruption issues, taking into account the fourth licensing round falls within those years. We also conclude that the fourth licensing round in 2013/14 was

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25 The Report is still ongoing not published yet

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implemented without being included in the annual procurement plan of that specific financial year (2013/14).

**Monitoring and Inspection factors**: Due to the existence of a weak monitoring and evaluation practices, there has been little effort in improving performance assessment, identification of challenges and proposing improvements to inspection activities. Unavailability of monitoring and evaluation criteria is also a ground for this conclusion.

**Other factors**: such as poor documentation, not acting according to the set objectives, the risks assessment framework, asymmetry of information between officials within the same department, all this lead to the conclusion that the procurement is not organized in a proper way.

Therefore, it is concluded that the goal of procurement is not effectively met due to the above mentioned factors.

**4.2.3 Areas for further improvements on the awarding process not identified and acted upon**

**Inadequate ex-post assessment of the Procurement**

There is no document or report showing ex-post assessment of the process. Although it is a mandatory requirement from the strategic plan to have performance evaluation of the activity conducted within TPDC; the TPDCs internal Audit Unit have been only auditing the budget for licensing round, but not the assessment of the performance. Also, MEM has not conducted any evaluation of performance to TPDC, so as to benchmark and understand the common challenges within the process.

**Insufficient Monitoring and Reporting System for malpractices and fraud during the awarding process**

There is no functioning system to monitor the malpractices within the process. MEM has set an objective regarding the development of the Anti-corruption mechanism and create Anti-corruption
action plan which is not functioning. Recording the performance of TPDC could be also a great system of identifying malpractices but they are not doing so.
CHAPTER FIVE

AUDIT RECOMMENDATIONS

5.1 Introduction

The audit findings and conclusions point-out that there are several weaknesses in the management of the process of awarding exploration and development contracts and licenses in oil and gas industry. The weaknesses were noted in mainly two areas, the system for the management of the contracting and licensing process and identification and improvement of areas in the management of contracting and licensing process.

This chapter therefore contains recommendations to the Ministry of Energy and Minerals and Tanzania Petroleum Development Corporation in order to improve the system and the process for awarding exploration and development contracts and licenses.

The National Audit Office believes that in order to attain an effective and efficient process of licensing and awarding of contacts these recommendations need to be fully addressed to ensure that the 3E’s principles of performance which are Economy, Efficiency and Effectiveness are achieved in the use of public resources.

5.2 Recommendations to the Ministry of Energy and Minerals

The Ministry of Energy and Minerals should:

1) conduct and document the needs analysis in a proper manner before announcement of the licensing round to facilitate the achievement of objectives;
2) evaluate the TPDC’s objectives as far as licensing process is concerned together with organization strategy to ensure attainment of the intended objectives;
3) establish proper timeframe in the activities within the process for issuance of licenses and contracts;
4) establish clear and more defined control mechanisms on how the acts of corruption, fraud and general malpractices are
intended to be controlled especially for the major players within the process, covering the whole process of awarding contracts and licenses and strengthen follow-up to ensure their implementations. The Ministry should involve TPDC in such plans (Anti-corruption) for the effective results;

5) periodically monitor and evaluate corruption prone areas in order to report on the overall performance for the benefit of people of Tanzania; and

6) establish a policy which emphasizes the need for regular assessment/evaluation of TPDC’s operations and ex-post assessment of licensing process. Regular review of the performance of the procurement entity (TPDC) is an important activity as it enables the MEM to identify opportunities for the increase of value for money opportunities and to identify malpractices and likelihood of procurement fraud.

5.3 Recommendations to Tanzania Petroleum Development Corporation

The Tanzania Petroleum Development Corporation should:

1) establish the controls relating to needs analysis and timeframe for issuance of licenses and contracts;

2) conduct and document the needs analysis in a proper manner before announcement of the licensing round to facilitate the achievement of objectives;

3) fully implement and utilize of the Risk Management Framework;

4) ensure that PMU is composed of multidisciplinary professionals who can guarantee availability of required technical skills during the processes for awarding contracts and licenses;

5) prepare and maintain procurement strategy/Policy to ensure proper allocation of the resources; and

6) make ex-post assessment/evaluation of the process to identify areas for further improvement.


12. Tanzania Investment Centre (2014); “Tanzania Investment Guide”, Dar es salaam, Tanzania


15. Organization for Economic Co-operation and Development - OECD (2007); ‘Bribery in Public Procurements-Methods, Actors and Counter measures’, Paris, France


18. EY Building a better working world (2014), Managing Bribery and Corruption Risks in the Oil and Gas Industry, UK


## Appendix 1: Audit Questions, Sub Questions and Audit Criteria used during the Audit

The audit objective was addressed through the following two audit questions:

<table>
<thead>
<tr>
<th>Audit Question 1</th>
<th>:</th>
<th>Is the system for awarding exploration and development contracts and licenses of natural gas to the IOC managed efficiently, effectively and ethically?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-question 1.1</td>
<td>:</td>
<td>Is the needs analysis conducted by MEM carried out in a proper way?</td>
</tr>
<tr>
<td>Sub-question 1.2</td>
<td>:</td>
<td>Do needs analysis and specifications ensure that the right items are acquired in the right quantity and quality, and at the right time and cost, to meet the users’ needs?</td>
</tr>
<tr>
<td>Sub-question 1.3</td>
<td>:</td>
<td>Are the procurement processes within the objectives and framework set by the legislation and the central procurement authority’s regulations?</td>
</tr>
<tr>
<td>Sub-question 1.4</td>
<td>:</td>
<td>To what extent does the procuring entity have a procurement strategy and is it implemented?</td>
</tr>
<tr>
<td>Sub-question 1.5</td>
<td>:</td>
<td>Is the procurement process organised in the most appropriate way, taking into consideration the complexity and type of procurement?</td>
</tr>
<tr>
<td>Sub-question 1.6</td>
<td>:</td>
<td>To what extent are their appropriate controls in place to ensure that procurement complies with the relevant legislation?</td>
</tr>
<tr>
<td>Sub-question 1.7</td>
<td>:</td>
<td>To what extent are risks managed to provide reasonable assurance regarding the organisation’s procurement objectives?</td>
</tr>
<tr>
<td>Sub-question 1.8</td>
<td>:</td>
<td>Is the MEM’s goal of procuring, contracting and awarding licenses to the lowest evaluated bidder (cost, time, quality, environmental protection, creating employments to locals etc) met?</td>
</tr>
<tr>
<td>Audit Question 2</td>
<td>Are the areas for further improvements on the process of awarding exploration and development contracts and licenses identified and acted upon?</td>
<td></td>
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<tr>
<td>-----------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Sub-question 2.1</td>
<td>Is the adequacy of the procurement process and its results assessed ex-post?</td>
<td></td>
</tr>
<tr>
<td>Sub-question 2.2</td>
<td>Is the performance of the procuring entity regularly evaluated?</td>
<td></td>
</tr>
<tr>
<td>Sub-question 2.3</td>
<td>To what extent are there regular reviews and analysis of the performance of the procuring entity?</td>
<td></td>
</tr>
<tr>
<td>Sub-question 2.4</td>
<td>Does the organisation evaluate and benchmark the performance of the procuring entity against other comparable entities?</td>
<td></td>
</tr>
<tr>
<td>Sub-question 2.5</td>
<td>Does MEM have a system for capturing performance data of the procuring entity?</td>
<td></td>
</tr>
<tr>
<td>Sub-question 2.6</td>
<td>Are there systems for recording and monitoring in order to discover malpractice and fraud during the procurement, contracting and awarding licenses?</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 2: Detailed Methodology approach of the Audit

The study used several methodologies during the process of data collection. The aim was to obtain both relevant and reliable data that would answer the questions so as to achieve the set out objectives.

**Interview**

Interviews were conducted with various officials from TPDC and MEM. Moreover the consultancy to other related offices such as PPRA, ESSRF was also conducted. Interviews were conducted in order to confirm or explain information from the documents reviewed, get clues to relevant information in cases where information in the formal documents was lacking or missing.

The following officials were interviewed:

**Tanzania Petroleum Development Corporation (TPDC)**
- Director of Up-stream and Upstream Officials
- Director of the Procurement Unit and Procurement Officer
- Director of the Risk Unit
- Internal Auditor
- Human Resource Officer
- Legal Officer
- Finance Officer

**Ministry of Energy and Minerals**
- Ass. Director - Legal
- Ass. Commissioner Petroleum & Energy Dept
- Geologists
- Director of Planning
- Ass. Director Human Resource- Training

**Consultations**
- Col. J.L.Simbakalia (EPZA)
- Mr. Kilegane, (retired Managing Director of TPDC)
- Prof. Oswald Mashindano
- Dr. Elias Kilembe (Retired TPDC Official)
- Capt. P. Chacha (Marine Consultant)
• Public Procurement Regulatory Authority’s Officials

Documents Review
Various documents were reviewed in order to obtain information to answer the questions, and to obtain the performance of TPDC and MEM in the management of the processes. Also, documents were reviewed in order to clarify various issues raised during the interviews. The documents reviewed were those which fall within the period of the Audit (from 2010 up to 2014) and sometimes the documents which fall within the past conducted licensing rounds.

The reviewed documents include:

Ministry of Energy and Minerals
• Strategic plan (2011/12-2015/16)
• Anti-corruption action plan (2014/15),
• Annual Plan and Budget for 2014/15
• Annual Action Plan 2014/15

Performance Data analysis
• Annual Performance Report 2014/15
• Several correspondences between MEM and TPDC

Tanzania Petroleum Development Corporation
• Evaluation Reports (tender No. PA/031/2013-14/PSA/01)
• Report for Implementation of System for Checking and Monitoring Tanzania Petroleum
• Annual Procurement Plan 2012/13, 2013/14
• General Procurement Notice 2012/13, 2013/14
• Register for submission of tender No. PA/031/2013-14/PSA/01
• Tender Document (tender no. PA/031/2013-14/PSA/01)
• Correspondence between TPDC and PPRA
• Correspondence between TPDC and MEM
• Minutes from Tender Board for tender No. PA/031/2013-14/PSA/01
Other documents

- The Deloitte Guide to Oil and Gas in East Africa, 2014

The table below summarizes the interviewed officials, documents reviewed and purpose for each method applied during data collection.

<table>
<thead>
<tr>
<th>Selected Method</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Interviews</td>
<td></td>
</tr>
<tr>
<td>Tanzania Petroleum Development Corporation (TPDC)</td>
<td></td>
</tr>
<tr>
<td>Director of Up-stream and Upstream Officials</td>
<td>To understand the upstream activities conducted by TPDC, and the role they play in the contracting and licensing procedures.</td>
</tr>
<tr>
<td>Director of the Procurement Unit and Procurement Officer</td>
<td>To understand the Procurement process conducted by TPDC in awarding the licences to TPDC.</td>
</tr>
<tr>
<td>Director of the Risk Unit</td>
<td>To understand the possible risks associated within the process</td>
</tr>
<tr>
<td>Internal Auditor</td>
<td>To see if TPDC have conducted any audits in the subject matter and if yes how such identified issues were discussed</td>
</tr>
<tr>
<td>Human Resource Officer</td>
<td>To understand resources (human) involved within the process</td>
</tr>
<tr>
<td>Legal Officer</td>
<td>To understand Legal and regulatory frameworks involved when conducting contracting and licensing process.</td>
</tr>
<tr>
<td>Accountant</td>
<td>To understand the financial resources involved within the process</td>
</tr>
<tr>
<td>Ministry of Energy and Minerals</td>
<td></td>
</tr>
<tr>
<td>Assistant Director - Legal</td>
<td>To understand governing Laws and regulations governing the Ministry as far as the Management of the awarding process is concerned</td>
</tr>
<tr>
<td></td>
<td>To understand roles the ministry plays in the process.</td>
</tr>
<tr>
<td>Selected Method</td>
<td>Purpose</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ass. Commissioner Petroleum &amp; Energy Dept.</td>
<td>To understand the structure of the department and organization in general and how they are involved in the process</td>
</tr>
<tr>
<td>Stiffs from Petroleum Department</td>
<td>To understand the roles the department plays in the management of the process and to what extent</td>
</tr>
<tr>
<td>Director of Planning</td>
<td>To understand whether monitoring system on the management of the processes for awarding contracts and licenses is in place and working as planned</td>
</tr>
<tr>
<td>Assistant Director, Human Resource - Training</td>
<td>To understand how the ministry deals with malpractice issues as far as the management of the process is concerned</td>
</tr>
</tbody>
</table>

2. Document Review

- Strategic plan (2011/12-2015/16)
- Anti-corruption action plan (2014/15),
- Annual Plan and Budget for 2014/15,
- Annual Action Plan 2014/15,
- Performance Data analysis,
- Annual Performance Report 2014/15,
- Evaluation Reports (tender No. PA/031/2013-14/PSA/01),
- Report for Implementation of System for Checking and Monitoring Tanzania Petroleum,

To clarify issues raised on interviews and get a snapshot of the performance of TPDC & MEM in the management of the process of awarding Exploration and Development Contracts and licenses of Natural gas in Tanzania.
<table>
<thead>
<tr>
<th>Selected Method</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>· Risk Management Framework, 2014,</td>
<td></td>
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<tr>
<td>· Annual Procurement Plan 2012/13, 2013/14,</td>
<td></td>
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<tr>
<td>· General Procurement Notice 2012/13, 2013/14,</td>
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<td>· Minutes from Tender bored for tender No. PA/031/2013-14/PSA/01</td>
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<td>· Several correspondences between MEM and TPDC</td>
<td></td>
</tr>
</tbody>
</table>
### Appendix 3: Level of implementation of objectives in each licensing round and reasons for non-attainment

<table>
<thead>
<tr>
<th>Licensing round</th>
<th>Areas</th>
<th>Year</th>
<th>Objectives</th>
<th>Level of implementation/attainment</th>
<th>Reasons for unsatisfactory implementation</th>
</tr>
</thead>
</table>
| **First Tanzania Offshore Licensing Round** | Offshore Blocks 1-6 | 2001 | - To attract hydrocarbon Exploration in offshore areas  
- To test the hydrocarbon prospectivity in Deep Sea water  
- To offer exploration and production investment opportunities in the country’s oil and gas sector  
- Enhance sustainability of petroleum production and thus contribute to the country’s economy through generating revenue to support other productive sectors of the economy. | Partially Fulfilled | Low degree of prospectivity in the areas |
<table>
<thead>
<tr>
<th>Licensing round</th>
<th>Areas</th>
<th>Year</th>
<th>Objectives</th>
<th>Level of implementation/attainment</th>
<th>Reasons for unsatisfactory implementation</th>
</tr>
</thead>
</table>
| The Second Tanzania Offshore Licensing Round | Offshore Blocks 1-4 and 6-12 | 2002 | • To invite international oil companies to bid for exploration rights in the remaining deep-sea blocks 1-4, 6-12  
  • Enhance sustainability of petroleum production and thus contribute to the country’s economy through generating revenue to support other productive sectors of the economy. | Partially Fulfilled | Low degree of prospectivity in the areas |
<table>
<thead>
<tr>
<th>Licensing round</th>
<th>Areas</th>
<th>Year</th>
<th>Objectives</th>
<th>Level of implementation/ attainment</th>
<th>Reasons for unsatisfactory implementation</th>
</tr>
</thead>
</table>
| The Third Tanzania Offshore Licensing Round   | Offshore Blocks 1-4 and 6-8  | 2005 | - Attracting well-established companies to Explore for Oil and Gas in Blocks 1-4 and 6-8  
- To offer exploration and production investment opportunities in the country’s oil and gas sector  
- Enhance sustainability of petroleum production and thus contribute to the country’s economy through generating revenue to support other productive sectors of the economy. | Partially Fulfilled               | Low degree of prospectivity in the areas                          |
<table>
<thead>
<tr>
<th>Licensing round</th>
<th>Areas</th>
<th>Year</th>
<th>Objectives</th>
<th>Level of implementation/attainment</th>
<th>Reasons for unsatisfactory implementation</th>
</tr>
</thead>
</table>
| The 4th Tanzania Offshore bidding round | 7 Offshore Blocks and Lake Tanganyika North | 2013 | • Establish and increase the country’s resource base  
• Attract Oil and Gas exploration in the 7 deep-sea Blocks which are sitting in ultra deep sea of Tanzania  
• To test the hydrocarbon prospectivity in Tanzania Rift system  
• To test hydrocarbon prospectivity to the deeper offshore area following the discoveries of Gas in Shallow waters  
• To offer exploration and production investment opportunities in the country’s oil and gas sector  
• Enhance sustainability of petroleum production and thus contribute to the country’s economy through generating revenue to support other productive sectors of the economy.  
• To test the 2013 MPSA | Partially Fulfilled | • Blocks awarded were sitting in areas where is deeper compared to other Deep see blocks and there were no incentives considered in the MPSA 2013 package  
• MPSA 2013 was prepared when the Oil price was $100 per barrel. The MPSA could not predict that in a few months later the price would go down by 50% |

*Source: TPDC*