

**REPUBLIC OF KENYA**



*Paper laid to the  
Table of the House  
by the Chamberlain  
of PIC the Hon  
Aden KUYI Mwangi  
on 14/06/2014*

**NATIONAL ASSEMBLY**

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**ELEVENTH PARLIAMENT- SECOND SESSION**

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**THE PUBLIC INVESTMENTS COMMITTEE**

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**SPECIAL REPORT ON THE PROCUREMENT OF THE  
TENDER FOR THE PROPOSED KENYA BUREAU OF  
STANDARDS COAST REGIONAL OFFICES AND  
LABORATORIES IN MOMBASA**

**MAY, 2014**

**CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI**

**MAY, 2014**



## **ACRONYMS AND ABBREVIATIONS**

KEBS	Kenya Bureau of Standards
KRA	Kenya Revenue Authority
MIED	Ministry of Industrialization and Enterprise Development
NEMA	National Environmental Management Authority
NSC	National Standards Council



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## **1.0 PREFACE**

**Mr. Speaker Sir,**

The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments.

### **1.1 Mandate of the Committee**

The Committee is mandated to:-

- (a) Examine the reports and accounts of the public investments;
- (b) Examine the reports, if any, of the Auditor General on the public investment;
- (c) Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

The Committee shall however not examine:-

- (a) Matters of major Government policy as distinct from business or commercial functions of the public investments;
- (b) Matters of day-to-day administration; and,
- (c) Matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173–203. The Committee has power, under the provisions of the Constitution, National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act (Cap. 412), to summon witnesses, examine them on oath and receive evidence.

## 1.2 Committee Membership

The Committee comprises of the following Members:-

- (1) Hon. Adan Keynan, CBS, MP - Chairperson
- (2) Hon. Kimani Ichung'wah, MP - Vice Chairperson
- (3) Hon. Sammy Mwaita, MP
- (4) Hon. Cornelly Serem, MP
- (5) Hon. Bare Shill, MP
- (6) Hon. Korei Ole Lemein, MP
- (7) Hon. Adan M. Noor, MP
- (8) Hon. Mithika Linturi, MP
- (9) Hon. Beatrice Nyaga, MP
- (10) Hon. John M. Nyaga, MP
- (11) Hon. Njogu Barua, MP
- (12) Hon. Irungu Kang'ata, MP
- (13) Hon. Onesmus Njuki, MP
- (14) Hon. Eng. John Kiragu, M.P
- (15) Hon. Johana Ngeno, MP
- (16) Hon. Mwadeghu Thomas, MP
- (17) Hon. Abdullswamad Sheriff, MP
- (18) Hon. Paul Otuoma, MP
- (19) Hon. John Aluoch Olago, MP
- (20) Hon. Francis Nyenze Mwanzia, MP
- (21) Hon. Dr. Oburu Oginga, MP
- (22) Hon. Major( Rtd) John K. Waluke, MP
- (23) Hon. Ogutu John Omondi, MP
- (24) Hon. Mary Keraa Sally, MP
- (25) Hon. Wafula Wamunyinyi, MP

(26) Hon. Bernard Munyoki Kitungi, MP

(27) Hon. Chrisanthus Wamalwa, MP

### **1.3 Committee Proceedings**

1.3.1 The Committee held four sittings in which it closely examined and recorded evidence from witnesses. The Minutes of the Committee are hereto annexed and copies of the Hansard Report in respect thereto, may be obtained at the National Assembly Library. In its inquiry into whether or not the affairs of the public investments were managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received oral and or written evidence from the Public Procurement Oversight Authority; the Management of Kenya Bureau of Standards; the former Managing Director of the Kenya Bureau of Standards, Ms. Evah Oduor ,the Principal Secretary for Industrialization and Enterprise Development; M/s EPCO Builders Limited; and the Chairman, National Standards Council.

1.3.2 The Committee also considered the Special Audit report of the Auditor-General on the procurement of the tender for the proposed Coast Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards. The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations and recommendations as outlined in the Report and can be obtained in the HANSARD reports of the Committee available in the National Assembly Library.

1.3.3 These observations and recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent investment and financial management and profitability



in State Corporations and the public investments sector as a whole and guide in future procurement of goods and services by State Corporations.

#### **1.4 Committee's General Observations**

The Committee's observations on the procurement of the tender for the proposed Coast Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards is summarized hereunder:-

1.4.1 Kenya Bureau of Standards advertised and after evaluation awarded tender for the construction and completion of regional laboratories and offices in Mombasa to M/s EPCO Builders Limited.

1.4.2 KEBS awarded the project at a corrected figure of Kshs. 1,327,099,280.50 to M/s EPCO Builders Limited. The award figure was negotiated between KEBS and M/s EPCO Builders Limited to a final contract figure of Kshs 1,324,399,601.00 representing a difference of Kshs. 2,699,679.00.

1.4.3 The contract price of Kshs. 1,324,399,601 was grossly in excess of the approved budgeted amount of Kshs. 1,000, 000, 000. KEBS had therefore awarded a contract without ensuring that adequate resources had been budgeted for, which was in contravention of section 26 (6) of the Public Procurement and Disposal Act, 2005. The Committee has further established that the source of financing the said contract above the approved budget has not been explained to the Auditor General.

1.4.4 KEBS awarded the Project to M/s EPCO Builders Limited, even though it did not provide a bank guarantee as required and was the highest bidder which was a blatant breach of the contractual obligations.

1.4.5 The National Standards Council established under section 6 of the Standards Act, Cap 496 Laws of Kenya terminated the contract for the construction of the coast regional offices and laboratories in its special



meeting held on 23<sup>rd</sup> July, 2013 without involvement and approval of the tender committee contrary to Regulation 32(2) of the Public Procurement and Disposal Regulations, 2006.

- 1.4.6 The cancellation of this project may lead to litigations between the contractor and the Kenya Bureau of Standards for breach of contract. As a result, KEBS is exposed to the risk of paying huge financial damages if the contractor moves to court and sues for a breach of contract.
- 1.4.7 KEBS single sourced the procurement of the services of professional consultants to the tune of Kshs. 97,341,287 from various firms before commencement of the main project which is contrary to section 74 (2) of the Public Procurement and Disposal Act, 2005.
- 1.4.8 The Ministry of Industrialization and Enterprise Development was interfering with the procurement process at KEBS by directing the cancellation of the contract for the proposed regional offices and laboratories in Mombasa yet the Council is a body corporate in which the Principal Secretary of the Ministry was and is a member.
- 1.4.9 Mrs. Eunice K. Miima, the then Acting Principal Secretary, Ministry of Industrialization and Enterprise Development was interfering with the procurement process at KEBS by directing the cancellation of the contract for the proposed regional offices and laboratories in Mombasa.
- 1.4.10 There was a moratorium by the Government on large projects during the electioneering period but the management sought necessary approvals from the Office of the President, Ministry of Industrialization and Enterprise Development and the National Standards Council for the project.

## **1.5 Committee's Recommendations**

Arising from the evidence adduced by witnesses and the observations thereof, the Committee recommends, that:-

1.5.1 EACC should investigate circumstances surrounding the procurement of consultancy services and the contract for the construction of KEBS regional laboratories and offices in Mombasa and the circumstances leading to the cancellation of the contract for the project.

1.5.2 EACC investigates Ms. Evah Oduor, the former Acting Managing Director, for committing Kenya Bureau of Standards and signing the contract for the construction of KEBS Regional offices and laboratories without adequate budgetary allocations contrary to the provisions of Section 26 (6) of the Public Procurement and Disposal Act, 2005 attendant procurement regulations.

1.5.3 The members of the Tender Committee namely; Mr. Joel Kioko , Mr. Joseph O. Kamochi, Mr. John Rukaria, Mr. Kalo Burudi, Mr. Samson Ombok, Ms. Patricia Kimanthi, Ms. Maureen Togo and members of the Evaluation Committee namely; Mr. Francis Okara, Mr. Charles Musee, Mr. Washington Okoth, Ms. Vera Ombata be held individually responsible for contravening section 27 of the Public Procurement and Disposal Act, 2005 and for failure to ensure that the provisions of the Public Procurement and Disposal Act, 2005 and the Regulations and any directions of the Authority are complied with, in respect to each of its procurements and in particular the tender for the proposed Kenya Bureau of Standards regional offices and laboratories in Mombasa.



- 1.5.4 The former acting Managing Director, Ms. Evah Oduor and the then procurement officer, and the tender committee members should be held responsible for single sourcing the procurement of consultancy services in contravention of section 74 of the provision of the Public Procurement and Disposal Act, 2005.
- 1.5.5 The Ministry should be cautioned against interfering in the procurement processes of State Corporations under it. Instead the Ministry should offer guidance. Mrs. Eunice K. Miima, the then acting Principal Secretary be held accountable for interfering in the procurement process of the Kenya Bureau of Standards.
- 1.5.6 The members of the National Standards Council namely; Dr. Brigid Boyani Monda, Dr. Emily Kogos, Salim Chingabwi, Nene Nzyuko, Yasin Haji Hussein, Joshua Lonyaman Angelei, Andrew Ndambiri Muriuki, Nyawira O. Njeru, Jeridah K. Sinange, Kennedy Obar Odera, Nazir Gulam Yusuf, Ahmed Saad Ali Hashi, Ms. Emily Gatuguta (alternate PS MIED), Mr. Martin Gumo (Alternate ministry of finance), Mr. Mohamed Ahmed Adan, Mrs. Mary Chepkemboi Ngeny be investigated and held responsible for terminating the contract for the construction of KEBS regional offices and laboratories without the approval of the tender committee in contravention of Regulation 32 (1) and (2) of the Public Procurement and Disposal Regulations 2006.
- 1.5.7 The Members of the National Standards Council namely; Dr. Brigid Boyani Monda, Dr. Emily Kogos, Salim Chingabwi, Nene Nzyuko, Yasin Haji Hussein, Joshua Lonyaman Angelei, Andrew Ndambiri Muriuki, Nyawira O. Njeru, Jeridah K. Sinange, Kennedy Obar Odera, Nazir

Gulam Yusuf, Ahmed Saad Ali Hashi, Ms. Emily Gatuguta (alternate PS MIED), Mr. Martin Gumo (Alternate Ministry of Finance), Mr. Mohamed Ahmed Adan, Mrs. Mary Chepkeboi Ngeny be held individually responsible for any loss that KEBS might incur as a result of the termination of the contract for the construction of the proposed regional offices and laboratories.

1.5.8 The Public Procurement and Disposal Act, 2005 be amended in section 73 to provide that a tendering committee may not approve a tender without the consent of the management body of a procuring entity.

1.5.9 In an event that M/s EPCO Builders Limited files a suit against KEBS in relation to the contract for the tender for the construction of KEBS regional offices and laboratories, the Attorney General should represent KEBS.

## **1.6 Acknowledgement**

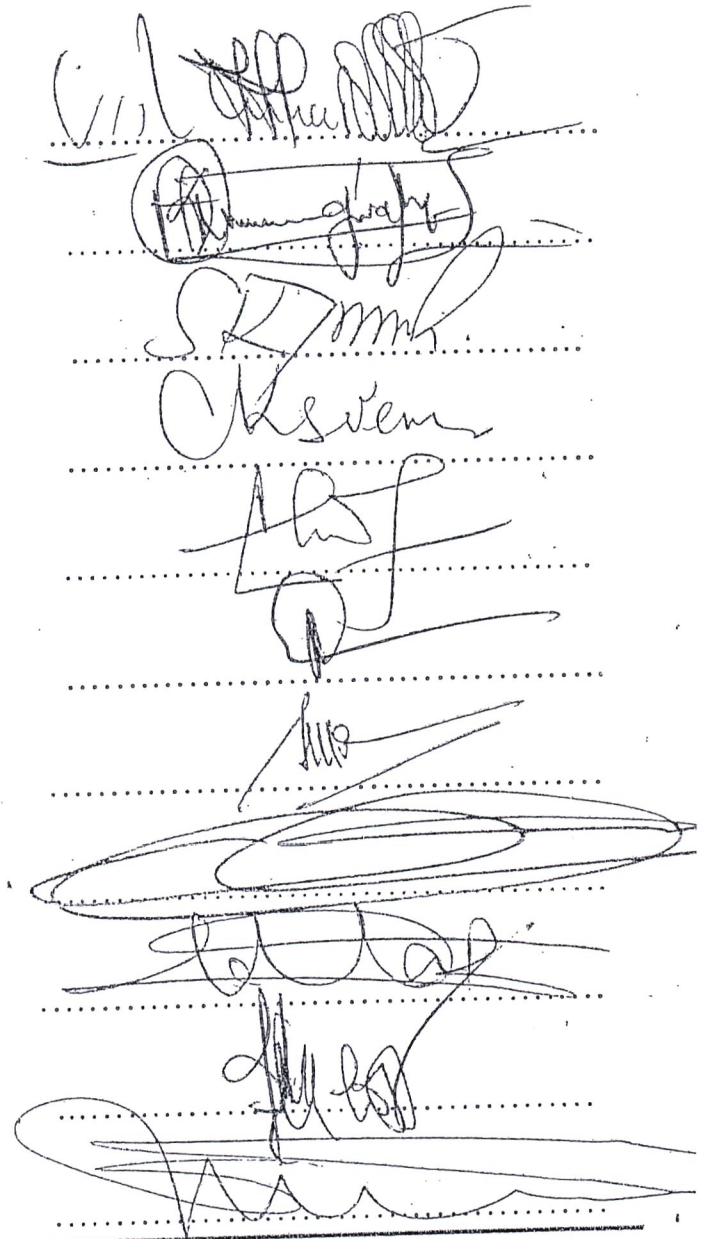
The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitation. The Committee is grateful to all the witnesses who appeared and adduced evidence before it. Further, the Committee is indebted to the staff of the National Assembly, Kenya National Audit Office, the Inspectorate of State Corporations and the Department of Government Investments and Public Enterprises (The National Treasury) for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.



ADOPTION OF THE SPECIAL REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE PROCUREMENT OF THE TENDER FOR THE PROPOSED KENYA BUREAU OF STANDARDS (KEBS) COAST REGIONAL OFFICES AND LABORATORIES

We the Members of the Public Investments Committee have pursuant to Standing Order 199 adopted this report and affix our signatures to affirm our approval and confirm its accuracy validity and authenticity:-

1. Hon. Adan Keynan, CBS, MP
2. Hon. Kimani Ichung'wah, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Cornelly Serem, MP
5. Hon. Bare Shill, MP
6. Hon. Korei Ole Lemein, MP
7. Hon. Adan M. Noor, MP
8. Hon. Mithika Linturi, MP
9. Hon. Beatrice Nyaga, MP
10. Hon. John M. Nyaga, MP
11. Hon. Njogu Barua, MP



*Special Report of PIC on the Procurement of the Tender for the Proposed Kenya Bureau of Standards (KEBS) Coast Regional Offices and Laboratories*

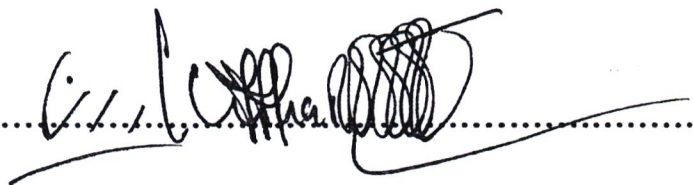


12. Hon. Irungu Kang'ata, MP
13. Hon. Onesmus Njuki, MP
14. Hon. Eng. John Kiragu, M.P
15. Hon. Johana Ngeno, MP
16. Hon. Mwadeghu Thomas, MP
17. Hon. Abdullswamad Sheriff, MP
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22. Hon. Major (Rtd) John K. Waluke, MP
23. Hon. Ogutu John Omondi, MP
24. Hon. Mary Keraa Sally, MP
25. Hon. Wafula Wamunyinyi, MP
26. Hon. Bernard Munyoki Kitungi, MP
27. Hon. Chrisanthus Wamalwa, MP

A series of handwritten signatures in black ink, each written on a horizontal dotted line. The signatures are cursive and vary in style, corresponding to the names listed on the left. Some signatures are more legible than others, but all appear to be the names of the individuals listed.

**Mr. Speaker,**

On behalf of the Members of the Public Investments Committee, I beg to table the special Report of the Committee on the procurement of the tender for the proposed Coast Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards pursuant to Standing Order 199 (6) and commend it to the House for adoption.

Sign: .....  .....

HON. ADAN. W. KEYNAN, CBS, MP  
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

Date: 22/4/2014 .....

## **2.0 BACKGROUND**

- 2.1 Kenya Bureau of Standards (KEBS) is a premier government agency established in 1974 under Cap 496 Laws of Kenya with the mandate of ensuring quality in the manufacturing and commercial sectors through the provision of normative standards, measurements standards (metrology) and conformity assessment (inspection, testing and certification).
- 2.2 The Government had allocated KEBS a land measuring 2 (two) Ha or thereabout in Miritini, for the institution planned to construct the proposed regional offices and 4 (four) state of the art laboratories with the aim of improving the national quality infrastructure capability.
- 2.3 KEBS has mobilized to facilitate the construction of a state of the art facility, an administration block and amenities to fill the gap at the Coast Region in Mombasa using internally generated savings taking into consideration the following factors:
- (i) The urgent need to improve the testing and calibration turnaround time
  - (ii) Growth in demand of KEBS services due to the emerging recent discoveries of rare earth minerals at the Coast and the envisaged business from Lamu Port which is under construction.

## **3.0 REPORT OF THE AUDITOR GENERAL**

The Auditor General in his report (*Annex I*) to the Committee stated that:-

- 3.1 The Kenya Bureau of Standards is a body corporate established under the Standards Act, Cap 496 Laws of Kenya with the objective of promoting standardization in industry and commerce amongst other functions. KEBS



is set to undertake the development of regional offices and laboratories in Mombasa to serve counties in the coast region and adjacent areas.

- 3.2 The project was identified as one of KEBS Vision 2030 flagship projects for implementation in the 2012/2013 and 2013/2014 Financial Years with the aim of ensuring effective provision of Standards Quality Assurance, Metrology and Testing (SQMT) services to the customers in the coast region and enhancing the scope of testing to include test in key sectors of the economy.
- 3.3 KEBS procured the services of professional consultancy from various firms before commencement of the main project. The procurement of the consultancy services to the tune of Kshs. 97,341,287 was single sourced contrary to the provisions of Section 74 (2&3) of the Public Procurement and Disposal Act, 2005.
- 3.4 The agency made the following payments to the various consultants, NEMA and Mombasa Municipal Council for approvals:-

<b>Particulars/Name of Firms</b>	<b>Amount (Kshs)</b>
M/s AAKI Consultants Architects & urban designers	39,324,640
M/s Otieno Odongo & Partners (Structural & Civil Engineer)	29,475,886
M/s Professional Consultants (Electrical and Mechanical Engineer)	13,933,893
M/s Ngahu Associates – Quality Surveyors	14,606,868
Other costs to Mombasa Municipal Council (approval of building plans) and NEMA (Environmental Impact Assessment fees)	4,596,922
<b>TOTAL</b>	<b>101,938,209</b>

- 3.5 Tender No. KEBS/TO86/2012/2013 was advertised on 7<sup>th</sup> March, 2013 and closed/opened on 28<sup>th</sup> March, 2013. Twelve tenders were sold but only

nine (9) firms responded and after technical and financial evaluation, the tender committee awarded the contract to the highest bidder.

3.6 The above project was awarded to M/s EPCO Builders Ltd on 7<sup>th</sup> June 2013 for Kshs.1,327,099,280.50 through a letter No. KEBS/T086/2012/2013 (**Annex 2**).

3.7 Though M/s EPCO Builders Ltd had quoted the highest, all the other firms were eliminated at the evaluation process due to non-compliance with mandatory requirements, technical and financial evaluation.

3.8 The award figure of Kshs. 1,327,099,280.50 was negotiated between KEBS and M/s EPCO Builders Ltd to a final contract figure of Kshs.1,324,399,601 which was higher than the initial approved budget amount of Kshs 1,000,000,000. The source of financing the contract above the approved budget has not been explained.

3.9 The project was then ordered to be kept on hold for further discussions/consultations vide letter No. MOI/CONF.4/1/1 of 16/7/2013 from the Permanent Secretary, Ministry of Industrialization (**Annex 3**). The project was eventually suspended on 23/7/2013 vide letter No. KEBS/DIR/15/12 of 23/7/2013. The contract was later cancelled on 12<sup>th</sup> August 2013 vide letter No. KEBS/DIR/2/12 (**Annex 4**).

3.10 It was not explained why KEBS awarded the Project at Kshs. 1,327,099,280.50 instead of the quoted figure of Kshs. 1,324,399,601.00. The difference of Kshs 2,699,679.00 was not explained. It was also noted



that the contract price was far much higher than the budgeted cost of Kshs 1000,000,000.

3.11 The cancellation of this project may lead to litigations between the contractor and the Kenya Bureau of Standards for breach of contract. As a result, KEBS is exposed to the risk of paying huge financial damages if the contractor moves to court as a result of breach of contract.

### **Committee's Observations**

3.12 The Committee observed that:-

- (i) The contract price was far much higher than the budgeted cost of Kshs 1,000,000,000 and the source of financing the contract above the approved budget has not been explained.
- (ii) KEBS awarded the Project at Kshs. 1,327,099,280.50 to M/s EPCO Builders Limited instead of the quoted figure of Kshs. 1,324,399,601.00. There was a difference of Kshs 2,699,679.00.
- (iii) The cancellation of this project may lead to litigations between the contractor and the Kenya Bureau of Standards for breach of contract. As a result, KEBS is exposed to the risk of paying huge financial damages if the contractor moves to court for breach of contract.
- (iv) KEBS single sourced the procurement of the services of consultancies from various firms before commencement of the main project to the tune of Kshs. 97,341,287 against the provisions of section 74 (2) Public Procurement and Disposal Act, 2005.

## 4.0 EVIDENCE BY WITNESSES

### 4.1 EVIDENCE BY THE PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

Mr. Maurice Juma, the Director General, Public Procurement and Oversight Authority appeared before the Committee on 5<sup>th</sup> November, 2013 to give evidence on the procurement of the tender for the proposed Coast Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards. He informed the Committee that:-

4.1.1 The tender (*TENDER NO. KEBS/T086/2012-2012*) for the construction and completion of regional laboratories and offices – Mombasa at Miritini area was advertised on 7<sup>th</sup> March, 2013 in the local newspapers. The tenders were opened on 28<sup>th</sup> March, 2013 witnessed by the bidders' representatives. The following firms submitted bids:-

- (a) M/s Landmark Holding Ltd;
- (b) M/s China Overseas Engineering Ltd;
- (c) M/s Mulji Devraj and Brothers Ltd;
- (d) M/s Diwafa Investment Ltd;
- (e) M/s Tulsi Construction Ltd;
- (f) M/s Donwoods Company Ltd;
- (g) M/s NK Brothers Ltd;
- (h) M/s EPCOBUILDERS Ltd; and
- (i) M/s Sichuan Huashi Enterprises.

4.1.2 Bids evaluation was conducted in three stages by a committee comprising of seven members (Mr. Francis Okara- Chairman/KEBS, Mr. Charles

Musee- KEBS, Mr. Michael Oganga- KEBS, Mr. Washington Okoth – KEBS, Ms. Vera Ombata – KEBS, Mr. Tom Oketch and Mr. Edward Mwangi from Tom Oketch and Associates). Six bidders, namely; Landmark Holding Ltd, Diwafa Investment Ltd, Tulsi Construction Ltd, Donwoods Company Ltd, NK Brothers Ltd and Sichuan Huashi Enterprises were disqualified at the preliminary evaluation stage.(Annex 5)

4.1.3 M/s China Overseas Engineering Ltd was disqualified at the technical stage for failure to provide evidence for works done of similar magnitude and complexity in the last five years. M/s Mulji Devraj and Brothers Ltd and M/s EPCO Builders Ltd were qualified for the next stage which is financial evaluation.

4.1.4 At the financial evaluation stage M/s Mulji Devraj and Brothers Ltd quoted a price of Kshs. 1,298,027,184 while M/s EPCO Builders Ltd quoted a price of Kshs. 1,327,099,280.50. The evaluation committee recommended M/s EPCO Builders Ltd for award of tender at Kshs. 1,327,099,280.50 (Annex 5).

4.1.5 The tender committee on 7<sup>th</sup> July, 2013 concurred with the recommendations of the evaluation committee and awarded the tender to M/s EPCO Builders Ltd at Kshs. 1, 327,099,280.50. The Kenya Bureau of Standards (KEBS) notified M/s EPCO Builders Ltd of the award and informed the firm of their intention to negotiate with a view to reducing the price and other conditions in the tender. The successful bidder accepted the offer. A team of three officers was appointed to negotiate with M/s EPCO



Builders Ltd to ensure that KEBS obtained best rates and other conditions of the subject tender.

4.1.6 Negotiation meeting between KEBS and M/s EPCO Builders Ltd took place on 28<sup>th</sup> June, 2013 but the meeting did not agree on reduction of price and instead M/s EPCO Builders Ltd offered its original bid price of Kshs. 1,324,399,601.

4.1.7 The parties entered into a contract after M/s EPCO Builders Ltd furnished KEBS with a performance bond of Kshs. 132,709,929 from Mayfair Insurance Company Limited.

4.1.8 On 23<sup>rd</sup> July, 2013 and 12<sup>th</sup> August, 2013 KEBS informed M/s EPCO Builders limited of the suspension and cancellation of the contract respectively (**Annex 4**).

4.1.9 M/s EPCO Builders Ltd wrote to the Public Procurement Oversight Authority indicating dissatisfaction on the termination of contract and were contemplating suing KEBS.

### **Committee's Observations**

4.1.10 The Committee observed that:-

- (i) Kenya Bureau of Standards advertised, evaluated and awarded tender for the construction and completion of regional laboratories and offices in Mombasa to M/s EPCO Builders Limited in blatant contravention of the procurement laws.

- (ii) M/s EPCO Builders Ltd made an attempt to appeal to Public Procurement Oversight Authority for a review of the decision by the Council on the cancellation of contract.
- (iii) The dispute between KEBS and M/s EPCO Builders Ltd has the potential of leading to loss of public funds due to litigation considering that the tenders had already been awarded and the contract signed.

#### **4.2 EVIDENCE BY THE FORMER MANAGING DIRECTOR, KENYA BUREAU OF STANDARDS**

Ms. Evah Oduor, the former Managing Director, appeared before the Committee on the 6<sup>th</sup> of November, 2013 to adduce evidence on the Tender for the Proposed Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards. She informed the Committee as hereunder-

- 4.2.1 That the Kenya Bureau of standards is a Premier Government agency established in 1974 pursuant to section 3 of the Standards Act (Cap 496) Laws of Kenya ,charged with the mandate of ensuring quality in the manufacturing and commercial sectors through the provision of normative standards, measurements standards (metrology) and conformity assessment (inspection, testing and certification).
- 4.2.2 The Government had allocated KEBS a land measuring 2 Ha. or thereabout in Miritini, on which the institution planned to construct the proposed regional offices and four state of the art laboratories with the aim of improving the national quality infrastructure capability.



- 4.2.3 The financing of the project was to be from the savings realized through the Pre-export Verification of Conformity to Standards (PVOC) program. By 2011/2012 Financial Year, KEBS had accumulated about Kshs. 1 billion and projected to raise it to Kshs. 1.5 billion in the 2012/2013 Financial Year. The project was allocated Kshs. 120 million for preliminaries and Kshs. 1 Billion in Financial Years 2012/2013 and 2013/2014. The project was prioritized for implementation as Vision 2030 flagship project and under the KEBS procurement plan for the Financial Years 2011/2012 and 2012/2013 where it was allocated Kshs. 122,750,000 and Kshs. 380,000,000 respectively.
- 4.2.4 The management sought approval of the National Standards Council (NSC) in December 2011 to construct the coast regional laboratories and offices to enhance its efficiency in service delivery at the port of Mombasa. The NSC approved KEBS to procure a team of experts to provide architectural, quantity surveying, structural, civil, mechanical and electrical engineering services to undertake design works and prepare tender documents.
- 4.2.5 The consultant finalized the designs and drawings and recommended two options to NSC costing Kshs. 1,134,717,560 and Kshs. 937,800,030.
- 4.2.6 NSC approved a budget of Kshs. 1 billion and recommended that KEBS management seeks the approval of the parent Ministry which was done in July, 2012.
- 4.2.7 The Kenya Bureau of Standards invited bids for the construction of the proposed regional Offices and Laboratories in Mombasa. Ten companies bought the tender documents but only seven of the companies returned bids. During the opening of tenders, the Engineer's estimates was read to the bidders.

4.2.8 The bids were in excess of the price approved by the Council and the tender was therefore declared non-responsive.

4.2.9 The Engineer's estimate was reviewed again to Kshs. 1.4 billion by the Ministry of Public Works. The increase in the estimates figure was attributed to piling. A geotechnical expert was invited to conduct geotechnical survey to determine scope of piling for structural works given the soil structure in Miritini area.

4.2.10 The tender was re-advertised on 7<sup>th</sup> March, 2013 and evaluated. The Ministry of Public Works' estimates of Kshs. 1,409,518,130 were opened in the presence of bidders after tender opening. Only three bidders met the threshold but one did not meet the technical evaluation criteria. Only one met the financial evaluation and was awarded the contract. The tender was awarded to M/s EPCO Builders Limited on the 7<sup>th</sup> of June, 2013 at a price of Kshs. 1,324,399,601. Notification of the winner and the losers was done and after the complaints period ended, the contract was signed on the 11<sup>th</sup> of July, 2013.

4.2.11 On 18<sup>th</sup> of March, 2013 a circular was issued from the office of the President suspending procurement of major projects of over Kshs. 500 million until clearance was given. This was communicated by the Ministry vide a letter ref no: MOI/CONF.5/25 Vol.2 (61) which was complied with and NSC was informed accordingly. KEBS received an approval from the office of the President forwarded by the Ministry of Industrialization and Enterprise Development vide a letter Ref:



MOI/CONF 4/1(14) granting approval to proceed with the construction process.

4.2.12 The Council and the Ministry held meetings in which the tender was cancelled. The Ministry of Industrialization and Enterprise Development (MIED) wrote and advised that the project should not proceed (**Annex 3**). The Principal Secretary, MIED invited her on 9<sup>th</sup> July 2012 for a briefing meeting on the projects undertaken by KEBS. During the meeting she was directed to put the process on hold, this was followed by a letter stating that the procurement process be put on hold until further discussions are done with the Ministry. In another meeting with the consultant, the Cabinet Secretary expressed his concern over the cost of the project and asked if it could be scaled down. The consultant advised that scaling down could be done by leaving the administration block and other amenities and only constructing the laboratories.

4.2.13 The Cabinet Secretary in a meeting requested NSC to look into ways of managing the contract by either scaling down, constructing in phases, cancelling the contract, renting a building and renovating into a laboratory or purchasing a building and renovating into a laboratory. She advised the NSC that the contract could only be cancelled by the tender committee in accordance with procurement regulations.

4.2.14 She advised the Council in a meeting attended by the Principal Secretary, against terminating the contract. It was the opinion of the Council in a meeting held on 12<sup>th</sup> August 2013 that it was cheaper to terminate the project and pay the contractor Kshs. 20 million than implementing the project. The Council held other meetings that culminated in the decision



to terminate the contract (**Annex 6**). During the meetings she was directed to leave the venue yet she was the secretary to the Council.

4.2.15 KEBS had secured Funding for equipment worth Euros 3 million through the EU Standard and Market Access Programme and most of the equipment was targeted for the Mombasa laboratories.

4.2.16 Her services as the Managing Director were terminated by the Council and issued with a letter of termination on 10<sup>th</sup> September, 2013. She observed that during her tenure as the Managing Director she had not been paid for a period of 20 months. She only earned the salary of her last position/cadre. During her termination she was accused of failure to obey the law, causing KEBS not to obey the law and not obeying lawful commands.

### **Committee's Observations**

4.2.17 The Committee made the following observations:-

- (i) The tender for the construction of the regional offices and laboratories was advertised, tenders evaluated (technical, financial evaluation), and approved by the tender committee.
- (ii) The management sought necessary approvals from the National Standards Council for the project, budget and procurement.
- (iii) The National Standards Council had capped the budget for the project at Kshs. 1 billion during the meeting held on 26<sup>th</sup> June 2012 but management awarded the contract at Kshs. 1,324,399,601 which was over and above the budgeted provision contrary to section 26 (6) of the Public Procurement and Disposal Act, 2005.

- (iv) KEBS awarded M/s EPCO Builders Limited the tender for the proposed regional Offices and Laboratories in Mombasa and contract was subsequently signed.
- (v) The contract was terminated by the Council without involvement and approval of the tender committee contrary to Regulation 32 (2) of the Public Procurement and Disposal Regulations, 2006.
- (vi) The Ministry of Industrialization and Enterprise Development was interfering with the procurement process at KEBS by directing the cancellation of the contract for the proposed regional offices and laboratories in Mombasa in contravention of procurement laws and Regulations.
- (vii) The Council conducted meetings in the absence of the Secretary /Managing Director in contravention of the standards Act.
- (viii) The Council terminated the services of Ms. Evah Oduor as the acting Managing Director on the 10<sup>th</sup> of September, 2013. She was accused of failure to obey the law, causing KEBS not to obey the law and not obeying lawful commands.

#### **4.3 EVIDENCE BY THE MANAGING DIRECTOR, EPCO BUILDERS LIMITED**

The Managing Director, Mr. Ramji D. Varsani, appeared before the Committee on the 7<sup>th</sup> of November, 2013 to adduce evidence on the Tender for the proposed Regional Offices and Laboratories in Mombasa for the Kenya Bureau of Standards. He informed the Committee that:-

4.3.1 Invitation to tender was through the local daily newspapers. They submitted their tender documents on 28<sup>th</sup> March, 2013 and on 11<sup>th</sup> June,



2013 they received their letter of offer. Their tender figure was Kshs. 1,324,339,601. The figure was re-adjusted upon calculation by the procuring entity to Kshs. 1, 327,099,280.50.

4.3.2 The Kenya Bureau of Standards invited them for negotiations on the 28<sup>th</sup> of June, 2013 with the aim of reducing the price. During the negotiations they could not agree on reduction of price but accepted their tender figure of Kshs.1,324,339,601- which had errors.

4.3.3 On the 8<sup>th</sup> of July, 2013 M/s EPCO Builders Ltd requested for drawings and approvals from KEBS and other approvals from NEMA but they were not availed to the said Company.

4.3.4 The agreement was signed on the 11<sup>th</sup> of July, 2013 and on the 18<sup>th</sup> of July, 2013 they received an e-mail from KEBS inviting them for a handing over of site ceremony. This was called off at the last minute.

4.3.5 On the 23<sup>rd</sup> of July, 2013 they received a letter from the Council (KEBS) suspending the contract and a subsequent letter of 12<sup>th</sup> August, 2013 terminating the contract. They responded to the letter terminating the contract on the 20<sup>th</sup> of August, 2013 and wrote to the Public Procurement and Oversight Authority complaining of the termination of the contract on 4<sup>th</sup> November, 2013. Following the termination of the contract the efficiency monitoring unit invited them for a meeting as a party to the agreement.



- 4.3.6 The company is preparing documents for claims of breach of contract which will include loss of profit, loss of opportunity, expenditure incurred. The claim would be in the range of 15 – 20% of the contract price.
- 4.3.7 On inquiring about the termination of the contract from the acting Managing Director, he was informed that the contract was terminated because the former Managing Director acted contrary to the law, did not seek the Council's approval and that the contract price was above the budget.
- 4.3.8 The acting Managing Director asked if M/s EPCO Builders Ltd could re-negotiate the price and whether they could take the job if the scope of work was scaled down. He informed the acting managing director that they could consider the proposal.

### **Committee's Observations**

4.3.9 The Committee observed that:-

- (i) M/s EPCO Builders Ltd were awarded the tender for the proposed regional offices and laboratories in Mombasa following competitive bidding. The company entered into a contract with KEBS for the construction of the project.
- (ii) The Council suspended and later terminated the contract in a special meeting held on the 23<sup>rd</sup> of July, 2013. The NSC cancelled the tender citing the reasons hereunder, that:

- (a) The management had committed Kshs. 1,324,399,601 which exceeded the approved budget of Kshs. 1,000,000,000.
  - (b) M/s EPCO Builders Limited had failed, ignored and or refused to comply with requirements on performance security. M/s EPCO furnished KEBS with a 10% performance bid bond of the contract price from Mayfair Insurance Co. on the 12<sup>th</sup> of July, 2013 instead of a bank guarantee as required.
  - (c) The terms and conditions of the contract allowed KEBS to cancel the contract convenience.
- (iii) M/s EPCO Builders Limited reported the termination of the contract to the Public Procurement Oversight Authority for review.
  - (iv) M/s EPCO Builders Limited seeks to sue KEBS for breach of contract with a claim of 15 – 20% of the contract price.
  - (v) The cancellation of this project may lead to litigation between the contractor and the Kenya Bureau of Standards if KEBS is sued for a breach of contract. This may be to the detriment of KEBS as to costs and consequences as it may expose KEBS to the risk of paying huge financial damages and related costs if the contractor moves to court for breach of contract.

#### **4.4 EVIDENCE BY THE MANAGING DIRECTOR, KENYA BUREAU OF STANDARDS**

Mr. Charles O. Ongwae, the Managing Director, Kenya Bureau of Standards, appeared before the Committee on the 9<sup>th</sup> of March, 2014 to adduce evidence on the procurement process, award of contract and its cancellation for the

proposed KEBS Mombasa regional offices and laboratories. He informed the Committee that:-

4.4.1 Kenya Bureau of Standards commenced the project in 2012 and procured the relevant consultants who were prequalified for the period 2011-2012-2013 and others recommended by the Ministry of Public Works (*Annex 7*) in line with the Public Procurement and Disposal Act, 2005 and Conditions of engagement and scales of fees for professional services for building works issued by the Ministry of Public Works, 1989 edition.

4.4.2 Evaluation was done and with the assistance of the Ministry of Public Works and subsequent approval by the Tender committee on the 6<sup>th</sup> of March, 2012 the following firms were awarded tenders under specific categories:-

- (a) M/s AAKI Consultant was awarded tender for architectural services;
- (b) M/s professional consultants Ltd was awarded tender for electrical and mechanical engineering services;
- (c) M/s Otieno Odongo and partners consulting engineers was awarded tender for structural and civil engineering services;
- (d) M/s Ngayu Associates was awarded tender for quantity surveying services; and
- (e) M/s Tom O. Oketch and associates was awarded tender no. KEBS/T075/2012/2013 for provision of project management services.

4.4.3 The procurement of the main contractor, to undertake civil works, was advertised on the 31<sup>st</sup> of March, 2012 requesting for expression of interest. The first tender No. E01/079/2011/2012 was terminated to allow for further technical input, environmental impact assessment and geo-technical survey. After completion of these processes, Tender No.



KEBS/T086/2012/2013 was advertised on March 7<sup>th</sup>, 2013 in the local dailies (*Annex 8*).

4.4.4 An evaluation committee was appointed on March 26<sup>th</sup>, 2013 comprising five KEBS employees, project manager and Ministry of Public Works (Mr. Francis Okara, Mr. Charles Musee, Mr. Washington Okoth, Ms Vera Ombata) (*Annex 5*). The preliminary evaluation was done and evaluation report submitted on April, 11<sup>th</sup>, 2013 where only three bidders qualified for the technical evaluation, viz;

(a) M/s China Overseas Engineering Company Ltd – Kshs. 1, 283,531,367

(b) M/s Mulji Devraj and brother Ltd – Kshs. 1, 298,027,184

(c) M/s EPCO Builders Ltd – Kshs. 1, 324, 399, 601

4.4.5 The tender was opened on March 28, 2013 and only nine tenders were received out of the twelve that were sold. A tender committee (Mr. Joel Kioko, Mr. Joseph O. Kamochi, Mr. John Rukaria, Mr. Kalo Burudi, Mr. Samson Ombok, Ms Patricia Kimanthi, Ms. Maureen Togo) (*Annex 9*) was subsequently formed to open the tenders.

4.4.6 Upon subjection to technical evaluation only M/s Mulji Devraj and Brothers Ltd and M/s EPCO Builders Ltd qualified for financial evaluation. In accordance to section 52 of the Act, the evaluation committee upon analyzing the tender amounts and considering the audited accounts for the two bidders recommended M/s EPCO Builders Ltd at a cost of Kshs. 1, 327, 099,280.

4.4.7 The tender committee on June 7, 2013 awarded the tender to the successful bidder M/s EPCO Builders Ltd at a cost of Kshs. 1,327,099,280.50 as recommended by the evaluation committee.

- 4.4.8 The tender was awarded to M/s EPCO Builders Ltd through letter dated June 7, 2013 (*Annex 2*) at Kshs. 1, 327,099,280.50. This figure however varies grossly from that indicated in the tender form and contract agreement of Kshs. 1, 324,399,601 (*Annex 10*).
- 4.4.9 M/s EPCO Builders Limited accepted the award through a letter Ref. EP/P600KEBS/2013/001 (*Annex 11*). Subsequently the firm furnished KEBS with a 10% performance bond of the contract price of Kshs. 132,709, 929 from Mayfair Insurance on July 12, 2013 while the tender conditions required a bank guarantee and not a performance bond.
- 4.4.10 The appeal period for any aggrieved party in respect to the tender lapsed on June 21<sup>st</sup>, 2013 and no appeal was received. The signing of the contract between the parties, KEBS and M/s EPCO Builders Ltd, was on July 11, 2013.
- 4.4.11 The decision to suspend and cancel the tender awarded to M/s EPCO Builders Limited was made during the NSC special meeting held on 23<sup>rd</sup> July, 2013 and communicated to the firm on 23<sup>rd</sup> July, 2013 and 12<sup>th</sup> August, 2013 for the suspension and cancellation respectively (*Annex 4*). The meeting observed that the managing director had signed the contract for the sum of Kshs. 1, 324,399,601 (budget capped at Kshs. 1 Billion) and that it was not in the best interest of the organization and further gave instructions to suspend the contract. The National Standards Council (NSC) also agreed that the project was critical to deliver KEBS mandate and whereas the contract was cancelled, further review and consultations would take place to determine the best way forward to restart the project.
- 4.4.12 On review of the procurement process the NSC cancelled the tender due to the following reasons:-



- (a) The management had committed Kshs. 1, 324,399,601 beyond what was approved being (Kshs. 1,000,000,000);
- (b) M/s EPCO Builders Limited failed to comply with the requirement on performance security. They furnished KEBS with a 10% performance bid bond for the Contract price from Mayfair Insurance Co. Ltd instead of a bank guarantee.
- (c) The terms of conditions of the contract allowed KEBS to cancel the contract at their convenience.

4.4.13 The payments made so far to the consultants were based on project evaluation at tender stage amounting to Kshs. 1,146,720,455. So far Kshs. 101,465,828.63 had been paid out to consultants and other services. The estimate for professional fees was 12% of the project cost as tabulated hereunder:-

Firm	Amount charged at Tender stage (Kshs)	Paid to client (Kshs.)	Withholding Tax Remitted to KRA (Kshs.)	Date paid
AAKI Consultants architects & urban designers	39,324,640.00	37,710,328.18	1,614,311.98	28/10/2012
Otieno Odongo& Partners	29,475,886.43	28,265,874.67	1,210,011.75	26/10/2012
Professional Consultants	13,933,892.72	13,361,893.90	571,998.88	26/10/2012
Ngahu associates	14,606,868.41	14,007,243.27	599,625.14	28/10/2012
Mombasa municipal council (approval of building plans)	1,113,100.00	113,100.00	-	
NEMA -Environmental Impact Assessment fees	569,537.00	569,537.00	-	



Foundation Piling Ltd – Geotechnical investigations	2,441,904.00	2,371,741.14	70,162.86	25/9/2012; 30/11/2012 & 28/01/2013
<b>TOTAL</b>	<b>101,465,828.63</b>	<b>97,399,718.16</b>	<b>4,066,110.61</b>	

4.4.14 The NSC resolved that the coast regional offices and laboratory project should continue after further review to determine the best option between purchase of an existing building or construction at KEBS plot at Miritini, Mombasa.

### **Committee’s Observations**

4.4.15 The Committee made the following observations:-

- (i) The tender process underwent due process with regard to advertisement for invitation to tender, technical evaluation, financial evaluation, and approval by the tender committee.
- (ii) The management sought necessary approvals from the National Standards Council for the project, budget and procurement.
- (iii) The tender was awarded to M/s EPCO Builders Ltd through a letter dated 7<sup>th</sup> of June, 2013 at Kshs. 1, 327,099,280.50 which exceeded the budgeted figure of Kshs 1,000,000,000.
- (iv) The decision to suspend and cancel the tender awarded to M/s EPCO Builders Limited was made during the NSC special meeting held on 23<sup>rd</sup> of July, 2013.
- (v) The NSC cancelled the tender due to the following reasons:
  - (a) The management had committed Kshs. 1,324,399,601 beyond the approved budget of Kshs. 1,000,000,000.
  - (b) M/s EPCO Builders Limited failed to comply with requirements on performance security. M/s EPCO furnished KEBS with a 10%

performance bid bond of the contract price from Mayfair Insurance Co. on 12<sup>th</sup> July 2013 instead of a bank guarantee

- (c) Terms and conditions of the contract allow KEBS to cancel the contract at their convenience.
- (v) The payments made so far to the consultants were based on project evaluation at the tender stage amounting to Kshs. 1,146,720,455. So far Kshs. 101,465,828.63 had been paid out to the various consultants and other services including NEMA approvals and Mombasa City Council approvals. The estimate for professional fees was 12 % of the project cost.
- (vi) The tender committee recommended M/s EPCO Builders Limited even though it was the highest bidder.

#### **4.5 EVIDENCE BY THE PRINCIPAL SECRETARY, MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT AND ENTERPRISE DEVELOPMENT**

Dr. Wilson Songa, The Principal Secretary, Ministry of Industrialization and Enterprise Development made a written submission on the procurement of the tender for the construction of the Kenya Bureau of Standards coast regional offices and laboratories. In the submission, he informed the Committee that:-

4.5.1 The Kenya Bureau of Standards is a statutory body established under the Standards Act, Cap 496 Laws of Kenya to promote standardization in industry and commerce; provide facilities for examination and testing of commodities; and materials and control the use of standardization marks and distinctive marks. The Act also establishes the National Standards Council (NSC).

4.5.2 KEBS initiated the process of procuring regional headquarters at the coastal region for effective provision of Standards, Quality Assurance,



Metrology and Testing (SQMT) services. Tenders were advertised on 7<sup>th</sup> March, 2013 and closed on 28<sup>th</sup> March, 2013. Nine companies submitted bids accompanied by bid bonds of Kshs. 1 million each as follows:-

- (i) M/s Land Mark Holdings Limited;
- (ii) M/s China Overseas & Engineering Co. Ltd;
- (iii) M/s Mulji Devraj & Brothers Ltd;
- (iv) M/s Diwafa Investments Ltd;
- (v) M/s Tulsi Construction Ltd;
- (vi) M/s Don-Woods Co. Ltd;
- (vii) M/s NK Brothers Ltd;
- (viii) M/s EPCO Builders Ltd; and
- (ix) M/s Sichuan Huashi Enterprises Corporation E.A Ltd

4.5.3 M/s China Overseas & Engineering Co. Ltd, M/s Mulji Devraj & Brothers Ltd and M/s EPCO Builders Ltd qualified during the preliminary evaluation but only M/s Mulji Devraj & Brothers Ltd and M/s EPCO Builders Ltd qualified for technical evaluation.

4.5.4 The financial evaluation was based on audited accounts for the last three years and after evaluation M/s Mulji Devraj & Brothers Ltd tendered the lowest but M/s EPCO Builders Ltd was recommended due to weaknesses identified in the audited accounts of M/s Mulji Devraj & Brothers Ltd.

4.5.5 M/s EPCO Builders was awarded the tender at the tender sum of Kshs. 1,324,399,601 and on 11<sup>th</sup> July, 2013 a contract was signed between M/s EPCO Builders Limited and Kenya Bureau of Standards.



4.5.6 The Ministry advised KEBS to cancel the contract because of the following reasons:-

- (i) The procurement plan was not approved by the Chief Executive Officer or the National Standards Council contrary to sections 10(1) and 27 of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 that require that every procurement shall have an annual procurement plan duly approved by the Head of procurement entity and where applicable the Council of Directors or a similar body
- (ii) The appointment of the tender committee was irregular on the basis that technical officers from the Ministry of Public Works did not participate in the evaluation in spite of the fact that NSC in its meeting held on 31<sup>st</sup> December 2012 insisted that they should be involved in all procurement processes in respect of the project.
- (iii) The Managing Director appointed members of the evaluation committee and included Ministry of Public Works as member contrary to Regulation 16 (3 & 6) of the Public Procurement and Disposal Regulations, 2006 which envisages that it is only individual members who are to be appointed to sit in the committee. The project manager/consultant was also appointed as a member of the evaluation committee.
- (iv) In the evaluation report, two representatives of Tom Oketch and Associates participated in the evaluation process notwithstanding the fact that they had not been appointed members of the technical evaluation committee (**Annex 5**).
- (v) The evaluation criteria did not spell out clear and precise specifications on the qualifications of the key personnel and their

number in respect of the project, though this appears to be one of the criteria used in the evaluation process.

- (vi) The management of KEBS awarded the tender to M/s EPCO Builders Ltd at a tender price of Kshs. 1,324,399,280.50, signed a contract on 11<sup>th</sup> July, 2013 against the advice by the National Standards Council which in a meeting held on 26<sup>th</sup> June, 2012 had resolved that the project should not exceed Kshs. 1 Billion.

### **Committee's Observations**

4.5.7 The Committee observed that:-

- (i) M/s EPCO Builders was awarded the tender at the tender sum of Kshs. 1,324,399,601 and contract entered on 11<sup>th</sup> July, 2013 between M/s EPCO Builders Limited and Kenya Bureau of Standards over and above the approved budget of Kshs. 1 Billion.
- (ii) The Ministry of Industrialization and Enterprise Development advised KEBS to cancel the contract for the construction of regional offices and laboratories due to alleged irregularities in the procurement process among other stated reasons.
- (iii) Even though the tender was awarded to M/s EPCO Builders Ltd the tender process was irregular since they were the highest bidder and provided a performance bond and not a bank guarantee as was required in the tender documents. Further there was no adequate budgetary provision as required under section 26 (6) of the Public Procurement and Disposal Act, 2005.



## **5.0 COMMITTEE'S GENERAL OBSERVATIONS**

The Committee made the following observations from the evidence adduced and documents submitted:-

- 5.1 Kenya Bureau of Standards advertised and after evaluation awarded tender for the construction and completion of regional laboratories and offices in Mombasa to M/s EPCO Builders Limited.
- 5.2 KEBS awarded the project at a corrected figure of Kshs. 1,327,099,280.50 to M/s EPCO Builders Limited. The award figure was negotiated between KEBS and M/s EPCO Builders Limited to a final contract figure of Kshs 1,324,399,601.00 representing a difference of Kshs. 2,699,679.00.
- 5.3 The contract price of Kshs. 1,324,399,601 was grossly in excess of the approved budgeted amount of Kshs. 1,000,000, 000. KEBS had therefore awarded a contract without ensuring that adequate resources had been budgeted for, which was in contravention of section 26 (6) of the Public Procurement and Disposal Act, 2005. The Committee has further established that the source of financing the said contract above the approved budget has not been explained to the Auditor General.
- 5.4 KEBS awarded the Project to M/s EPCO Builders Limited, even though it did not provide a bank guarantee as required and was the highest bidder which was irregular and a blatant breach of the contractual obligations.
- 5.5 The National Standards Council established under section 6 of the Standards Act, Cap 496 Laws of Kenya terminated the contract for the construction of the coast regional offices and laboratories in its special meeting held on 23<sup>rd</sup> July, 2013 without involvement and approval of the tender committee contrary to Regulation 32(2) of the Public Procurement and Disposal Regulations, 2006.



- 5.6 The cancellation of this project may lead to litigations between the contractor and the Kenya Bureau of Standards for breach of contract. As a result, KEBS is exposed to the risk of paying huge financial damages if the contractor moves to court and sues for a breach of contract.
- 5.7 KEBS single sourced the procurement of the services of professional consultants to the tune of Kshs. 97,341,287 ,from various firms before commencement of the main project which is contrary to section 74 (2) of the Public Procurement and Disposal Act, 2005.
- 5.8 The Ministry of Industrialization and Enterprise Development was interfering with the procurement process at KEBS by directing the cancellation of the contract for the proposed regional offices and laboratories in Mombasa yet the Council is a body corporate in which the Permanent Secretary of the Ministry was a member.
- 5.9 Mrs. Eunice K. Miima, the then Acting Principal Secretary, Ministry of Industrialization and Enterprise Development was interfering with the procurement process at KEBS by advising for the cancellation of the contract for the proposed regional offices and laboratories in Mombasa.
- 5.10 There was a moratorium by the government on large projects during the electioneering period but the management sought necessary approvals from the Office of the President, Ministry of Industrialization and Enterprise Development and the National Standards Council for the project, budget and procurement.

## **6.0 COMMITTEE'S RECOMMENDATIONS**

Arising from the evidence adduced by witnesses and the observations thereof, the Committee recommends, that:-

- 6.1 EACC should investigate circumstances surrounding the procurement of consultancy services and the contract for the construction of KEBS regional laboratories and offices in Mombasa and the circumstances leading to the cancellation of the contract for the project.
- 6.2 EACC investigates Ms. Evah Oduor, the former Acting Managing Director, for committing Kenya Bureau of Standards and signing the contract for the construction of KEBS Regional offices and laboratories without adequate budgetary allocations contrary to the provisions of Section 26 (6) of the Public Procurement and Disposal Act, 2005 attendant procurement regulations.
- 6.3 The members of the Tender Committee namely; Mr. Joel Kioko , Mr. Joseph O. Kamochi, Mr. John Rukaria, Mr. Kalo Burudi, Mr. Samson Ombok, Ms. Patricia Kimanthi, Ms. Maureen Togo and members of the Evaluation Committee namely; Mr. Francis Okara, Mr. Charles Musee, Mr. Washington Okoth, Ms. Vera Ombata, Mr. Edward Mwangi and Mr. Tom Oketch be held individually responsible for contravening section 27 of the Public Procurement and Disposal Act, 2005 and for failure to ensure that the provisions of the Public Procurement and Disposal Act, 2005 and the Regulations and any directions of the Authority are complied with, in respect to each of its procurements and in particular the tender for the proposed Kenya Bureau of Standards regional offices and laboratories in Mombasa.
- 6.4 The former acting Managing Director, Ms. Evah Oduor and the then procurement officer, Mr. George Kamami, and the tender committee



members (Mr. Joel Kioko , Mr. Joseph O. Kamochi, Mr. John Rukaria, Mr. Kalo Burudi, Mr. Samson Ombok, Ms. Patricia Kimanthi, Ms. Maureen Togo) should be held responsible for single sourcing the procurement of consultancy services in contravention of section 74 of the provision of the Public Procurement and Disposal Act, 2005.

6.5 The Ministry should be cautioned against interfering in the procurement processes of State Corporations under it. Instead the Ministry should offer guidance. Mrs. Eunice K. Mima, the then acting Principal Secretary be held accountable for interfering in the procurement process of the Kenya Bureau of Standards.

6.6 The members of the National Standards Council namely; Dr. Brigid Boyani Monda, Dr. Emily Kogos, Salim Chingabwi, Nene Nzyuko, Yasin Haji Hussein, Joshua Lonyaman Angelei, Andrew Ndambiri Muriuki, Nyawira O. Njeru, Jeridah K. Sinange, Kennedy Obar Odera, Nazir Gulam Yusuf, Ahmed Saad Ali Hashi, Ms. Emily Gatuguta (alternate PS MIED), Mr. Martin Gumo (Alternate ministry of finance), Mr. Mohamed Ahmed Adan, Mrs. Mary Chepkemboi Ngeny be investigated and held responsible for terminating the contract for the construction of KEBS regional offices and laboratories without the approval of the tender committee in contravention of Regulation 32 (1) and (2) of the Public Procurement and Disposal Regulations 2006.

6.7 The Members of the National Standard Council namely; Dr. Brigid Boyani Monda, Dr. Emily Kogos, Salim Chingabwi, Nene Nzyuko, Yasin Haji Hussein, Joshua Lonyaman Angelei, Andrew Ndambiri Muriuki, Nyawira O. Njeru, Jeridah K. Sinange, Kennedy Obar Odera, Nazir Gulam Yusuf, Ahmed Saad Ali Hashi, Ms. Emily Gatuguta (alternate PS MIED), Mr.



Martin Gumo (Alternate Ministry of Finance), Mr. Mohamed Ahmed Adan, Mrs. Mary Chepkeboi Ngeny be held individually responsible for any loss that KEBS might incur as a result of the termination of the contract for the construction of the proposed regional offices and laboratories.

- 6.8 The Public Procurement and Disposal Act, 2005 be amended in section 73 to provide that a tendering committee may not approve a tender without the consent of the management body of a procuring entity.
- 6.9 In the event that M/s EPCO Builders Limited files a suit against KEBS in relation to the contract for the tender for the construction of KEBS regional offices and laboratories, the Attorney General should represent KEBS.

# MINUTES

**MINUTES OF THE 84<sup>TH</sup> SITTING OF THE PUBLIC INVESTMENTS COMMITTEE  
HELD ON TUESDAY, 5<sup>TH</sup> NOVEMBER, 2013 IN COMMITTEE ROOM 7, MAIN  
PARLIAMENT BUILDINGS AT 10.30 A.M.**

**PRESENT**

- |                                      |   |                         |
|--------------------------------------|---|-------------------------|
| 1. Hon. Adan Keynan, MP              | - | <b>Chairperson</b>      |
| 2. Hon. Kimani Ichung'wah, MP        | - | <b>Vice Chairperson</b> |
| 3. Hon. Bare Shill, MP               |   |                         |
| 4. Hon. Korei Ole Lemein, MP         |   |                         |
| 5. Hon. John M. Nyaga, MP            |   |                         |
| 6. Hon. Cornelly Serem, MP           |   |                         |
| 7. Hon. Njogu Barua, MP              |   |                         |
| 8. Hon. Onesmus Njuki, MP            |   |                         |
| 9. Hon. Mwadeghu Thomas, MP          |   |                         |
| 10. Hon. Paul Otuoma, MP             |   |                         |
| 11. Hon. John Olago Aluoch, MP       |   |                         |
| 12. Hon. Major (Rtd) John Waluke, MP |   |                         |
| 13. Hon. Ogutu John Omondi, MP       |   |                         |
| 14. Hon. Mary Keraa Sally, MP        |   |                         |
| 15. Hon. Wafula Wamunyinyi, MP       |   |                         |
| 16. Hon. Bernard Munyoki Kitungi, MP |   |                         |
| 17. Hon. Chrisanthus Wamalwa, MP     |   |                         |
| 18. Hon. Johana Ngeno, MP            |   |                         |
| 19. Hon. Abdullswamad Sheriff, MP    |   |                         |
| 20. Hon. Beatrice Nyaga, MP          |   |                         |

**ABSENT WITH APOLOGY**

1. Hon. Eng. John Kiragu, MP
2. Hon. Mithika Linturi, MP
3. Hon. Sammy Mwaita, MP
4. Hon. Francis Nyenze, MP
5. Hon. Dr. Oburu Oginga, MP
6. Hon. Adan Nooru, MP
7. Hon. Irungu Kang'ata, MP

**IN-ATTENDANCE**

**KENYA NATIONAL ASSEMBLY**

- |                        |   |                             |
|------------------------|---|-----------------------------|
| 1. Mr. Nicholas Emejen | - | Principal Clerk Assistant I |
| 2. Mr. Joash Kosiba    | - | Fiscal Analyst              |



3. Ms. Rahab Chepkilim - Hansard Reporter  
4. Mr. Michael Njenga - Parliamentary Intern

### KENYA NATIONAL AUDIT OFFICE

- Mr. Charles Nyanyuki - Ag. Director  
Mr. Richard Nyagwachi - Manager, Audit  
Mr. Obed Chweya - Senior Manager, Audit  
Mr. Geoffrey M. Irungu - Assistant Manger

### TREASURY

Mr. John Munge -

### INSPECTORATE OF STATE CORPORATIONS

- Ms. Jane Weru - Assistant Inspector General  
Chris A. Makhoha - Senior Assistant Inspector General

### MINUTE NO. 474/2013 PRELIMINARIES

The Chairperson called the meeting to order at Thirty Minutes past Ten O'clock.

### MINUTE NO. 475/2013 EVIDENCE: PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

The Director General, Public Procurement and Oversight Authority, Mr. Maurice Juma accompanied by Mr. P. M. Wangai, SCO appeared before the Committee to brief it on the tender for the supply, installation and commissioning of three sea to shore gantry cranes for Kenya Ports Authority and tender for the proposed Coast Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards.

He briefed the Committee as follows:-

#### 1. TENDER No. KPA/117/2012-13/TE - SUPPLY, INSTALLATION AND COMMISSIONING OF THREE SEA TO SHORE GANTRY CRANES FOR KENYA PORTS AUTHORITY

- (i) The tender was advertised in the Standard newspaper on 22<sup>nd</sup> and 23<sup>rd</sup> April, 2013 and the Lloyds list intelligence/classified on Wednesday 24<sup>th</sup> April, 2013. The tenders were closed and opened on 10<sup>th</sup> June, 2013.
- (ii) An evaluation Committee comprising of six members was appointed by the Managing Director with the mandate of evaluating two tenders; tender KPA/116/2012-2013/TE - supply and commissioning of 12 No. RTG cranes and tender No. KPA/117/2012-

13/TE supply and commissioning of 3 No. SSG Cranes. The committee conducted the evaluation in three stages namely preliminary, technical and financial evaluation from 25<sup>th</sup> June to 9<sup>th</sup> July, 2013.

- (iii) The tender evaluation committee evaluated the following tenders which were received and opened during tender opening:- M/s Liebherr Container Cranes Ltd; M/s Terex Port Solutions; M/s Kocks Crane GMBH; M/s Dalian Huarui Heavy Industry (DHHI) and M/s Kalmar. All the five firms were qualified to proceed to the technical evaluation stage.
- (iv) The technical evaluation was carried out as per tender requirements, TDS clause 30 and ITT clause 29 after incorporating addenda issued in respect of tender. M/s Liebherr Container Cranes Ltd (overall score 93.55% and 47.23% technical score) and M/s Kocks Crane GMBH (91.05% overall score and 45.10% technical score) were recommended to proceed to the next stage of evaluation after attaining overall scores above the required pass mark of 80%. M/s Terex Port Solutions and M/s Dalian Huarui Heavy Industry (DHHI) were disqualified because they failed to attain the technical pass of 45% and overall pass mark of 80% while M/s Kalmar was declared non responsive and was therefore not recommended for further evaluation.
- (v) The evaluation committee recommended that due diligence be carried out on the two firms M/s Liebherr Container Cranes Ltd and M/s Kocks Crane GMBH before opening of financial bids by visiting their plants and reference sites listed in their bids. The site visits would enable the authority to verify the information given by the tenders and obtain clarification and additional information with regard to, quality of workmanship, reliability of the ship to shore gantry cranes, availability of spare parts, and durability of the ship to shore gantry cranes as well as the cost of maintenance. The committee only visited sites by M/s Liebherr Container Cranes Ltd in Ireland (Killarney manufacturing plant) and United Arab Emirates (Khorfakkan Container Terminal) and M/s Rainbow Cargotec industries sites in China (Nantong, Shanghai) and Thailand (LCMT, Bang Na Port). The committee observed from the sites that M/s Liebherr Container Cranes Ltd and M/s Rainbow Cargotec industries had capacity to manufacture and supply good quality STS and RTG cranes respectively. The committee recommended that if deemed fit the authority may proceed with the tendering process.
- (vi) The opening of financial bids was done on 29<sup>th</sup> July, 2013. M/s Liebherr Container Cranes Ltd quoted a price of USD 29,190,850 while M/s Kocks Crane GMBH quoted USD 31,421,970. The committee recommended the award of tender no. KPA/117/2012-13/TE – design, manufacture, supply, installation, testing and commissioning of three new fully built ship to shore gantry cranes to M/s Liebherr



Container Cranes Ltd at the evaluated tender sum of USD 30,362,915.52 with a delivery period of 67 weeks.

(vii) The KPA Tender committee awarded M/s Liebherr Container Cranes Ltd the tender No. KPA/117/2012-13/TE – design, manufacture, supply, installation, testing and commissioning of three new fully built ship to shore gantry cranes at USD29,625,520 CIF Mombasa with a delivery period of 67 weeks.

(viii) M/s Kocks Crane GMBH lodged a request for review of the whole tender on 12<sup>th</sup> September, 2013. The review Board allowed each of the parties to the dispute to present its case and considered all the documents and submission before it from all parties.

(ix) The Board considered the request for review and dismissed it and advised the procuring entity to proceed with the procurement process.

#### **Administrative review of the procurement process**

- (a) Tender committee had not conducted proper evaluation of the tenderers since some parameters in the tender documents were not scored.
- (b) Financial evaluation was conducted within 48 hours after completion of the technical evaluation contrary to regulation 16 (7) (b).
- (c) M/s Kocks Crane was to supply within the required delivery period of 64 weeks as opposed to 67 weeks by M/s Liebherr Container Cranes Ltd.
- (d) Under regulation 4 (11)(b) observers should be invited during tender opening of such tenders and a report by the observers submitted to the Public Procurement Oversight Authority (PPOA). No such report has been submitted to PPOA.

#### **2. TENDER NO. KEBS/T086/2012-2012 FOR PROPOSED REGIONAL OFFICES AND LABORATORIES IN MOMBASA FOR KENYA BUREAU OF STANDARDS**

- (i) The tender for the construction and completion of regional laboratories and offices – Mombasa at Miritini area was advertised on 7<sup>th</sup> March, 2013 in the local newspapers. The tenders were opened on 28<sup>th</sup> March, 2013 witnessed by the bidders representatives. A total of nine firms; Landmark Holding Ltd, China Overseas Engineering Ltd, Mulji Devraj and Brothers Ltd, Diwafa Investment Ltd, Tulsi Construction Ltd, Donwoods Company Ltd, NK Brothers Ltd, EPCO Builders Ltd and Sichuan Huashi Enterprises submitted bids.



- (ii) Bid evaluation was conducted in three stages by a committee comprising of seven members. Six bidders; Landmark Holding Ltd, Diwafa Investment Ltd, Tulsi Construction Ltd, Donwoods Company Ltd, NK Brothers Ltd and Sichuan Huashi Enterprises were disqualified at the preliminary evaluation.
- (iii) China Overseas Engineering Ltd was disqualified at the technical stage for failure to provide evidence for works done of similar magnitude and complexity in the last five years. Mulji Devraj and Brothers Ltd and EPCO Builders Ltd were qualified for financial evaluation.
- (iv) At the financial evaluation stage Mulji Devraj and Brothers Ltd quoted a price of Kshs. 1,298,027,184 while EPCO builders quoted a price of Kshs. 1,327,099,280.50. The committee recommended EPCO builders Ltd for award of tender at Kshs. 1,327,099,280.50.
- (v) The tender committee on 7<sup>th</sup> July, 2013 concurred with the recommendations of the evaluation committee and awarded the tender to EPCO builders Ltd at Kshs. 1,327,099,280.50. KEBS notified the bidder of the award and informed the bidder of their intention to negotiate with the bidder with a view to reducing the price and other conditions in the tender. The successful bidder accepted the offer. A team of three officers was appointed to negotiate with EPCO builders to ensure that KEBS obtained best rates and other conditions of the subject tender.
- (vi) Negotiation meeting between KEBS and EPCO builders took place on 28<sup>th</sup> June, 2013 but the meeting did not agree on reduction of price and instead Epc builders offered its original bid price of Kshs. 1,324,399,601.
- (vii) The parties entered into a contract after EPCO Builders furnished KEBS with a performance bond of Kshs. 132,709,929 from Mayfair Insurance Company Limited.
- (viii) On 23<sup>rd</sup> July, 2013 KEBS informed EPCO builders that the contract had been suspended and on 12<sup>th</sup> August, 2013 EPCO Builders was informed of the cancellation of the contract.
- (ix) M/s EPCO Builders Ltd wrote to Public Procurement Oversight Authority indicating dissatisfaction on the termination of contract and were contemplating suing KEBS.

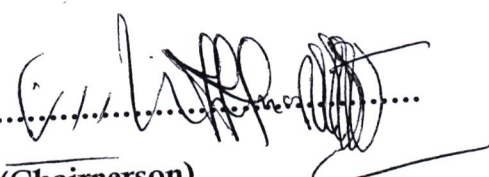
#### **MINUTE NO. 477/2013 - COMMITTEE OBSERVATIONS**

The Committee observed that:-

- (i) The dispute has the potential of leading to loss of public funds due to litigation considering that the tenders had already been awarded and contracts entered.
- (ii) Need to review the procurement law in its entirety.

MINUTE NO. 478/2013      ADJOURNMENT

There being no other business, the meeting adjourned at Five Minutes past Twelve O'clock.

Signed.....  
  
(Chairperson)

Date: 10/3/2014.....

**MINUTES OF THE 85<sup>TH</sup> SITTING OF THE PUBLIC INVESTMENTS COMMITTEE  
HELD ON WEDNESDAY, NOVEMBER 6, 2013 IN COMMITTEE ROOM 7, MAIN  
PARLIAMENT BUILDINGS AT 11.00 AM**

**PRESENT:**

1. Hon. Adan Keynan, M.P. – **Chairperson**
2. Hon. Kimani Ichung'wah, M.P. – **Vice Chairperson**
3. Hon. Ogutu John Omondi, M.P.
4. Hon. Paul Otuoma, M.P.
5. Hon. John Aluoch Olago, M.P.
6. Hon. Dr. Oburu Oginga, M.P.
7. Hon. Njogu Barua, M.P.
8. Hon. Abdullswamad Sheriff, M.P.
9. Hon. Korei Ole Lemein, M.P.
10. Hon. Chrisanthus Wamalwa, M.P.
11. Hon. John M. Nyaga, M.P.
12. Hon. Eng. John Kiragu, M.P.
13. Hon. Bernard Munyoki Kitungi, M.P.
14. Hon. Major (Rtd) John Waluke, M.P.
15. Hon. Johana Ngeno, M.P.
16. Hon. Beatrice Nyaga, M.P.
17. Hon. Mithika Linturi, M.P.
1. Hon. Mwadeghu Thomas, M.P.
18. Hon. Adan M. Nooru, M.P.
19. Hon. Wafula Wamunyinyi, M.P.
20. Hon. Irungu Kang'ata, M.P.
21. Hon. Mary Keraa Sally, M.P.
22. Hon. Cornelly Serem, M.P.

**ABSENT WITH APOLOGY**

2. Hon. Francis Nyenze Mwanzia, M.P.
3. Hon. Bare Shill, M.P.
4. Hon. Sammy Mwaita, M.P.
5. Hon. Onesmus Njuki, M.P.

**IN – ATTENDANCE**

**NATIONAL ASSEMBLY**

Mr. Nicholas Emején

–

Principal Clerk Assistant I



Ms. Rahab Chepkilim - Audio Officer  
Mr. Michael Njenga - Parliamentary Intern

### KENYA NATIONAL AUDIT OFFICE

Mr. Richard Nyagwachi - Manager, Audit  
Mr. Obed K. Chweya - Senior Assistant Manager, Audit  
Mr. Geoffrey M. Irungu - Assistant Manager

### INSPECTORATE OF STATE CORPORATIONS

Mr. Maingi Inoti - Senior Assistant Inspectorate

### MINUTE NO. 479/2013 EVIDENCE: KENYA BUREAU OF STANDARDS

The following officers from the Kenya Bureau of Standards appeared before the Committee to adduce evidence on the Tender for the Proposed Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards:-

- (i) Ms. Evah Oduor - Former Managing Director, Kenya Bureau of Standards
- (ii) Mr. Joel M. Kioko - Director meteorology
- (iii) Mr. Joel Gikubu - Director testing
- (iv) Mr. Burudi Kalo
- (v) Mr. George Kamani

The Committee observed that the Kenya Bureau of Standards team was not properly constituted since the Managing Director was not present in the meeting. The Committee deliberated on the matter and resolved to excuse the other current officers and directed that the former Managing Director be sworn in.

Ms. Evah Oduor was put on oath.

### MINUTE NO. 480/2013 EVIDENCE: FORMER MANAGING DIRECTOR, KENYA BUREAU OF STANDARDS

The former Managing Director, Ms. Evah Oduor, adduced evidence on the Tender for the Proposed Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards.

- (i) The Kenya Bureau of Standards invited bids for the construction of the proposed regional Offices and Laboratories in Mombasa. Seven companies returned bids. During the opening of tenders the Engineer's (Ngau and Associates) estimates (Kshs. 1.2 Billion) was read to the bidders.

- (ii) The bids were above the price approved by the Board and the tender was therefore declared non responsive.
- (iii) The Engineers estimate was reviewed again to Kshs. 1.4 billion by the ministry of public works. The increase in the estimates figure was attributed to pilling. A geotechnical expert was invited to conduct geotechnical survey.
- (iv) The tender was re-advertised on 7<sup>th</sup> March, 2013.
- (v) The tender was evaluated. Only three bidders met the threshold and one did not meet the technical evaluation criteria. Only one met the financial evaluation and was awarded the contract. The tender was awarded to M/s Epc Builders Limited. Notification of the winner and the losers done and after the complaints period the contract was signed.
- (vi) The Board and the Ministry held meetings in which the tender was cancelled. The Ministry of Industrialization wrote and advised that the project should not proceed. The Cabinet Secretary, Ministry of Industrialization invited her for a briefing meeting on the projects undertaken by KEBS. In another meeting with the consultant the Cabinet Secretary expressed his disappointment over the signing of the contract for the proposed Regional Offices and Laboratories in Mombasa and instructed that the project be put on hold. She was later informed that the Cabinet Secretary had wanted the project scaled down. The then acting Permanent Secretary (Mima) later wrote advising that the project be put on hold pending further investigations.
- (vii) The project was approved in October, 2012 prior to the moratorium on huge projects. The Kenya Bureau of Standards had budgeted for the project and had set aside money for its implementation in the budget.
- (viii) She advised the Board in a meeting attended by the Principal Secretary, against terminating the contract. It was the opinion of the Board that it was cheaper to terminate the project and pay the contractor Kshs. 20 million than implementing the project. The Board held other meetings that culminated in the decision to terminate the contract. During the meetings she was directed to leave the venue yet she was the secretary to the Board.
- (ix) Her services as the Managing Director were terminated by the Board and on 10<sup>th</sup> September 2013 she was issued with a letter of termination. She observed that during her tenure as the Managing Director she had not been paid for a period of 20 months. She only earned the salary of her last position/cadre. During her termination she was accused of failure to obey the law, causing KEBS not obey the law and not obeying lawful commands.



Ms. Evah Oduor was requested to submit a comprehensive brief on the tender and contract. The Committee also sought a Special Audit from the Auditor General on the project.

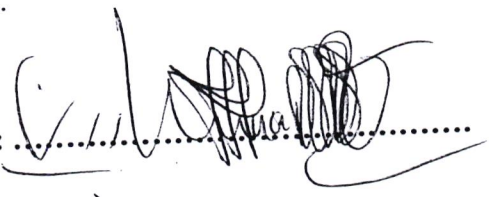
**MINUTE NO. 491/2013 - COMMITTEE OBSERVATIONS**

The Committee made the following observations:-

- (i) There was a Government moratorium on projects yet the tendering and other aspects of the project continued in spite this.
- (ii) The contract was terminated without involvement and approval of the tender committee.
- (iii) The Board conducted meetings in the absence of the Secretary /Managing Director.

**MINUTE NO. 482/2013 ADJOURNMENT**

There being no other business, the meeting adjourned at Fifty Five Minutes past Twelve O'clock.

Signed: 

(Chairperson)

Date: 10/3/2014



**MINUTES OF THE 88<sup>TH</sup> SITTING OF THE PUBLIC INVESTMENTS COMMITTEE  
HELD ON WEDNESDAY, NOVEMBER 7, 2013 IN COMMITTEE ROOM 7, MAIN  
PARLIAMENT BUILDINGS AT 4.10 PM**

**PRESENT:**

1. Hon. Adan Keynan, M.P. – **Chairperson**
2. Hon. Kimani Ichung'wah, M.P. – **Vice Chairperson**
3. Hon. Ogotu John Omondi, M.P.
4. Hon. Onesmus Njuki, M.P.
5. Hon. Paul Otuoma, M.P.
6. Hon. John Aluoch Olago, M.P.
7. Hon. Dr. Oburu Oginga, M.P.
8. Hon. Njogu Barua, M.P.
9. Hon. Abdullswamad Sheriff, M.P.
10. Hon. Korei Ole Lemein, M.P.
11. Hon. Chrisanthus Wamalwa, M.P.
12. Hon. John M. Nyaga, M.P.
13. Hon. Eng. John Kiragu, M.P.
14. Hon. Bernard Munyoki Kitungi, M.P.
15. Hon. Major (Rtd) John Waluke, M.P.
16. Hon. Johana Ngeno, M.P.
17. Hon. Sammy Mwaita, M.P.
18. Hon. Beatrice Nyaga, M.P.
19. Hon. Mithika Linturi, M.P.

**ABSENT WITH APOLOGY**

1. Hon. Wafula Wamunyinyi, M.P.
2. Hon. Francis Nyenze Mwanzia, M.P.
3. Hon. Mwadeghu Thomas, M.P.
4. Hon. Adan M. Nooru, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Irungu Kang'ata, M.P.
7. Hon. Mary Keraa Sally, M.P.
8. Hon. Cornelly Serem, M.P.

**IN – ATTENDANCE**

**NATIONAL ASSEMBLY**

Mr. Nicholas Emejien

–

Principal Clerk Assistant I

Ms. Rahab Chepkilim - Audio Officer  
Mr. Michael Njenga - Parliamentary Intern

### KENYA NATIONAL AUDIT OFFICE

Mr. Richard Nyagwachi - Manager, Audit  
Mr. Obed K. Chweya - Senior Assistant Manager, Audit  
Mr. Geoffrey M. Irungu - Assistant Manager

### INSPECTORATE OF STATE CORPORATIONS

Mr. Maingi Inoti - Senior Assistant Inspectorate

### MINUTE NO. 493/2013 EVIDENCE: EPCO BUILDERS LIMITED

The Managing Director, Mr. Ramji D. Varsani, appeared before the Committee to adduce evidence on the Tender for the Proposed Regional Offices and Laboratories in Mombasa for Kenya Bureau of Standards. He briefed the Committee as follows:-

- (i) Invitation to tender was through the local daily newspapers. They submitted their tender documents on 28<sup>th</sup> March, 2013 and on 11<sup>th</sup> June, 2013 they received their letter of offer. Their tender figure was Kshs. 1,324,339,601. The figure was re-adjusted upon calculation by the procuring entity to Kshs. 1, 327,099,280.50
- (ii) The Kenya Bureau of Standards invited them for negotiations on 28<sup>th</sup> June, 2013 with the aim of reducing the price. During the negotiations they could not agree on reduction of price but accepted their tender figure which had errors.
- (iii) On 8<sup>th</sup> July, 2013 they requested for drawings, NEMA and other approvals from KEBS but they were not forthcoming.
- (iv) The agreement was signed on 11<sup>th</sup> July, 2013 and on 18<sup>th</sup> July, 2013 they received an email from KEBS inviting them for a handing over of site ceremony. This was called off at the last minute.
- (v) On 23<sup>rd</sup> July, 2013 they received a letter from Board (KEBS) suspending the contract and a subsequent letter of 12<sup>th</sup> August, 2013 terminating the contract. They responded to the letter terminating the contract on 20<sup>th</sup> August, 2013 and wrote to the public procurement and oversight authority complaining of the termination of the contract on 4<sup>th</sup> November, 2013. Following the termination of the contract the efficiency monitoring unit invited them for a meeting as a party to the agreement.

(vi) The company is preparing documents for claims of breach of contract which will include loss profit, loss of opportunity, expenditure incurred. The claim will be in the range of 15 – 20% of the contract price.

(vii) On inquiring about the termination of the contract from the Acting Managing Director he was informed that the contract was terminated because the former Managing Director acted contrary to the law, did not seek the Boards approval and that the contract price was above the budget. The acting managing director asked if EPCO could re-negotiate the price and whether they could take the job if the scope of work was scaled down. He informed the acting managing director that they could consider the proposal.

The Committee expressed concerned that M/s EPCO Builders did not have copies of the original contract documents.

**MINUTE NO. 494/2013 ADJOURNMENT**

There being no other business, the meeting adjourned at Twenty Minutes past Five O'clock.

Signed: .....



Date: .....

10/3/2014

(Chairperson)



**MINUTES OF THE 47<sup>TH</sup> SITTING OF THE PUBLIC INVESTMENTS COMMITTEE  
HELD ON TUESDAY APRIL 22<sup>ND</sup> 2014, AT SAROVA WHITE SANDS RESORT IN  
MOMBASA AT 10.00 AM**

**PRESENT:**

Hon. Adan Keynan, CBS M.P. – **Chairperson**  
Hon. Kimani Ichung'wah, M.P. – **Vice Chairperson**  
Hon. Francis Nyenze Mwanzia, M.P.  
Hon. Bare Shill, M.P.  
Hon. Adan M. Nooru, MBS, M.P.  
Hon. Chrisanthus Wamalwa, M.P.  
Hon. Abdullswamad Sheriff, M.P.  
Hon. John M. Nyaga, M.P.  
Hon. Dr. Paul Otuoma, EGH, M.P.  
Hon. Beatrice Nyaga, M.P.  
Hon. Cornelly Serem, M.P.  
Hon. Dr. Oburu Oginga, M.P.  
Hon. John Aluoch Olago, M.P.  
Hon. Johana Ngeno, M.P.  
Hon. Onesmus Njuki, M.P.  
Hon. Mithika Linturi, M.P.  
Hon. Mwadeghu Thomas, M.P.  
Hon. Irungu Kang'ata, M.P.  
Hon. Bernard Munyoki Kitungi, M.P.  
Hon. Eng. John Kiragu, M.P.  
Hon. Njogu Barua, M.P.  
Hon. Sammy Mwaita, M.P.  
Hon. Korei Ole Lemein, M.P.  
Hon. Ogutu John Omondi, MP  
Hon. Major (Rtd) John Waluke, M.P.

**ABSENT WITH APOLOGY**

Hon. Mary Keraa Sally, M.P.  
Hon. Wafula Wamunyinyi, M.P.

**IN – ATTENDANCE**

**NATIONAL ASSEMBLY**

Mr. Nicholas Emejen  
Mr. Abdullahi Aden  
Mr. Joash Kosiba

Principal Clerk Assistant  
First Clerk Assistant  
Fiscal Analyst

Mr. Wilson Dima

Senior Legal Counsel

**OFFICE OF THE AUDITOR GENERAL**

Mr. Kalinda Mulli - Auditor

**INSPECTORATE OF STATE CORPORATIONS**

Mr. Nelson Kweya - Inspectorate of State Corporations

**MINUTE. NO. 109/2014 - ADOPTION OF THE REPORT ON THE  
PROCUREMENT OF THE TENDER FOR THE  
CONSTRUCTION OF REGIONAL OFFICES AND  
LABORATORIES FOR THE KENYA BUREAU OF  
STANDARDS IN MOMBASA**

The Committee considered its Report on the Procurement of the Tender for the Construction of Regional Offices and Laboratories for the Kenya Bureau of Standards in Mombasa and unanimously adopted it after being proposed by Hon. Mithika Linturi, MP and Seconded by Hon. Chrisanthus Wamalwa, MP.

**MINUTE NO. 110/2014 - ADOPTION OF THE REPORT ON THE  
PROCUREMENT AND FINANCING OF THE  
STANDARD GAUGE RAILWAY FROM  
MOMBASA TO NAIROBI**

The Committee considered it's Report on the Procurement and Financing of the Standard Gauge Railway from Mombasa to Nairobi (Phase I) and unanimously adopted it after being proposed by Hon. Thomas Mwadeghu, MP and seconded by Hon. Serem Cornelly, MP.

**MINUTE NO. 111 /2014 ADJOURNMENT**

There being no other business, the Chairperson adjourned the meeting at thirty Minutes past Seven O'clock

Signed: .....

(Chairperson)

Date: .....

# ANNEXES



# ANNEX 1

1

KEBS/2012/2013/VOL.11(15)

20 March 2014

The Chairman

Public Investment Committee

P.O. Box 41842

NAIROBI

Dear Sir,

**TENDER FOR THE CONSTRUCTION OF ULTRA MODERN OFFICE AND LABORATORY IN MOMBASA FOR KENYA BUREAU OF STANDARDS (KEBS)**

**1.0 Introduction**

The Kenya Bureau of Standards is a body Corporate established under the Provisions of the Standards act, Chapter 496 of the Laws of Kenya. Its main objectives are promoting Standardization in Industry and Commerce amongst others. Kenya Bureau of Standards (KEBS) is set to undertake the development of regional offices and laboratories at Mombasa. The offices will serve countries in the Coast region and adjacent areas.

The Project was identified as one of the KEBS Vision 2039 flagship projects for implementation in the 2012/2013 and 2013/2014 financial years. The main objective of the project is to ensure effective provision of Standards Quality Assurance, Metrology and Testing (SQMT) services to the customers in the coast region. Other objectives are to expand and enhance the scope of testing to include tests in key sectors of our economy.

## 2.0 KEBS Regional Offices and Laboratories Project

### 2.1 Procurement of Consultancy Services

Kenya Bureau of Standards procured the services of Professional Consultancy from various firms before the commencement of the main project and made the following payments as at 30 June 2013.

	Kshs.
M/s AAKI Consultants(Architectural Consultants)	39,324,640
M/s Professional Consultants (Electrical & Mech.Engineers)	13,933,893
M/s Otieno Ondongo & Partners (Structural & Civil Engineers)	29,475,886
M/s Ngahu & Associates – Quality Surveyors	<u>14,606,868</u>
Sub-Total	97,341,287
Other costs to NEMA & Mombasa Municipal	<u>4,596,922</u>
Total	<u>101,938,209</u>

Documents requested form KEBS for audit of the procurements of the above Consultancy services included:-

- |  |             |
|--|-------------|
| (i) Copy of advertisement  | - Not seen  |
| (ii) The tender opening minutes  | -Not seen   |
| (iii) Tender evaluation minutes  | - Not seen  |
| (iv) Tender awarding Minutes   | - Available |
| (v) Letter of awarding contract to Consultants                                 | -Available  |
| (vi) Consultants acceptance letters  | -Available  |
| (vii) The certificate of Works done by each consultant to justify the payments | -Not seen   |



### 2.1.1 Observations:-

Without having seen a copy of advertisement, tender opening minutes and tender evaluation minutes, it has not been possible to confirm whether the consultancy services, were procured competitively in line with the procurement and Disposal Act, 2005.

### 2.2 Regional Offices and Laboratories Project

Section 2 of the Public Procurement and Disposal Act, 2005 establishes the Procedures for Procurement of goods and services by Public entities. The public entity shall ensure that this Act, the regulations and any directions of the authority are complied with in respect of its procurements.

Tender No. KEBS/TO86/2012/2013 was advertised on the 07 March 2013 and closed/opened on 28 March 2013. The following nine (9) tenders were received against the twelve tenders sold.

<u>Firm/Bidders</u>	<u>Quoted Price (Kshs)</u>
(i) Land Mark Holding Ltd.	1,251,829,390
(ii) China Overseas Engineering Ltd	1,283,531,367
(iii) Mulji DeVraj& Brothers Ltd	1,298,027,184
(iv) Diwaga Investment Ltd	1,117,114,182
(v) Tulsi Constructions	Form not filled
(vi) Donwood Company Ltd.	1,223,519,245
(vii) N.K. Brothers	1,159,909,101

(viii)	EPCO Builders	1,324,399,601
(ix)	Sichuan Houshi Enterprises Corp. E.A. Ltd.	1,186,477,936

After technical and financial evaluation, the tender Committee awarded the contract to the highest bidder EPCO Builders at a contract price of Kshs.1,324,399,601.

### 2.2.1 Observation:

The National Standards Council in the special meeting held on 25 July, 2013 approved the project budget of Kshs.1,000,000,000. However, the former acting Managing Director signed a contract with EPCO Builders of Kshs.1,324,399,601 which is over and above the approved budget by Kshs.324,399,601. The source of financing the contract above the approved budget had not been explained.

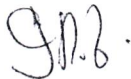
The Contract between KEBS and EPCO Builders was signed on 11 July 2013. However, on 16 July 2013 the Principal Secretary – Ministry of Industrialization instructed the former MD to put the process on hold until further discussions /Consultations are made within the Ministry. Later, the former Managing Director cancelled the contract between KEBS and EPCO Builders without any written authority from the National Standards Council. The former Managing Director was later suspended because of this contract by the Cabinet Secretary Ministry of Industrialization on 15 August 2013.

The Contractor has written to KEBS expressing intention to move to court to claim damages as a result of the breach of contract. This exposes the Bureau to risk of

paying huge financial damages to the Contractor due to the breach of contract which has not been budgeted.

### **3.0 Conclusion**

1. The procurement of Consultancy Services to the tune of Kshs.97,341,287 were single sourced against Public procurement and Disposal Act, 2005.
2. The contract was awarded to the highest bidder at a contract price of Kshs.1,324,399,601 against approved budget of Kshs.1,000,000,000. The source of financing the contract above the budget/approved amount has not been explained.
3. The former Managing Director cancelled the contract of the project without written authority from the National Standards Council. This exposes KEBS to the risk of paying huge financial damages if the contractor moves to court as a result of breach of contract.



**Richard O. Nyagwachi**

**For: AUDITOR-GENERAL**



# ANNEX 2



**Standards**  
Standards for quality life

**Annex 5**

DATE: 2013-06-07

OUR REF: KEBS/T086/2012/2013

M/s Epco Builders Ltd  
P.O. Box 55628-00200  
Nairobi

Tel: 020-558033/154  
Fax: 020-534617

Dear Sir/Madam,

**RE: KEBS/T086/2012/2013 - PROPOSED REGIONAL OFFICES AND LABORATORIES MOMBASA FOR KENYA BUREAU OF STANDARDS**

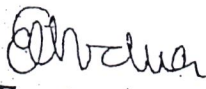
Reference is made to the above tender for Proposed Regional Offices and Laboratories Mombasa for Kenya Bureau of Standards

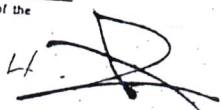
This to inform you that you were successful in your bid. Kindly give Kenya Bureau of Standards a written confirmation within 14 days that you will carry out Proposed Regional Offices and laboratories Mombasa for Kenya Bureau of Standards at your bid price of **Ksh.1,327,099,280.50** (One billion three hundred and twenty seven million ninety nine thousand two hundred and eighty five cents shillings only). However the client (Kenya Bureau of Standards) would like to negotiate with yourselves with a view to reducing the price and other conditions of the above tender.

After the negotiations are finalized, the signing of the contract of will follow as shall be agreed upon in the negotiation meetings. The dates of negotiation will be communicated to you after your written confirmation.

As per the tender documents clause 7 and the special conditions of the contract, furnish Kenya Bureau of Standards with a performance security in the amount of 10% of the contract price which should remain in force as per the special conditions.

Yours faithfully,

  
Eva Oduor (Mrs)  
**MANAGING DIRECTOR**  
GK/jm







# ANNEX 3

7



MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT  
OFFICE OF THE PERMANENT SECRETARY

Fax No: +254-(0)-20-340700  
Telephone: +254-(0)20-315021/2-4

TELPOSTA TOWERS  
P.O BOX 30418-00100  
NAIROBI, GPO  
KENYA

MOI/ CONF.4/1/1

Mrs. Evah Oduor  
Managing Director  
Kenya Bureau of Standards  
NAIROBI



16<sup>th</sup> July, 2013

Dear Mrs. Oduor,

**RE: PROPOSED MOMBASA LABORATORIES AND OFFICES BY THE  
KENYA BUREAU OF STANDARDS**

Reference is made to the conversation between yourself and the immediate former Industrialization Secretary on the construction of Mombasa Laboratories and offices.

It has been decided that you put the process on hold until further discussions/consultations are made within the Ministry.

Yours Sincerely,

**Eunice K. Miima (Mrs) MBS  
Ag. PRINCIPAL SECRETARY**

27

**REPUBLIC OF KENYA**



**MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT**  
**Office of the Principal Secretary**

Telephone: 020-2731531-9  
0704097021/23  
0788484840/41  
Fax: 020-2731511  
Email: [ps@industrialization.go.ke](mailto:ps@industrialization.go.ke)  
When replying please quote:

Social Security House BLK 'A'  
Bishops Road, Capital Hill  
P.O. Box 30547 - 00100  
NAIROBI

MOI/CORP/5/1

Date: 7<sup>th</sup> August, 2013

**Evah Oduor (Mrs)**  
Managing Director  
Kenya Bureau of Standards  
**Nairobi**



Dear *Mrs Oduor,*

**SUSPENSION OF THE CONTRACT ON THE PROPOSED  
KENYA BUREAU OF STANDARDS COAST REGIONAL  
OFFICES AND LABORATORIES**

Kindly immediately confirm to us whether Messrs. AAKI Consultants and Messrs EPCO Builders Limited have received and acknowledged their letters respectively dated 25<sup>th</sup> July, 2013 and 23<sup>rd</sup> July, 2013 in respect of the above subject.

Yours *Sincerely*

Dr. Wilson Songa, MBS  
**PRINCIPAL SECRETARY**



# ANNEX 4



KEBS Head Office  
P. O. Box 54974, Nairobi 00200  
Tel.: +254 (0) 20 6005490, 6005506,  
Mobile: 0722 202137/8,  
0734 600 471/2  
Fax: +254 (0) 20 6009 660  
Direct Dial: +254 (0) 20 694 8000  
E-Mail: info@kebs.org  
Web: http://www.kebs.org

REF: KEBS/ DIR/15/2/12

DATE: 2013-07-23

8A

EpcO Builders Limited  
P. O. Box 55628 - 00200  
NAIROBI

Dear sirs

KEBS Coast Region  
P. O. Box 99376, Mombasa 80100  
Tel: +254 (0) 41 2317050, 2230939/38/40  
Fax: +254 (0) 41 229 448  
E-mail kebs-msa@kebs.org

**SUSPENSION OF THE CONTRACT ON THE PROPOSED KENYA BUREAU OF STANDARDS COAST REGIONAL OFFICES AND LABORATORIES**

This is to inform you that the above contract has been suspended following consultations with the relevant authorities and stakeholders.

KEBS Lake Region  
P. O. Box 2949, Kisumu 40100  
Tel: +254 (0) 57 202 8396, 202 9549  
Fax: +254 (0) 57 202 7814  
E-mail: kebs-kisumu@kebs.org

No further activity should be undertaken unless otherwise advised.

Yours faithfully

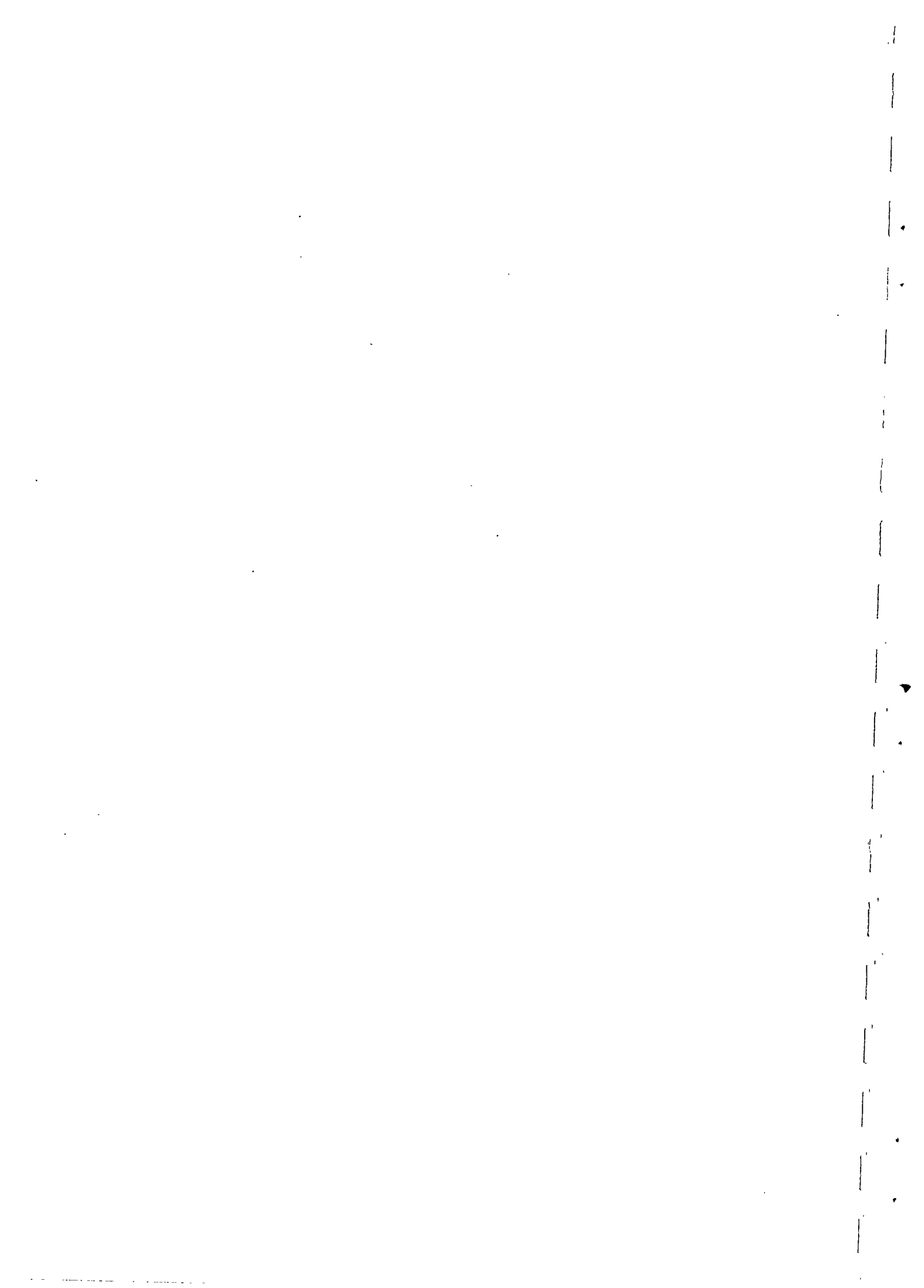
KEBS Rift Valley Region  
P. O. Box 2138, Nakuru 20100  
Tel: +254 (0) 51 221 053/5, 221 1208  
Fax: +254 (0) 51 221 0076  
E-Mail: kebs-nakuru@kebs.org

Evah Oduor  
**MANAGING DIRECTOR**

KEBS Mt. Kenya Region  
P. O. Box 1790, Nyeri 10100  
Tel: +254 (0) 61 203 1410/1  
Fax: +254 (0) 61 203 2038  
E-Mail: kebs-nyeri@kebs.org

c.c. Principal Secretary,  
Ministry of Industrialization and Enterprise Dev.,  
NSSF Building, Eastern Wing, 17<sup>th</sup> Floor  
NAIROBI.

KEBS North Eastern Region  
P. O. Box 978, Garissa 70100  
Tel: +254 (0) 46 2519  
Fax: +254 (0) 46 3455  
E-Mail: kebs-garissa@kebs.org







August 8

(3)

(8)

KEBS Head Office  
P. O. Box 54974, Nairobi 00200  
Tel: +254 (0) 20 6005490, 6005506,  
Mobile: 0722 202137/8,  
0734 600 471/2  
Fax: +254 (0) 20 6009 660  
Direct Dial: +254 (0) 20 694 8000  
E-Mail: info@kebs.org  
Web: http://www.kebs.org

REF: KEBS/ DIR/15/2/12

DATE: 2013-08-12

Epco Builders Limited  
P.O. Box 55628-00200  
**NAIROBI**

Dear Sirs

**CANCELLATION OF AGREEMENT ON THE PROPOSED KENYA BUREAU OF STANDARDS COAST REGIONAL OFFICES AND LABORATORIES PROJECT**

KEBS Coast Region  
P. O. Box 99376, Mombasa 80100  
Tel: +254 (0) 41 2317050, 2230939/38/40  
Fax: +254 (0) 41 229 448  
E-mail: kebs-msa@kebs.org

Reference is made to the above agreement dated 12<sup>th</sup> July 2013 between yourselves and the Kenya Bureau of Standards. The Board has reviewed the above matter and reached a decision that the same be and is hereby cancelled/terminated immediately. Accordingly no work should commence under the same.

KEBS Lake Region  
P. O. Box 2949, Kisumu 40100  
Tel: +254 (0) 57 202 8396, 202 9549  
Fax: +254 (0) 57 202 7814  
E-mail: kebs-kisumu@kebs.org

The Board has also directed that the insurance bond be refunded to you and you should arrange to collect the same from our offices.

KEBS Rift Valley Region  
P. O. Box 2138, Nakuru 20100  
Tel: +254 (0) 51 221 0553/5, 221 1208  
Fax: +254 (0) 51 221 0076  
E-Mail: kebs-nakuru@kebs.org

By a copy of this letter, all consultants are advised accordingly

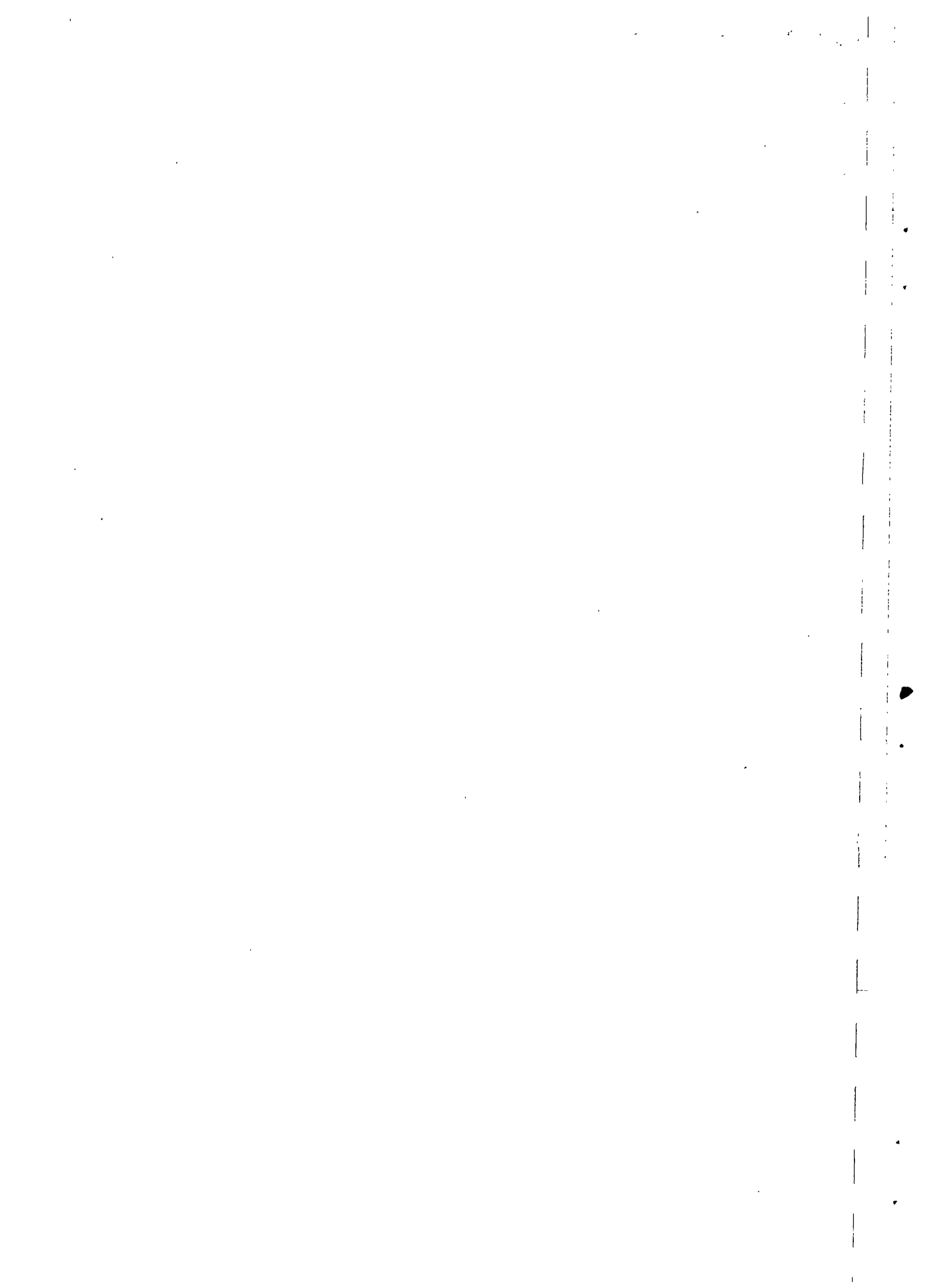
Yours faithfully

KEBS Mt. Kenya Region  
P. O. Box 1790, Nyeri 10100  
Tel: +254 (0) 51 203 1410/1  
+254 (0) 51 203 2038  
E-Mail: kebs-nyeri@kebs.org

Evah Oduor (Mrs)  
**MANAGING DIRECTOR**

KEBS North Eastern Region  
P. O. Box 978, Garissa 70100  
Tel: +254 (0) 46 2519  
Fax: +254 (0) 46 3455  
E-Mail: kebs-garissa@kebs.org

c.c. AAKI Consultants  
Dale House, Rhapta Road, Westlands  
P.O. Box 66091-00800  
**NAIROBI**



# ANNEX 5



Attach. 2



KENYA BUREAU OF STANDARDS  
(KEBS)

PROPOSED REGIONAL OFFICES AND LABORATORIES - MOMBASA FOR KENYA  
BUREAU OF STANDARDS.

TENDER NO. KEBS/T086/2012/2013

TENDER EVALUATION REPORT

APRIL 2013

EVALUATION REPORT FOR PROPOSED REGIONAL OFFICES AND LABORATORIES  
MOMBASA FOR KENYA BUREAU OF STANDARDS  
KEBS/T086/2012/2013

### 1.1 SCOPE OF WORK

The work under this contract comprises erection and completion of the following;

- a. Administration block
- b. Two (2 )No. laboratory blocks
- c. Restaurant and gymnasium
- d. Residential block
- e. Incineration/sample store
- f. Mass pieces and LPG
- g. External works and
- h. Related mechanical and electrical works.

### 1.2 TENDER INVITATION

Bidders were invited to tender for the works through the print media, with the tender advertisement notice appearing in the "Standard", "The Star" and the "Nation" newspapers of 7<sup>th</sup> March 2013.

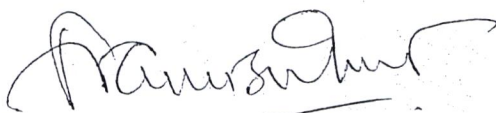
### 1.3 TENDER OPENING RESULTS

Nine (9No.) bids were received and opened on **28<sup>th</sup> March, 2013 at 10.00 a.m** in the KEBS conference room in the presence of KEBS tender opening committee and bidders' representatives.

The results of the opened bids were as in table 1 below:-

Table 1: Tender Opening Results

Bidder No	Bidder	Tendered Amount (Kshs)	Bid Bond
1	Landmark Holding Ltd	1,251,829,390.00	APA Insurance
2	China overseas Engineering Ltd	1,283,531,367.00	CFC Stanbic Bank
3.	Mulji Devraj and brothers Ltd	1,298,027,184.00	Mayfair Insurance
4.	Diwafa Investment Ltd	1,117,114,182.00	AMACO Insurance
5.	Tulsi construction Ltd	Not attached	Occidental Insurance
6.	Don woods Co. Ltd	1,223,519,245.00	Intra Africa Insurance
7.	N.K brothers Ltd	1,159,909,101.00	Intra Africa Insurance
8.	EpcO Builders Ltd	1,324,399,601.00	Mayfair Insurance
9.	Sichuan Huashi Enterprises Corporation E.A Ltd	1,186,497,936.00	First Assurance
	<b>OFFICIAL ESTIMATE</b>	<b>1,409,518,130.00</b>	



10/04/13



## 2.0 EVALUATION COMMITTEE

The evaluation committee members were formally appointed by the Managing Director Kenya Bureau of standards.

## 3.0 EVALUATION CRITERIA

The evaluation was carried out in stages as follows:

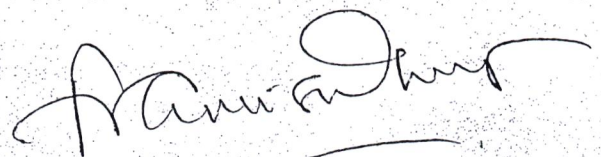
### 3.1 PRELIMINARY EXAMINATION – COMPLIANCE WITH MANDATORY REQUIREMENTS

In accordance with the requirements of the conditions of tendering, only substantially responsive tenders are to be subjected to detailed evaluation. For the purpose of this tender, a responsive tender is one which conforms to all the requirements of the tender as contained in the advertisement and tendering instructions, without material deviations and reservations. If a tender is not substantially responsive, it shall be rejected as per clause 5.5 of the instructions to tenderers.

The parameters considered at the preliminary stage were

- i. Valid Bid bond of Kshs. 1,000,000.00 of tender sum in form of bank guarantee from reputable Bank or approved insurance company.
- ii. Tender sum variation should be within  $\pm 10\%$  of the official estimate.
- iii. Current Tax compliance Certificate
- iv. Duly filled and stamped form of tender
- v. Confidential Business Questionnaire

Any bidder who fails in any of the above parameters should be considered **non-responsive and should not be subjected to further evaluation.**



10/04/13



**Table 2: Preliminary Evaluation Results**

Requirement/ contractors	1	2	3	4	5	6	7	8	9
Bid bond validity (August 25 <sup>th</sup> 2013)	√	√	√	√	√	√	√	√	√
Form of tender duly filled	√	√	√	√	X	√	√	√	√
Confidential Business Questionnaire	√	√	√	√	√	√	√	√	√
Current Tax Compliance certificate	√	√	√	X	X	√	√	√	X
± % Variance of Estimate	-11.19	-8.94	-7.91	-20.74	-	-13.20	-17.71	-6.04	-15.82
<b>Recommendation</b>	<b>Fail</b>	<b>Pass</b>	<b>Pass</b>	<b>Fail</b>	<b>Fail</b>	<b>Fail</b>	<b>Fail</b>	<b>Pass</b>	<b>Fail</b>

**Key**

- √-Compliant
- x-Non-Compliant

**NOTES TO TABLE 1:**

**Bidder 1 Landmark holdings Ltd M/s Ltd**

- Tender sum is -11.19% below the official estimate.

**Bidder NO.4 Diwafa Investments**

- Attached expired tax compliance certificate
- Tender sum is -20.74% below the official estimate

**Bidder No.5 Tulsi Construction Ltd**

- Did not attached duly signed and filled form of tender
- Attached expired tax compliance certificate

**Bidder No.6 Don Woods Company Ltd**

- Tender sum is -13.20% below the official estimate.

#### **Bidder No.7 N. K Brothers**

- Tender sum is -17.71% below the official estimate.

#### **Bidder No. 9 Sichuan Huashi Enterprises**

- Tender sum is -15.82% below the official estimate.
- Attached invalid tax compliance certificate.

Based on preliminary evaluation above, bidders No. 2, 3 and 8 qualified for detailed technical evaluation.

#### **DETAILED EXAMINATION FOR QUALIFICATION FOR AWARD OF CONTRACT**

In accordance with clause 1.7 of the instructions to the bidders, the bidders are required to provide evidence for eligibility of award of the tender by satisfying the employer of their eligibility and adequacy of resources to effectively carry out the subject contract. Consequently, the bidders are required to meet the following criteria:-

1. Proof of works of similar magnitude and complexity undertaken in the last five years.
2. Adequate equipment and key personnel for the specified types of works.
3. Sound financial standing and adequate access to bank credit line.
4. Registration with the Ministry of Public works in Class 'A' as General Building Contractors.
5. Provide Domestic Sub contractors of the Registration categories given in the Tender Notice.



10/04/13



**Table No.3: Detailed Technical examination**

NO	PARAMETERS	BIDDERS		
		2	3	8
1.	Proof of works of similar magnitude and complexity undertaken in the last five years.(attached letters of award and/or completion certificates)	X	√	√
2.	Adequate equipment (Attached list of construction equipment)	√	√	√
3.	Key personnel for the specified types of works. (Attached copies of CV or Certificates)	√	√	√
4.	Sound financial standing and adequate access to bank credit line (Attached copies of Audited Financial Accounts reports)	√	√	√
5.	Registration with the Ministry of Public works in Class 'A'	√	√	√
6	<b>REGISTRATION CATEGORY OF DOMESTIC SUB- CONTRACTORS</b>			
		<b>2</b>	<b>3</b>	<b>8</b>
	Electrical installation Works (Cat. C and above)	√	√	√
	Generators Installations (Cat. F and above)	x	√	√
	Lifts Installations (Cat. F and above)	√	√	√
	Access Control Security Alarm and CCTV Installations (Cat. F and above)	x	√	√
	Audio Visual Equipment Installations (Cat. F and above)	x	√	√
	Communication Services (Cat. E and above)	x	√	√
	Plumbing, Drainage and Fire Fighting	x	√	√



	Installations (Cat. B and above)			
	Air conditioning & Mechanical Installations (Cat. D and above)	x	√	√
	Compressed Air, vacuum, LPG and laboratory gasses (Cat. F and above)	x	√	√
	Incinerator Installations ( Cat. F and above)	x	√	√
	Kitchen Equipment and laundry Equipment (Cat. G and above)	x	√	√
	Solar Water Heating Installations (Cat. G and above)	x	√	√
	Sauna, Steam & Gym Equipment (Cat G and above)	x	√	√
	<b>Recommendations</b>	<b>Fail</b>	<b>Pass</b>	<b>Pass</b>

**Key**

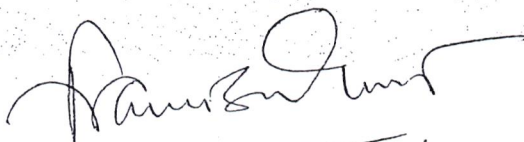
√-Compliant  
x-Non-Compliant

**SUMMARY OBSERVATIONS FROM TABLE 3 ABOVE**

**Bidder No.2**

- Did not show proof of works of similar magnitude and complexity undertaken in the last five years.
- No proof of MOPW registration of Sub-contractor for Generators Installations, Access Control Security Alarm and CCTV Installations, Audio Visual Equipment Installations, Communication Services, Plumbing, Drainage and Fire Fighting Installations, Air conditioning & Mechanical Installations, Compressed Air, vacuum, LPG and laboratory gasses, Incinerator Installations, Kitchen Equipment and laundry Equipment Solar Water Heating Installations and Sauna, Steam & Gym Equipment

After the detailed Technical evaluation, bidder No. 3 and 8 met all the technical requirements and qualified for financial evaluation.

  
10/04/13

## FINANCIAL EVALUATION

Table 4: Analysis of tender amounts

Bidder	Quoted	Verified	Variance	% Variance
3	1,298,027,184.00	1,302,465,926.56	-4,438,742.56	- 0.34
8	1,327,099,280.50	1,315,883,594.50	11,215,686.00	0.85

As per table 4 above, the committee noted that the variances from the quoted tender amounts were as detailed above. (Detailed summations attached)

The variances noted in table 4 above shall be dealt with as per clauses 5.7 to 5.9 of the Instructions to Tenderers of the tender document.

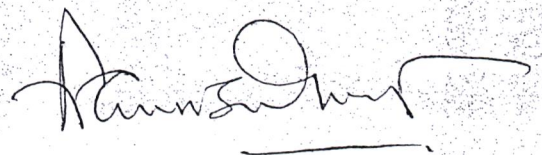
**Table 5: Audited Accounts Analysis**

	3	8	Notes
<b>Turnover</b>			Number of times the turnover is more than official tender estimate:
2009	1,462,968,852.00	1,935,745,101.00	
2010	1,531,762,209.00	2,416,944,911.00	Bidder 3: more than 1.04 times for the 3 years
2011	1,545,225,807.00	3,371,171,199.00	Bidder 8: more than 1.37 times for the 3 years
<b>Working Capital = CA - CL</b>			
2009	147,440,340.00	511,603,393.00	
2010	182,655,729.00	695,130,527.00	Bidder 3: Experienced a negative working capital in year 2011
2011	-497,486,750.00	760,811,638.00	Bidder 8: Increased growth trend in working capital
<b>Net worth= CA+NCA -TL</b>			
2009	289,031,770.00	1,131,840,351.00	
2010	383,204,010.00	1,423,763,887.00	Bidder 3: Decreased net worth in 2011 from 2010
2011	140,909,902.00	1,972,030,086.00	Bidder 8: Increased trend in growth of net worth



<b>Liquidity Ratio— Current Assets/ Current Liabilities:</b>			
2009	1.46	1.74	
2010	1.52	2.10	Bidder 3: Liquidity ratio of less than 0.7 in year 2011 and highest of 1.52
2011	0.70	1.50	Bidder 8. Lowest liquidity ratio 1.50 and highest liquidity 2.10
<b>Gearing Ratio:</b>			
<b>Debt Ratio = Total liabilities/ Total assets</b>			
2009	0.75	0.39	Bidder No. 8 is highly geared compared to Bidder 3
2010	0.52	0.31	
2011	0.93	0.44	
<b>General financial trend (Based on turnover growth)</b>			
2009	373,403,243.00	254,050,821.00	
2010	68,793,357.00	481,199,810.00	Both Bidders have +ve growth with 8 the highest and 3 the lowest
2011	13,463,598.00	954,226,288.00	
<b>Cash flows</b>			
2009	72,688,020	224,236,131	Bidder 8 has the highest cash flow and 3 the lowest cash flow
2010	75,740,760	298,775,442	Bidder 8 has the highest cash flow and 3 the lowest cash flow
2011	-63,021,064	443,692,586	Bidder 8 has the highest cash flow and 3 the lowest cash flow (Negative)
	<b>Unstable financial trend for this magnitude of work</b>	<b>Stable financial trends</b>	

The audited accounts analysis revealed that Bidder no. 3 has no financial capability to undertake the works.




10/04/13



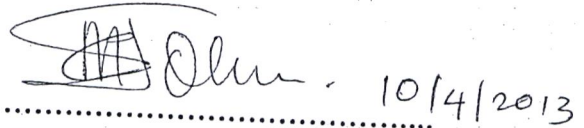
RECOMMENDATION

The evaluation committee recommends that the tender be awarded to Bidder No. 8 – M/S Epco Builders Ltd. at the quoted tender amount of KSh.1,327,099,280.50

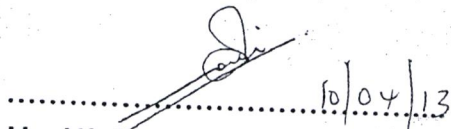
EVALUATION TEAM



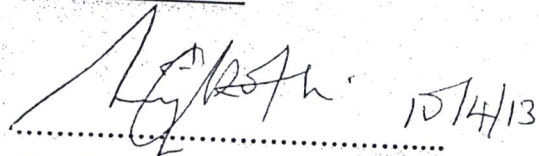
..... 10/04/13  
Mr. Francis Okara  
Chairman – KEBS



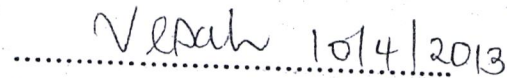
..... 10/4/2013  
Mr. Charles Musee  
Member - KEBS



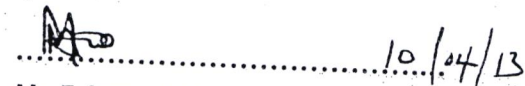
..... 10/04/13  
Mr. Michael Oganga  
Member – KEBS



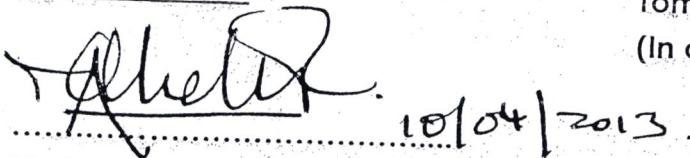
..... 10/4/13  
Mr. Washington Okoth  
Member - KEBS



..... 10/4/2013  
Ms. Vera Ombata  
Member – KEBS



..... 10/04/13  
Mr. Edward Mwangi  
Tom Oketch & Associates  
(In attendance)



..... 10/04/2013  
Mr Tom Oketch  
Tom Oketch & Associates  
(In attendance)

# ANNEX 6

**ROLL CALL**

1.	Mr. Joshua Angelei Lonyaman	Chairing	Present
2.	Mr. Nene Nzyuko	Member	Present
3.	Dr. Brigid Monda	Member	present
4.	Ms. Jeridah Sinange	Member	Present
5.	Mr. Yasin Hussein	Member	Present
6.	Mr. Ahmed Hashi	Member	Present
7.	Dr. Emily Kogos	Member	Present
8.	Mr. Andrew Muriuki	Member	Present
9.	Mr. Adan Mohammed	Member	Present
10.	Ms. Mary Ngeny	Member	Present
11.	Dr. Wilson Songa	PS MOI&ED	Present
12.	Mrs. Evah A. Oduor	Secretary/MD	Present
13.	Ms Nyawira Njeru	Member	Absent with apology
14.	Mr. Gulam Yusuf	Member	Absent with apology
15.	Mr. Martin S.O. Gumo	Alt. PS Finance	Absent with apology
16.	Mr. Kennedy Odera Obar	Member	Absent with 'apology
17.	Mr. Salim Chingabwi	Member	Absent with apology

**IN ATTENDANCE**

1.	Mr. Adan Mohammed	Cabinet Secretary	In attendance
2.	Mr. Erastus Kimuri	MOI&ED	In attendance

**PRELIMINARIES**

The meeting was called to order at 3.40 pm and introductions made. In the absence of a substantive Chairman, Mr. Joshua Angelei was proposed to Chair the meeting by the Managing Director and seconded by Yasin Hussein.

The Principal Secretary granted permission for the meeting to be held at a venue other than the KEBS Boardroom as required by law.

**AGENDA**

The Agenda was adopted as follows.

1. Roll call
2. KEBS Mombasa regional offices and laboratories

In his opening remarks the Principal Secretary noted that there was need for a brief on the status of the project.

**MIN 10/2013: KEBS MOMBASA REGIONAL OFFICES AND LABORATORIES**

The Chairman gave a detailed brief of the status of the project stating that:

- The Board had fulfilled its fiduciary duties, Corporate Governance principles and oversight as advisors to the management,



- The Board which was constituted in 2011 identified the Mombasa Laboratories as a facility that was not in good shape and that due to its strategic position, it was agreed that they commence the process of acquiring new laboratories.
- When the tender process started, it was noted that the initial tender was unresponsive and that there was need for re-evaluation. This led to re-tendering. At this point the Ministry of Works was involved. There was consultation and concurrence with the Board.
- The Chairman and Managing Director were mandated to brief the Ministry on the going-on at the parastatal. He mentioned that the next NSC meeting was scheduled for 31<sup>st</sup> July 2013 where a full brief was to be availed for the board to consider and approve the new tender amount.

The Chair of the Technical Committee comprising of 9 members noted that they had proposed Kes. 1.1 Billion as an estimate to be spent on the project whose absolute cost would be known after the tendering process and would still be subjected to the Board for approval. This was however not done.

Other members' contributions were that:

- The intention of the project was in good faith and management had followed due process in the run-up to the project
- The procurement process was the responsibility of the management which was expected to follow due process
- Serious discussion in the Board was held on the cost of the project with the then Chairman initially proposing that the project be undertaken at a cost of between Kes 800,000,000 and Kes 1,000,000,000.

#### COMMENTS BY THE CABINET SECRETARY

In his response the Cabinet Secretary wanted to find out:

- If due process for approval from the Board was sought before engaging the contractor by executing the contract and whether other pending financial obligations had been considered beforehand. What was the impact on the cash-flow position on the organization since this was going to deplete all cash reserved and possibly incur incremental costs on the variations that would potentially shoot up during the normal construction period of the project.
- The approximate size of the project in square feet noting that in the previous day's meeting the architect had quoted 24,000 sq. ft; the Quantity Surveyor had quoted 7,000 sq m while a schedule provided by the Managing Director read 3,000 sq. m. He noted that at an average cost of Kes. 30,000 per square ft. for 7,000 sq m the project cost would be Kes. 210,000,000 visa-a-vis current cost of Kes. 1,300,000,000.
- He had directed through Mr. Joel Kioko that no commitment should be made on the project until he gave the go ahead. He sought to know whether the Board had been informed of his directive and whether it (the Board) had authorized the signing of the contract.

In the same breath the Cabinet Secretary made the following observations:

- That with an annual rent of Kes. 5,000,000 KEBS could be allowed to spend Kes. 20,000,000 that would translate to approximately 66 years to deplete the project sum of Kes. 1,300,000,000.
- It was questionable that KEBS would spend Kes 1,300,000,000 on a land in an area that was considered to be sinking without due consideration on the future position of its financial needs.
- The principal Secretary stated that he had instructed the Managing Director to halt the process pending further instructions. He directed the board to seek to understand what led to the signing of the contract.

#### OBSERVATIONS

- That although the Managing Director had signed the contract for the sum of Kes. 1,300,000,000, it was not in the best interest of the organization and that it should be halted until a decision is made.
- That the Board needed to urgently review the project with options on remedial action that could include the reduction of the scope of the project among other available options and possibly reduce the project cost to Kes. 500,000,000.
- The Board approved a budget of Kes One Billion to be financed in phases,

#### RECOMMENDATIONS/RESOLUTION

- 1) The NSC to have a meeting on 24<sup>th</sup> July 2013 and come up with several options taking into consideration what is critical versus what is nice to have.
- 2) A letter be written to the contractor suspending the project whilst consultations are made.

The meeting ended at 5.00.p.m

Prepared by .....  
(Evah Oduor)

*Evah Oduor*  
Secretary

Date: 2013-07-30

Confirmed .....  
(Joshua Angelei)

Meeting Chair

Date: .....







**KEBS Head Office**  
P. O. Box 54974, Nairobi 00200  
Tel: +254 (0) 20 6005490, 6005506.  
Mobile: 0722 202137/8,  
0734 600 471/2  
Fax: +254 (0) 20 6009 660  
Direct Dial: +254 (0) 20 694 8000  
E-Mail: info@kebs.org  
Web: http://www.kebs.org

REF: KEBS/DIR/65/2/21

DATE: 2013-08-07

Dr. Wilson Songa,  
Principal Secretary,  
Ministry of Industrialization & Enterprise Dev.  
P. O. Box 30430-00100,  
**NAIROBI.**

**KEBS Coast Region**  
P. O. Box 99376, Mombasa 80100  
Tel: +254 (0) 41 2317050, 2230939/38/40  
Fax: +254 (0) 41 229 448  
E-mail: kebs-msa@kebs.org

Dear Sir,

**REPORT OF THE SPECIAL NATIONAL STANDARDS COUNCIL MEETING HELD ON 6<sup>TH</sup> AUGUST 2013 AT KEBS BOARDROOM**

The following were the agenda items:

**KEBS Lake Region**  
P. O. Box 2949, Kisumu 40100  
Tel: +254 (0) 57 202 8396, 202 9549  
Fax: +254 (0) 57 202 7814  
E-mail: kebs-kisumu@kebs.org

1. Roll call
2. Confirmation of Minutes of 24<sup>th</sup> & 25<sup>th</sup> Jul 2013
3. Matters arising
4. Mombasa Regional Offices & Laboratories.
  - a. Scaling down of the project
  - b. Cancellation of the project
5. Explanation on commitment of the budget beyond NSC approval

**KEBS Rift Valley Region**  
P. O. Box 2138, Nakuru 20100  
Tel: +254 (0) 51 221 0553/5, 221 1208  
Fax: +254 (0) 51 221 0076  
E-Mail: kebs-nakuru@kebs.org

**Discussions by the National Standards Council**

■ Minutes of the National Standards Council Meetings held on 24<sup>th</sup> and 25<sup>th</sup> July 2013 together with those of 2<sup>nd</sup> August 2013 were confirmed.

**■ Scaling down of the Mombasa Offices and Laboratories Project**

That management presented 2 options on the scale down as advised by the Consultants as shown below:

**Option 1.**

The first option proposes that the project be scaled down, by totally omitting the Administration block and other buildings considered not critical in the operations of the labs such as restaurant, kitchen, clinic and gym block, staff housing block, kitchen LPG and the covered walkway, and other related external works and services. This means that all the activities would be housed in one three-storey block. This was with the view that administration functions could be carried out by the existing Mombasa office. Overall, the total project cost would be reduced from **Ksh 1.323 Billion** to **Ksh 667 Million**.

**KEBS Mt. Kenya Region**  
P. O. Box 1790, Nyeri 10100  
Tel: +254 (0) 61 203 1410/1  
Fax: +254 (0) 61 203 2038  
E-Mail: kebs-nyeri@kebs.org

**KEBS North Eastern Region**  
P. O. Box 978, Garissa 70100  
Tel: +254 (0) 46 2519  
Fax: +254 (0) 46 3455  
E-Mail: kebs-garissa@kebs.org

### **Option 2**

In the second option of project cost reduction, the team noted that the labs would need some administrative functions such as receiving of samples and the related service. The team therefore proposed that an additional floor be included to the laboratory block to house some of the administrative functions such that it would have a total of four storeys. This would increase the above costs to **Ksh 742 Million**.

The management also reported that the Contractor is currently in India. However management confirmed that in their discussions the Contractor indicated that he is willing to work on a scaled down project.

### **■Cancellation of the Project**

The NSC considered the report from the Quantity Surveyor and noted as follows:

- i. The built up area was not indicated
- ii. The cost per unit area was not indicated and the project cost was not justified
- iii. The benchmarking with similar projects was not given
- iv. There is no formal commitment from the contractor to work on a scaled down project.
- v. Information on cost per square metre was not provided
- vi. The cost per square metre will remain the same even if the project is scaled down.

From the above, the meeting resolved that the project should be cancelled and that Management should issue a letter to the contractor cancelling the project.

After the above confirmations, the meeting went ahead to discuss Agenda Item No. 5 in the absence of the Managing Director. The report of this discussion will be forwarded to you by Mr. Joshua Angelei who was Chairing.

Yours faithfully,



**EVAH ODUOR (MRS)**  
**MANAGING DIRECTOR**

# ANNEX 7





MINISTRY OF PUBLIC WORKS  
ARCHITECTURAL DEPARTMENT

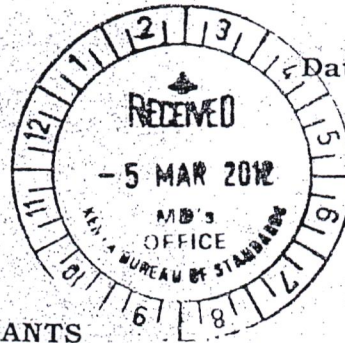
Telegrams: "MINIWORKS", NAIROBI  
Telephone: (020) 2723101  
Fax: (020): 2720044  
When replying please Quote:

WORKS BUILDING  
NGONG ROAD  
P.O. Box 30743-00100  
NAIROBI

Ref: BJ2/1/VOL.I/68

Date: 5<sup>th</sup> March, 2012

Managing Director  
Kenya Bureau of Standards  
P.O. Box 54974 - 00200  
NAIROBI (Attn: Mr. G. Kamami)



REF: INFORMATION OF CONSULTANTS

Reference is made to your letter Ref. Procurement/I dated 22<sup>nd</sup> February, 2012 on the above mentioned subject.

We forward herewith our report on the Consultants as requested.

We have not commented on Ms. Wamwangi Associates your immediate past Consultant for Labs in the Nairobi Headquarters project as his profile is well known to you.

Please revert to us for any further information on the matter.

Arch. F.K. Njuguna  
FOR: PERMANENT SECRETARY

# REPORT ON THE CONSULTANCY SERVICES KENYA BUREAU OF STANDARDS

## CATEGORY 1: ARCHITECTURAL SERVICES

### 1. Ms. AAKI CONSULTANTS

P.O. Box 66091-00800,  
NAIROBI

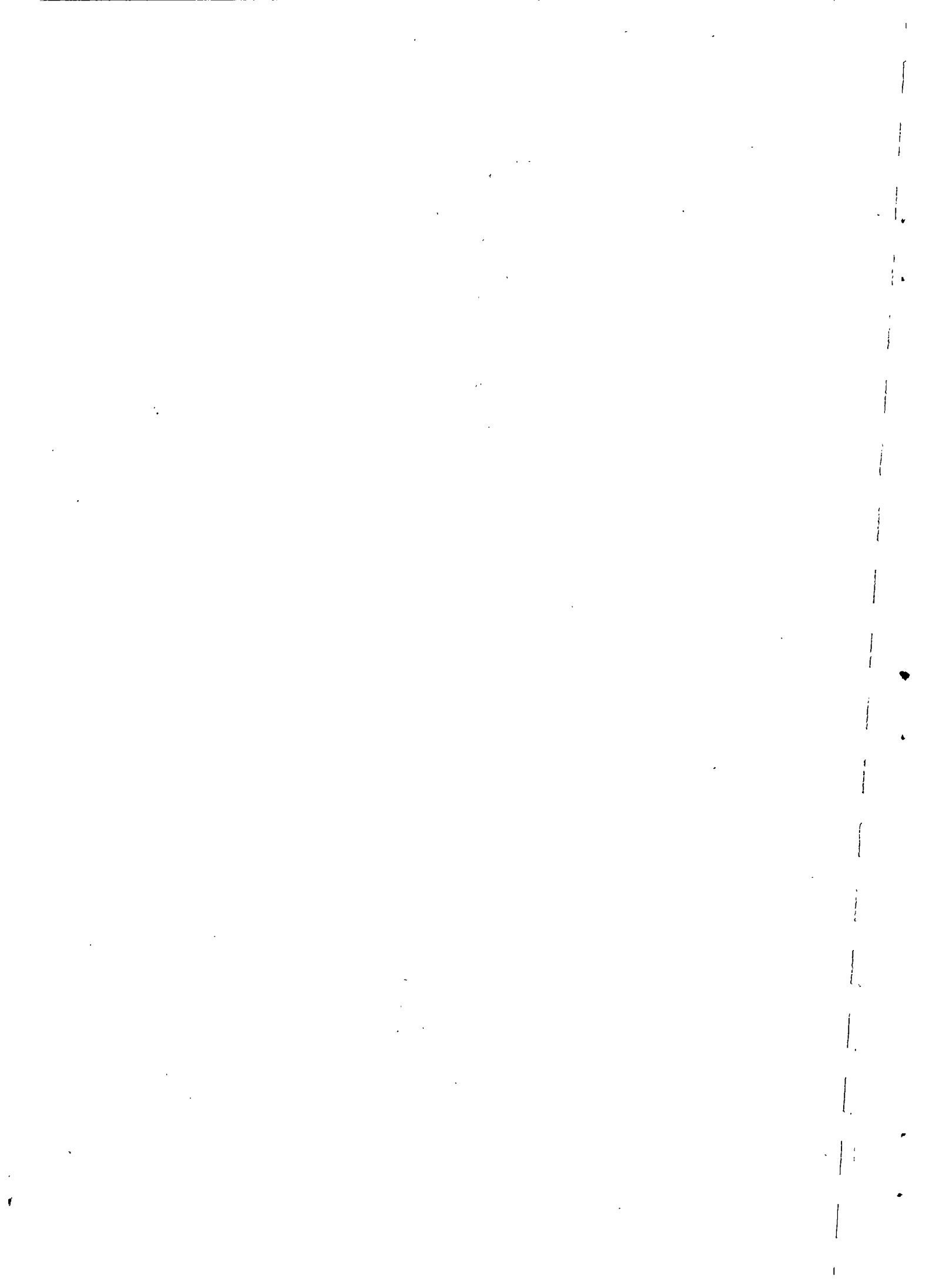
This firm has wide experience of design and development of office blocks, housing estates. Educational and research facilities, libraries., shopping malls, hotels and banking facilities in the East African region

1	Doctors Plaza -Nairobi Hospital	
2	Kenya Inst. Of Management Nbi Admin Block	
3	Faculty of Health Science Block-Egerton University	
4	Esami Training and Business Centre Kampala	
5	KEFRI Garissa Headquarters	
6	City Cabanas Hotel -Nairobi	
7	Thika Greens Golf Estate	
8	Luxury Apartments for Britak- Lavington	
9	Headquarters Block- Mayfair Insurance Ralphe Bunche Av, Nairobi	
10	Proposed Kenya National Library Hq. Nairobi	
11	Proposed Tea Board of Kenya Hqs, Nairobi	
12	Proposed Uchumi Hqs. Nairobi And Branch Bombolulu-Mombasa	

2. Ms. Maestro Ltd  
P,O, Box 6644-00100,  
NAIROBI

This firm has considerable experience in a wide range of project types in the country

1	Mully Childrens Family - Housing Block	
2	Meru University College of Science and Technology- tuition block	
3	Nyambene Arimi SACCO Office Block	
4	Burundi Insurance Company Offices	
5	Rusinga School - Multipurpose hall	
6	Komo Secondary School- Munyu Thika	
7	Gilgil Hills Academy- Teaching and Administrative facilities	
8	Apartments for Northwood Developers	





**3. Ms. Zastruga (K) Architects**  
**P.O. Box 57733-00200,**  
**NAIROBI**

This firm has wide experience in design and documentation of public buildings in the country.

1	Kenya Commercial Bank-Homabay Branch
2	Kenya Commercial Bank-Mbita Branch
3	Kenya Commercial Bank-Kakamega Branch
4	Kenya Commercial Bank- Vihiga
5	New Apostolic Church of Kenya

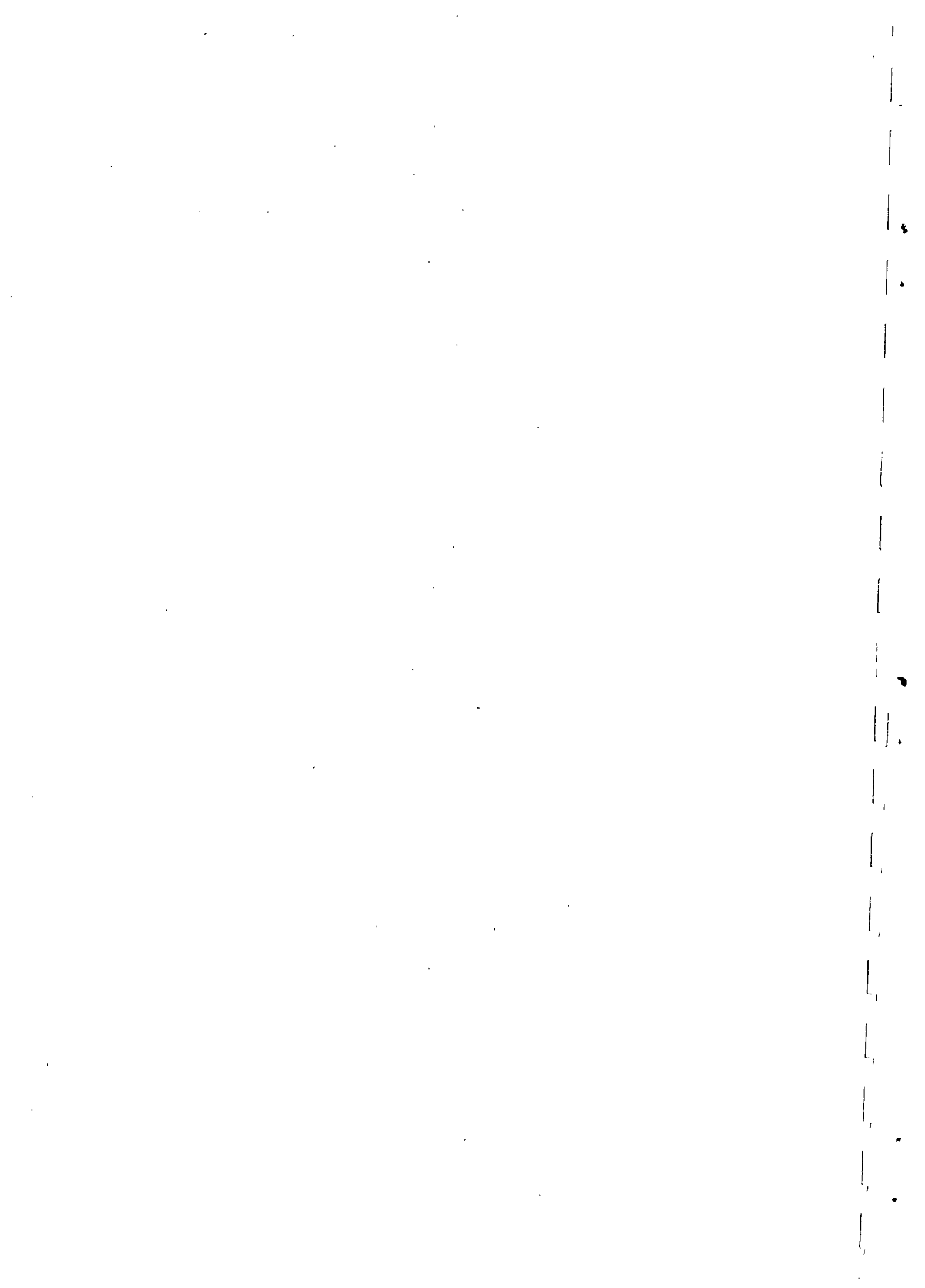
Note:- We have not evaluated Ms Wamwangi Associates who executed the last design project for your Headquarters laboratories as their performance is well documented by yourselves.

**CATEGORY 2: ELECTRICAL AND MECHANICAL ENGINEERING SERVICES**

.....  
**1. Ms. Professional Consultants Ltd.**  
**P.o.Box 45792-00100,**  
**NAIROBI**

This is a multidisciplinary firm which has handled extensive professional services in all building types for Electrical / Mechanical services and also Structural / Civil Engineering Services. Relevant projects handled by this firm include the following:-

1	NHIF Hq-Multi Storey Carpark and Wards
2	NHIF-Karen Recreation and Resource Centre
3	Bawan Ltd- Office Block World Bank premises
4	Nation Media Group-Mwananchi Publications Ltd-Printing and production Centre
5	Nation Media Group-Monitor Publications -Printing and production Centre
6	New Episcopos Church, Kisumu
8	Doctors Plaza-Nairobi Hospital



9	Housing Apartments Mansion Properties Ltd.	
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**2. Ms Edson Engineers,**  
**P.O. Box 5647-00100,**  
**NAIROBI**

1	Panafric Hotel Nairobi- Rehabilitation	
2	Kenya Red Cross Society- Offices	
4	KCAA- Administration Block	
5	Kenya Agricultural Research Institute- Offices and Laboratories	

**3. Ms. Catrimec Services Ltd.**  
**P.O. Box 3890-00506,**  
**NAIROBI**

1	Nakumatt Holdings Ltd- Construction of Branch
2	East African Portland Cement- Office rehabilitation: Athi River
3	Extension of the Mater Hospita Nairobi
4	City Council of Nairobi
5	Packaging Industries- Godowns and offices Nairobi

**4. Ms. Prime Consult Consulting Engineers,**  
**P.O. Box 1200-80100,**  
**NAIROBI**

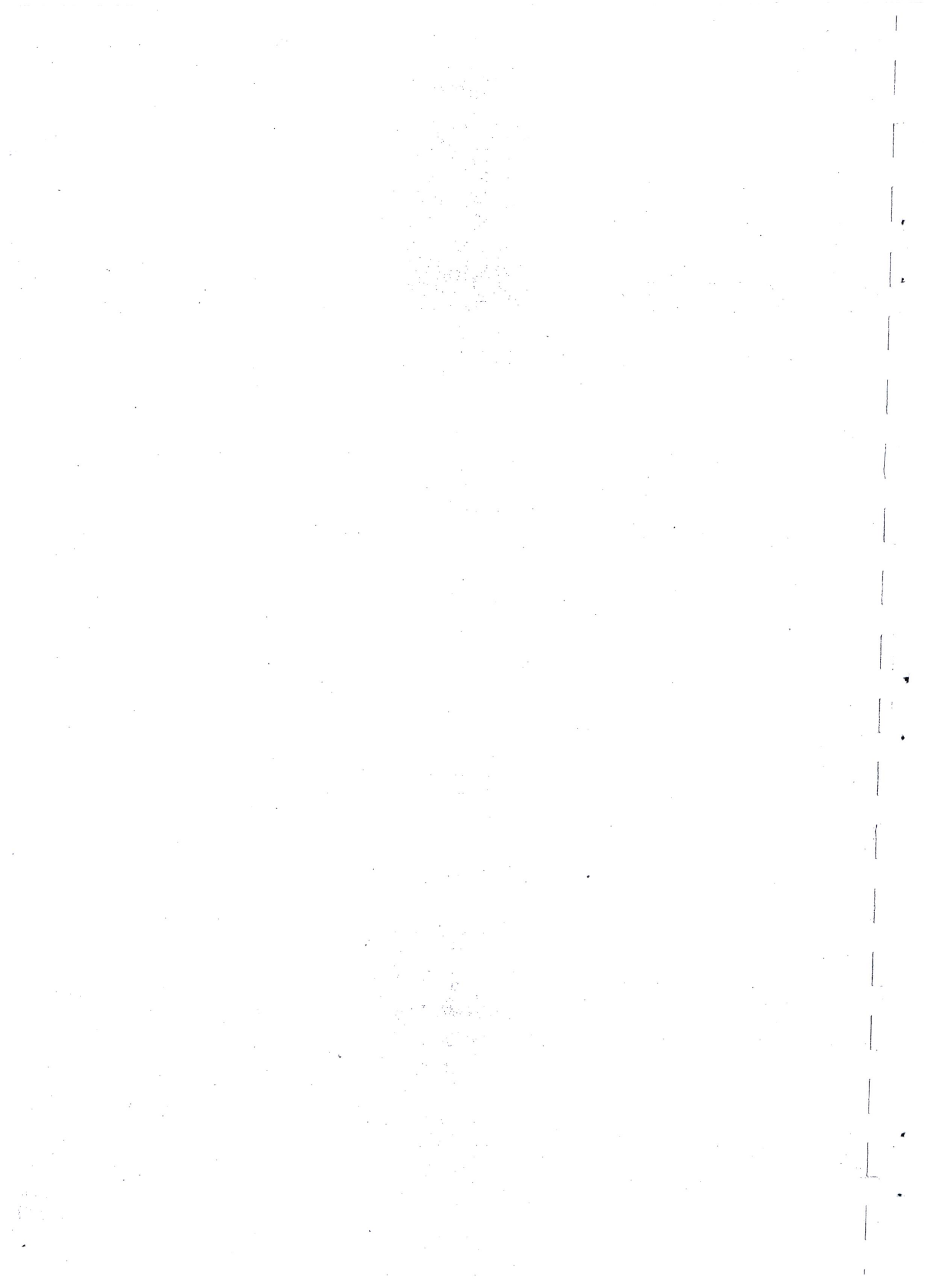
1	Apartments for Multiple ICDK Ltd
2	Focus Container Freight Station Ltd- Warehouse Mombasa
3	Oceanfreight East African Ltd-Offices and Warehouse Mombasa
4	Apartments- Shangriras Villas Nairobi

**CATEGORY3: STRUCTURAL AND CIVIL ENGINEERING SERVICES**

**1. Ms. Otieno Odongo & Partners Consulting Engineers,**  
**P.O. Box 54021-00200,**  
**NAIROBI**

This firm has extensive experience in design of Roads and Highways, Water and Sewerage, Irrigation, Buildings including Airports, Office Blocks, Hotels, Hospitals< Educational and





Research facilities in Kenya, East African Region and in Southern Africa. Relevant recent projects include the following;-

1	Proposed International Sports Academy-MISC Kasarani	
2	Multi Media University- Nairobi Masterplan	
3	Kenyatta University Arts Block- Nairobi	
4	Completion of Mitihani House-Nairobi	
5	Kenya Re Offices-Nairobi	
6	NSSF Housing Project- Nairobi	
7	Anniversary Towers Nairobi	
8	TSC Office Block Upper Hill	
9	Piedmont Plaza- Offices, Shopping, Restaurants and Banking facilities	
10	Kenyatta University post modern Library	
11	Library, Theatre, and Tuition Block UON Kikuyu	
12	Butabika Mental Hospital- Kampala	
13	Residential Blocks for MOD- Lanet, Embakasi, Eldoret	
14	JKIA Rehabilitation Project -Nairobi	

**2.Ms. Professional Consultants Ltd.**

**P.o.Box 45792-00100,**

**NAIROBI**

This is a multidisciplinary firm which has handled extensive professional services in all building types for Electrical / Mechanical services and also Structural / Civil Engineering Services. Relevant projects handled by this firm include the following:-

1	Nation Media Group-Mwananchi Publications Ltd-Printing and production Centre
2	Nation Media Group-Monitor Publications -Printing and production Centre
3	World Vision Kenya
4	Posta Corporative Savings and Credit Society
5	Nyeri Teachers co-operative Society
6	Bawan Ltd- Office Block World Bank premises
7	Family Planning Association
8	Local Authority Provident Fund
9	Juja Housing Development Company Ltd
10	NHIF-Multi storey Carpark and Wards
11	NHIF-Karen Recreational Resource Centre

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12	Central Bank of Kenya-Pension Fund
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This firm should be recommended for the Electrical/ Mechanical Services for the project instead of Civil/ Structural which should be executed by others to avoid project monopoly.

**3.Ms.Ngasi Consulting Engineers,  
P.O. Box 2680-00202,  
NAIROBI**

1	Kenya Anti Corruption Commission- Offices
2	Toyota Kenya Ltd- Showroom and Offices
3	Ministry of Housing- Housing Project
4	BAT Kenya Ltd= Extensions and Rehabilitations
5	National Bank of Kenya= Branch offices

**4. Stanceconsult Consulting Structural and Civil Engineers,  
P.O. Box 54098-00200,  
NAIROBI**

1	All Saints Cathedral Church Nairobi- Extensions
2	Mavoko Water and Sewerage Co Ltd- Offices
3	Jamii Sacco Society- Housing Estate
4	Ministry of Housing- Housing Development Project

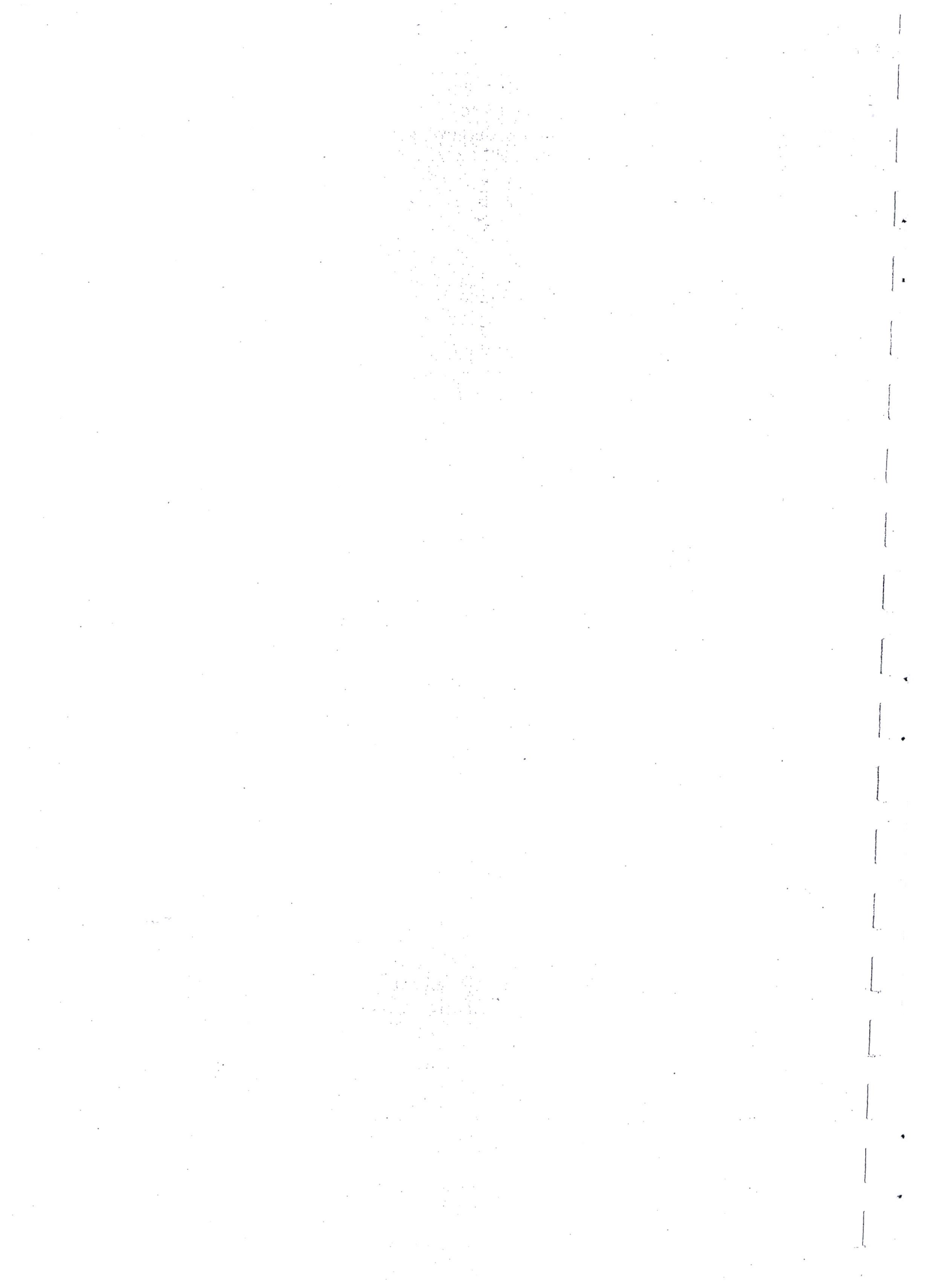
**5.Civic Tech Consultants,  
P.O. Box 216-00517,  
NAIROBI**

1	Narok County Council
2	Kenya Sugar Authority
3	Liam Telecommunications

#### **CATEGORY4: QUANTITY SURVEYING SERVICES**

**1.Ngahu Associates,  
P.O.Box 921-00621,  
NAIROBI**

This firm should be considered as they have a wide experience of handling a wide variety of projects from research, commercial, residential and Industrial. The other two firms listed appear to have lesser experience in the project that they have indicated in their resumes.



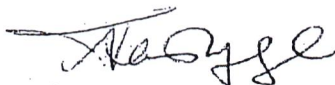
1	Kikabi Homes- Residential and Commercial Development- Nairobi
2	Presbyterian Foundation – Msingi complex Westlands – shopping and recreation
3	East African Gold Mining Co. Dr. Winari Hospital Arusha
4	KARI Research Centre Rehabilitation
5	Tissue Culture Molecular labs For CRF
6	Rukenya Housing Estate for Superior HomesLtd.
7	Arusha Skyline Hotel (ongoing)
8	Nyayo Tea Zones Dev. Corp. Tea Factory
9	Police Flats Nyamira
10	Radioactive Waste Facility and Labs Oloolua Ngong
11	International Sports Centre- Moi Int. Sports Complex
12	Technical Training Institutes Kenya Rehabilitation of various facilities

## 2.Master Cost (K) Ltd

1	Kenya Pipeline Company
2	Kenya Forest Service
3	Ministry of Local Govt
4	Kenya Commercial Bank
5	Co-operative Bank of Kenya

## 3. cost- link consultants.

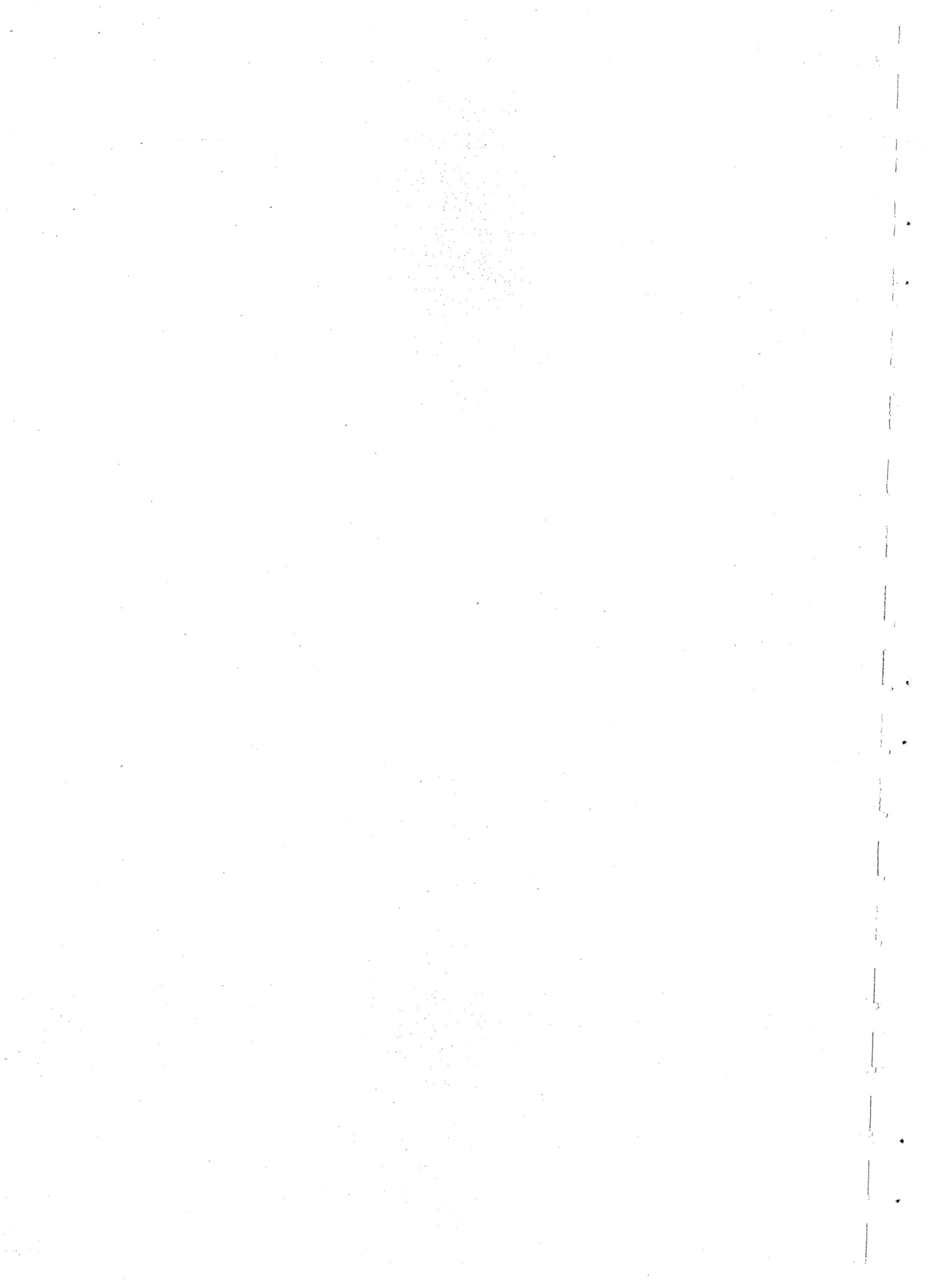
1	Doctor W K Koinange house development
2	JKUAT-main gate
3	JKUAT-swimming pool and changing room
4	JKUAT-swimming pool and changing room



Arch. F.K.Njuguna







# ANNEX 8



**Kenya Bureau of Standards**  
Standards for Quality Life

# INVITATION TO TENDER

**TENDER NO. KEBS/T086/2012/2013:**

The Kenya Bureau of Standards invites tenders from Contractors to carry out the construction and completion of Regional Laboratories and Offices-Mombasa at Miritini area, off the Mombasa-Nairobi Highway.

Interested Contractors who are registered in categories 'A' General Building by Ministry of Public Works (proof of current registration required) may obtain Tender Documents from the Procurement Office of the Kenya Bureau of Standards Headquarters on Popo Road Off Mombasa Road upon payment of a non-refundable fee payable at the cash office in cash or bankers cheque of Kshs 44,000 (Forty four thousand Only) for complete set of the works documents. (Ksh. 5000 for the main works documents (Vol 1 & 2) and the fee for the subcontracts shall be at Kshs. 3,000 for each category of specialized works whose total are (13) thirteen (Vol 3 - 15). The specialized work shall be undertaken by qualified domestic subcontractors under the tenderer.

VOL	DESCRIPTION	CATEGORY	BID BOND	CLOSING DATE
VOL 1 & 2 OF 15	Main Works	A' Only (General Building)	KShs. 1,000,000.00	28 <sup>th</sup> March 2013
VOL 3 OF 15	Electrical Installations	Minimum 'B' and Above	N/A	
VOL 4 OF 15	Generator Installations	Minimum 'F' and Above	N/A	
VOL 5 OF 15	Lift Installations	Minimum 'F' and Above	N/A	
VOL 6 OF 15	Access Control Security alarm & CCTV Installations	Minimum 'F' and Above	N/A	
VOL 7 OF 15	Audio Visual Equipment Installations	Minimum 'F' and Above	N/A	
VOL 8 OF 15	Communication Service	Minimum 'E' and Above	N/A	
VOL 9 OF 15	Plumbing, Drainage and Fire fighting Installations	Minimum 'B' and Above	N/A	
VOL 10 OF 15	Air Conditioning & Mechanical Installations	Minimum 'D' and Above	N/A	
VOL 11 OF 15	Compressed Air, Vacuum, LPG and Laboratory gases	Minimum 'F' and Above	N/A	
VOL 12 OF 15	Incinerator Installations	Minimum 'F' and Above	N/A	
VOL 13 OF 15	Kitchen Equipment and Laundry Equipment	Minimum 'G' and Above	N/A	
VOL 14 OF 15	Solar Water Heating Installations	Minimum 'G' and Above	N/A	
VOL 15 OF 15	Sauna, Steam & Gym Equipment	Minimum 'G' and Above	N/A	

Interested tenderers should note that only those meeting the criteria indicated below as a minimum, supported by relevant documents at submission will be considered for further evaluation.

1. Proof of works of similar magnitude and complexity undertaken in the last five years.
2. The Bid Bond must be in form of Bank Guarantee from reputable bank or approved insurance company.
3. Adequate equipment and key personnel for the specified type of works.
4. Sound financial standing and adequate access to bank credit line.
5. Litigation History of the Company (both court and arbitration cases).
6. Confidential Business Questionnaire.
7. Tax Compliance Certificate.

Further, tenders from the following tenderers shall be treated as non-responsive and therefore subject to automatic disqualification:

- (i) A tender from a tenderer whose on-going project(s) is/are behind schedule and without approved extension of time
- (ii) A tender from a tenderer who has been served with a default notice on on-going project(s) or a tenderer who has been terminated in a Government Contract in the past.
- (iii) A tender from a tenderer whose tender sum is above or below 10% of the official estimate

Completed tender documents in plain sealed envelopes clearly marked "KEBS/T086/2012/2013: Proposed Regional Offices and laboratories Mombasa For Kenya Bureau Of Standards" Should be addressed and delivered to:

THE MANAGING DIRECTOR,  
KENYA BUREAU OF STANDARDS,  
POPO ROAD OFF MOMBASA ROAD  
P.O. BOX 54974 - 00200  
NAIROBI.

Deposited in the Tender Box at KEBS Centre Main Reception marked "TENDER BOX" so as to be received on or before 10.00 am on Thursday 28<sup>th</sup> March, 2013.

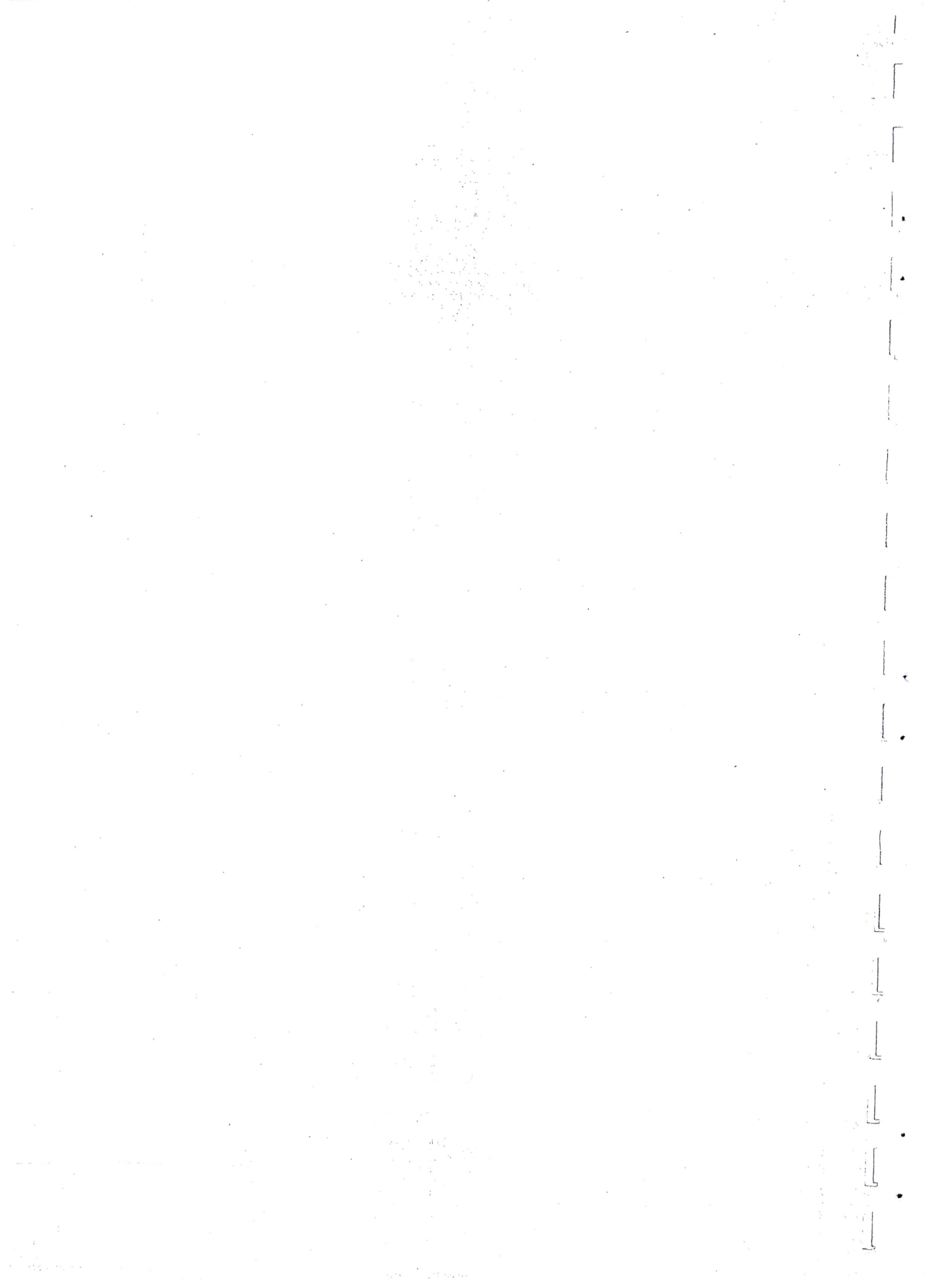
Submitted tenders will be opened publicly in the KEBS Centre conference room soon after the above stated closing date and time in the presence of the tenderers or their representatives who choose to attend. Late tenders will be returned unopened.

Prices quoted must remain valid for one hundred twenty (120) days from the opening date of the tender.

The Bid Security of Ksh 1,000,000 (One Million) which must be from an established bank, or approved insurance Company, shall be valid for one hundred fifty (150) days from tender opening date.

MANAGING DIRECTOR





# ANNEX 9



**KEBS Head Office**

P. O. Box 54974, Nairobi 00200  
Tel.: +254 (0) 20 6005490, 6005506,  
Mobile: 0722 202137/8,  
0734 600 471/2  
Fax : +254 (0) 20 6009 660  
Direct Dial: +254 (0) 20 694 8000  
E-Mail: info@kebs.org  
Web: http://www.kebs.org

**Our Ref:** KEBS/CONF/DIR/15/2 VOL. 2(90)

**Date:** 2014-04-30

**Mr. Justin N. Bundi, CBS**  
Clerk of the National Assembly  
P O Box 41842-00100  
**NAIROBI**

**KEBS Coast Region**

P. O. Box 99376, Mombasa 80100  
Tel: +254 (0) 41 2317050, 2230939/38/40  
Fax: +254 (0) 41 229 448  
E-mail: kebs-msa@kebs.org

Dear 

**RE: A LIST OF MEMBERS OF THE EVALUATION AND TENDER COMMITTEE ON THE PROPOSED KEBS MOMBASA OFFICES AND LABORATORIES**

The above refers.

As directed by the Public Investment committee please find below the aforesaid list for your information:-

**KEBS Lake Region**

P. O. Box 2949, Kisumu 40100  
Tel: +254 (0) 57 202 8396, 202 9549  
Fax: +254 (0) 57 202 7814  
E-mail: kebs-kisumu@kebs.org

**EVALUATION COMMITTEE MEMBERS**

- |                         |   |        |
|-------------------------|---|--------|
| 1. Mr. Francis Okara    | - | Chair  |
| 2. Mr. Charles Musee    | - | Member |
| 3. Mr. Washington Okoth | - | Member |
| 4. Ms Vera Ombata       | - | Member |

**KEBS Rift Valley Region**

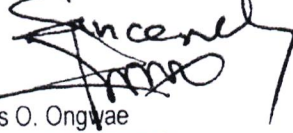
P. O. Box 2138, Nakuru 20100  
Tel: +254 (0) 51 221 0553/5, 221 1208  
Fax: +254 (0) 51 221 0076  
E-Mail: kebs-nakuru@kebs.org

**TENDER COMMITTEE MEMBERS**

- |                           |   |        |
|---------------------------|---|--------|
| 1. Mr. Joel Kioko         | - | Chair  |
| 2. Mr. Joseph O. Kamochi  | - | Member |
| 3. Mr. John Rukaria       | - | Member |
| 4. Mr. Kalo Burudi        | - | Member |
| 5. Mr. Samson Ombok       | - | Member |
| 6. Ms. Patricia Kimanathi | - | Member |
| 7. Ms Maureen Togo        | - | Member |

**KEBS Mt. Kenya Region**

P. O. Box 1790, Nyeri 10100  
Tel: +254 (0) 61 203 1410/1  
Fax: +254 (0) 61 203 2038  
E-Mail: kebs-nyeri@kebs.org

Yours   
**Charles O. Ong'wae**  
**MANAGING DIRECTOR**

**KEBS North Eastern Region**

P. O. Box 978, Garissa 70100  
Tel: +254 (0) 46 2519  
Fax: +254 (0) 46 3455  
E-Mail: kebs-garissa@kebs.org



cc: **Dr. Wilson Songa, MBS**  
Principal Secretary  
Ministry of Industrialization & Enterprise Development  
P O Box 30418-00100  
**NAIROBI**

**Mr. Edward Ouko**  
Auditor General  
Kenya National Audit Office  
**NAIROBI**

**Mrs. Esther Koinett**  
Investment Secretary  
The National Treasury  
**NAIROBI**

**Mr. Edward Ngigi**  
Ag. Inspector General  
Inspectorate of State Corporation  
Office of the deputy President  
**NAIROBI**

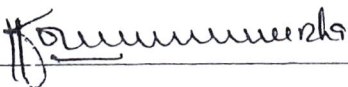
# ANNEX 10





Witness; Name GILBERT KOWUCHA

Address P.O. BOX 55628-00200 NAIROBI

Signature 

Date 28/03/2013

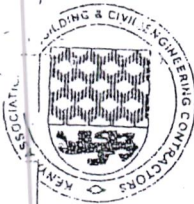
EPCO BUILDERS LTD  
P. O. Box 55016 NAIROBI  
CITY SQUARE  
NAIROBI, KENYA.

gB



# ANNEX 11

Annex 6



# Epcobuilders Ltd.

## BUILDING & CIVIL ENGINEERING CONTRACTORS

P. O. Box 55628 - 00200 - NAIROBI Cell: 0734 000064, 0734 705450  
Wireless: 020 3504219/20 Email:- info@epco.co.ke • www.epcobuildersltd.com  
P. O. Box 42490 MOMBASA. Tom Mboya Avenue. Cell: 0733.710068 / 69  
Email:- epcomsa@epco.co.ke



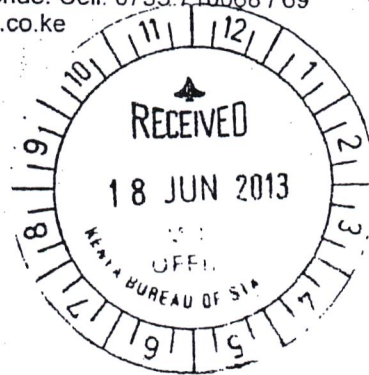
PIN No. P000610483R  
V.A.T. Reg. No. 0021511V

Our Ref: EP/P 600 KEBS/2013/001

15<sup>th</sup> June, 2013

Kenya Bureau of Standards  
P. O. Box 54974 - 00200  
**NAIROBI**

**Attn.: Mrs. Eva Oduor**



Enclosed



Dear Madam,

**RE: PROPOSED REGIONAL OFFICES AND LABORATORIES MOMBASA FOR KENYA BUREAU OF STANDARDS**

### Confirmation of Award of the Contract

Your letter ref; KEBS/T086/2012/2013 dated 7<sup>th</sup> June 2013 refers.

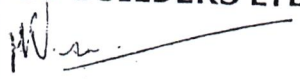
This is to confirm that we shall carry out the construction of the Proposed Regional Offices and Laboratories in Mombasa at Kshs. 1,327,099,280.50 (Kenya Shillings One Billion, Three Hundred Twenty Seven Million, Ninety Nine Thousand, Two Hundred and Eighty Cents Fifty) only.

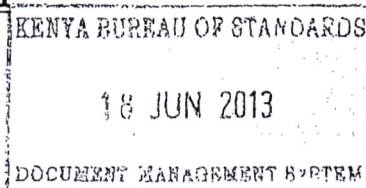
We again wish to thank you for awarding this construction project to us and undertake to diligently deliver the project in time and as per the specifications.

We shall submit a Performance Security in the amount of 10% of the contract price shortly.

Assuring you of the best of our services and attention always.

Yours faithfully,  
**EPCO BUILDERS LTD**

  
**R D VARSANI**



  
**GILBERT KOWUOCHA**  
**PROJECT MANAGER**

RDV/SK/SSO





