REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION

THE JOINT COMMITTEE OF TRANSPORT, PUBLIC WORKS & HOUSING, FINANCE, PLANNING & TRADE, AND BUDGET

REPORT ON

CANCELLATION OF TENDER FOR CONSTRUCTION OF A NEW TERMINAL AT THE JOMO KENYATTA INTERNATIONAL AIRPORT

Volume 1 (Main Report)

September 12, 2012

PREFACE

Mr. Speaker Sir,

The Joint Committee of Transport, Public Works & Housing, Finance, Planning & Trade, and Budget on cancellation of tender for construction of a new terminal at the Jomo Kenyatta International Airport (JKIA) was constituted during the Sitting of the House on 16th August 2012 following unsatisfactory Ministerial Statement issued by the Hon. Minister for Transport and given the strategic importance of the matter and interest of Hon Members.

The Joint Committee was tasked to investigate the matter in detail and recommend to the House the way forward on the tendering of the project also known as the Green Field Project. Key among the matters that the Committee sought to investigate and establish were:

i. Why the tender awarded to a Chinese Company, Anhui Construction Engineering Limited (ACEL) in joint venture with China Aero-Technology International Engineering Corporation (CATIC), was being cancelled
ii. Whether or not the Minister instructed Kenya Airports Authority to cancel the tender
iii. How much money is the Government going to lose or pay, if it cancels the tender at this stage

The Joint Committee is composed of members of the three House Committees as follows:-

1. Hon. David Were, M.P. – Co-Chairman
2. Hon. Chris Okemo, M.P. – Co- Chairman
3. Hon. Elias Mbau, M.P. – Co-Chairman
4. Hon. Johnson Muthama, M.P.
5. Hon. (Prof.) Philip Kaloki, M.P.
6. Hon. Jakoyo Midiwo, MGH, M.P.
7. Hon. John Mbadi, M.P.
8. Hon. Nelson Gaichuhie, M.P.
9. Hon. Ahmed Shabbir Shakeel, M.P.
10. Hon. Sammy Mwaita, M.P
11. Hon. Isaac Muoki, M.P.
12. Hon. Walter Nyambati, M.P.
13. Hon. Edwin O. Yinda, M.P.
14. Hon. Nelson Gaichuhie, M.P.
15. Hon. Emilio Kathuri, MP
16. Hon. Ababu Namwamba, M.P.
17. Hon. Omari Zonga, M.P.
18. Hon. Joseph Kiuna, M.P.
19. Hon. Ntoitha M'Mithiaru, M.P.
20. Hon. Alfred Sambu, M.P.
21. Hon. Jackson Kiptanui,MP
22. Hon. Lenny Kivuti, M.P.
23. Hon. Lucas Chepkitony, M.P.
24. Hon. Musikari Kombo, M.P.
25. Hon. Nkoidila Ole Lankas, M.P.
26. Hon. Luka Kigen, M.P.
27. Hon. Yusuf K. Chanzu, M.P.
28. Hon. Martin Otieno Ogindo, M.P.
29. Hon. Benjamin Langat, M.P
30. Hon. Sheikh Dor Yakub, M.P.
31. Hon. Moses Lessonet, M.P.
32. Hon. Abdul Bahari, M.P.
33. Hon. John Mututho, M.P.
34. Hon. (Dr.) Wilbur Ottichilo, M.P.
35. Hon. Nemesyus Warugongo, M.P.
36. Hon. Danson Mungatana, M.P.
37. Hon. Clement Wambugu, M.P.

38. Hon. Boaz Kaino, M.P.
39. Hon. John Mututho,M.P.
40. Hon. Dr. Robert Monda, M.P.
41. Hon. Fred Kapondi, M.P.
42. Hon. Hussein Abdikadir, M.P.
43. Hon. David Koech, M.P.
44. Hon. James Rege, M.P.
45. Hon. Aden Keynan, M.P.
46. Hon. Mutava Musyimi, M.P.
47. Hon. Sophia Noor, M.P.
48. Hon. Thomas Mwadeghu, M.P.
49. Hon. Ekwe Ethuro, M.P.
50. Hon. Njoroge Baiya, M.P.
51. Hon. Dr. Bonny Khalwale, M.P.
52. Hon. Mithika Linturi, M.P.
53. Hon. David Ngugi, M.P.

Mr. Speaker Sir,

The Joint Committee set out to achieve its mandate by holding a series of meetings both internal and with institutions and other government bodies who have been or are involved in the Green Field Project procurement process. In total, the Committee convened **eleven** sittings. The Committee was briefed by the following Institutions:

i. The Management of Kenya Airports Authority
ii. The Board of Kenya Airports Authority
iii. The Public Procurement Oversight Authority
iv. The Ethics and Anti Corruption Commission
v. The Hon. Attorney General
vi. The Acting Head of Public Service and Secretary to the Cabinet
vii. The Minister for Transport

Mr. Speaker Sir,

The Committee had purposed to interact with more institutions but was unable to due to logistical challenges. The Committee received a copy of the decision made on 29th August 2012 by the Public Procurement Administrative Review Board on the matter of the procurement of the Greenfield Project by the Kenya Airports Authority.

This Report we are presenting to the House provides a summary of presentations to the Joint Committee and thus the Committee observations on the matter.

Committee Recommendations

Mr. Speaker Sir, the committee recommends that:

1. That the Kenya Airports Authority comply with the directions of the Public Procurement Administrative Review Board and enter into formal contract with consortium of Anhui Construction Engineering Limited (ACEL) in joint venture with China Aero-Technology International Engineering Corporation (CATIC) within 28 days of 29th August 2012.
2. That the Board of Directors of the Kenya Airports Authority and the Minister for Transport obey the law and refrain from interfering with

the procurement process and day to day management of the Kenya Airports Authority.

3. The Government ensures that its operations are streamlined and there is a constant flow of information across all Ministries to avoid a situation where policy decisions are made and rescinded due to lack of information as well as unnecessary bureaucratic delays caused by lengthy and complicated decision making processes.

Acknowledgement

The Joint Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. Gratitude also goes to the institutions who briefed the Committee during its deliberations. The Chairpersons take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Mr. Speaker,

In Summary, the Committee has fully appraised itself of the matter and has not found any irregularity in the procurement process and therefore recommends that the project should be implemented as tendered without unnecessary delays. The conclusion by the Committee is congruent with the opinions made by a number of key institutions, namely: The Attorney General, the Ethics & Anti Corruption Commission, the Public Procurement Oversight Authority and the Public Procurement Administrative Review Board, among others.

Volume 1 of this report contains the main report of the committee while volume 2 contains the minutes of the proceedings, papers laid and other annexure.

Mr. Speaker,

The Committee observations and findings in this Report are based on the submissions and evidence received by the Committee during meetings and were agreed to unanimously by all members present during report writing. The decisions of the Joint Committee on this Report were arrived at after extensive deliberations and were unanimous.

It is now our pleasure, on behalf of the Joint Committee of Transport, Public Works & Housing, Finance, Planning & Trade, and Budget, to present and commend this report to the House.

HON. DAVID WERE, M.P

CHAIRMAN, TRANSPORT, PUBLIC WORKS & HOUSING COMMITTEE

DATE.....12-09-12.....

SIGNED.....

HON. CHRYSANTHUS OKEMO, M.P

CHAIRMAN, FINANCE, PLANNING & TRADE COMMITTEE

DATE.....12/9/2012.....

SIGNED.....

HON. ELIAS P. MBAU, M.P

CHAIRMAN, BUDGET COMMITTEE

DATE.....

SIGNED.....12/09/12.....

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1.0 INTRODUCTION

Background

1.1 On 14th August, 2012, the Member for Parliament for Belgut Constituency, Hon. Charles Keter, sought a Ministerial Statement from the Minister in charge of Transport in relation to the ongoing tender to construct a terminal at the Jomo Kenyatta International Airport also known as the Green Field Project. In particular, the Hon Member sought clarifications on the following:-

i. Why the tender awarded to a Chinese Company, AWI Construction Engineering Group, was being cancelled

ii. Whether or not the Minister instructed Kenya Airports Authority to cancel the tender

iii. How much money is the Government going to lose or pay, if it cancels the tender at this stage

1.2 The Minister made an undertaking in the House to issue a Statement on 16th August, 2012. In his Statement, the Minister informed the House of Government's desire to develop Nairobi as the aviation hub for the region. After an assessment of current facilities and the projected air traffic in the future, it had been decided to develop a new terminal at JKIA. The new terminal is what is being referred to as the "Greenfield Terminal". The Minister briefed the House on the tender process which began with an advertisement in June, 2011 and culminated in conclusion of bid evaluation and subsequent notification of award in December 2011. The Minister informed the House that in February

2012, after considering the issues surrounding the process of the tender, KAA Board noted discrepancies in the tender process and resolved that the KAA Management should terminate the procurement process.

1.3 According to the Minister, the notification of award that had been sent out was conditional to successful negotiations and signing of a loan agreement with the project financier and thus so far, there is no agreement that has been entered into between the KAA and M/s Anhui Construction Engineering Group Company Limited. Since there was no signed contract, he did not anticipate the Government to incur any monetary loss as a result of the purported cancellation of the tender.

1.4 The House was however informed that the Hon. Attorney General had advised against termination of the process after notification and acceptance of award of contract, as the Authority would not only be contravening the provision of Clause 327(3) of the Request for Proposal but also acting in bad faith, thereby undermining the integrity and fairness of the procurement process. The House was further informed that other institutions had weighed in their opinions on the matter. The Minister for Transport however reiterated that there had been no signed contract and that the process ought to halt until the Cabinet provides directions on the matter.

1.5 The Hon. Speaker noted that the matter was generating interest of Members and that the given the strategic importance, the matter be referred to a Committee of the House. The Speaker referred the matter

for investigation to the joint committees on Transport, Public Works and Housing, Budget and Finance, Planning and Trade. The joint committee was tasked to inquire into the matter and file a report in the House within 14 days.

2.0 SUBMISSIONS FROM PRESENTERS

2.1 The committee received submission from the following bodies:

i. KAA Management
ii. KAA Board of Directors
iii. Public Procurement Oversight Authority
iv. Ethics and Anti-Corruption Commission
v. Attorney General
vi. Secretary to the Cabinet
vii. Minister of Transport
viii. Public Procurement Oversight Authority (written submission)

Submissions by the Kenya Airports Authority management

2.2 The KAA management was invited to brief the committee on the issues surrounding the Greenfield Terminal Complex. The KAA management was invited on two occasions, 23rd August 2012 and on 30th August 2012. The Managing Director informed the Committee as follows:-

2.3 The current passenger terminal facilities were opened in 1978 with a capacity to handle 2.5 million passengers per annum and no major improvement has been carried out since, resulting in congestion and low level of passenger service.

2.4 The ongoing expansion on the current terminal at JKIA commenced in 2006 with the aim of decongesting the airport through increasing the capacity from 2.5 million passengers per annum to 9.3 million passengers per annum and to improve safety and security at the airport. The expansion plan is being implemented in six packages. However, following completion of the master plan review, further expansion was necessary to expand capacity for the airport to handle 17.1million passenger per annum projected in the year 2020 and subsequently 35.4million in the year 2030.

2.5 The Kenya Airways business development strategy in terms of new route development, fleet acquisition, and JKIA hub development through linking of every major African city to the rest of the World through JKIA, were considered in the traffic forecast. Kenya Airways plans to increase its fleet from the current 33 to 68 passenger aircraft in 2015 and 130 in 2020. Consideration was also given to the Kenya Airways strategy to open six new destinations every year, expand capacity to the rapidly expanding economies of China and India and to position JKIA as the leading hub airport in Africa. In addition to the Kenya Airways hub operation, there is great interest from new operators to JKIA.

2.6 Construction of the New Greenfield terminal complex and associated facilities will provide the additional long term capacity to handle passengers and enhance operational efficiency necessary to consolidate the position of JKIA as the premier hub in the region.

2.7 The design footprint is modular and in line with current airport design practices, allows for future expansion without interrupting operations of the Terminal building during construction. The JKIA Greenfield design foot print allows for another 12 million passengers.

2.8 The scope of the proposed development shall include the construction of a new terminal building with floor area of about 178,000 square meters on four levels conceived as a hub terminal for efficient connectivity for transiting passengers. Among other facilities, it will have 50 international check-in positions; 32 contact and 8 remote gates; associated apron with 45 aircraft stands complete with fuel hydrant and all associated services. It will also include railway terminal, parking garage and airport hotel. The cost estimate is USD 654million based on tendered amount.

Implementation of the Greenfield Terminal

2.9 On 9th March 2011, the 147th Board of Directors meeting approved the Greenfield Terminal Project after meeting the Minister of Transport on the JKIA Masterplan.

2.10 JKIA Greenfield Project was tendered in accordance with the Public Procurement and Disposal Act and advertised on 24th June 2011. The closing date for the tender was 17th November 2011. The only communication from Ministry of Transport during the 5 month tendering period was on 3rd October, 2011 when KAA received a letter from PS Transport to proceed with the tender as a design, build and finance.

2.11 Five (5) bids were submitted on the closing day, 17th November 2011.

i. Three (3) were contractors: Larsen & Toubro – India; Sinohydro Corporation Ltd – China; Pascall + Watson architects/Anhui Construction Group JV – UK/China
ii. One (1) was a bank – Citigroup
iii. One (1) was a financial institution – Sifikile

2.12 One bidder, M/s China State Construction Group arrived late past opening time and their bid was not open.

2.13 This was a two (2) envelope bid, i.e. financial and technical proposals were submitted in separate envelopes. Bidders were not required to finance the works but were to identify a financier who would and if successful sign a separate contract with KAA.

2.14 The tender required bidders to submit a financial proposal in two parts, financing proposal (loan terms) and financial proposal (amount of bid).

Bidders were also required to prove they had a competent lead consultant to carry out the designs, either by association or by use of internal capacity.

2.15 The bank and the financial institution were deemed incomplete bids as they only had financing proposals.

2.16 Sinohydro Corporation Ltd failed because it did not meet mandatory requirement to demonstrate design capacity.

2.17 Two (2) bidders made it to detailed evaluation.

i. Pascall + Watson architects/Anhui Construction Group JV – UK/China.
ii. Larsen & Toubro – India.

2.18 Larsen & Toubro failed to meet the pass mark. Reasons included and not limited to: Submitted experience for design and build for past projects for which they were only contractors.

2.19 One (1) bidder made it to financial evaluation: Pascall + Watson architects/Anhui Construction Group JV – UK/China. The bidder's amount was USD 654 million. The bid was 5.21% lower than the Engineers pre-bid estimate of USD 646 million. The bidder submitted two financing options namely China Development Bank and China Exim Bank. Both met minimum criteria set out in the RFP and submitted favorable terms.

2.20 The Tender Committee did a comparative analysis of the costs with recently completed similar Airports globally. The price was found to be comparable to average rates of the following:

i. Cairo International Airport Terminal 3 – 2009.
ii. King Abdul Aziz, Jeddah Saudi Arabia – 2011.
iii. Sofia airport, Bulgaria – 2006.

Developments Leading to the Cancellation of Tender

2.21 Following a briefing to the PS Ministry of Transport by KAA Managing Director and the Chairman of the Board of Directors, on 10th January, Transport PS issued a letter, under secret cover, requesting the Managing Director KAA to restart the tender process. Reasons as follows:

i. Unacceptable minimum number of acceptable technical and financial proposals to be compared.
ii. Bidders did not provide finance.
iii. Bidders should compete on Design and Build basis.

2.22 On 8th February, 2012 KAA responded to the PS Ministry of Transport clarifying the following:

i. After a 5-month tender submission period, only 5 Bidders submitted Bids. Of which only 3 were complete bids.
ii. Contrary to the PS Transports Ministry of letter, Bidders were NOT REQUIRED to finance the project. They were only required to submit their bid with a Third Party financier's proposal. A bidder financing

this project would be deemed to be a Public Private Partnership (PPP) and thus follow a different laid out process.

iii. Bidders DID compete on the design and Build basis alone as stipulated in the RFP document. No other criteria were used.

iv. Louis Berger from USA has been competitively sourced by KAA and engaged to supervise the works of the contractor.

2.23 On 10th February 2012, the PS Ministry of Transport responded with instructions to act on January 10th Letter.

2.24 On 13th February 2012, the Minister and PS Ministry of Transport summoned the KAA Board and management for a discussion on the Tender. A presentation was made justifying the need to proceed with the process. The Minister instructed the Board to cancel the award and start the process afresh.

2.25 On 14th February, KAA management in consultation with the Board wrote to the Hon. Attorney General for legal advice on cancelling the award. KAA also wrote to the external lawyers for the same advice.

2.26 On request from the Ministry, the Board met on 21st February, 2012 and endorsed the Minister's instruction to cancel the process. The KAA lawyers had advised that KAA should await an authoritative opinion from the Hon. Attorney General before moving forward. As a result, the board decision was not unanimous and the legal advice from the Attorney General had not been obtained at the time of this meeting.

2.27 On 22nd February, 2012 the Hon. Attorney General advised against cancellation of the tender citing that:

i. In opening one financial bid, the process produced an acceptable minimum number of technical and financial proposals.
ii. It was clear that the bidders were NOT required to finance the project and that they were only to propose a financier (s) to KAA
iii. Terminating will undermine the integrity and fairness of the procurement process.

2.28 On 6th March, 2012 PS Office of the Prime Minister wrote to KAA to withhold any action on the procurement process and prepare a Cabinet Paper for direction.

2.29 On 7th March 2012, KAA forwarded the Cabinet Paper as directed.

2.30 On 13th March, 2012 KAA management appeared before the Cabinet Subcommittee for Infrastructure where a sub-committee of Ministers and a Technical sub-committee was formed to look into the details of the process of this tender.

2.31 On 20th March 2012, the PS, Prime Minister office wrote to the Attorney General requesting further analysis of legal implications of terminating the procurement process.

2.32 On 21st March, 2012, KAA received a letter from the PM's office requesting for certain documents for the Technical Sub-committee. KAA engineering delivered the documentation and appeared before the Technical sub-committee members.

2.33 On the 16th April 2012, the Attorney General responded to PS, Prime Minister Office letter of 20th March 2012, reiterating his recommendations in his letter of 22nd February, 2012.

2.34 On 22nd May 2012 the Board of Directors held a meeting reiterating that the tender should be cancelled.

2.35 On 14th June 2012, the PS MOT wrote to the Director General Public Procurement and Disposal Oversight Authority (PPOA), requesting for the DG's investigation on any breach of procurement law on the Greenfield procurement process.

2.36 On 15th June 2012, DG, PPOA wrote to KAA advising on PS requesting and scheduling the dates for the investigation meetings.

2.37 On 18th June 2012, DG, PPOA wrote to PS MOT acknowledging receipt of the letter and advising on likely day for completion of the exercise.

2.38 On 25th June 2012, the Minister MOT called a meeting with PS, MOT, KAA, KCAA and KQ on way forward for implementation of the

Greenfield terminal and second runway. In the meeting KQ was directed to engage a consultancy to review the Greenfield design and make necessary recommendations. The Minister also advised that he was appointing a steering committee to oversee the implementation of the Greenfield and 2nd runway.

2.39 On 10th July, the KQ consultant, M/s Avia Solutions of UK held a kick off meeting with KQ, KAA and KCAA.

2.40 On 26th July 2012, the KAA Board of Directors held a meeting in which they instructed the MD to cancel the award.

2.41 On 26th July 2012, the MD, KAA, wrote to the Attorney General requesting for legal direction on cancellation and copied Secretary to the Cabinet amongst other offices.

2.42 On 27th July 2012, the Attorney General and Secretary to the Cabinet responded to the MD's letter, stating that it was not appropriate for the Board to direct MD to take action on the tender while the matter was pending with the cabinet.

2.43 On 27th July 2012, the KAA Tender Committee held an urgent meeting on direction of the Board of Directors to cancel the tender. The TC recommended that the accounting officer, the MD should terminate.

2.44 On 31st July 2012, the MD, KAA wrote to the Tender Committee advising he was awaiting direction from the Cabinet.

2.45 On 7th August, 2012, Secretary to the Cabinet wrote to KAA requesting action plan on ground breaking for Greenfield Terminal and 2nd Runway.

2.46 On 10th August 2012, the Minister for Transport gazette the Steering Committee and issued appointment letters.

2.47 On 13th August 2012, the PS Prime Minister office wrote a letter to Secretary to the Cabinet, stating the need for the Board to observe Cabinet directive in light of cancellation of the award.

2.48 On 16th August 2012, PPOA concluded th3 investigations of procurement process for the Greenfield.

2.49 On 17th August, the Board of Directors issued a statement to the press on the status on the Greenfield Terminal. A statement appeared in the print media on 19th August 2012.

2.50 On 20th August 2012, the KAA MD responded to the Chairman Board of Directors.

Investigations on the Greenfield Terminal tender

2.51 On 20th January, 2012 after receiving a complaint, investigative officers from Ethics and Anti-Corruption Commission collected documents on the Greenfield Tender from KAA offices.

2.52 On 26th January, KAA wrote to Ethics and Anti-Corruption Commission to seek authenticity of the officer.

2.53 On 31st January, 2012 Ag. CEO EACC wrote to KAA confirming the investigation of the Greenfield tender following an alleged irregularity in the process.

2.54 On 15th February, 2012 EACC wrote to KAA clearing the tender process and allowing KAA to proceed with the project as planned.

2.55 The Attorney General has issued two (2) legal opinions on 22nd February 2012 and 16th August 2012 advising against cancellation of the award

2.56 The Public Procurement Oversight Authority (PPOA) on request of PS, Ministry of Transport conducted an investigation in August 2012. The conclusions of the investigations are that the procurement process is in order.

2.57 The Minister of Transport has appointed a steering committee to oversee the redesign and re-advertisement of the Greenfield Terminal Second runway

Submissions by the Board, Kenya Airports Authority

2.58 The board of KAA was invited to the committee on 30th August 2012 to inform the committee on their role in the Greenfield terminal procurement process. The board informed the committee as follows:

2.59 The Board approved USD 500 million as the cost estimates for the Greenfield terminal based on the master plan prepared by the consultant.

2.60 According the Public Procurement and Disposal Act, 2005, Procurement process is a preserve of the management and therefore the Board had no business in interfering with it so long as the law was duly followed. This was the common practice within the Kenya Airports Authority's procurements that had been undertaken. Therefore, the only time when the Board would be required was during the approval stages of the project.

2.61 The Kenya Airports Authority Board was kept in the dark about the Greenfield Project by the management in the whole tendering process.

2.62 Though the law was duly followed during the tendering process, the Board was uncomfortable with the outcome of the process. It felt that it did not produce an acceptable minimum number of acceptable technical and financial Proposals that could be compared especially considering that out of 120 bidders who bought tender documents; only five submitted their bids. Furthermore, two of the five firms that submitted their bids had incomplete documents (had no financing proposals).

2.63 The fact that there were about three hundred enquiries throughout the tendering was an indication to the Board that the tendering documents were not clear to majority of the bidders.

2.64 Management acted within the law by rejecting the bidder who was late by thirty minutes to submit the bid.

Cancellation of the tendering process

2.65 14th November, 2011, a letter to the Permanent Secretary, Ministry of Transport from the Prime Minister's Office on the tender for the development of the second terminal and runway at Jomo Kenyatta International Airport expressed concern that the project, as structured, required mobilization of massive resources with approval by various arms of government and therefore it required cabinet approval for it to go forward. It recommended that the procurement process be stopped immediately and commencement of the mechanism of seeking cabinet approval for the same by way of a Cabinet Memorandum.

2.66 Management acted in contempt of the Prime Minister's Office by awarding the tender to Anhui Construction Engineering Group Co. Ltd. (ACEG), at a sum of US$653,782,814.57 (inclusive of 10% contingencies for the works, 5% for employer's supervision consultant and all taxes), on the 16th December, 2011.

2.67 19th December 2011, the Anhui Construction Engineering Group Co. Ltd (ACEG), in joint venture with Aero-Technology International Engineering Corporation (CATIC), accepted the award through writing.

2.68 The cost of the tender awarded ($653 million) was materially different from the initial approved cost of $500 million by the Board. This variation (about 30%) did not augur well with the Board and it clearly depicted unappreciation of the complementary roles of the Board by the Management.

2.69 In a letter dated 10th February 2012, from the Permanent Secretary, Ministry of Transport to the Managing Director and copied to the Chairman of the Board, KAA instructed the KAA Management not to commit the Airports Authority on any contractual arrangement on the proposed Greenfield project until the issues raised by the office of the Prime Minister and the Ministry had been resolved by the Cabinet.

2.70 In the Boards' 155th special meeting of Directors held on Tuesday 21st February, 2012 to deliberate on the status of the Greenfield Terminal

project following a meeting at the Ministry of Transport on 13th February, 2012, it was resolved that KAA annul the ongoing procurement process and re-start the same. There was one dissent from Director, Kibuchi Muriithi.

2.71 The KAA Management ignored the board's resolution and instead sought the Attorney General's legal opinion on the matter. The Attorney General's response came on 22nd February 2012, which to the Board's interpretation questioned the outcome of the tendering process.

2.72 The Kenya Airports Authority Board's 157th special meeting reiterated its resolution of 155th meeting that the procurement process for the Greenfield Terminal project be annulled and restarted. It further resolved to bring all the stakeholders on board before any decisions were made.

2.73 The 206th Tender Committee special meeting held on 27th July 2012 resolved that the tender awarded to M/s An Hui construction Engineering Group Ltd (ACEG) and M/s China Aero-Technology International Engineering Corporation (CATIC) be annulled as per the Board's resolutions of 21st February, 2012 and 25th May, 2012.

2.74 The special Board meeting that was held on 24th August 2012 was procedurally called for. The chairman and the Managing Director had consulted over the phone to call for the same meeting. However, the Managing Director did not attend that meeting. It is in this meeting

when the Board resolved to send the Managing Director on a compulsory leave for failing to implement its resolutions and leaking the Authorities' classified documents to the outsiders.

2.75 The Authority has since learned through an Industrial court order that the Managing Director has been granted a stay in his duties pending hearing and determination of the matter. It however denied withdrawing the Managing Director's emoluments save for his offices for security reasons.

Submissions by the Public Procurement Oversight Authority

2.76 The PPOA briefed the committee on 4th September 2012. The PPOA informed the committee as follows:-

2.77 The Permanent Secretary, Ministry of Transport vide a letter dated 6th June 2012, requested PPOA to undertake a procurement investigation on the tender for construction of the Greenfield Project. PPOA in turn informed KAA of the intended investigation, which was to commence immediately.

2.78 The project was approved for commencement by the KAA Board of Directors, during its meeting held on 9th March 2011.KAA estimated the project to cost Ksh. 68,305,021,899.13 and in the budget for the 2011/12 financial year, KAA had allocated Kshs. 1.2Billion for the project.

2.79 The procurement method used for the project was International Competitive Bidding. Bidders were required to submit. Bidders were required to submit a technical and financial proposal through the two envelope system.

2.80 KAA invited bidders to a pre bi meeting which was held on 19th July 2011. During the meeting, KAA clarified various questions raised by potential bidders.

2.81 The technical bid was opened on 17th November 2011. Five firms namely:- M/s Sifikile, M/s Larsen & Turbo Ltd, M/s Beijing Construction Engineering Group & Sinohydro Corporation Limited(joint venture), M/s Anhui Construction Engineering Group & China National Aero Technology(joint venture) and M/s Citibank submitted their bids while M/s China Construction Engineering State Corporation Ltd were late and their bid rejected and returned un-opened.

2.82 The Tender Committee at its meeting held on 15th December 2011 awarded the tender to M/s Anhui Construction Engineering Co. at a tender sum of Kshs. 64,745,354,315. Both the successful and unsuccessful bidders were notified on 16th December 2012 and 7th December 2012 respectively. The Successful bidder accepted the offer on 19th December 2011. No Contract has been signed to date.

2.83 The final draft Report of the investigations carried by PPOA was forwarded to KAA on 29th August 2012 for comments and a response

from KAA is expected by 7th September 2012. This will then be analyzed and PPOA will conclude the matter and advise the Committee accordingly.

2.84 The current Procurement laws were operationalized in 2006. An exercise to review the same is ongoing.

2.85 PPOA monitors implementation of procurement laws in public entities while the Administrative Review Board is a forum where tendering disputes are resolved.

Observation by PPOA

2.86 KAA ought to have adopted the Public Private Partnership arrangement to procure the project as financing had not been secured at the time of commencement of the procurement process.

2.87 The mandatory requirement in the technical proposal for a letter of intent from a financer may have limited participation by potential bidders who were unable to secure a financer. This may partly explain why 110 potential bidders purchased the bid document and only 5 bidders submitted bids.

2.88 In the minutes of the Tender Committee that awarded the tender, the head of procurement unit was not the Secretary as provided under Section 26(5)(b) of the Act.

2.89 KAA's General Manager, Procurement and Logistics appointed members of the evaluation committee, which is contrary to Regulation 16 (3) of the PPOA Act which requires that the Accounting Officer appoints members of the evaluation Committee.

Submissions by the Ethics and Anti-Corruption Commission

2.90 The EACC was called to brief the committee on 5th Septemeber 2012. The EACC informed the Committee as follows:-

2.91 The EACC received an anonymous complaint on 17th January 2012 on alleged irregularities in the award of tender for the construction of the greenfield terminal worth USD 500 million. It was alleged that there was a conspiracy involving the Kenya Airports Authority (KAA) Managing Director (MD) and the Permanent Secretary (PS) Ministry of Finance to award the tender to Larson Toubro Company at USD 640 million of which the excess USD 140 million was a kick back to the KAA MD and the PS. The conduit of the bribe was a broker by the name Mohan.

2.92 The EACC launched an inquiry, requesting the KAA to give it a number of documents concerning the tendering process from the time of advertising of the tender to the point of notification of award of the tender. These included the advertised notice date, the memo approving commencement of procurement process, evaluation report, copy of opening register, minutes of meeting of opening of the tender,

notification of award, letter of acceptance and international tender notice.

2.93 After scrutinizing and analyzing the documents, the EACC found out that the tender was opened on 17th November 2011. After evaluation, Anhui Construction Engineering Group Co. Ltd (ACEG) in joint venture with China Aero-Technology International Engineering Corporation (CATIC) was awarded the tender with a notification of award being issued on 16th December 2011. The company accepted the award on 19th December 2011. Larson Company which was alleged to have been associated with the KAA MD and the PS Ministry of Finance was eliminated at the technical evaluation stage.

2.94 Based on the preliminary investigation, EACC did not find any suspect dealings in the process and therefore advised KAA to proceed with the tender but in prudence.

Submissions by the Attorney General

2.95 The Attorney General (AG) was invited to brief the committee on 5th September 2012 on his involvement in the Greenfield procurement process. The AG adequately informed the committee on the following developments of the Greenfield terminal at JKIA:

2.96 The tender was advertised by KAA on 24th June 2011 and it was due to close on 21st September 2011. However, it was extended twice due to the volume of queries by bidders to 17th November 2011. 120 tender

documents were purchased and only 5 bidders returned the documents. 2 of the 5 bidders were incomplete and disqualified. 2 of the remaining 3 bids were technically non-responsive. The remaining bidder was technically evaluated and their financial proposal opened. The bidder did not have capacity to finance the project and had proposed 2 financing entities. A notification of award was sent to Anhui Construction Engineering in joint venture with China Aero-Technology International Engineering Corporation on 16th December 2011 and they responded affirmatively on 19th December 2011.

2.97 The PS Ministry of Transport wrote to the MD KAA on 10th January 2012 to prepare a cabinet brief on the progress of the project as had been requested earlier by the Office of the Prime Minister (OPM). Further the PS instructed the MD to issue a new tender that would be assessed on the basis of design, construct, cost and completion time without the financing aspect as none of the bidders had offered to provide finance. The financing aspect was to be left to KAA.

2.98 The KAA responded to the PS Ministry of Transport on 8th February 2012 stating that the tender process was carried out in a satisfactory manner. The KAA also sought legal advice from the AG on the matter on 14th February 2012 stating that the PS Ministry of Transport had directed for the cancellation of the tendering process and repetition of it afresh yet a letter of award had already been issued to the winning bidder. The AG provided a legal opinion on the matter and advised the KAA to carry out the procurement process in accordance with the law

and not terminate the process. On 24th February 2012, KAA submitted a cabinet brief on the development of the project to the PS Ministry of Transport.

2.99 The OPM informed the AG on 20th March 2012 that the cabinet memo had been presented and discussed in the cabinet committee which directed that it be handled by a sub-committee of the cabinet committee and advice it on the tendering process for the project, the legal implications of terminating the process and propose a way forward for the project. A special committee was established by the OPM to deal with the matter.

2.100 The KAA forwarded the project summary and correspondences with various government institutions concerning the project to the OPM and the AG on 27th March 2012.

2.101 The OPM informed the AG of a meeting of the technical committee and the ministers' committee to be held on 3rd April 2012. The report of the technical committee was forwarded to the AG by the OPM on 12th April 2012. On 16th April 2012, the AG forwarded a legal opinion to the OPM indicating that the project be implemented as tendered since the procurement process was carried out properly from a legal standpoint. The OPM informed the AG that the Minister's committee was to be held on 2nd May 2012.

2.102 The Minister of Transport informed the AG on 10th May 2012 on the Ministry's disagreement with the legal opinions by the AG and that the matter was before the Public Procurement Oversight Authority (PPOA) which would form a competent basis for a more comprehensive legal opinion. The AG responded on 24th May 2012 stating that the office will wait for communication on the issue from the Minister for Transport or chairman of the Cabinet Sub-Committee.

2.103 The KAA sought directions from the AG on 26th July 2012 on the cancellation of the tender in view of the legal opinion of the AG, the directions from the OPM to halt the procurement process pending a directive on mater from Cabinet and the clearance of the procurement process by the EACC.

2.104 The Secretary to the Cabinet wrote to the AG on 27th July 2012 informing that the resolution by the KAA board to terminate the procurement process without the concurrence of the cabinet committee was in bad taste and disrespectful to Cabinet. The AG responded that since the matter was still pending in cabinet, it would be imprudent to initiate a parallel process as it could initiate conflict and expose the government and KAA to legal liability. The PS OPM also concurred with the views of the Secretary to the Cabinet and AG. The OPM was of the view that the Ministry of Transport should strongly reprimand the KAA board for breach of administrative protocol and the KAA rescind the decision to cancel the award of the contract while awaiting the final policy direction from the cabinet. The Secretary to the Cabinet

informed the AG of a meeting on this matter to be held on 29th August 2012.

2.105 The MD KAA was ordered by the board to go on compulsory leave. The MD then wrote to the Chairman, Board of Directors KAA on 24th August 2012 on the issue of the compulsory leave. By a copy of the letter, the MD sought legal advice from the AG. The Chairman, Board of Directors of KAA wrote to the AG on the issue of compulsory leave of the MD stating that the board was not able to work with the MD as he persistently and consistently failed to implement the KAA board decisions.

Submissions by the Secretary to the Cabinet

2.106 The deputy to the secretary to the cabinet briefed the committee on 6th September 2012. The following were his submissions:

2.107 The expansion of the Jomo Kenyatta International Airport was a Vision 2030 Project, to accommodate the expansion of Kenya Airways and build Nairobi as a regional hub.

2.108 The Cabinet Sub Committee on Infrastructure, chaired by the Hon. Chris Obure, was seized of issues surrounding the Greenfield Project. The Sub Committee submitted its Report to Cabinet and the matter was referred back to it, to conclude and submit its final Report to Cabinet.

2.109 Procurement decisions are not made at Cabinet level. The Sub Committee can only deal with policy making decisions.

Submissions by the Minister of Transport

2.110 The Minister briefed the committee on 11th September 2012. The minister detailed the following as the developments surrounding the greenfiel project and the Ministry's involvement:

2.111 The works at the JKIA started in the first five years of the present government's regime. It was decided that since the present JKIA terminal couldn't handle the increased capacity, there was need to build a new terminal, the Greenfield terminal.

2.112 The new terminal was to be financed through PPP. The contractor was to design, build and finance the project and payment was to be done after completion.

2.113 The tendering process opened on 24th June 2012 and closed on 14th November 2012.

2.114 On 4th December 2012, a letter from the PS of the Office of the Prime Minister to the Minister of Transport requested for a cabinet brief on the project. The Minister relied the information to the KAA.

2.115 No formal communication was accorded to the Ministry until 10th January 2012 when the KAA management and KAA board gave a

courtesy call on the Minister. The KAA was then requested to prepare a cabinet brief.

2.116 From the meeting, the minister was shocked to learn that the project had been shifted from a design, build and finance to a design, build and propose a financier who will the enter into negotiations with the KAA. The minister also noted that the tendering process was not competitive having only one final bidder to get to opening of the financial bid yet 120 bidders bought the tender document. The winning bidder had already been notified yet the finances had not been secured.

2.117 The Minister communicated to the KAA to halt the tendering process. Since the matter is being deliberated in cabinet, the minister insisted that the decision of the cabinet should be reached first before any further action is undertaken.

Submission by the Public Procurement Administrative Review Board

2.118 The board provided the committee with a written submission. It detailed as follows:

2.119 The request for review was lodged on the 31st day of July, 2012 against the purported decision by the Kenya Airports Authority made on the 26th day of July, 2012 in the matter of Tender No. KAA/ES/JKIA/658/DB for Design and build tender for construction of the Greenfield Passenger Terminal Complex and Associated Works at

the Jomo Kenyatta International Airport. The Applicant has raised 20 ground as the basis for the review.

2.120 The board finds the decision by the KAA board of directors directing the MD to terminate the tender process as having no basis. The process had duly followed the procurement process.

2.121 The board of directors of KAA had no role to play in the procurement process and KAA board has to appreciate he limitations imposed on it to act in accordance with the law. This will also apply to other government agencies interfering with the procurement process including the Ministry of Transport, and the Office of the Prime Minister. This is in accordance with the Public Procurement and Disposal Act, 2005. Therefore the directions issued by the government agencies to annul the procurement process should be revoked.

2.122 The financing contract has no findings on the matter of the financing contract since the applicant is not party to the proposed contract.

2.123 The board orders the procuring entity to sign the contract to design/build with the applicant within twenty eight (28) days of this decision.

3.0 SYNTHESIS OF THE SUBMISSIONS

Submission by the KAA Management

3.1 After the KAA management made its submission on the issues surrounding the Greenfield Terminal Complex on 23rd August 2012 and on 30th August 2012, the Committee made the following observations;

3.2 The whole process of procurement was duly followed as provided for in the Public Procurement and Disposal Act, 2005.

3.3 The KAA Board's decision to send the Managing Director on Compulsory leave when it was aware that he was a chief witness in the Committees' investigation was done in bad faith and in contempt of parliament.

3.4 The KAA's Board decision to cancel the tender on the grounds that the outcome of the tendering process was wrong was ill-advised considering that it was an open tendering system where every company had equal opportunities to bid.

3.5 The KAA Management's decision to vary the cost of the tender was in line with the KAA' Board resolution of 9th March 2011 (147th meeting) which adopted the master plan with modifications therein. Modification of the master plan to include some aspects which were not previously there would essentially lead to the corresponding increase in

cost. Furthermore, the costing was informed by the bill of quantities done by the KAA engineers.

3.6 The fact that one hundred and ten tenderers bought the tender documents and only five returned their bids was common in the procurements involving massive capital outlay. Not every company that bought tender documents was capable of doing the job.

3.7 If the tender were to be cancelled, there is a possibility of the company that worn the tender suing the KAA and winning as advised by the Attorney General. If this was to occur, there would be dire financial implications.

3.8 It is in bad faith for both the Ministry of Transport and the KAA Board to ignore the advice of the Attorney General, the Public procurement Oversight Advisory, and the Public Procurement Advisory Review Board against the cancellation of the Greenfield Project Tender.

3.9 Throughout the tendering process, it is clear that stakeholders like Kenya Airways, Kenya Roads Board, the Office of the Prime Minister and the Ministry in charge were involved.

Submission by the KAA Board

3.10After the KAA Board made its submission on the JKIA Expansion Plans the Committee made the following observations;

3.11 The Board approved USD 500 million as the cost estimates for the Greenfield terminal based on the master plan prepared by the consultant.

3.12 According the Public Procurement and Disposal Act, 2005, Procurement process is a preserve of the management and therefore the Board had no business in interfering with it so long as the law was duly followed. This was the common practice within the Kenya Airports Authority's procurements that had been undertaken. Therefore, the only time when the Board would be required was during the approval stages of the project.

3.13 The Kenya Airports Authority Board was kept in the dark about the Greenfield Project by the management in the whole tendering process.

3.14 Though the law was duly followed during the tendering process, the Board was uncomfortable with the outcome of the process. It felt that it did not produce an acceptable minimum number of acceptable technical and financial Proposals that could be compared especially considering that out of 120 tenderers who bought tender documents; only five submitted their bids. Furthermore, two of the five firms that submitted their bids had incomplete documents (had no financing proposals).

3.15 The fact that there were about three hundred enquiries throughout the tendering was an indication to the Board that the tendering documents were not clear to majority of the tenderers.

3.16 Management acted within the law by rejecting the tenderer who was late by thirty minutes to submit his bid.

3.17 There was an attempt to hold on the Expansion plans as indicated through the letter of 14th November, 2011 to the the Permanent Secretary, Ministry of Transport from the Prime Minister's Office. This was as a result of the tender for the development of the second terminal and runway at Jomo Kenyatta International Airport as structured, required mobilization of massive resources with approval by various arms of government and therefore it required cabinet approval for it to go forward. It was recommended that the procurement process be held on and should commence once cabinet approval for the same by way of a Cabinet Memorandum was approved.

3.18 The Committee observed that the KAA Management acted in contempt of the Prime Minister's Office by awarding the tender to Anhui Construction Engineering Group Co. Ltd. (ACEG), on the 16th December, 2011.

3.19 The Committee observed that the cost of the tender awarded ($653 million) was materially different from the initial approved cost of $500 million by the Board. This variation (about 30%) did not augur well

with the Board and it clearly depicted unappreciation of the complementary roles of the Board by the Management.

3.20 In a letter dated 10th February 2012, from the Permanent Secretary, Ministry of Transport to the Managing Director and copied to the Chairman of the Board, KAA instructed the KAA Management not to commit the Airports Authority on any contractual arrangement on the proposed Greenfield project until the issues raised by the office of the Prime Minister and the Ministry had been resolved by the Cabinet.

3.21 In the Boards' 155th special meeting of Directors held on Tuesday 21st February, 2012 to deliberate on the status of the Greenfield Terminal project following a meeting at the Ministry of Transport on 13th February, 2012, it was resolved that KAA annul the ongoing procurement process and re-start the same. There was one dissent from Director, Kibuchi Muriithi.

3.22 The Committee observed that the KAA Management ignored the board's resolution and instead sought the Attorney General's legal opinion on the matter. The Attorney General's response came on 22nd February 2012, which to the Board's interpretation questioned the outcome of the tendering process. The Attorney General in Part said ""**Where only one or two bids are determined responsive the procuring entity shall have the option of proceeding with the evaluation or determining the entire tender non-responsive.**"

3.23 The Kenya Airports Authority Board's 157th special meeting reiterated its resolution of 155th meeting that the procurement process for the Greenfield Terminal project be annulled and restarted. It further resolved to bring all the stakeholders on board before any decisions were made.

3.24 The 206th Tender Committee special meeting held on 27th July 2012 resolved that the tender awarded to M/s An Hui construction Engineering Group Ltd (ACEG) and M/s China Aero-Technology International Engineering Corporation (CATIC) be annulled as per the Board's resolutions of 21st February, 2012 and 25th May, 2012.

3.25 The special Board meeting that was held on 24th August 2012 was procedurally called for. The chairman and the Managing Director had consulted over the phone to call for the same meeting. However, the Managing Director did not attend that meeting. It is in this meeting when the Board resolved to send the Managing Director on a compulsory leave for failing to implement its resolutions and leaking the Authorities' classified documents to the outsiders.

3.26 The Authority has since learned through an Industrial court order that the Managing Director has been granted a stay in his duties pending hearing and determination of the matter. It however denied withdrawing the Managing Director's emoluments save for his offices for security reasons.

Submission by the Public Procurement Oversight Authority
The Committee observed the following:

3.27 The brief presented before the Committee was neither signed nor dated and the PPOA was requested to sign and date the document to make it admissible. Further, he was directed to submit a detailed report together with the letters exchanged between his office, KAA and the PS, Ministry of Transport and the ruling made by the Administrative Review Board.

3.28 The Director General did not give a considered opinion on the matter before the Committee, although the Committee had expected him to give the way forward, being the expert in the procurement process. No party had objected to the tendering process.

Submission by the Ethics and Anti-Corruption Commission (EACC)
The Committee was informed as follows by the EACC:-

3.29 The EACC received an anonymous complaint on 17th January 2012 on alleged irregularities in the award of tender for the construction of the Greenfield terminal worth USD 500 million. It was alleged that there was a conspiracy involving the Kenya Airports Authority (KAA) Managing Director (MD) and the Permanent Secretary (PS) Ministry of Finance to award the tender **to Larson Toubro Company at USD 640 million** of which the excess USD 140 million was a kick back to the KAA

MD and the PS. The conduit of the bribe was a broker by the name a Mohan.

3.30 Upon the receipt of the allegation, the EACC launched an inquiry, requesting the KAA to give it a number of documents concerning the tendering process from the time of advertising of the tender to the point of notification of award of the tender. These included the advertised notice date, the memo approving commencement of procurement process, evaluation report, copy of opening register, minutes of meeting of opening of the tender, notification of award, letter of acceptance and international tender notice.

3.31 As a result of the possession of the necessary Documents, and after scrutinizing and analyzing the documents, the EACC found out that the tender was opened on 17th November 2011. After evaluation, ***Anhui Construction Engineering Group Co. Ltd (ACEG)*** in joint venture with ***China Aero-Technology International Engineering Corporation (CATIC)*** was awarded the tender with a notification of award being issued on **16th December 2011.** The company accepted the award on 19th December 2011. Larson Company which was alleged to have been associated with the KAA MD and the PS Ministry of Finance was eliminated at the technical evaluation stage.

3.32 After the seizure of the necessary documents and commencement of the preliminary inquiry, the EACC initiated correspondences with relevant institutions (MD- KAA) relating to the tender to facilitate in the

inquiry of the alleged irregularities and who in turn sought clarifications and were satisfied with clarifications.

3.33 Based on the preliminary investigation, EACC did not find any suspect dealings in the process and therefore advised KAA to proceed with the tender but in prudence.

Committee Observations

3.34 After discussions the Committee sought a brief deliberation ensued on the nature of the complaint and the EACC provided the committee with the summary of the matter raised by the complainant. The EACC also informed the committee that the inquiry was just a preliminary investigation. The EACC retaliated that their job was to protect witnesses and safeguard projects from scuttles.

Submission by the Attorney General
Bidding Process

3.35 The request for proposal was advertised in the local print media on 23rd June, 2011. 120 persons purchased the tender documents and only 5 firms' submitted proposals by the 17th November, 2011 which was the deadline.

3.36 The firms that submitted their bids were the following:

i. Anhil Construction Engineering Group Co. Ltd (ACEDG) & China national Aero-technology International Corporation (CATIC);

ii. Beijing Construction Engineering Co. Ltd (BECG) & Sinhydro Corp. Ltd joint venture;

iii. Larsen & Toubro Ltd;

iv. Citibank; and

v. SIFIKILE.

Mode of Evaluation

3.37 The evaluation of the tender was done by following 3 steps, that is to say preliminary, technical and financial evaluation.

3.38 Out of the five (5) firms that submitted proposals, one (1) firm (Citibank) was disqualified as it had only submitted a financial proposal.

3.39 The four (4) firms that remained were subjected to preliminary examination to determine those that met the minimum mandatory requirements. Only two (2) firms (ACEG & CATIC and Larsen & Turbo) met these requirements and thereby qualifying for the detailed technical examination.

3.40 The qualifying score set out for the technical evaluation was 70%. ACEG & CATIC was ranked first with a score of 85.96%. Thus, ACEG & Turbo was ranked second with a score of 62.74%. Thus ACEG & CATIC was responsive to the technical evaluation and qualified to undergo the financial evaluation.

3.41 The financial evaluation was done by comparing the pre-bid estimate for works (which was Kshs.68,305,021,899.13 including taxes) against the financial proposal of ACEG & CATIC which was Kshs. 64,745,354,315.00. Although the financial bid was -5.21% as compared to the pre-bid estimate, the same was within the 25% off the pre-bid estimate.

3.42 Further, the bidder had submitted two (2) letters of intent/interest to finance the project from China Development Bank Corp & China Exim Bank respectively.

3.43 With a combined financial and technical evaluation score of 90.98%, the bidder was found to be responsive to the conditions set out in the tender documents.

3.44 Subsequently, the Authority issued the successful bidder with a notification of award of the tender vide a letter dated 16th December, 2011 and the bidder accepted the award of 19th December, 2011.

The issues raised by the Permanent Secretary, Ministry of Transport

3.45 The Authority received a letter from the Permanent Secretary which stated as follows:-

3.46 That the outcome of the bidding process did not produce an acceptable minimum number of technical and financial proposals that could be compared; and

3.47 None of the bidders offered to provide finance therefore the process should be undertaken on the basis of design and build only.

3.48 The Permanent Secretary, therefore, directed that a new tender be issued on a design, construct, cost and completion time etc and the financing was to be an added advantage.

The legal issues to be considered : Whether the bidding process produced an acceptable minimum number of technical and financial proposals

3.49 The Public Procurement and Disposal Act of 2005 does not define competitive bidding. What the Act does is to provide for various methods of procurement; including open tendering, direct tendering and restrictive tendering.

3.50 The open tendering method of procurement is deemed to be the most competitive. The glossary of the Public Procurement $ Disposal General Manual (PPDGM) which is issued pursuant to section 9(c) (i) of the Act, indicates that open tendering is the preferred procurement method of Kenya that implies opening competition to the market with any restrictions. This can be compared to direct procurement that does not require use of competitive bidding.

3.51 The procedures to be followed in relation to open tendering are set out in Parts V and IV of the Act and Public Procurement and Disposal Regulations of 2006, respectively.

3.52 It is noteworthy that none of the provisions in the Act and the Regulations specifies the minimum number of technical and financial proposals to be evaluated. The requirement for competition can only be inferred from the use terms such as, "comparison of tenders", ranking" and "lowest evaluated price".

3.53 An attempt to set a minimum number of bids to be evaluated is made in the PPDGM. Part (o) of section 7.2 (Open Tendering Method) states that: **"Where only one or two bids are determined responsive the procuring entity shall have the option of proceeding with the evaluation or determining the entire tender non-responsive".**

3.54 The PPDMG goes on to clarify that a procuring entity can only exercise this option if it included the same in the bidding documents. However, it is not clear which of the two options needs to be included in the bidding documents – proceeding with the evaluation or determining the entire tender non-responsive.

3.55 In the instant tender, five firms submitted bids. One firm was disqualified. The remaining four firms were subjected to a three-step evaluation process. The first step was the preliminary evaluation and the four firms were subjected thereto after which two firms failed to

meet the minimum mandatory requirements. Thus, only two firms proceeded to the second step, being technical evaluation. One firm was found unresponsive as a result of which only one firm proceeded to the third step- financial evaluation.

Whether the bidders offered to provide finance

3.56 We have already indicated that the eligibility criteria for the instant tender required the bidders to:

3.57 Submit a letter of commitment to finance the project from a financier(s); and source for a suitable financier(s) meeting the minimum terms and conditions in the tender document.

3.58 In this regard, the successful bidder submitted two letters of intent/interest to finance the project from China Development Bank Corp and China Exim Bank, respectively.

3.59 The fact that these two letters were submitted is sufficient proof that the successful bidder had sourced for the two financiers.

The directive to terminate the procurement proceedings and re-tender

3.60 There are three instanced where procurement proceedings may be terminated:

3.61 **Section 36** of the Act permits a procuring entity to terminate procurement proceedings at any time without entering into a contract.

Where a procuring entity takes this step, the law requires it to promptly notify all the bidders and to give reasons for such termination to any bidder who requests for them. It is noteworthy that this provision has been qualified by clause 3.27.2 of the request for proposals which restricts the right of the employer to annual the tendering process to "any time prior to award of contract";

3.62 **Section 65** of the act requires a procuring entity to notify all the bidders that none of the bids was responsive. This notification implies termination; and

3.63 Where only one or two bids are determined responsive and the procuring entity has stated in the bidding documents that it shall opt to determine the entire tender non-responsive, as per the PPDGM.

3.64 The instance in (b) does not apply in the instance case, as there was a responsive bid which (c) is subject an express provision in the bidding documents. The Authority can only exercise this option if it includes it in the bidding documents.

Way Forward

3.65 In answer to question 1, going by the minimum number of bids indicated in the PPDGM and assuming that the Authority had included that option in the tender documents, the Authority ought to have exercised the option to determine the entire tender unresponsive after the technical evaluation, as only one firm emerged responsive.

3.66 Since the Authority proceeded to evaluate a sole financial bid, then authority rightfully opted to exercise the second option indicated in the PPDGM. That is to award the tender to the responsive bidder. Therefore, it is our view that the bidding process produced an acceptable minimum number of technical and financial proposals.

3.67 The second issue as whether the bidders offered to provide finance, instead they only had to propose a financier(s) and we are informed that the responsive bidder gave two letters of intent/interest to finance the project from China Development Bank and Exim Bank of China.

3.68 Thirdly, as regards the directive to terminate the procurement proceedings and re-tender, the only possibility of terminating the instant procurement proceedings is under section 36 of the Act. However, clause 3.27.3 of the request for proposals restricts the Authority's right to annual the tendering process to "any time prior to award of contract".

3.69 Thus by seeking to terminate the procurement process after notification and acceptance of award of contract, the Authority will not only be contravening the provisions of the clause 3.27.3 of the request for proposals but also acting in bad faith; thereby undermining the integrity and fairness of the procurement process.

Submission by Office of the Secretary to the Cabinet

3.70 The Committee observed that the Representatives from the Office of the Acting Head of Public Service were not well briefed to inform the Committee and it would be imperative to have the Acting Head of Public Service appear before the Committee in person.

Written Submission by the Public Procurement Administrative Review Board

3.71 The Committee received a written submission from the Public Procurement Administrative Review Board:

3.72 The board finds the decision by the KAA board of directors directing the MD to terminate the tender process as having no basis. The process had duly followed the procurement process.

3.73 The board of directors of KAA had no role to play in the procurement process and KAA board has to appreciate he limitations imposed on it to act in accordance with the law. This will also apply to other government agencies interfering with the procurement process including the Ministry of Transport, and the Office of the Prime Minister. This is in accordance with the Public Procurement and Disposal Act, 2005. Therefore the directions issued by the government agencies to annul the procurement process should be revoked.

3.74 The financing contract has no findings on the matter of the financing contract since the applicant is not party to the proposed contract.

3.75 The board orders the procuring entity to sign the contract to design/build with the applicant within twenty eight (28) days of this decision.

3.76 The Board observes that this Tender was awarded on December 16th 2011 following an evaluation process which led to the award of the tender to the Applicant as indicated above. The Board further observes that conclusion of the process through execution of the contract has been delayed such that, nearly nine months since the decision by the Procurement Entity, the project has not Commenced.

3.77 The Board further observes that the procurement process has been widely criticized for being too bureaucratic and slow in delivering projects, especially infrastructure projects, to Kenyans in pursuit of Vision 2030.

3.78 The Board observes that very often, it is the kind of interference evident in this matter that is responsible for the delays in procurement processes, yet blame is shifted to the institutions involved in the procurement process and the law.

3.79 It is clear from the event set out in this case that the delay in concluding the procurement process was precipitated by interference by the agencies listed above and not the Board or the law itself.

Submission by the Minister for Transport

From the deliberations with the minister, the committee observed the following:

3.80 The whole process of conception and approval of the Greenfield Terminal project was a mess considering that the Ministry of Transport and government waited until the time when the tender had been awarded start approval mechanisms.

3.81 The Ministry of Transport demonstrated laxity in its duties considering that it is the Prime Minister's Office which alerted the Ministry of transport that the Greenfield Terminal project required approval by other relevant Government departments.

3.82 The Minister for transport, being a member of the Cabinet Subcommittee on infrastructure where the Attorney General sits was sufficiently advised on the matter.

3.83 The reasons given by the Minister for stopping the Greenfield Terminal Project was not sufficient considering that the competent authorities have given the project a clean bill of health.

4.0 COMMITTEE'S OBSERVATIONS

The Committee observed the following:-

Attorney General's Advice

4.1 The Attorney General is the principal legal advisor to the Government pursuant to Article 156 of the Constitution of Kenya. The advice of the Attorney General was sought with regard to the procurement process in question and the directives given by various bodies including the KAA Board of Directors, the Office of the Prime Minister and the Minister for Transport.

4.2 The Attorney General advised that the rights of the successful bidder had already crystallized and a binding legal relationship existed between the parties. In the event of failure to proceed with formalization of the relationship by way of executing a contract, the successful bidder may sue for damages and specific performance.

4.3 The Attorney General noted that investigations by the Ethics and Anti-Corruption Commission did not disclose any irregularity in the procurement process and there was therefore no reason to warrant delay in implementing the project. The Attorney General advised that the project should be implemented.

Public Procurement Administrative Review Board

4.4 The Public Procurement Administrative Review Board is established under the Public Procurement and Disposal Act to review complaints from any candidate who claims to have suffered or risks suffering, loss or damage due to breach of a duty imposed on a procuring entity by the Public Procurement and Disposal Act.

4.5 On 29th August 2012 the Public Procurement Administrative Review Board delivered its ruling on Application for Review No. 39/2012 of 31st July 2012 in which Anhui Construction Engineering Limited (ACEL) in joint venture with China Aero-Technology International Engineering Corporation (CATIC) had complained about the failure by the Kenya Airports Authority to enter into contract with it following award of the tender.

4.6 The Review Board held that by virtue of the fact that the Kenya Airports Authority, as a procuring entity, sent a formal letter of award to the joint venture of ACEL and CATIC and the joint venture replied accepting the award a legal relationship was formed between the two entities which gave rise to certain mutual rights and obligations between them. These rights and obligations remain even as the formalization of contract is pending. If KAA fails to formalize the contract it shall leave itself liable to be sued for specific performance and damages.

4.7 The Review Board observed that the Public Procurement and Disposal Act removed from the procurement decision making process actors such as Cabinet Ministers and board members of statutory corporations. The

statutory removal of board members and Cabinet Ministers, according to the Review Board, was aimed at removing interference by the said persons in the procurement function. Responsibility for the procurement function has been fixed on professional staff of a procurement entity, that is, the Accounting Officer and employees of a public entity. They are in turn accountable for their decisions to all oversight bodies such as the Auditor-General, the Ethics and Anti-Corruption Authority, the Director-General of the Public Procurement Oversight Authority and Parliament. The committee agreed with these observations of the Review Board.

4.8 The Review Board found that there has been interference in the procurement process in question from government agencies that are not recognized by the Public Procurement and Disposal Act in terms of the decision making process. This is notable from the correspondence exchanged between the Office of the President, Office of the Prime Minister, the Ministry of Transport, the Attorney General, the Ethics and Anti-Corruption Authority, the Director-General of the Public Procurement Oversight Authority and the Managing Director of the Kenya Airports Authority. The committee agrees with the Review Board's observations of interference by government agencies in the process of procurement.

4.9 The Review Board directed the Kenya Airports Authority to enter into contract with the consortium of Anhui Construction Engineering Limited

(ACEL) in joint venture with China Aero-Technology International Engineering Corporation (CATIC) within 28 days of 29th August 2012.

Policy Directions

4.10 The Kenya Airports Authority is established by the Kenya Airports Authority Act, Cap 395. The Board of Directors of the Board includes:

i. a chairman who shall be appointed by the President;
ii. the managing director;
iii. the Permanent Secretary of the Ministry for the time being
iv. Responsible for matters relating to the Authority or his
v. Representative;
vi. the Permanent Secretary to the Treasury or his
vii. Representative;
viii. the Permanent Secretary to the Ministry for the time being
ix. Responsible for Transport and Communications or his
x. Representative;
xi. not more than two person not being public officers to be
xii. appointed by the Minister by virtue of their knowledge of civil aviation.
xiii. The committee therefore found that the Board of Directors is representative of the relevant Ministries of Government necessary to give KAA policy direction.

4.11 Section 11 of the Kenya Airports Authority Act provides that the Minister for the time being responsible for matters related to

Aerodromes may give directions of a general nature to the Board relating to the operation of the undertakings of the Authority. The Minister may, in consultation with the Minister for Finance, approve any individual capital work for the purposes of the Authority which the estimated cost exceed ten million shillings.

4.12 The committee observed that the Board of Directors met with the Minister for Transport on 9th March 2011 who approved of the project. The Minister for Transport thereafter requested for updates of the project. This signified that the Minister for Transport had granted policy approval of the project as required by section 11 of the Kenya Airports Authority Act.

4.13 There has been a great deal of interference with the procurement process of this project by various government agencies. The Minister for Transport and the Board of Directors of KAA have purported to withdraw their policy approval of the project on the ground that they are not satisfied with the procurement process. This is contrary to the law and done in bad faith as Parliament, through the Public Procurement and Disposal Act, specifically removed the Board of Directors and Ministers from the procurement process. The role of the Board of Directors and the Minister is at policy level while the operations of selecting the contractor to undertake the works through the procurement process are the responsibility of the professional staff.

4.14 There is no dispute that the project urgently needs to proceed in order for the economy to benefit from a more efficient and effective Jomo Kenyatta International Airport. The relevant oversight bodies have cleared the procurement process of any irregularities.

4.15 There is the danger of legal consequences and loss of colossal sums of money if the contract is not signed and the project proceeding. The committee finds that there is no reason that the Kenya Airports Authority should not proceed with the project as per the award of the Tender Committee and the directions of the Public Procurement Administrative Review Board, save if the High Court issues and injunction to halt the process.

4.16 That the Cabinet sub-committee responsible for infrastructure has not moved quickly enough to provide policy direction with regard to the tender for construction of the new terminal at the Jomo Kenyatta International Airport.

5.0 COMMITTEE'S RECOMMENDATIONS

5.1 That the Kenya Airports Authority should comply with the directions of the Public Procurement Administrative Review Board and enter into formal contract with consortium of Anhui Construction Engineering Limited (ACEL) in joint venture with China Aero-Technology International Engineering Corporation (CATIC) within 28 days of 29th August 2012.

5.2 That the Board of Directors of the Kenya Airports Authority and the Minister for Transport obey the law and refrain from interfering with the procurement process and day to day management of the Kenya Airport Authority.

5.3 The Government ensures that its operations are streamlined and there is a constant flow of information across all Ministries to avoid situations where policy decisions are made and rescinded due to lack of information as well as unnecessary bureaucratic delays caused by lengthy and complicated decision making processes.

MINUTES OF THE 1ST JOINT SITTING OF THE DEPARTMENTAL COMMITTEEs – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKS & HOUSING AND BUDGET COMMITTEE HELD ON 23RD AUGUST 2012, IN THE COMMITTEE ROOM, 5TH FLOOR , CONTINENTAL HOUSE.

PRESENT:

Hon. David Were, M.P. – Co-Chair
Hon. Chris Okemo – Co- Chair
Hon. Elias Mbau, MP – Co-Chair
The Hon. (Prof.) Philip Kaloki, M.P.
Hon. Jakoyo Midiwo, MGH, M.P.
Hon. John Mbadi, MP
Hon. Nelson Gaichuhie, MP
Hon. Ahmed Shabbir Shakeel, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Sammy Mwaita, M.P
Hon. Isaac Muoki, M.P.
Hon. Walter Nyambati, M.P.
Hon. Yusuf K. Chanzu, M.P.
Hon. Edwin O. Yinda, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Emilio Kathuri, MP
Hon. Benjamin Langat, M.P
Hon. Jackson Kiptanui,MP
Hon. Luka Kigen

ABSENT WITH APOLOGY

Hon. Musikari Kombo, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Ntoitha M'Mithiaru, M.P.
Hon. Nkoidila Ole Lankas, M.P.

Hon. Martin Otieno Ogindo, M.P.
Hon. Sheikh Dor Yakub, M.P.
Hon. Moses Lessonet, M.P.
Hon. Omari Zonga, M.P.
Hon. Alfred Sambu, M.P.
Hon. Abdul Bahari, M.P.
Hon. John Mututho, M.P.
Hon. Nemesyus Warugongo, M.P.
Hon. Danson Mungatana, M.P.
Hon. Clement Wambugu, M.P.
Hon. Boaz Kaino, M.P.
Hon. Joseph Kiuna, M.P.
Hon. John Mututho - Chairman, Agriculture, Livestock and Cooperatives
Hon. Dr. Robert Monda - Chairman, Health Committee
Hon. Fred Kapondi - Chairman, Administration & National Security Committee
Hon. Hussein Abdikadir- Chairperson, Constitution Implementation Oversight Committee

Hon. David Koech – Chairman, Education, Research & Technology
Hon. James Rege - Chairman, Energy, Communication & Information Committee
Hon. Aden Keynan - Chairman, Defense & Foreign Relations Committee
Hon. Mutava Musyimi – Chairman, Lands and Natural Resources
Hon. Sophia Noor – Chairperson, Labour and Social Welfare Committee
Hon. Thomas Mwadeghu – Chairman, Local Authorities and Funds Accounts Committee
Hon. Ekwe Ethuro – Chairman, CDF (CFC) Committee
Hon. Njoroge Baiya – Acting Chairman, Justice and Legal Affairs Committee
Hon. Dr. Bonny Khalwale – Chairperson, Public Accounts Committee
Hon. Mithika Linturi - Chairman, Public Investment Committee
Hon. David Ngugi- Chairperson, Local Authorities

IN ATTENDANCE - KENYA AIRPORTS AUTHORITY

Eng. Stephen Gichuki	-	Managing Director
Eng. Philemon Chamwada	-	General Manager
Mr. John Thumbi	-	General Manager, Finance
Mr. Allan Muturi	-	General Manager, Procurement
Mr. Francis Ngugi	-	Project Manager
Mr. George Kamau	-	Legal Officer

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Fredrick Muthengi	-	Fiscal Analyst
Ms. Josephine Kusinyi	-	Clerk Assistant

MIN. NO. 001/2012: PRELIMINARY

The Joint Chairperson called the meeting to order at 11.45a.m after prayers were said. He introduced Members present and welcomed the Managing Director, Kenya Airports Authority and his team.

MIN. NO. 002/2012: IMPLEMENTATION OF THE JOMO KENYATTA INTERNATIONAL AIRPORT EXPANSION PROJECT

The Managing Director invited the General Manager, Infrastructure, to appraise the Committee on the subject matter. The General Manager then informed the Committee as follows;-

(i) The current passenger terminal facilities were opened in 1978 with a capacity to handle 2.5 million passengers per annum and no major improvement has been carried out since, resulting in congestion and low level of passenger service.

(ii) The ongoing expansion commenced in 2006 with the aim of decongesting the airport through increasing the capacity from 2.5 million passengers per annum to 9.3 million passengers per annum and to improve safety and security at the airport. However,

following completion of the master plan review, further expansion was necessary to expand capacity for the airport to handle 17.1million passengers per annum in the year 2020 and 35.4million in the year 2030.

(iii) The Kenya Airways business development strategy in terms of new route development, fleet acquisition, and JKIA hub development through linking of every major African city to the rest of the World through JKIA, were considered in the traffic forecast. Kenya Airways plans to increase its fleet from the current 33 to 68 passenger aircraft by 2015 and 130 by 2020. Out of this planned aircraft acquisition, 20 are currently on order. The airline will also increase the number of dedicated freighters from 3 aircraft in 2011 to 19 in 2016. Consideration was also given to the Kenya Airways strategy to open six new destinations every year, expand capacity to the rapidly expanding economies of China and India and to position JKIA as the leading hub airport in Africa. In addition to the Kenya Airways hub operation, there is great interest from new operators to JKIA.

MIN. NO. 003/2012: STATUS OF IMPLEMENTATION OF JKIA EXPANSION

The General Manager further informed the Meeting that;

The JKIA expansion program is being implemented in six packages and the status of implementation is as follows:

(i) Package 1 - Construction of the terminal unit 4 passenger apron, the taxiways and associated civil and electrical works to increase the number of aircraft parking stands from 23 to 37 ,for which construction commenced in October 2006 and was completed in April 2008. The cost for this package was US$38million and was funded from KAA's own internal resources.

(ii) Package 2 - Construction of terminal unit 4, the multi-storey car park and the grade parking which is currently on-going having commenced in September 2010 and scheduled for completion in December 2013. The output from this project is the construction of a new international terminal unit with 30 check-in counter with separation of inbound and outbound passenger. It will further enhance airport hub development in particular to support the Kenya Airways route development strategy to link every major African city to the rest of the World through JKIA within the next five years. The estimated cost of the package is US$ 110.56 million and is Co-funded by the World Bank and AFD.

(iii) Package 3a - Construction of arrivals hall adjacent to Terminal 4 to increase capacity to handle arriving passengers, to commence in June 2013 and be completed by May 2014. The estimated cost is US$ 24.5 million funded by EIB.

(iv) Package 3b - Renovation and re-organization of terminal unit 1, 2, 3 and arrivals building including construction of new infill building to commence in August 2013 and be completed in June 2015.The estimated cost is US$69.5million funded by EIB.

(v) Package 4a – Rehabilitation and upgrading of aircraft pavements and upgrading of ILS system from ICAO CAT I to CAT II to increase capacity of runway and to improve on

safety of operation on the runway, construction is expected to commence in November 2012 and be completed in April 2015. The estimated cost is US$ 55million co-funded by AFD and KAA.

(vi) Package 4b - Construction of 16 additional aircraft stands in support of Kenya Airways route development strategy within the next 2 years. The construction commenced in March 2012 and will be completed in August 2013. The estimated cost is Kshs.2.3billion funded from KAA internal resources.

(vii) **Package 6**- Second Runway, Taxiways And Associated Facilities
This will be a parallel runway of length 5.7Km capable of handling Code F aircraft like Airbus A380. The design is in progress and works are expected to commence in March 2013 for a 24 months period. The cost estimate is US$150million which will be funded by GOK.

MIN. NO. 004/2012: CONSTRUCTION OF THE NEW GREENFIELD TERMINAL COMPLEX-PACKAGE 5

The Meeting was further informed that;

A. Construction of the New Greenfield terminal complex and associated facilities will provide the additional long term capacity to handle passengers and enhance operational efficiency necessary to consolidate the position of JKIA as the premier hub in the region.

B. The design footprint is modular and in line with current airport design practices, allows for future expansion without interrupting operations of the Terminal building during construction. The JKIA Greenfield design foot print allows for another 12 million passengers.

C. The scope of the proposed development shall include the construction of a new terminal building with floor area of about 178,000 square metres on four levels conceived as a hub terminal for efficient connectivity for transiting passengers. Among other facilities, it will have 50 international check-in positions; 32 contact and 8 remote gates; associated apron with 45 aircraft stands complete with fuel hydrant and all associated services. It will also include railway terminal, parking garage and airport hotel. The cost estimate is US$654million based on tendered amount.

- On 9th March 2011, the 147th Board of Directors meeting approved the Greenfield Terminal Project after meeting the Minister of Transport on the JKIA Masterplan.

- JKIA Greenfield Project was tendered in accordance with the Public Procurement and Disposal Act and advertised in an open process on, 24th June 2011 as well as posted to KAA Website. Through request from some bidders, the closing date was extended from 21st September 2011 to 25th October 2011 and further extended to 17th November 2011. This allowed for more time to put together their submission. The only communication from Ministry of Transport during the 5 month tendering period

was on 3rd October, 2011 when KAA received a letter from PS Transport to proceed with the tender as a design, build and finance.

D. Bid Submission

- Five bids were submitted on the closing day, 17th November 2011.
  - i) Three (3) were contractors
    - Larsen & Toubro – India
    - Sinohydro Corporation Ltd – China
    - Pascall + Watson architects/Anhui Construction Group JV – UK/China
  - ii) One bidder, M/s China State Construction Group arrived late past opening time and their bid was not open.
  - iii) (1) was a bank – Citigroup
  - iv) (1) was a financial institution - Sifikile
- This was a two (2) envelope bid, i.e. financial and technical proposals were submitted in separate envelopes.
- Bidders were not required to finance the works but were to identify a financier who would, and if successful, sign a separate contract with KAA.
- The tender required bidders to submit a financial proposal in two parts, financing proposal (loan terms) and financial proposal (amount of bid).
- Bidders were also required to prove they had a competent lead consultant to carry out the designs, either by association or by use of internal capacity.

E. Evaluation and award

- The bank and the financial institution were deemed incomplete bids as they only had financing proposals.
- Sinohydro Corporation Ltd failed because it did not meet mandatory requirement to demonstrate design capacity.
- Two (2) bidders made it to detailed evaluation.
  - i) Pascall + Watson architects/Anhui Construction Group JV – UK/China.
  - ii) Larsen & Toubro – India.
- Larsen & Toubro failed to meet the pass mark. Reasons included and not limited to:
  - Submitted experience for design and build for past projects for which they were only contractors.
- One (1) bidder made it to financial evaluation.
  - Pascall + Watson architects/Anhui Construction Group JV – UK/China.
  - Bidders amount was USD 654 million. Bid was 5.21% lower than the Engineers pre-bid estimate of USD 646 million.
  - Bidder submitted two financing options namely China Development Bank and China Exim Bank. Both met minimum criteria set out in the RFP and submitted favorable terms.

- The Tender Committee did a comparative analysis of the costs with recently completed similar Airports globally. The price was found to be comparable to average rates of the following;
    i) Cairo International Airport Terminal 3 – 2009.
    ii) King Abdul Aziz, Jeddah Saudi Arabia – 2011.
    iii) Sofia airport, Bulgaria – 2006.

MIN. NO. 005/2012: DEVELOPMENTS LEADING TO THE DIRECTIVE FOR CANCELLATION OF TENDER

In conclusion, the Meeting was informed that:

(i) Following a briefing to the PS Ministry of Transport by KAA Managing Director and the Chairman of the Board of Directors, on 10th January 2012, Transport PS issued a letter, under secret cover, requesting the Managing Director KAA to restart the tender process. Reasons as follows:
    a. Unacceptable minimum number of acceptable technical and financial proposals to be compared.
    b. Bidders did not provide finance.
    c. Bidders should compete on Design and Build basis.

(ii) On 8th February, 2012 KAA responded to the PS Ministry of Transport clarifying the following:
    a. After a 5-month tender submission period, only 5 Bidders submitted Bids. Of which only 3 were complete bids.
    b. Contrary to the PS Transports Ministry's letter, Bidders were NOT REQUIRED to finance the project. They were only required to submit their bid with a Third Party financier's proposal. A bidder financing this project would be deemed to be a Public Private Partnership (PPP) and thus follow a different laid out process.
    c. Bidders DID compete on the design and Build basis alone as stipulated in the RFP document. No other criteria were used.
    d. Louis Berger from USA had been competitively sourced by KAA and engaged to supervise the works of the contractor. Louis Berger's experience include :
        i. Newark International Airport
        ii. Atlanta International Airport
        iii. South Korea (Incheon) International Airport
        iv. Navi Mumbai International Airport
        v. Islamabad International Airport
        vi. Multan International Airport
        vii. Thailand (Suvarnabhumi) Airport
        viii. Mauritius (Ramgoolam) International Airport
        ix. Jordan(Queen Alia) International Airport
        x. Jamaica (Sangstar) International Airport

xi. Vietnam (Da Nang) International Airport

(iii) On 10th February 2012, the PS Ministry of Transport responded with instructions to act on January 10th 2012 Letter.

(iv) On 13th February 2012, the Minister and PS Ministry of Transport summoned the KAA Board and management for a discussion on the Tender. A presentation was made justifying the need to proceed with the process. The Minister instructed the Board to cancel the award and start the process afresh.

(v) On 14th February, KAA management in consultation with the Board wrote to the Hon. Attorney General for legal advice on cancelling the award. KAA also wrote to the external lawyers for the same advice.

(vi) On request from the Ministry, the Board met on 21st February, 2012 and endorsed the Ministers instruction to cancel the process. The KAA lawyers had advised that KAA should await an authoritative opinion from the Hon. Attorney General before moving forward. As a result, the board decision was not unanimous and the legal advice from the Attorney General had not been obtained at the time of this meeting. The Board considered two options:

a. Option 1 -Proceed with the project as tendered since expert opinion does not indicate any findings that were in contravention of the procurement regulations. This would ensure timely implementation of the project.
b. Option 2- Annul the ongoing procurement process and invite new tenders for the project. However, it was noted that this would result in delays in implementation and possible legal action by the bidder who had already been notified of the award in the on-going tender process.

(vii) On 22nd February, 2012 the Hon. Attorney General advised against cancellation of the tender citing that:

a. In opening one financial bid, the process produced an acceptable minimum number of technical and financial proposals.
b. It was clear that the bidders were NOT required to finance the project and that they were only to propose a financier (s) to KAA
c. Terminating will undermine the integrity and fairness of the procurement process.

(viii) On 6th March, 2012 PS Office of the Prime Minister wrote to KAA to withhold any action on the procurement process and prepare a Cabinet Paper for direction.

(ix) On 7th March 2012, KAA forwarded the Cabinet Paper as directed.

(x) On 13th March, 2012 KAA management appeared before the Cabinet Subcommittee for Infrastructure where a sub-committee of Ministers and a Technical sub-committee was formed to look into the details of the process of this tender.

(xi) On 20th March 2012, the PS, Prime Minister's Office wrote to the Attorney General requesting further analysis of legal implications of terminating the procurement process.

(xii) On 21st March, 2012, KAA received a letter from the PM's office requesting for certain documents for the Technical Sub-committee. KAA engineers delivered the documentation and appeared before the Technical sub-committee members.

(xiii) On 16th April 2012, the Attorney General responded to PS, Prime Minister's Office letter of 20th March 2012, reiterating his recommendations in his letter of 22nd February, 2012.

(xiv) On 22nd May 2012 the KAA Board of Directors held a meeting reiterating that the tender should be cancelled.

(xv) On 14th June 2012, the PS Ministry of Transport wrote to the Director General Public Procurement and Disposal Oversight Authority (PPOA), requesting for the DG's investigation on any breach of procurement law on the Greenfield procurement process.

(xvi) On 15th June 2012, DG, PPOA wrote to KAA advising on PS's request and at the same time requested for scheduling the dates for the investigation meetings.

(xvii) On 18th June 2012, DG, PPOA wrote to PS Ministry of Transport acknowledging receipt of the letter and advising on the likely day for completion of the exercise.

(xviii) On 25th June 2012, the Minister Ministry of Transport called a meeting with PS, Ministry of Transport, KAA, KCAA and KQ on way forward for implementation of the Greenfield terminal and second runway. In the meeting KQ was directed to engage a consultancy to review the Greenfield design and make necessary recommendations. The Minister also advised that he was appointing a steering committee to oversee the implementation of the Greenfield and 2nd runway.

(xix) On 10th July 2012, the KQ consultant, M/s Avia Solutions of UK held a kick off meeting with KQ, KAA and KCAA.

(xx) On 26th July 2012, the KAA Board of Directors held a meeting in which they instructed the MD to cancel the award.

(xxi) On 26th July 2012, the MD, KAA, wrote to the Attorney General requesting for legal direction on cancellation and copied Secretary to the Cabinet amongst other offices.

(xxii) On 27th July 2012, the Attorney General and Secretary to the Cabinet responded to the MD's letter, stating that it was not appropriate for the Board to direct MD to take action on the tender while the matter was pending with the cabinet

(xxiii) On 27th July 2012, the KAA Tender Committee held an urgent meeting on direction of the Board of Directors to cancel the tender. The Tender Committee recommended that the accounting officer, the MD should terminate.

(xxiv) On 31st July 2012, the MD, KAA wrote to the Tender Committee advising he was awaiting direction from the Cabinet.

(xxv) On 7th August, 2012, Secretary to the Cabinet wrote to KAA requesting action plan on ground breaking for Greenfield Terminal and 2nd Runway.

(xxvi) On 10th August 2012, the Minister for Transport gazetted the Steering Committee and issued appointment letters.

(xxvii) On 13th August 2012, the PS Prime Minister's Office wrote a letter to Secretary to the Cabinet, stating the need for the Board to observe Cabinet directive in light of cancellation of the award.

(xxviii) On 16th August 2012, PPOA concluded the investigations of procurement process for the Greenfield Terminal Project.

(xxix) On 17th August, the Board of Directors issued a statement to the press on the status on the Greenfield Terminal. A statement appeared in the print media on 19th August 2012.

(xxx) On 20th August 2012, the KAA MD responded to the Chairman Board of Directors

MIN. NO. 006/2012: INVESTIGATIONS

The Meeting was informed that after receiving an order from the Ministry of Transport to cancel the tender, the following developments have since taken place;

(i) On 20th January, 2012 after receiving a complaint, investigative officers from Ethics and Anti-Corruption Commission collected documents on the Greenfield Tender from KAA offices.

(ii) On 26th January, KAA wrote to Ethics and Anti-Corruption Commission to seek authenticity of the officer.

(iii) On 31st January, 2012 Ag. CEO EACC wrote to KAA confirming the investigation of the Greenfield Terminal tender following an alleged irregularity in the process.

(iv) On 15th February, 2012 EACC wrote to KAA clearing the tender process and allowing KAA to proceed with the project as planned.

(v) The Attorney General has issued two (2) legal opinions on 22nd February 2012 and 16th August 2012 advising against cancellation of the award.

(vi) The Public Procurement Oversight Authority (PPOA) on request of PS, Ministry of Transport conducted an investigation in August 2012. The conclusions of the investigations are that the procurement process is in order.

(vii) The Minister for Transport has appointed a steering committee to oversee the redesign and re-advertisement of the Greenfield Terminal Second runway

MIN. NO. 007/ 2012: DELIBERATIONS

After a brief deliberation on the cancellation of the tender for construction of the new airport terminal at JKIA, the Meeting resolved to recall the Managing Director and his team after Members have had a chance to peruse the documents presented before the Committee.

MIN. NO. 008/ 2012: ADJOURNMENT

There being no other business, the Joint Chair adjourned the meeting at half past one o 'clock.

SIGINATURE:.....DATE.....12/9/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....12/9/2012.....
(Co-Chairman (Hon. Chris Okemo,EGH, M.P.)

SIGINATURE:.....DATE.....12/09/2012.....
(Co-Chairman (Hon.Elias Mbau, M.P.)

MINUTES OF THE 2ND JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKS & HOUSING AND BUDGET COMMITTEE HELD ON WEDNESDAY 29TH AUGUST 2012, IN THE COMMITTEE ROOM 2ND FLOOR, CONTINENTAL HOUSE at 11:30 A.M.

PRESENT:

Hon. David Were, M.P. – Co-Chair
Hon. Chris Okemo – Co- Chair
Hon. Johnson Muthama, M.P.
Hon. (Prof.) Philip Kaloki, M.P.
Hon. Jakoyo Midiwo, MGH, M.P.
Hon. John Mbadi, MP
Hon. Nelson Gaichuhie, MP
Hon. Ahmed Shabbir Shakeel, M.P.
Hon. Sammy Mwaita, M.P
Hon. Isaac Muoki, M.P.
Hon. Walter Nyambati, M.P.
Hon. Edwin O. Yinda, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Emilio Kathuri, MP
Hon. Ababu Namwamba, M.P.
Hon. Omari Zonga, M.P.
Hon. Joseph Kiuna, M.P.
Hon. Ntoitha M'Mithiaru, M.P.
Hon. Alfred Sambu, M.P.
Hon. Jackson Kiptanui,MP
Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

Hon. Elias Mbau, MP – Co-Chair
Hon. Lucas Chepkitony, M.P.
Hon. Musikari Kombo, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Luka Kigen, M.P.
Hon. Yusuf K. Chanzu, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Benjamin Langat, M.P
Hon. Sheikh Dor Yakub, M.P.
Hon. Moses Lessonet, M.P.
Hon. Abdul Bahari, M.P.
Hon. John Mututho, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Nemesyus Warugongo, M.P.
Hon. Danson Mungatana, M.P.
Hon. Clement Wambugu, M.P.

Hon. Boaz Kaino, M.P.
Hon. John Mututho,M.P.
Hon. Dr. Robert Monda, M.P.
Hon. Fred Kapondi, M.P.
Hon. Hussein Abdikadir, M.P.
Hon. David Koech, M.P.
Hon. James Rege, M.P.
Hon. Aden Keynan, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Sophia Noor, M.P.
Hon. Thomas Mwadeghu, M.P.
Hon. Ekwe Ethuro, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Dr. Bonny Khalwale, M.P.
Hon. Mithika Linturi, M.P.
Hon. David Ngugi, M.P.

IN ATTENDANCE	KENYA NATIONAL ASSEMBLY	
Mr. Fredrick Muthengi	-	Fiscal Analyst
Ms. Josephine Kusinyi	-	Clerk Assistant
Mr. Evans Oanda	-	Clerk Assistant
Ms. Rose Mudibo	-	Public Relations Officer
Ms. Lucy Makara	-	Fiscal Analyst
Mr. Benjamin Ng'imor	-	Fiscal Analyst
Mr. Gilbert Kirui	-	Fiscal Analyst

MIN.NO. 009/2012: PRELIMINARY

The meeting started with a word of prayer at 11:40 am.

MIN.NO. 010/2012: IMPLEMENTATION OF THE JOMO KENYATTA INTERNATIONAL AIRPORT EXPANSION PROJECT

The Committee deliberated on the matter and resolved as follows:

A. Seek an extension of two weeks from the speaker to enable it conclude its work. The Chairman of Transport Committee undertook to raise the matter with the speaker.

B. The Secretariat was asked to summarize the report that was tabled by the Kenya Airports Authority when it appeared before the Committee to enable Members to easily and quickly grasp all the salient issues within the report.

C. Invite the following stakeholders to its meetings to shed light on the matter:

i. The Management of the Kenya Airports Authority to appear on Thursday 30th August, 2012 at 10:30 am.
ii. The Board of Kenya Airports Authority to appear on Thursday, 30th August, 2012 at 3:30 pm.
iii. The Public Procurement Oversight Authority to appear on Tuesday 4th August, 2012 at 11:00 am
iv. The Attorney General to appear on Tuesday 4th September, 12:30 Pm
v. The PS in the Prime Minister's Office to appear on Tuesday 4th September, 3:30 Pm
vi. The PS, Secretary to the Cabinet and Acting Head of Public Service, to appear on Tuesday 4th September, 4:30 Pm
vii. The Ethics and Anti Corruption Commission to appear on Wednesday 5th September, 2012 at 11:00 am
viii. The Minister for Transport and His Permanent Secretary to appear on Wednesday 5th September, 2012 at 3:30 pm

MIN. NO. 011/ 2012: ADJOURNMENT

There being no other business, the Joint Chairman adjourned the meeting at twenty minutes past twelve o 'clock.

SIGINATURE:.....DATE.12/9/12
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.12/9/2012
(Co-Chairman (Hon. Chris Okemo,EGH, M.P.)

SIGINATURE:.....DATE.12/09/2012
(Co-Chairman (Hon.Elias Mbau, M.P.)

MINUTES OF THE 3RD JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKS & HOUSING AND BUDGET COMMITTEE HELD ON THURSDAY 30TH AUGUST 2012, IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 10:30 A.M.

PRESENT:

Hon. David Were, M.P. – Co-Chair
Hon. Chris Okemo – Co- Chair
Hon. Elias Mbau, MP – Co-Chair
Hon. Jakoyo Midiwo, MGH, M.P.
Hon. John Mbadi, MP
Hon. Nelson Gaichuhie, MP
Hon. Isaac Muoki, M.P.
Hon. Walter Nyambati, M.P.
Hon. Edwin O. Yinda, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Emilio Kathuri, MP
Hon. Lucas Chepkitony, M.P.
Hon. Clement Wambugu, M.P.
Hon. Omari Zonga, M.P.
Hon. Yusuf K. Chanzu, M.P.
Hon. Moses Lessonet, M.P.
Hon. Joseph Kiuna, M.P.
Hon. Dr. Robert Monda, M.P.
Hon. Musikari Kombo, M.P.
Hon. Ntoitha M'Mithiaru, M.P.
Hon. Sophia Noor, M.P.
Hon. David Ngugi, M.P.
Hon. Jackson Kiptanui,MP
Hon. Lenny Kivuti, M.P.

ABSENT WITH APOLOGY

Hon. Nkoidila Ole Lankas, M.P.
Hon. Alfred Sambu, M.P.
Hon. Sammy Mwaita, M.P
Hon. Ahmed Shabbir Shakeel, M.P.
Hon. Johnson Muthama, M.P.
Hon. (Prof.) Philip Kaloki, M.P.
Hon. Luka Kigen, M.P.
Hon. Ababu Namwamba, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Benjamin Langat, M.P
Hon. Sheikh Dor Yakub, M.P.
Hon. Abdul Bahari, M.P.

Hon. John Mututho, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Nemesyus Warugongo, M.P.
Hon. Danson Mungatana, M.P.
Hon. Boaz Kaino, M.P.
Hon. John Mututho,M.P.
Hon. Fred Kapondi, M.P.
Hon. Hussein Abdikadir, M.P.
Hon. David Koech, M.P.
Hon. James Rege, M.P.
Hon. Aden Keynan, M.P.
Hon. Mutava Musyimi, M.P.
Hon. Thomas Mwadeghu, M.P.
Hon. Ekwe Ethuro, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Dr. Bonny Khalwale, M.P.
Hon. Mithika Linturi, M.P.

IN ATTENDANCE - KENYA AIRPORTS AUTHORITY

Eng. Stephen Gichuki	-	Managing Director, KAA
Eng. Philemon Chamwoda	-	General Manager, Projects and Engineering services
Mr. John Thumbi	-	General Manager, Finance
Mr. Allan Muturi	-	General Manager, Procurement
Mr George Kamau	-	Legal Officer
Mr. Francis Ngigi	-	Projects Manager
Mr. Jonah Biwott	-	Procurement Assistant

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mrs. Florence Abonyo	-	Clerk Assistant
Ms. Josephine Kusinyi	-	Clerk Assistant
Mr. Fredrick Muthengi	-	Fiscal Analyst
Mr. Evans Oanda	-	Clerk Assistant
Ms. Rose Mudibo	-	Public Relations Officer
Mr. Benjamin Ng'imor	-	Fiscal Analyst
Mr. Gilbert Kirui	-	Fiscal Analyst

MIN.NO. 012/2012:PRELIMINARY

The Co-Chairman brought the meeting to order at 10:30 am after which players were said. He then introduced Members present and welcomed the managing director, Kenya Airports Authority, and his team to appraise the Committee on the implementation status of the Greenfield project at the Jomo Kenyatta International Airport.

MIN.NO. 013/2012: MEETING WITH THE MANAGEMENT OF THE KENYA AIRPORTS AUTHORITY ON THE IMPLEMENTATION OF THE JOMO KENYATTA INTERNATIONAL AIRPORT EXPANSION PROJECT

The Committee was informed as follows:

Tendering process

i. The Kenya Airports Authority Board had approved the JKIA Master Plan by the Consultant to design/build Greenfeild passenger Terminal complex and the associated works at the Jomo Kenyatta International Airport in its 147th Board meeting of 9th march 2011 at a cost of $500 million subject to modifications in line with the Board Members' observations. The Board therefore directed the management to immediately commence the process of implementation.

ii. Considering that $500 million stated before and during tendering was abroad level estimates based on the master Plan concept, the KAA engineers did a bill of quantities factoring in the modifications (upgraded utilities that were not in the master plan) proposed by the Board as part of the tendering process and arrived at a value of $646 million. These upgraded utilities included:
    a. Main supply upgrade for 66KV double line from a distance of up to 6KM, power station with switch yard and step down transformer and associated switchgear;
    b. Air traffic control systems related to building interface with control tower;
    c. New supply line for fuel hydrant from KPC fuel tank complete with all accessories;
    d. Enhancement of water supply by an independent source, storage and distribution system;
    e. Water harvesting infrastructure; and
    f. Water recycling systems

iii. The tender document stated that the bidders would submit a technical and financial proposal. The proposed financier would be expected to negotiate with the authority and enter into a separate financing agreement with the authority for the financing. Under the Loans Guarantee Act, the KAA is mandated to seek parliament approval in getting the loans. However, this was not the case with the Greenfield project since KAA would secure financing through assignment of its receivables as per the KAA Act. The prospective tenderers were duly informed of this fact.

iv. The procuring process was conducted within the timelines prescribed under the procurement law. The bids were invited on 25th June 2011 and they were submitted in November 2011. The process of open tendering was therefore duly followed considering that a five months period was provided. Upon closure of submission of bids, China State Corporation was late by 30 minutes and therefore did not submit its bid.

v. Thereafter the evaluation process was undertaken in accordance with section 16(5)(b) of the Public Procurement and Disposal Act 2005 which stipulates that after opening the bids, the evaluation process should be concluded within 30 days. The bids were opened on 17th November 2011 and award made on 15th December 2011; which was within the allowed time. The contractor accepted the award on 19th December 2011.

vi. Throughout the procurement process, all the stakeholders were involved. For instance, the Kenya Airways was on board from inception to an extent of even submitting an addendum after the master plan had been developed. The Minister for Transport and his PS were presented with a master plan on 5th November 2010. Through a letter in September 2011 the Ministry of Transport advised KAA to proceed with the tender as it was. The KAA did a presentation of the project to the Cabinet Sub-Committee on infrastructure on 13th March 2012.

Attempted Cancellation of the tender

vii. On 14th November 2011, the Ministry of Transport received a letter from the office of the Prime Minister expressing concern that the Greenfield project was too big to commit the taxpayers' money before cabinet approval. It recommended stoppage of the tendering process pending cabinet approval.

viii. Upon receipt of the communication from the Prime Minister's Office, the KAA management visited the office of the Prime Minister and made a detailed presentation of the Project to the Prime Minister. While agreeing that the project should go on, the Prime Minister advised the KAA management to prepare a cabinet memo for the same project; which the KAA duly did and submitted to the Cabinet through the Ministry of Transport (7th march 2012). However, the outcome of this cabinet memo is yet to be disclosed.

ix. On 13th February 2012, the Minister and PS Ministry of Transport summoned the KAA Board and management for a discussion on the tender. A presentation was made justifying the need to proceed with the process. The Minister instructed the Board to cancel the award and start the process afresh.

x. On 14th February, KAA management in consultation with the Board wrote to the Hon. Attorney General for legal advice on cancelling the award. KAA also wrote to the external lawyers for the same advice.

xi. On request from the Ministry, the Board met on 21st February, 2012 and endorsed the Ministers instruction to cancel the process. The KAA lawyers had advised that KAA should await an authoritative opinion from the Hon. Attorney General before moving forward. As a result, the Board's decision was not unanimous and the legal advice from the Hon. Attorney General had not been obtained at the time of this meeting. The KAA was to later meet on 22nd May 2012 and 26th July

2012 where they instructed the Managing Director to cancel the tender against the Hon. Attorney General's advice. This decision was advised against by the Attorney general and the Secretary to the Cabinet on 27th July 2012 pending discussion

xii. In his earlier advice of 22nd February 2012, the Hon. Attorney General had advised against cancellation of the tender citing that:

a. In opening one financial bid, the process produced an acceptable minimum number of technical and financial proposals.
b. It was clear that the bidders were NOT required to finance the project and that they were only to propose financier (s) to KAA
c. Terminating will undermine the integrity and fairness of the procurement process.

xiii. The Public Procurement Advisory Board, Public Procurement Appeals Review Board and the Ethics and Anticorruption Commission have since investigated the tendering process and given it a clean bill of health.

Managing Director sent on compulsory leave

xiv. On 24th August 2012, the KAA Board held a special Board meeting in absence of the managing director (without consultation with the Managing director) where it resolved to send him on a compulsory leave and thereafter appointed an acting Managing Director. The meeting was held a day after the KAA management was appearing before the Committee to give evidence on the matter. The Board has since instructed closure of the Managing Director's office including that of his secretaries.

xv. The reasons given for sending the Managing Director on compulsory leave was due to his failure to implement Board decisions and his lack of appreciation of the complementally roles of the Board.

xvi. The Managing Director has since gone to the industrial court and obtained a court order dated 27th August 2012 staying the KAA Board's decision pending hearing and determination of the application.

MIN.NO. 014/2012: COMMITTEE OBSERVATIONS

The Committee noted the following:

1. The whole process of procurement was duly followed as provided for in the Public Procurement and Disposal Act, 2005.

2. The KAA Board's decision to send the Managing Director on Compulsory leave when it was aware that he was a chief witness in the Committees' investigation was done in bad faith and in contempt of parliament.

3. The KAA's Board decision to cancel the tender on the grounds that the outcome of the tendering process was wrong was ill-advised considering that it was an open tendering system where every company had equal opportunities to bid.

4. The KAA Management's decision to vary the cost of the tender was in line with the KAA' Board resolution of 9th March 2011 (147th meeting) which adopted the master plan with modifications therein. Modification of the master plan to include some aspects which were not previously there would essentially lead to the corresponding increase in cost. Furthermore, the costing was informed by the bill of quantities done by the KAA engineers.

5. It is in bad faith for both the Ministry of Transport and the KAA Board to ignore the advice of the Attorney General, the Public procurement Oversight Advisory, and the Public Procurement Advisory Review Board against the cancellation of the Greenfield Project Tender.

6. Throughout the tendering process, it is clear that stakeholders like Kenya Airways, Kenya Roads Board, the Office of the Prime Minister and the Ministry in charge were involved.

MIN. NO. 015/ 2012: ADJOURNMENT

There being no other business, the Joint Chairman adjourned the meeting at thirty minutes past one o 'clock.

SIGINATURE:.....DATE.....12/9/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....12/9/2012.....
(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE.....12/09/2012.....
(Co-Chairman (Hon. Ellas Mbau, M.P.)

MINUTES OF THE 4TH JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKDS AND HOUSING AND BUDGET COMMITTEE HELD ON THURSDAY 30TH AUGUST 2012 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 4.00 PM.

PRESENT

Hon. David Were, M.P. Co-Chair
Hon. Chris Okemo, M.P. Co-Chair
Hon. Edwin Yindan, M.P.
Hon. Ntoitha M'mithiaru, M.P.
Hon. (Prof) Philip Kaloki, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.
Hon. Isaac Muoki, M.P.
Hon. David Ngugi, M.P.
Hon. Joseph Kiuna, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Emilio Kathuri, M.P.
Hon. Jakoyo Midiwo, M.P.
Hon. Omar Zonga, M.P.
Hon. Clement Wambugu, M.P.
Hon. Yusuf Chanzu, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.

ABSENT WITH APOLOGY

Hon. Elias Mbau, M.P. Co-Chair
Hon. John Mbadi, M.P.
Hon. Walter Nyambati, M.P.
Hon. Benjamin Langat, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Luka Kigen, M.P.
Hon. Musikari Kombo, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Sheikh Dor Yakub, M.P.
Hon. Alfred Sambu, M.P.
Hon. Abdul Bahari, M.P.
Hon. John Mututho, M.P.
Hon. Nesmesyus Warugongo, M.P.
Hon. Danson Mungatana, M.P.
Hon. Boaz Kaino, M.P.
Hon. John Mututho, M.P. - Chairman, Agriculture, Livestock and Cooperatives
Hon. (Dr.) Robert Monda, M.P. – Chairman, Health Committee
Hon. Fred Kapondi, M.P. – Chairman, Administration & National Security

Hon. Hussein Abdikadir, M.P. – Chairman, Constitution Implementation Oversight Committee
Hon. David Koech M.P. – Chairman, Education, Research & Technology
Hon. James Rege, M.P. – Chairman, Energy, Communication & Information
Hon. Aden Keynan, M.P. – Chairman, Defense & Foreign Relations Committee
Hon. Mutava Musyimi, M.P. – Chairman, Lands and Natural Resources
Hon. Sophia Noor, M.P. – Chairperson, Labour and Social Welfare Committee
Hon. Thomas Mwadeghu, M.P. – Chairman, Local Authorities and Funds Accounts
Hon. Ekwe Ethuro, M.P. – Chairman, CDF (CFC) Committee
Hon. Njoroge Baiya, M.P. – Acting Chairman, Justice and Legal Affairs Committee
Hon. (Dr.) Bonny Khalwale, M.P. – Chairman, Public Account Committee
Hon. Mithika Linturi, M.P. – Chairman, Public Investments Committee

IN ATTENDANCE	BOARD, KENYA AIRPORTS AUTHORITY
Hon. Martin Wambora	- Chairman
Mr. Kulow Maalim Hassan	- Director, Kenya Airports Authority
Mr. Victor Arika	- Legal Counsel, Kenya Airports Authority
Mrs. Catherine Kuria	
Mr. Isaac N. Kamau	

IN ATTENDANCE	KENYA NATIONAL ASSEMBLY
Ms. Josephine Kusinyi	- Clerk Assistant
Mr. Evans Oanda	- Clerk Assistant
Ms. Rose Mudibo	- Public Relations Officer
Mr. Benjamin Ng'imor	- Fiscal Analyst

MIN. NO.016/2012: PRELIMINARY

The meeting was called to order at 4.30 p.m. followed by a word of prayer. The joint Chairperson introduced the Members of the Committee and welcomed the Board of Kenya Airports Authority. The Chairperson proceeded to brief the Board that the agenda of the meeting was on the Jomo Kenyatta International Expansion Project, which had been referred to the Committee by the Speaker on the 16th of August 2012. The Board was further informed that the Committee had met the management of Kenya Airports Authority twice and needed to hear from the Board.

MIN. NO.017/2012: BRIEFING BY THE BOARD ON THE JOMO KENYATTA INTERNATIONAL AIRPORT EXPANSION PROJECT

The Committee was informed as follows:-

Functions of the Board

Section 15 (1) of the State Corporation Act, Cap 446 provides that a Board shall be responsible for the proper management of the affairs of a state corporation and shall be accountable for the moneys, the financial business and the management of a state corporation.

Section 10 (f) of the Kenya Airports Authority Act, Cap. 395 Provides that in exercising its duty, the Managing Director may be given directions by the Board.

Section 10(c) of the Kenya Airports Authority Act, Cap. 395 Provides that the Board may approve any individual capital work for the purpose of the Authority, not included within the programme of works approved by the Minister, of which the estimated cost does not exceed ten million shillings or such other sum as the Minister, from time to time, by order determine;

The tendering process of the Greenfield Terminal

The Board approved USD 500 million as the cost estimates for the Greenfield terminal based on the master plan prepared by the consultant.

According the Public Procurement and Disposal Act, 2005, Procurement process is a preserve of the management and therefore the Board had no business in interfering with it so long as the law was duly followed. This was the common practice within the Kenya Airports Authority's procurements that had been undertaken. Therefore, the only time when the Board would be required was during the approval stages of the project.

The Kenya Airports Authority Board was kept in the dark about the Greenfield Project by the management in the whole tendering process.

Though the law was duly followed during the tendering process, the Board was uncomfortable with the outcome of the process. It felt that it did not produce an acceptable minimum number of acceptable technical and financial Proposals that could be compared especially considering that out of 120 tenderers who bought tender documents; only five submitted their bids. Furthermore, two of the five firms that submitted their bids had incomplete documents (had no financing proposals).

The fact that there were about three hundred enquiries throughout the tendering was an indication to the Board that the tendering documents were not clear to majority of the tenderers.

Management acted within the law by rejecting the tenderer who was late by thirty minutes to submit his bid.

Attempted Cancellation of the tendering

14th November, 2011, a letter to the Permanent Secretary, Ministry of Transport from the Prime Minister's Office on the tender for the development of the second terminal and runway at Jomo Kenyatta International Airport expressed concern that the project, as structured, required mobilization of massive resources with approval by various arms of government and therefore it required cabinet approval for it to go forward. It

recommended that the procurement process be stopped immediately and commencement of the mechanism of seeking cabinet approval for the same by way of a Cabinet Memorandum.

Management acted in contempt of the Prime Minister's Office by awarding the tender to Anhui Construction Engineering Group Co. Ltd. (ACEG), at a sum of US$653,782,814.57 (inclusive of 10% contingencies for the works, 5% for employer's supervision consultant and all taxes), on the 16th December, 2011.

19th December 2011, the Anhui Construction Engineering Group Co. Ltd (ACEG), in joint venture with Aero-Technology International Engineering Corporation (CATIC), accepted the award through writing.

The cost of the tender awarded ($653 million) was materially different from the initial approved cost of $500 million by the Board. This variation (about 30%) did not augur well with the Board and it clearly depicted unappreciation of the complementary roles of the Board by the Management.

In a letter dated 10th February 2012, from the Permanent Secretary, Ministry of Transport to the Managing Director and copied to the Chairman of the Board, KAA instructed the KAA Management not to commit the Airports Authority on any contractual arrangement on the proposed Greenfield project until the issues raised by the office of the Prime Minister and the Ministry had been resolved by the Cabinet.

In the Boards' 155th special meeting of Directors held on Tuesday 21st February, 2012 to deliberate on the status of the Greenfield Terminal project following a meeting at the Ministry of Transport on 13th February, 2012, it was resolved that KAA annul the ongoing procurement process and re-start the same. There was one dissent from Director, Kibuchi Muriithi.

The KAA Management ignored the board's resolution and instead sought the Attorney General's legal opinion on the matter. The Attorney General's response came on 22nd February 2012, which to the Board's interpretation questioned the out come of the tendering process. The Attorney General in Part said ""Where only one or two bids are determined responsive the procuring entity shall have the option of proceeding with the evaluation or determining the entire tender non-responsive."

The Kenya Airports Authority Board's 157th special meeting reiterated its resolution of 155th meeting that the procurement process for the Greenfield Terminal project be annulled and restarted. It further resolved to bring all the stakeholders on board before any decisions were made.

The 206th Tender Committee special meeting held on 27th July 2012 resolved that the tender awarded to M/s An Hui construction Engineering Group Ltd (ACEG) and M/s China Aero-Technology International Engineering Corporation (CATIC) be annulled as per the Board's resolutions of 21st February, 2012 and 25th May, 2012.

The special Board meeting that was held on 24th August 2012 was procedurally called for. The chairman and the Managing Director had consulted over the phone to call for the same meeting. However, the Managing Director did not attend that meeting. It is in this meeting when the Board resolved to send the Managing Director on a compulsory leave for failing to implement its resolutions and leaking the Authorities' classified documents to the outsiders.

The Authority has since learned through an Industrial court order that the Managing Director has been granted a stay in his duties pending hearing and determination of the matter. It however denied withdrawing the Managing Director's emoluments save for his offices for security reasons.

MIN. NO. 018/2012: COMMITTEE OBSERVATIONS

The Committee observed the following:

1. The whole process of procurement was duly followed as provided for in the Public Procurement and Disposal Act, 2005.
2. Though Procurement process is a preserve of the Management, it was erroneous for the Board to submit that it did not single that was happening during the procurement process.

3. The KAA Board's decision to send the Managing Director on Compulsory leave when it was aware that he was a chief witness in the Committees' investigation was done in bad faith and in contempt of parliament.
4. The KAA's Board decision to cancel the tender on the grounds that the outcome of the tendering process was wrong was ill-advised considering that it was an open tendering system where every company had equal opportunities to bid.

5. The KAA Management's decision to vary the cost of the tender was in line with the KAA Board's resolution of 9th March 2011 (147th meeting) which provided for adoption of the master plan with modifications therein. With modification of the master plan to include some aspects which were not previously there would essentially lead to the corresponding increase in cost. Furthermore, the costing was informed by the KAA engineers' bill of quantities.

6. The fact that one hundred and twenty tenderers bought the tender documents and only five returned their bids was common in the procurements involving massive capital outlay. Not every company that bought tender documents was capable of doing the job.

7. If the tender were to be cancelled, there is a possibility of the company that worn the tender suing the KAA and winning as advised by the Attorney General. If this was to occur, there would be dire financial implications.

8. The Board's interpretation of the legal opinion of the Attorney was selectively and narrowly done by leaving out its conclusion that stated "Thus seeking to terminate the procurement process after notification and acceptance of award of contract, the Authority will not only be contravening the provisions of clause 3.27.3 of the request for proposals but also acting in bad faith; thereby undermining the integrity and fairness of the procurement process."

9. It was in bad faith for both the Ministry of Transport and the KAA Board to ignore the advice of the Attorney General, the Public procurement Oversight Advisory, and the Public Procurement Advisory Review Board against the cancellation of the Greenfield Project Tender.

MIN. NO. 019/ 2012: ADJOURNMENT

There being no other business, the Joint Chairman adjourned the meeting at two minutes past six o 'clock.

SIGINATURE:.....DATE.12/9/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....
(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE.12/09/2012.....
(Co-Chairman (Hon. Elias Mbau, M.P.)

MINUTES OF THE 5TH JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKDS AND HOUSING AND BUDGET COMMITTEE HELD ON TUESDAY 4TH SEPTEMBER 2012 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 11.30 AM.

PRESENT

Hon. David Were, M.P. Co-Chair

Hon. Chris Okemo, M.P. Co-Chair

Hon. Elias Mbau, M.P. Co-Chair

Hon. Edwin Yinda, M.P.

Hon. Ntoitha M'mithiaru, M.P.

Hon. Lucas Chepkitony, M.P.

Hon. Ahmed Shakeel Shabbir, M.P.

Hon. Isaac Muoki, M.P.

Hon. David Ngugi, M.P.

Hon. Joseph Kiuna, M.P.

Hon. Nelson Gaichuhie, M.P.

Hon. Emilio Kathuri, M.P.

Hon. Yusuf Chanzu, M.P.

Hon. John Mbadi, M.P.

Hon. Jackson Kiptanui, M.P.

Hon. Alfred Sambu, M.P.

Hon. Lenny Kivuti, M.P.

Hon. Musikari Kombo, M.P.

Hon. Danson Mungatana, M.P.

Hon. Moses Lessonet, M.P.

Hon. James Rege, M.P. – Chairman, Energy, Communication & Information

ABSENT WITH APOLOGY

Hon. (Prof) Philip Kaloki, M.P.

Hon. Jakoyo Midiwo, M.P.

Hon. Omar Zonga, M.P.

Hon. Clement Wambugu, M.P.

Hon. (Dr.) Wilbur Ottichilo, M.P.

Hon. Walter Nyambati, M.P.

Hon. Benjamin Langat, M.P.

Hon. Jackson Kiptanui, M.P.

Hon. Luka Kigen, M.P.

Hon. Nkoidila Ole Lankas, M.P.

Hon. Martin Otieno Ogindo, M.P.

Hon. Sheikh Dor Yakub, M.P.

Hon. Abdul Bahari, M.P.

Hon. John Mututho, M.P.

Hon. Nesmesyus Warugongo, M.P.

Hon. Boaz Kaino, M.P.

Hon. John Mututho, M.P. - Chairman, Agriculture, Livestock and Cooperatives

Hon. (Dr.) Robert Monda, M.P. – Chairman, Health Committee

Hon. Fred Kapondi, M.P. – Chairman, Administration & National Security

Hon. Hussein Abdikadir, M.P. – Chairman, Constitution Implementation Oversight Committee

Hon. David Koech M.P. – Chairman, Education, Research & Technology

Hon. Aden Keynan, M.P. – Chairman, Defense & Foreign Relations Committee

Hon. Mutava Musyimi, M.P. – Chairman, Lands and Natural Resources

Hon. Sophia Noor, M.P. – Chairperson, Labour and Social Welfare Committee

Hon. Thomas Mwadeghu, M.P. – Chairman, Local Authorities and Funds Accounts

Hon. Ekwe Ethuro, M.P. – Chairman, CDF (CFC) Committee

Hon. Njoroge Baiya, M.P. – Acting Chairman, Justice and Legal Affairs Committee

Hon. (Dr.) Bonny Khalwale, M.P. – Chairman, Public Account Committee

Hon. Mithika Linturi, M.P. – Chairman, Public Investments Committee

IN ATTENDANCE		PUBLIC PROCUREMENT OVERSIGHT AUTHORITY (PPOA)
Mr. Maurice Juma	-	Director General
Mr. Peter Ndung'u	-	Manager, Compliance
Mr. Robert Kanyi	-	Capacity Building
Mrs. Jane Njoroge	-	General Manager, Technical Services

IN ATTENDANCE		KENYA NATIONAL ASSEMBLY
Ms. Josephine Kusinyi	-	Clerk Assistant
Mr. Evans Oanda	-	Clerk Assistant
Mr. Fredrick Muthengi	-	Fiscal Analyst
Mr. Benjamin Ng'imor	-	Fiscal Analyst

MIN. NO.020/2012: PRELIMINARY

The meeting was called to order at 11.30 a.m. followed by a word of prayer. The joint Chairperson introduced the Members of the Committee and welcomed the Director General, PPOA and his team.

MIN. NO.021/2012: BRIEFING BY THE DIRECTOR GENERAL, PPOA, ON THE GREENFEILD PROJECT

The Committee was informed as follows:-

i. The Permanent Secretary, Ministry of Transport vide a letter dated 6th June 2012, requested PPOA to undertake a procurement investigation on the tender for construction of the Greenfield Project. PPOA in turn informed KAA of the intended investigation, which was to commence immediately.

ii. Approval of the Project; The project was approved for commencement by the KAA Board of Directors, during its meeting held on 9th March 2011. KAA estimated the

project to cost Ksh. 68,305,021,899.13 and in the budget for the 2011/12 financial year, KAA had allocated Kshs. 1.2 Billion for the project.

iii. The procurement method used for the project was International Competitive Bidding. Bidders were required to submit bids containing both a technical and a financial proposal through the two envelope system.

iv. Pre Bid Meeting; KAA invited bidders to a pre bid meeting which was held on 19th July 2011. During the meeting, KAA clarified various questions raised by potential bidders.

v. Tender Opening; The technical bid was opened on 17th November 2011. Five firms namely:- M/s Sifikile, M/s Larsen & Turbo Ltd, M/s Beijing Construction Engineering Group & Sinohydro Corporation Limited(joint venture), M/s Anhui Construction Engineering Group & China National Aero Technology(joint venture) and M/s Citibank submitted their bids while M/s China Construction Engineering State Corporation Ltd were late and their bid rejected and returned un-opened.

vi. The Tender Committee at its meeting held on 15th December 2011 awarded the tender to M/s Anhui Construction Engineering Co. at a tender sum of Kshs. 64,745,354,315. Both the successful and unsuccessful bidders were notified on 16th December 2012 and 7th December 2012 respectively. The Successful bidder accepted the offer on 19th December 2011. No Contract has been signed to date.

vii. The final draft Report of the investigations carried by PPOA WAS FORWARDED TO KAA on 29th August 2012 for comments and a response from KAA is expected by 7th September 2012. This will then be analyzed and PPOA will conclude the matter and advise the Committee accordingly.

viii. The current Procurement laws were operationalized in 2006. An exercise to review the same is ongoing.

ix. PPOA monitors implementation of procurement laws in public entities while the Administrative Review Board is a forum where tendering disputes are resolved.

MIN. NO. 022/2012: PPOA'S OBSERVATIONS

The Committee was further informed as follows:-

i. KAA ought to have adopted the Public Private Partnership arrangement to procure the project as financing had not been secured at the time of commencement of the procurement process.

ii. The mandatory requirement in the technical proposal for a letter of intent from a financer may have limited participation by potential bidders who were unable to

secure a financer. This may partly explain why 110 potential bidders purchased the bid document and only 5 bidders submitted bids.

iii. In the minutes of the Tender Committee that awarded the tender, the head of procurement unit was not the Secretary as provided under Section 26(5)(b) of the Act.

iv. KAA's General Manager, Procurement and Logistics appointed members of the evaluation committee, which is contrary to Regulation 16 (3) of the PPOA Act which requires that the Accounting Officer appoints members of the evaluation Committee.

MIN. NO. 023/2012: COMMITTEE OBSERVATIONS

The Committee observed the following:

i. The brief presented before the Committee was neither signed nor dated and the Director General was requested to sign and date the document to make it admissible. Further, he was directed to submit a detailed report together with the letters exchanged between his office, KAA and the PS, Ministry of Transport and the ruling made by the Administrative Review Board.

ii. The Director General did not give a considered opinion on the matter before the Committee, although the Committee had expected him to give the way forward, being the expert in the procurement process.

iii. No party had objected to the tendering process.

MIN. NO. 024/ 2012: ADJOURNMENT

There being no other business, the Joint Chairman adjourned the meeting at twenty seven minutes past one o 'clock.

SIGINATURE:.....DATE.....12/9/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....12/9/2012.....
(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE.....12/09/2012.....
(Co-Chairman (Hon. Elias Mbau, M.P.)

MINUTES OF THE 6TH JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING & TRADE; TRANSPORT, PUBLIC WORKS & HOUSING AND BUDGET COMMITTEE HELD ON WENESDAY 5TH SEPTEMBER 2012, IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 11:00 AM.

PRESENT:

Hon. David Were, M.P. – Co-Chair
Hon. Chris Okemo, M.P. – Co- Chair
Hon. (Prof.) Philip Kaloki, M.P.
Hon. Danson Mungatana, M.P.
Hon. David Ngugi, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Ahmed Shabbir Shakeel, M.P.
Hon. John Mbadi, M.P.
Hon. Sofia Abdi Noor, M.P.
Hon. Isaac Muoki, M.P.
Hon. Walter Nyambati, M.P.
Hon. Yusuf K. Chanzu, M.P.
Hon. Edwin O. Yinda, M.P.
Hon. Alfred Sambu, M.P.
Hon. Emilio Kathuri, M.P.
Hon. Boaz Keino, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Clement Wambugu, M.P.
Hon. Moses Lessonet, M.P.
Hon. Mithiaru Ngeitha, M.P.
Hon. Joseph Kiuna, M.P.

ABSENT WITH APOLOGY

Hon. Lucas Chepkitony, M.P.
Hon. Jakoyo Midiwo, M.P.
Hon. Omar Zonga, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Elias Mbau, M.P.
Hon. Benjamin Langat, M.P.
Hon. Luka Kigen, M.P.
Hon. Musikari Kombo, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Sheikh Dor Yakub, M.P.
Hon. Abdul Bahari, M.P.
Hon. John Mututho, M.P.
Hon. Nesmesyus Warugongo, M.P.
Hon. John Mututho, M.P. - Chairman, Agriculture, Livestock and Cooperatives
Hon. (Dr.) Robert Monda, M.P. – Chairman, Health Committee
Hon. Fred Kapondi, M.P. – Chairman, Administration & National Security

Hon. Hussein Abdikadir, M.P. – Chairman, Constitution Implementation Oversight Committee
Hon. David Koech M.P. – Chairman, Education, Research & Technology
Hon. James Rege, M.P. – Chairman, Energy, Communication & Information
Hon. Aden Keynan, M.P. – Chairman, Defense & Foreign Relations Committee
Hon. Mutava Musyimi, M.P. – Chairman, Lands and Natural Resources
Hon. Thomas Mwadeghu, M.P. – Chairman, Local Authorities and Funds Accounts
Hon. Ekwe Ethuro, M.P. – Chairman, CDF (CFC) Committee
Hon. Njoroge Baiya, M.P. – Acting Chairman, Justice and Legal Affairs Committee
Hon. (Dr.) Bonny Khalwale, M.P. – Chairman, Public Account Committee
Hon. Mithika Linturi, M.P. – Chairman, Public Investments Committee

IN ATTENDANCE - ETHICS AND ANTI CORRUPTION COMMISSION (EACC)

Kennedy Masita	-	coordinator of investigations
Humphrey Maiva	-	EACC Staff
Joseph Owino	-	EACC Staff

IN ATTENDANCE - ATTORNEY GENERAL'S OFFICE

Proff. Githu Muigai, EGH, MP	-	Attorney General
Miss Chesoni	-	Parliamentary Assistant of AG

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Fredrick Muthengi	- Fiscal Analyst
Mr. Gilbert Kirui	- Fiscal Analyst
Mr. Benjamin Ng'imor	- Fiscal Analyst

MIN. NO. 25/2012: PRELIMINARY

The Joint Chairperson called the meeting to order at 11.40a.m after prayers were said. He introduced Members present and welcomed the Ethics and Anti-Corruption Commission (EACC) team.

MIN. NO. 26/2012: MEETING WITH ETHICS AND ANTI-CORRUPTION COMMISSION

The EACC informed the Committee as follows:-

i.) The EACC received an anonymous complaint on 17th January 2012 on alleged irregularities in the award of tender for the construction of the Greenfield Terminal worth USD 500 million. It was alleged that there was a conspiracy involving the Kenya Airports Authority (KAA) Managing Director (MD) and the Permanent Secretary (PS) Ministry of Finance to award the tender to Larson Toubro Company at USD 640 million of which the excess USD 140 million was to be shared between the KAA MD and the PS. The conduit of the bribe was a broker by the name Mohan.

ii.) The EACC launched an inquiry by requesting the KAA to give it a number of documents concerning the tendering process from the time of advertising of the tender to the point of notification of award of the tender. These included the advertised notice date, the memo approving commencement of procurement process, evaluation report, copy of opening register, minutes of meeting of opening of the tender, notification of award, letter of acceptance and international tender notice.

iii.) After scrutinizing and analyzing the documents, the EACC found out that the tender was opened on 17th November 2011. After evaluation, Anhui Construction Engineering Group Co. Ltd (ACEG) in joint venture with China Aero-Technology International Engineering Corporation (CATIC) was awarded the tender with a notification of award being issued on 16th December 2011. The company accepted the award on 19th December 2011. Larson Company which was alleged to have been associated with the KAA MD and the PS Ministry of Finance was eliminated at the technical evaluation stage.

iv.) Based on the preliminary investigation, EACC did not find any suspect dealings in the process and therefore advised KAA to proceed with the tender but in prudence.

MIN. NO. 27/ 2012: MEETING WITH THE ATTORNEY GENERAL OVER THE GREENFEILD TERMINAL PROJECT

The Committee was informed as follows:

i.) The tender was advertised by KAA on 24th June 2011 and it was due to close on 21st September 2011. However, it was extended twice due to the volume of queries by bidders to 17th November 2011. 120 tender documents were purchased and only 5 bidders returned the documents. 2 of the 5 bidders were incomplete and disqualified. 2 of the remaining 3 bids were technically non-responsive. The remaining bidder was technically evaluated and their financial proposal opened. The bidder did not have capacity to finance the project and had proposed 2 financing entities. A notification of award was sent to Anhui Construction Engineering in joint venture with China Aero-Technology International Engineering Corporation on 16th December 2011 and they responded affirmatively on 19th December 2011.

ii.) The PS Ministry of Transport wrote to the MD KAA on 10th January 2012 directing him to to prepare a cabinet brief on the progress of the project as had been requested earlier by the Office of the Prime Minister (OPM). Further the PS instructed the MD to issue a new tender that would be assessed on the basis of design, construct, cost and completion time without the financing aspect as none of the bidders had offered to provide finance. The financing aspect was to be left to KAA.

iii.) The KAA responded to the PS Ministry of Transport on 8th February 2012 stating that the tender process was carried out in a satisfactory manner. The KAA also sought legal advice from the Attorney General on the matter on 14th February 2012 stating that the PS, Ministry of Transport had directed for the cancellation of the tendering process and ordered a repetition of it yet a letter of award had already been issued to

the winning bidder. The Attorney General provided a legal opinion on the matter and advised the KAA to carry out the procurement process in accordance with the law and not terminate the process. On 24th February 2012, KAA submitted a cabinet brief on the development of the project to the PS, Ministry of Transport.

iv.) On 20th March 2012, the Office of the Prime Minister informed the Attorney General that the cabinet memo had been presented and discussed in the Cabinet Committee which directed that it be handled by a sub-committee on infrastructure which was required to advise on the matter in so far as tendering process; the legal implications of terminating the process and propose a way forward for the project. A special committee was established by the OPM to deal with the matter.

v.) The KAA forwarded the project summary and correspondences with various government institutions concerning the project to the Office of the Prime Minister and the Attorney General on 27th March 2012.

vi.) The Office of the prime Minister informed the Attorney General of a meeting of the technical committee and the ministers' committee to be held on 3rd April 2012. The report of the technical committee was forwarded to the Attorney General by the Office of the Prime Minister on 12th April 2012. On 16th April 2012, the Attorney General forwarded a legal opinion to the Office of the Prime Minister indicating that the project be implemented as tendered since the procurement process was carried out properly from a legal standpoint. The Office of the Prime Minister informed the Attorney General that the Minister's committee was to be held on 2nd May 2012.

vii.) On 10th May 2012, the Minister for Transport informed the Attorney General on the Ministry's disagreement with the legal opinions by the Attorney General and that the matter was before the Public Procurement Oversight Authority (PPOA) which would form a competent basis for a more comprehensive legal opinion. The Attorney General responded on 24th May 2012 stating that the office will wait for communication on the issue from the Minister for Transport or chairman of the Cabinet Sub-Committee.

viii.) On 26th July 2012, the KAA sought directions from the Attorney General on the cancellation of the tender in view of the legal opinion of the Attorney General, the directions from the Office of the Prime Minister to halt the procurement process pending a directive on mater from Cabinet and the clearance of the procurement process by the EACC.

ix.) On 27th July 2012, the Secretary to the Cabinet wrote to the Attorney General informing that the resolution by the KAA board to terminate the procurement process without the concurrence of the cabinet committee was in bad taste and disrespectful to Cabinet. The AG responded that since the matter was still pending in cabinet, it would be imprudent to initiate a parallel process as it could initiate conflict and expose the government and KAA to legal liability. The PS Office of the Prime Minister also concurred with the views of the Secretary to the Cabinet and Attorney General. The Office of the prime Minister was of the view that the Ministry of Transport should strongly reprimand the KAA board for breach of administrative protocol and the KAA rescind the decision to cancel the award of the contract while awaiting the

final policy direction from the cabinet. The Secretary to the Cabinet informed the AG of a meeting on this matter to be held on 29th August 2012.

x.) The MD KAA was ordered by the board to go on compulsory leave. The MD then wrote to the Chairman, Board of Directors KAA on 24th August 2012 on the issue of the compulsory leave. By a copy of the letter, the MD sought legal advice from the Attorney General. The Chairman, Board of Directors of KAA wrote to the Attorney General on the issue of compulsory leave of the MD stating that the board was not able to work with the MD as he persistently and consistently failed to implement the KAA board decisions.

xi.) The Attorney General indicated it was prudent for to await a cabinet decision since it was seized of the matter and was just about to conclude it. He However cautioned that cancellation of the tender would lead to increase of cost since the process will have to be undertaken afresh and there might be legal liability to the government and KAA.

xii.) The Attorney General further indicated that the Ministry of Transport did not furnish the Office of the Attorney General with any other document which would show any flouting of regulations by the KAA on the matters concerning the procurement of the tender.

MIN. NO. 28/ 2012: COMMITTEE OBSERVATIONS

The Committee noted the following:

1. The Attorney General had objectively articulated all the issues raised according to the law to the relevant government institutions as mandated by law. Therefore if any Government institution ignored his legal advice must have acted in contempt of law.
2. The composition of the KAA board of directors did not have regional balance.

MIN. NO. 29/ 2012: ADJOURNMENT

There being no other business, the Joint Chair adjourned the meeting at 1.00 pm.

SIGINATURE:.....DATE..12/09/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE..12/9/2012.....
(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE..12/09/2012.....
(Co-Chairman (Hon. Elias Mbau, M.P.)

MINUTES OF THE 7TH JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKDS AND HOUSING AND BUDGET COMMITTEE HELD ON THURSDAY 6TH SEPTEMBER 2012 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 3.30 PM.

PRESENT

Hon. David Were, M.P. Co-Chair
Hon. Chris Okemo, M.P. Co-Chair
Hon. Elias Mbau, M.P. Co-Chair
Hon. Edwin Yinda, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Emilio Kathuri, M.P.
Hon. Yusuf Chanzu, M.P.
Hon. Ntoitha M'mithiaru, M.P.
Hon. Boaz Kaino, M.P.
Hon. Joseph Kiuna, M.P.
Hon. David Ngugi, M.P.
Hon. Omar Zonga, M.P.
Hon. (Prof) Philip Kaloki, M.P.
Hon. Clement Wambugu, M.P.

ABSENT WITH APOLOGY

Hon. John Mbadi, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.
Hon. Isaac Muoki, M.P.
Hon. Alfred Sambu, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Moses Lessonet, M.P.
Hon. Walter Nyambati, M.P.
Hon. Musikari Kombo, M.P.
Hon. Danson Mungatana, M.P.
Hon. Jakoyo Midiwo, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Benjamin Langat, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Luka Kigen, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Sheikh Dor Yakub, M.P.
Hon. Abdul Bahari, M.P.
Hon. John Mututho, M.P.
Hon. Nesmesyus Warugongo, M.P.
Hon. John Mututho, M.P. - Chairman, Agriculture, Livestock and Cooperatives

Hon. (Dr.) Robert Monda, M.P. – Chairman, Health Committee
Hon. Fred Kapondi, M.P. – Chairman, Administration & National Security
Hon. Hussein Abdikadir, M.P. – Chairman, Constitution Implementation Oversight Committee
Hon. David Koech M.P. – Chairman, Education, Research & Technology
Hon. Aden Keynan, M.P. – Chairman, Defense & Foreign Relations Committee
Hon. Mutava Musyimi, M.P. – Chairman, Lands and Natural Resources
Hon. Sophia Noor, M.P. – Chairperson, Labour and Social Welfare Committee
Hon. Thomas Mwadeghu, M.P. – Chairman, Local Authorities and Funds Accounts
Hon. Ekwe Ethuro, M.P. – Chairman, CDF (CFC) Committee
Hon. Njoroge Baiya, M.P. – Acting Chairman, Justice and Legal Affairs Committee
Hon. (Dr.) Bonny Khalwale, M.P. – Chairman, Public Account Committee
Hon. Mithika Linturi, M.P. – Chairman, Public Investments Committee
Hon. James Rege, M.P. – Chairman, Energy, Communication & Information

IN ATTENDANCE		OFFICE OF THE PRESIDENT
Sam .Mwala		Principal Administrative Secretary
Mr. Kihara	-	Parliamentary Liason Officer

IN ATTENDANCE		KENYA NATIONAL ASSEMBLY
Ms. Josephine Kusinyi	-	Clerk Assistant
Mr. Evans Oanda	-	Clerk Assistant
Mr. Fredrick Muthengi	-	Fiscal Analyst
Mr. Benjamin Ng'imor	-	Fiscal Analyst

MIN. NO. 30 /2012: PRELIMINARY

The meeting was called to order at 4.00 p.m. followed by a word of prayer. The joint Chairperson introduced the Members of the Committee and welcomed representatives from the office of the Acting Head of Public Service, who conveyed the Permanent Secretary's apologies.

MIN. NO.31 /2012: BRIEFING BY REPRESENTATIVES FROM THE OFFICE OF THE ACTING HEAD OF PUBLIC SERVICE AND SECRETARY TO THE CABINET

The Committee was informed as follows:-

i. The expansion of the Jomo Kenyatta International Airport was a Vision 2030 flagship Project meant to accommodate the expansion of Kenya Airways and build Nairobi as a regional hub. Therefore this project has to be accelerated if Jomo Kenyatta International Airport was to achieve her status as a regional hub.

ii. Currently, the Cabinet Sub Committee on Infrastructure, chaired by the Hon. Chris Obure, was seized of issues surrounding the Greenfield Project. The Sub Committee is in the final stages of concluding the matter and soon rather than later the Cabinet will give policy guidelines on the same. Therefore as at now, the office of the secretary to the Cabinet had no policy guidelines to report on the matter.

iii. Though Procurement process as mentioned was mentioned as one of the factors that have derailed the process of implementation of the Greenfield Project, it is the Office of the Secretary to the Cabinet's view that procurement process is a preserve of other competent authorities and no the Cabinet. Cabinet can only issue policy directions.

MIN. NO. 32/2012: COMMITTEE OBSERVATIONS

The Committee observed that the Representatives from the Office of the Acting Head of Public Service were not well briefed to inform the Committee and it would be imperative to have the Acting Head of Public Service appear before the Committee in person.

MIN. NO.33 /2012: ANY OTHER BUSINESS

The Committee rescheduled its meetings as indicated below and noted that it was important to conclude its investigations as soon as possible so as to table its report by Wednesday 12th September 2012.

i. 10th September 2012 at 2:30 p.m meet with the Administrative Review Board

ii. 11th September at 11:30 am meet with the Cabinet Sub Committee on Infrastructure

iii. 11th September at 3:30 pm meet with the Minister for Transport

MIN. NO. 34 / 2012: ADJOURNMENT

There being no other business, the Joint Chairman adjourned the meeting at six o 'clock.

SIGINATURE:.....DATE.....12/09/12.....

(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....12/9/2012.....

(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE.....12/09/2012.....

(Co-Chairman (Hon. Elias Mbau, M.P.)

MINUTES OF THE 8TH JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKDS AND HOUSING AND BUDGET COMMITTEE HELD ON WEDNESDAY 11TH SEPTEMBER 2012 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE AT 3.30 PM.

PRESENT

Hon. David Were, M.P. Co-Chair
Hon. Chris Okemo, M.P. Co-Chair
Hon. Elias Mbau, M.P. Co-Chair
Hon. Emilio Kathuri, M.P.
Hon. Yusuf Chanzu, M.P.
Hon. Ntoitha M'mithiaru, M.P.
Hon. David Ngugi, M.P.
Hon. Omar Zonga, M.P.
Hon. (Prof) Philip Kaloki, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Alfred Sambu, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Musikari Kombo, M.P.
Hon. Jakoyo Midiwo, M.P.
Hon. Benjamin Langat, M.P.
Hon. Moses Lessonet, M.P.
Hon. Sheikh Dor Yakub, M.P.
Hon. (Dr.) Robert Monda, M.P. – Chairman, Health Committee
Hon. Aden Keynan, M.P. – Chairman, Defense & Foreign Relations Committee
Hon. Ekwe Ethuro, M.P. – Chairman, CDF (CFC) Committee

ABSENT WITH APOLOGY

Hon. John Mbadi, M.P.
Hon. Nelson Gaichuhie, M.P.
Hon. Joseph Kiuna, M.P.
Hon. Clement Wambugu, M.P.
Hon. Boaz Kaino, M.P.
Hon. Edwin Yinda, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.
Hon. Isaac Muoki, M.P.
Hon. Walter Nyambati, M.P.
Hon. Danson Mungatana, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Luka Kigen, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Abdul Bahari, M.P.
Hon. John Mututho, M.P.

Hon. Nesmesyus Warugongo, M.P.
Hon. John Mututho, M.P. - Chairman, Agriculture, Livestock and Cooperatives
Hon. Fred Kapondi, M.P. – Chairman, Administration & National Security
Hon. Hussein Abdikadir, M.P. – Chairman, Constitution Implementation Oversight Committee
Hon. David Koech M.P. – Chairman, Education, Research & Technology
Hon. Mutava Musyimi, M.P. – Chairman, Lands and Natural Resources
Hon. Sophia Noor, M.P. – Chairperson, Labour and Social Welfare Committee
Hon. Thomas Mwadeghu, M.P. – Chairman, Local Authorities and Funds Accounts
Hon. Njoroge Baiya, M.P. – Acting Chairman, Justice and Legal Affairs Committee
Hon. (Dr.) Bonny Khalwale, M.P. – Chairman, Public Account Committee
Hon. Mithika Linturi, M.P. – Chairman, Public Investments Committee
Hon. James Rege, M.P. – Chairman, Energy, Communication & Information

IN ATTENDANCE		MINISTRY OF TRANSPORT
Hon. Amos Kimunya, EGH, MP	-	Minister
Hon. Ali Hassan Joho, M.P.	-	Assistant Minister
Dr. Cyrus Njiru, CBS	-	Permanent Secretary
Esther Koimet	-	Member, Greenfield steering Committee
Gabriel Ogut	-	Member, Greenfield steering Committee
Gabriel Kioko	-	Member, Greenfield steering Committee

IN ATTENDANCE		KENYA NATIONAL ASSEMBLY
Mr. Evans Oanda	-	Clerk Assistant
Mr. Fredrick Muthengi	-	Fiscal Analyst
Mr. Benjamin Ng'imor	-	Fiscal Analyst
Ms. Rose Mudibo	-	Public Relations Officer
Mr. Gilbert Kirui	-	Fiscal Analyst
Mr. Martin Mugambi	-	Parliamentary Intern

MIN. NO. 35 /2012: PRELIMINARY

The meeting was called to order at 4.10 p.m. followed by a word of prayer. The joint Chairperson apologized to the Minister and His team for the delayed start of the meeting and introduced the Members of the Committee present. He then asked the Minister to appraise the Committee on the status of the Greenfield project right from conception stage to the current stage.

MIN. NO.36 /2012: MEETING WITH THE MINISTER FOR TRANSPORT

The Committee was informed as follows:-

i. The Greenfield Terminal Project was part of the expansion programme in the Jomo Kenyatta International Airport meant to accommodate the expansion of

Kenya Airways and build Nairobi as a regional hub. The Greenfield Terminal is one of the flagship projects in the country's Vision 2030 development programme.

ii. The Greenfield project was conceived with the understanding that the aspect of financing was to be done through the Public Private Partnership arrangement. The KAA was therefore urged to go ahead and advertise for tender.

iii. Advertisement for the tender was done on 24th June 2011 and bids were closed on 17th November, 2012.

iv. On 14th November 2011, the Minister received a letter from the Office of the Prime Minister raising concerns on the Greenfield Terminal project. It indicated that the project, as conceived, required massive mobilization of resources and therefore required approval of other relevant government departments before implementation. It therefore directed the process be stopped immediately and that the KAA should prepare the cabinet memo for consideration. The Minister for Transport conveyed the same information to the KAA as directed by the Office of the Prime Minister.

v. On 10th January 2012, the Chairman and the managing Director of KAA met with the Permanent Secretary in the Ministry of Transport to brief him about the Greenfield project. It is here that it was disclosed that only 5 out of 120 tenderers who bought tender documents had submitted their bids. Furthermore, it was disclosed that only one bidder was responsive as far as financing was concerned. The Ministry of Transport further learned that the tender had already been awarded and the winning bidder had accepted the award contrary to the Prime Minister's directive. The Ministry therefore felt that the process did not yield the acceptable minimum bidders to be evaluated.

vi. On 10th February 2012, the Minister for Transport wrote to the KAA Managing Director directing him not to commit KAA in any contractual obligations in so far as the Greenfield project was concerned until all the issues raised by the Office of the Prime Minister had been resolved.

vii. The Cabinet memo has since been prepared and presented to the Cabinet Sub-Committee on infrastructure for consideration. Since the Cabinet has not pronounced itself on the matter, the Minister has no concrete policy decision to inform the Committee.

viii. On getting invitation to appear before the Committee over the Greenfield Terminal Project, the Minister for Transport sought for advice from the Prime

Minister on the matter who advised him to tell the Committee to wait for cabinet direction on the matter.

ix. Contrary to the reports that the Minister for Transport had cancelled the tender, the Minister maintained that he only conveyed the directive of the Office of the Prime Minister seeking Cabinet directive on the matter.

x. Though tendering process is a preserve of the tendering entity, contractual obligation in the Greenfield Terminal Project was to involve more than one government department. Therefore all of them had to be brought on board before the tender was awarded.

xi. Contrary to the allegation that the Minister had ignored the Attorney General's advice on the matter, the Minister indicated that he had not sought for the Attorney General's advice and therefore he had not been given any advice to ignore.

xii. The Minister has since appointed a steering Committee to oversee the implementation of the Jomo Kenyatta Airport Expansion Programme.

xiii. The Kenya Airports Authority Act provides that any budget beyond Ksh. 10 million must be approved by the Minister for Transport. So far KAA has not presented any budget on the Greenfield Terminal Project to the Minister for approval.

xiv. Throughout the tendering process, the Minister for Transport was not aware of what was happening and only came to learn the outcome on 10th of January 2012.

MIN. NO.37 /2012: COMMITTEE OBSERVATIONS

1. The whole process of conception and approval of the Greenfield Terminal project was a mess considering that the Ministry of Transport and government waited until the time when the tender had been awarded start approval mechanisms.

2. The Ministry of Transport demonstrated laxity in its duties considering that it is the Prime Minister's Office which alerted the Ministry of transport that the Greenfield Terminal project required approval by other relevant Government departments.

3. The Minister for transport, being a member of the Cabinet Subcommittee on infrastructure where the Attorney General sits was sufficiently advised on the matter.

4. The reasons given by the Minister for stopping the Greenfield Terminal Project was not sufficient considering that the competent authorities have given the project a clean bill of health.

MIN. NO.38 /2012: ANY OTHER BUSINESS

The committee resolved to meet in the following day (12th September, 2012) at 11: 00 am to adopt its report ready for tabling in the same afternoon. It further resolved to lobby the House Business Committee to place it for debate on Thursday 13th September, 2012.

MIN. NO. 39/ 2012: ADJOURNMENT

There being no other business, the Joint Chair adjourned the meeting at 6.35 pm.

SIGINATURE:.....DATE.....12/09/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....
(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE.....12/09/12.....
(Co-Chairman (Hon. Elias Mbau, M.P.)

MINUTES OF THE 9TH JOINT SITTING OF THE DEPARTMENTAL COMMITTEES – FINANCE, PLANNING AND TRADE, TRANSPORT, PUBLIC WORKDS AND HOUSING AND BUDGET COMMITTEE HELD ON WEDNESDAY, 12TH SEPTEMBER 2012 IN THE OLD CHAMBER, MAIN PARLIAMENT BUILDING AT 11.00 AM.

PRESENT

Hon. David Were, M.P. Co-Chair
Hon. Chris Okemo, M.P. Co-Chair
Hon. Elias Mbau, M.P. Co-Chair
Hon. Emilio Kathuri, M.P.
Hon. John Mbadi, M.P.
Hon. Ntoitha M'mithiaru, M.P.
Hon. Omar Zonga, M.P.
Hon. (Prof) Philip Kaloki, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Alfred Sambu, M.P.
Hon. Musikari Kombo, M.P.
Hon. Jakoyo Midiwo, M.P.
Hon. Moses Lessonet, M.P.
Hon. Abdul Bahari, M.P.
Hon. Alex Mwiru, M.P
Hon. Boaz Kaino, M.P.
Hon. Sammy Mwaita, M.P.
Hon. Njoroge Baiya, M.P. – Acting Chairman, Justice and Legal Affairs Committee
Hon. David Koech M.P. – Chairman, Education, Research & Technology

ABSENT WITH APOLOGY

Hon. Nelson Gaichuhie, M.P.
Hon. Joseph Kiuna, M.P.
Hon. David Ngugi, M.P.
Hon. Benjamin Langat, M.P.
Hon. Lucas Chepkitony, M.P.
Hon. Clement Wambugu, M.P.
Hon. Lenny Kivuti, M.P.
Hon. Edwin Yinda, M.P.
Hon. Ahmed Shakeel Shabbir, M.P.
Hon. Isaac Muoki, M.P.
Hon. Walter Nyambati, M.P.
Hon. Danson Mungatana, M.P.
Hon. (Dr.) Wilbur Ottichilo, M.P.
Hon. Luka Kigen, M.P.
Hon. Nkoidila Ole Lankas, M.P.
Hon. Martin Otieno Ogindo, M.P.
Hon. Sheikh Dor Yakub, M.P.
Hon. John Mututho, M.P.

Hon. Nesmesyus Warugongo, M.P.
Hon. Alex Mwiru, M.P.
Hon. John Mututho, M.P. - Chairman, Agriculture, Livestock and Cooperatives
Hon. Fred Kapondi, M.P. – Chairman, Administration & National Security
Hon. Hussein Abdikadir, M.P. – Chairman, Constitution Implementation Oversight Committee
Hon. (Dr.) Robert Monda, M.P. – Chairman, Health Committee
Hon. Aden Keynan, M.P. – Chairman, Defense & Foreign Relations Committee
Hon. Ekwe Ethuro, M.P. – Chairman, CDF (CFC) Committee
Hon. Mutava Musyimi, M.P. – Chairman, Lands and Natural Resources
Hon. Sophia Noor, M.P. – Chairperson, Labour and Social Welfare Committee
Hon. Thomas Mwadeghu, M.P. – Chairman, Local Authorities and Funds Accounts
Hon. (Dr.) Bonny Khalwale, M.P. – Chairman, Public Account Committee
Hon. Mithika Linturi, M.P. – Chairman, Public Investments Committee
Hon. James Rege, M.P. – Chairman, Energy, Communication & Information

IN ATTENDANCE		KENYA NATIONAL ASSEMBLY
Mr. Evans Oanda	-	Clerk Assistant
Mr. Fredrick Muthengi	-	Fiscal Analyst
Mr. Benjamin Ng'imor	-	Fiscal Analyst
Ms. Rose Mudibo	-	Public Relations Officer
Mr. Gilbert Kirui	-	Fiscal Analyst
Mr. Martin Mugambi	-	Parliamentary Intern

MIN. NO. 40 /2012: PRELIMINARY

The meeting was called to order at 12:25 p.m. followed by a word of prayer.

MIN.NO. 41/2012: CONFIRMATION OF MINUTES

Minutes of the 1st sitting held on Thursday 23rd August, 2012 were confirmed by the Members present as a true recording after being proposed by the Hon. (Prof) Philip Kaloki, M.P.and seconded by the Hon. Jackson Kiptanui, M.P.

Minutes of the 2nd sitting held on Wednesday 29th August, 2012 were confirmed by the Members present as a true recording after being proposed by the Hon. (Prof) Philip Kaloki, M.P.and seconded by the Hon. Ntoitha M'mithiaru, M.P.

Minutes of the 3rd sitting held on Thursday 30th August, 2012 were confirmed by the Members present as a true recording after being proposed by Hon. Moses Lessonet, M.P. and seconded by the Hon. Ntoitha M'mithiaru, M.P.

Minutes of the 4th sitting held on Thursday 30th August, 2012 were confirmed by the Members present as a true recording after being proposed by Hon. (Prof) Philip Kaloki, M.P.and seconded by the Hon. Ntoitha M'mithiaru, M.P.

Minutes of the 5th sitting held on Tuesday 4th September, 2012 were confirmed by the Members present as a true recording after being proposed by Hon. Ntoitha M'mithiaru, M.P.and seconded by the Hon. Emilio Kathuri, M.P.

Minutes of the 6th sitting held on Wednesday 5th September, 2012 were confirmed by the Members present as a true recording after being proposed by Hon. Alfred Sambu, M.P. and seconded by the Hon. Boaz Kaino, M.P.

Minutes of the 7th sitting held on Thursday 6th September, 2012 were confirmed by the Members present as a true recording after being proposed by Hon. Alfred Sambu, M.P. and seconded by the Hon. Ntoitha M'mithiaru, M.P.

Minutes of the 8th sitting held on Thursday 6th September, 2012 were confirmed by the Members present as a true recording after being proposed by Hon. Emilio Kathuri, M.P. and seconded by the Hon. Jackson Kiptanui, M.P.

MIN.NO. 42/2012: MATTERS ARASING

1. **Under the Minutes of the 8th sitting held on 11th September, 2012,** the Hon. John Mbadi, M.P. attended the meeting while the Hon. Yusuf Chanzu, M.P. did not attennd. The same meeting took place on a Tuesday and not Wednesday as recorded.
2. **Under Min.No.36/2012, in (iv and v),** it was the Permanent Secretary in the Ministry of Transport that recieved the letters and not the Minister for Transport.
3. **Under Min.No.37/2012, in (1);** the whole paragraph should me amended to read "The whole process of conception and approval of the Greenfield Terminal project was not well coordinated considering that the Ministry of Transport and the government waited until the time when the tender had been awarded to start approval mechanisms."
4. **Under Min.No.27/2012, in (xi),** the word "for" should be deleted.
5. **Under the Minutes of the 4th sitting held on 30th August, 2012,** the Hon. Sammy Mwaita, M.P. should be captured under absent with apology.
6. **Under Min.No.18/2012, in (2),** the words "single that" should be replaced with the words "know what".

7. **Under Min.No.18/2012, in (7),** the word "worn" should be replaced with the word "won".
8. **Under Min.No.18/2012, in (7),** the word "Advisory" should be replaced with the word "Authority".

MIN.NO. 43/2012: ADOPTION OF THE REPORT

The Committee unanimously adopted the report with the following amendments:

1. Under the Committee recommendation (1) in page 48, "*unless injuncted by the High court*" should be deleted.
2. Under committee observations in page 48 (v), the last sentence "*save if the High Court issues an injuction to halt the process*" should be deleted.

The Secretariat was urged to prepare the report for tabling in the same afternoon.

MIN. NO. 44/ 2012: ADJOURNMENT

There being no other business, the Joint Chair adjourned the meeting at 1.40 pm.

SIGINATURE:.....DATE.....12/9/12.....
(Co-Chairman (Hon. David Were, M.P.)

SIGINATURE:.....DATE.....12/9/2012.....
(Co-Chairman (Hon. Chris Okemo, M.P.)

SIGINATURE:.....DATE.....12/09/2012.....
(Co-Chairman (Hon. Elias Mbau, M.P.)