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*Paper laid
By Hon. Chacha Ganga
Member, DC - Trans, PW & Housing
on Thurs. 19.11.2015 (PM)
M.M.W.*

ELEVENTH PARLIAMENT - THIRD SESSION - 2015

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON THE INQUIRY INTO THE PROCUREMENT OF THE APRON BUSES BY
KENYA AIRPORTS AUTHORITY

Directorate of Committee Services,
Clerk's Chambers
Parliament Buildings,
NAIROBI

OCTOBER, 2015

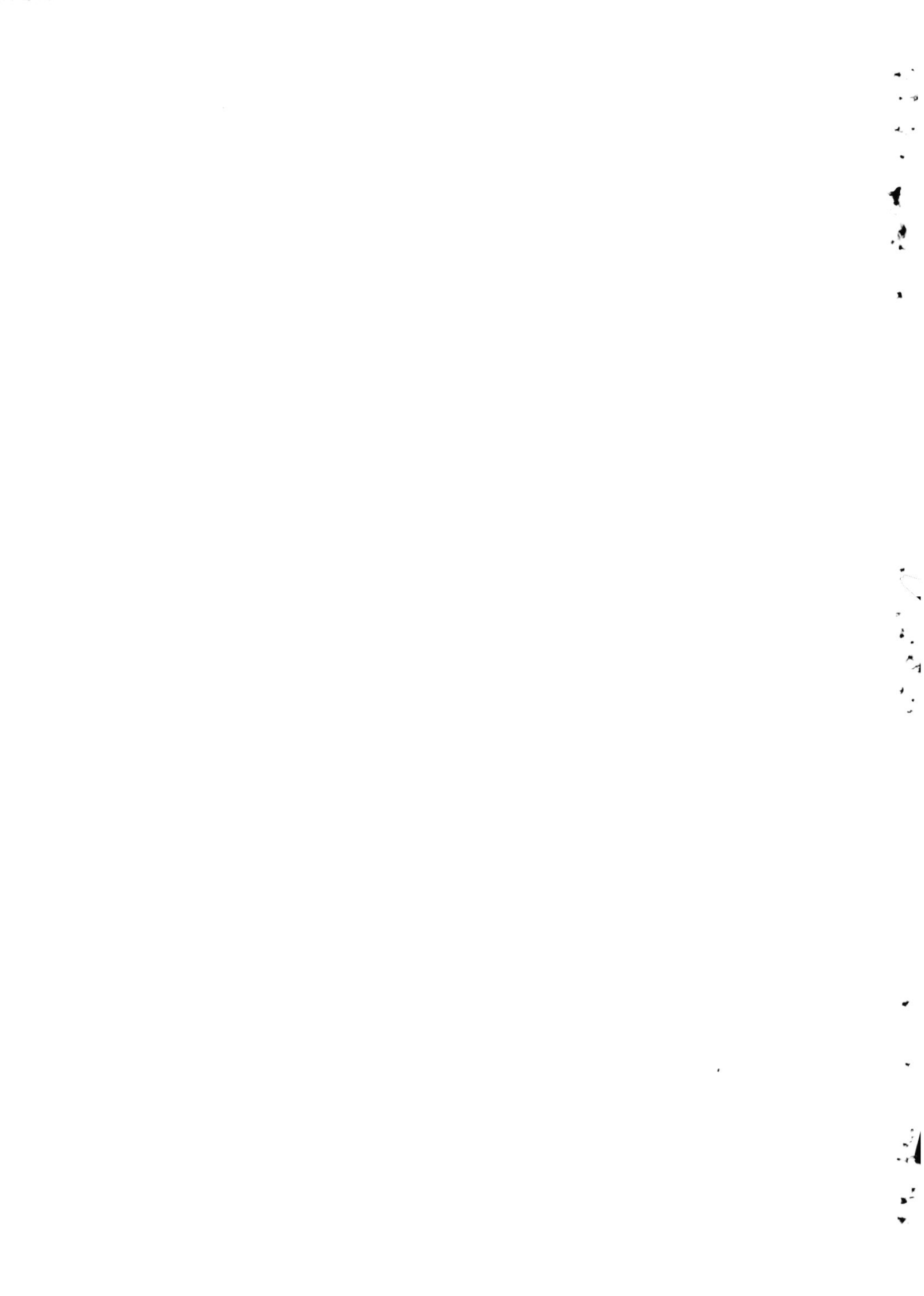


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1.0 ABBREVIATIONS / ACRONYMS

JKIA - Jomo Kenyatta International Airport

KAA - Kenya Airports Authority

PPOA- Public Procurement Oversight Authority

KRA - Kenya Revenue Authority

KQ - Kenya Airways Ltd

VAT- Value added tax

IDF - Import Declaration Fee

RDF- Railway Development Levy

MD- Managing Director

EACC- Ethic and Anti-Corruption Commission

2.0 PREFACE

Mr. Speaker,

On behalf of the Members of the Departmental Committee on Transport, Public Works and Housing, and pursuant to the provisions of the Standing Orders 199(6), it is my pleasure to present the House Committee's Report on the inquiry into the procurement of the Apron Buses by Kenya Airports Authority.

2.1 Mandate of the Committee

The Committee is established pursuant to the provisions of Standing Order 216 (5), which mandates the Committee, among other terms of reference, to: -

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House; and
- f) Make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

The Committee is mandated to consider matters of transport, roads, public works, construction, maintenance of roads, rails and buildings, air, seaports and housing and oversees the following Government Ministry and State Department, namely: -

- a) Ministry of Transport and Infrastructure;
- b) State Department for Housing and
- c) Directorate of Public Works and Urban Development

2.2 Committee Membership

The Committee was constituted on May 20th 2013 and its membership is as follows:-

1. The Hon. Maina Kamanda, M.P. – **(Chairperson)**
2. The Hon. Eng. Mahamud Maalim, M.P. – **(Vice Chairperson)**
3. The Hon. Eng. Stephen Ngare, M.P.
4. The Hon. Ali Wario, M.P.
5. The Hon. Arch. David Kiaraho, M.P.
6. The Hon. Cecily Mbarire, M.P.
7. The Hon. Capt. Clement Wambugu, M.P.
8. The Hon. Eng. John Kiragu, M.P.
9. The Hon. Gideon Konchella, M.P.
10. The Hon. Barchilei Kipruto, M.P.
11. The Hon. Mark Lomunokol, M.P.
12. The Hon. Grace Kipchoim, M.P.
13. The Hon. Mathias Robi, M.P.
14. The Hon. Joseph Lomwa, M.P.
15. The Hon. Peter Shehe, M.P.
16. The Hon. Stephen Manoti, M.P.
17. The Hon. Emmanuel Wangwe, M.P.
18. The Hon. K.K. Stephen Kinyanjui Mburu, M.P.
19. The Hon. Suleiman Dori, M.P.
20. The Hon. Edick Omondi Anyanga, M.P.
21. The Hon. Simon Nyaundi Ogari, M.P.
22. Hon. Johnson Manyana Naicca, M.P.

23. The Hon. Mishi Juma, M.P.
24. The Hon. Aduma Owuor, M.P.
25. The Hon. Chachu Ganya, M.P.
26. The Hon. Omar Mwinyi, M.P.
27. The Hon. Ahmed Abbas Ibrahim, M.P.
28. The Hon. Omulele Christopher, M.P.
29. The Hon. Mukwe James Lusweti, M.P.

2.3 Inquiry into the procurement of the Apron Buses by KAA

The Apron Bus Service mode of transport was first envisioned in the year 2007 where the management Kenya Airports authority (KAA) then saw a need to expand services at the airport. A committee was formed to evaluate the modalities where they gave three recommendations as follows;

- a) KAA purchase, operate and maintain the Apron buses but the option was not considered,
- b) KAA to concession a third party to buy own, operate and maintain the Apron buses but the option was not considered, or
- c) KAA to purchase the Apron Buses and concession a third party to operate and maintain them, this option was recommended.

The tender was awarded to M/s. Relief and Mission Logistics Ltd at a cost of USD 120,000 per month. This was questioned by the President during the commissioning of terminal 2 at JKIA on 15th May 2015 and as result of this Presidential directive, six senior officials at KAA were interdicted.

As part of its oversight role, the Committee took the initiative to investigate the issues surrounding the procurement of the Apron Buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority (KAA) and the reason for interdiction of certain staff at KAA.

In establishing facts, the Committee invited and met with some key stakeholders for an engagement regarding their position on the procurement of the Apron Buses. Those invited for meetings were as follows:-

- i) The Principal Secretary for the Ministry of Transport and Infrastructure, Eng. John Mosonik
- ii) The Acting Managing Director, KAA, Mr. Yatich Kangugo
- iii) Officers interdicted by KAA Board
- iv) The Board of Directors of KAA
- v) The management of Kenya Airways Ltd
- vi) The Public Procurement Oversight Authority (PPOA)
- vii) The Kenya Revenue Authority (KRA)
- viii) M/s. Relief and Mission Logistics Ltd

2.4 Committee Observations

Arising from the various meetings with witnesses, the Committee made the following observations and conclusions:-

- i. The Authority ignored the option for KAA to purchase the Apron Buses and concession a third party to operate and maintain them despite the recommendation by the Committee tasked to come up with mode of provision of the bus services.
- ii. KAA procured the Apron Bus services from M/s. Relief and Mission Logistics Ltd without the existence of an adequate budget in contravention of the Public Procurement and Disposal Regulations of 2006 specifically regulation 10(2d) which state there should be no commencement of any procurement process without the provision of funds.
- iii. The tendering process was commenced before negotiating with the airlines on the service charge so as to gauge the viability of the business. More importantly, there is no evidence on record to show KAA negotiated with airlines on this issue.
- iv. The Authority established a negotiation team after awarding the tender to M/s Relief and Mission Logistics Ltd instead of the vice versa contrary to Public Procurement and Disposable Act of 2005.
- v. The Authority disregarded the recommendation by the 1st Negotiation Committee to have the tender process stopped and the tender be floated afresh due to lack of adequate funds but instead the Tender Committee established a second negotiation team, which had members from the Tender Committee who were to finally approve the negotiation report (**see Appendix I**).

- vi. The tender price for the provision of the five Apron Buses is outrageous and is not sustainable.
- vii. The KAA management approved Kenya Airways to own and operate Apron Buses and yet the Authority targets Airlines which Kenya Airways is one of them to hire the five buses leased from M/s Relief and Mission Logistics Ltd.
- viii. The Committee further observed that M/s. Relief & Mission Logistics Ltd imported a total of five Apron Buses of which four of them were brand manufactured in the year 2014 and the remaining one was manufactured in 2011 and it is fairly old.
- ix. It has been observed that the Authority was granted US\$ 2.1 M by the World Bank to procure seven buses, however it was noted that the tendering process took too long bearing in mind this was to address an emergency situation i.e JKIA fire tragedy.
- x. The contractor has not constructed the maintenance yard and the fueling station as provided for in the contract and the fueling is currently done through a mobile unit. In addition the legal department does not have the performance guarantee in their custody and proof of insurance for the Apron Buses and their staff.
- xi. Ms. Relief and Mission Logistics Ltd forwarded invoices Ref. KAA 01-14 USD 74,400 KAA 02 -15 of USD 72,000 dated 28/12/2014 and 1/3/2015 respectively for payment before fulfilling all the conditions (**See Appendix II**).
- xii. Though the tender committee recommended for negotiation, the negotiation was not provided for in the tender documents. Indeed, negotiations are not envisaged under open tender procurement method. However, post qualification of tender is envisaged under Regulation 52 of the Public Procurement and Disposal Regulations, 2006 and Procuring Entities are required to do market surveys before award of a tender to satisfy themselves that they are getting value for money.
- xiii. The Second Negotiation Committee went beyond its mandate by recommending an increment of buses to ten buses in order to meet passenger transfer demand by then. This was not provided for in the tender documents.

- xiv. It is not clear whether the three persons (Lucy Mbugua, John Thumbi and Allan Muturi) that were proposed by the tender committee to be added in the negotiation committee were appointed by the Accounting Officer as required by the Procurement Law.

2.5 Committee Recommendations

In view of the above observations the Committee recommends that:-

- i. Kenya Airports Authority should expedite the procurement process of the seven (7) Apron Buses and utilize the US\$ 2.1 M granted to the Authority by the World Bank following the fire tragedy in August 2013 and concession a third party to operate and maintain them following the due process as provided for in the Public Procurement and Disposal Act, 2005.
- ii. The acting Finance Manager, Mr. Patrick Chonde should be further investigated by EACC for abdicating from his role in the procurement process and delegating to a junior officer, one Mr. Martin Kamau.
- iii. The following officers who participated in the Second Negotiation Team, namely Ms. Lucy Mbugua, former Managing Director; Messrs, John Thumbi, former General Manager (Finance), Martin Kamau, former Head of Examination (Finance), Eng. C.N. Warutere, JKIA Engineer and Ms. Lillian Okidi, former Procurement manager should be investigated by Ethics and Anti-corruption Commission for any procurement malpractice.

2.6 Adoption of the Report

We the members of the Departmental Committee on Transport, Public Works and Housing have pursuant to Standing Order 199 adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity on Friday, 14th August 2015.



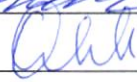
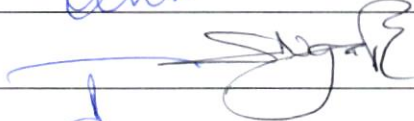
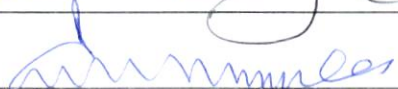
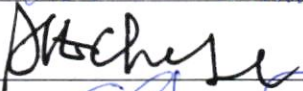
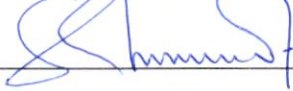




THE NATIONAL ASSEMBLY

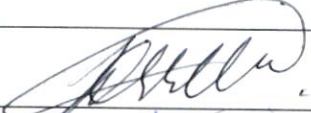


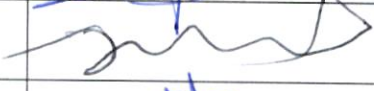




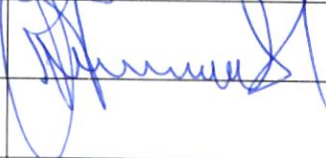

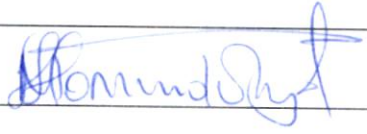


ELEVENTH PARLIAMENT – 3RD SESSION

DEPARTMENTAL COMMITTEE – L: TRANSPORT, PUBLIC WORKS AND HOUSING

Register for the adoption of the report on the inquiry into the procurement of the apron buses by Kenya Airports Authority- Friday 14th August 2015

NO.	MEMBER	SIGNATURE
1.	Hon. Maina Kamanda (Chairperson), MP	
2.	Hon. (Eng.) Mohamud M. Mohamed (Vice Chairperson), MP	
3.	Hon. KK Stephen Kinyanjui Mburu, MP	
4.	Hon. Christopher Omulele, MP	
5.	Hon. (Eng.) Stephen Ngare, MP	
6.	Hon. Johnson M. Naicca, MP	
7.	Hon. (Eng.) John Kiragu, MP	
8.	Hon. Stephen K. Manoti, MP	
9.	Hon. Joseph Lomwa, MP	
10.	Hon. (Capt.) Clement M. Wambugu, MP	
11.	Hon. Emmanuel Wangwe, MP	
12.	Hon. Grace J. Kipchoim, MP	
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25.	Hon. Simon Nyaundi Ogari, MP	
26.	Hon. Chachu Ganya, MP	
27.	Hon. Mathias N. Robi, MP	
28.	Hon. Mukwe James Lusweti, MP	
29.	Hon. Mark Lomunokol, MP	

Mr. Samuel Kalama – First Clerk Assistant

For: **CLERK OF THE NATIONAL ASSEMBLY**

2.7 Acknowledgement

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. The Committee wishes to thank all the stakeholders for their participation in the inquiry process.

Finally, I wish to express my appreciation to the Honourable Members of the Committee who made useful contribution towards the production of this Report in spite the tight work schedules.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Transport, Public Works and Housing to table its Report in the House on the inquiry into the Procurement of the Apron Buses by Kenya Airports Authority for consideration and adoption pursuant to Standing Order 199 (6).

FOR *Hon FRANCIS CHACHU GANYA, MP*
Signed *[Signature]* Date *19/11/2015*

Hon. Maina Kamanda, EGH, MP
Chairperson of the Departmental Committee on Transport, Public Works and Housing

3.0 BACKGROUND

The necessity to have Apron Buses started in the year 2007 when the then airport manager Mr. John Mugo formed a committee to evaluate and propose the modalities of offering the service. A committee was formed under the chairmanship of Mr. Harrison Machio which recommended Kenya Airports Authority (KAA) to procure five buses and outsource them to a third party to operate and maintain, collect fees from the Airlines and pay concession to KAA.

On 29th November, 2011 that is four years later after the initial business need analysis, the parameters of the business case were changed vide a memo by the then General Manager, Business Development, Ms. Lucy Mbugua to then Managing Director Mr. Stephen Gichuki requesting the engagement of an operator to provide five (5) Apron buses at Jomo Kenyatta International Airport (JKIA), contrary to the earlier business case where KAA was to charge the Airlines and pay the Apron Buses operator. Subsequently the MD approved the request and the tendering process started.

An open tender was advertised on 6th December 2011 and two firms bided which are, M/s Relief and Mission Logistics Limited And M/s Pewin Cabs Limited

The Evaluation Committee was formed and issued a report on 27th February, 2012 recommending award to M/S. Relief and Mission Logistics Ltd at a cost of USD \$ 120,000 per month. M/S. Pewin Cabs Limited bid was disqualified at the preliminary state due to non-responsiveness. Subsequently, the Tender Committee approved the award on 3rd May 2012 and a notification letter was issued on 14th may 2012.

On 22nd may 2012, a Negotiation Team was appointed and in their report the team recommended the tender process be stopped and the tender be floated a fresh due to unavailability of funds. However the Tender Committee in their meeting of 13th September 2012 recommended for a renegotiation and expanded the Negotiation Committee.

On 30th August 2013, the Negotiation Team presented their report to the Tender Committee and in their report they justified the charging of US \$ 120,000 per month. A letter of offer outlining the terms of the license agreement was forwarded to M/s Relief & Mission Logistic Ltd by Ag. MD Ms. Lucy Mbugua.

Three months later, on 23rd January, 2014 the then legal officer Mr. George Kamau wrote to the external lawyers Robson Harris and company advocates instructing them to draw a License Agreement on 7th April 2014. The Agreement was signed between KAA and M/s. relief and Mission Logistics Ltd to supply five (5) Apron Buses.

On 15th May 2015, during the commissioning of terminal 2 at JKIA, His Excellency President Uhuru Kenyatta ordered those involved in the leasing of the five-ramp passenger buses at Kshs. 10 million per month to be investigated. A week later after the Presidential directive KAA board announced the interdiction of six KAA senior officials namely the Managing Director Ms. Lucy Mbugua, Finance General Manager Mr. John Thumbi, Legal Counsel Mr. Victor Arika, Procurement Manager Ms. Lilian Okidi, Airport Engineer Mr. Christopher Warutere and Head of Examination Mr. Martin Kungu.

4.0 EVIDENCE SUBMITTED BY WITNESSES

4.1 Submission by the Principal Secretary for the Ministry of Transport and Infrastructure, Eng. John Mosonik

On 2nd June, 2015 the Committee met with the Principal Secretary for the Ministry of Transport and Infrastructure, Eng. John Mosonik and the Management of KAA to shed light on the issues surrounding the procurement of the Apron Buses to transfer passengers at Jomo Kenyatta International Airport.

The Principal Secretary informed the Committee on the issues surrounding the procurement of the Apron Buses as follows;

That:

- i. Internal investigation on the procurement of the Apron Buses had revealed serious issues that require criminal investigation.
- ii. The entire process of procurement, evaluation and operation of the Apron Buses has many unanswered questions and more so whether Kenyans were getting value for their money in the project.
- iii. The Board of Directors for KAA considered the matter and opted to refer the same to the Ethics and Anti-corruption Commission for investigation owing to the criminal nature of the issues raised in the entire process.

4.2 Submission by Mr. Yatich Kangugo, Acting Managing Director, KAA

The Acting Managing Director informed the Committee as follows:-

That:-

- a. The project of procuring the Apron Buses at JKIA was first conceived in 2007. Consequently the KAA management formed a committee to evaluate and propose the modalities of offering the Apron Bus Services. The Committee proposed the following mode of the provision of the said service:-
 - i. The first option was for KAA to purchase, operate and maintain the Apron Buses. This option however, was found unsuitable due to logistics constraints and not within the Authorities core business mandate
 - ii. The second option was for KAA to concession a third party to buy own, operate and maintain the Apron Buses. Upon consideration of this proposal, the committee found it unsuitable since the interest of the concessionaire would be profit driven.
 - iii. The third option was for KAA to purchase the Apron Buses and concession a third party to operate and maintain them. Upon further consideration the Committee found this option most suitable given that it would balance the issues in aforementioned options.
- b. The Committee recommended that the Authority acquire five Apron Buses, four buses to be used at JKIA and one at Moi International Airport. The Acquisition was to be fast tracked since the remote parking stands were still under construction.
- c. The Committee recommended that the Authority should procure and concession a third party to operate, maintain and collect fees from the airlines and pay concession to KAA.
- d. The concessionaire was to provide five buses all operating at JKIA. The operator would charge the Authority on monthly bases and then KAA would charge the airline for the services. An annual provision of Kshs. 75 million for eight years starting FY 2012/2013 was to be set aside to cover any short falls incurred over the concession period.

- e. The Committee recommended that the charges for the use of the buses to be charged at between 80-100% of the fee levied for use of the passenger boarding bridges. The air bridge is charged between \$75 for an aircraft with passenger capacity of 0-180 and \$100 for capacity of 180 and above passengers.
- f. The Authority placed advertisement in the print media inviting bidders. However, it only received two bidders namely: M/s. Relief and Mission Logistics Ltd and Pewin Cabs Ltd.
- g. The Authority formed an Evaluation Committee comprising of the following members:-
 - i. Mr. Bernard Mugambi- Marketing & Business Development- Chairperson
 - ii. Mr. Wilfred Ndegwa- Airport Accountant- Member
 - iii. Mr. Christopher Warutire- JKIA Engineer- Member
 - iv. Mr. David Ngetich- Procurement Officer- Member
- h. On 27th February 2012 the Evaluation Committee issued an evaluation report recommending to the Tender Committee the award of the tender to M/s. Relief and Mission Logistics Ltd at a monthly cost of US \$ 120,000.
- i. The said evaluation report disqualified M/s. Pewin Cabs Ltd at the preliminary evaluation stage for failing to provide the tender security and CV copies for its key personnel as a requirement. The bidder had quoted a monthly payment of \$ 86,876.24 (Duty paid) or \$ 80,653 (Duty free).
- j. The evaluation report, tender paper no. 1953 (2862) was presented to the Tender Committee for approval. From the Tender Committee minutes there were a series of questions and issues which the Tender Committee wished to be clarified. For example the Tender Committee queried how the figure of US \$ 120,000 recommended was arrived at.
- k. During the 192nd meeting of the Tender Committee held on 3rd May. 2012 adjudicated and approved awards of the tender subject to negotiation. Subsequently a Negotiation Team was constituted.
- l. On 14th May, 2012 the Authority issued a letter of notification of award to M/s Relief and Mission Logistics Ltd. The letter stated that the Authority had accepted their bid

and formally invited successful bidder for negotiation as per the Tender Committee instructions.

- m. During the 214th meeting of the Tender Committee held on 13th September 2012, the Negotiation Team recommended that the tender process be stopped and the tender be floated afresh due to unavailability of funds. However, the Tender Committee recommended that there should be a renegotiation team and that the Negotiation Team to be expanded to include AM-JKIA (AOC Chairperson-JKIA), General Manager in charge of Finance, General Manager- Marketing & Business Development and General Manager-Procurement & Logistics. The members of the Tender Committee who were finally to approve the tender became part of the Negotiation Team.
- n. During the 267th meeting of the Tender Committee held on 30th August 2013, Mr. Martin Kamau in charge of Finance informed the Tender Committee that the second Negotiation Committee recommended that KAA contracts M/s. Relief and Mission Logistics Ltd at their tender price of US \$ 120,000 per month for provision of five Apron Buses. The Tender Committee approved the Committee report and instructed the Marketing & Business Development department to negotiate with airlines on the rates for the use of the Apron Buses. However, no negotiation and agreement has been reached with airlines.
- o. On 6th September 2013, the then Acting Managing Director, Ms. Lucy Mbugua issued a letter to M/S. Relief and Mission Logistics Ltd informing them of the acceptance of the bid for five Apron Buses at a cost of US \$ 120,000 per month.
- p. On 2nd October 2013, the Authority forwarded a letter of offer outlining the terms and license agreement to M/s Relief and Mission Logistics Ltd.
- q. On 7th April 2014, a concession agreement was signed between KAA and M/s Relief and Mission Logistics Ltd.
- r. On 22nd April 2015, the Board of Directors of KAA passed a resolution and directed Audit and Risk Department to audit the matter of the Apron Buses and to submit a report to the Board by 30th April 2015.
- s. On 14th May 2015, the Board Audit and Risk Management Committee met and deliberated on the preliminary report. Subsequently, the Committee met on 18th and

19th May 2015 and reviewed the documentation on a chronological order and prepared presentation to the Board with the specific recommendations.

- t. On 19th May 2015, the Board of Directors, KAA in their special sitting approved the report of the Board Audit Committee, interdicting all the staff involved in the second Negotiation Committee together with the acting Corporation Secretary.

4.3 Submission by the officers interdicted by KAA Board

On 11th June, 2015 the Committee met with the following interdicted officers who briefed it on the issues surrounding the procurement of the Apron Buses to transfer passengers at Jomo Kenyatta International Airport as follows.

4.3.1 Mr. Victor Arika – Corporation Secretary/Chief Legal Officer

He briefed the Committee as follows:-

That:-

- i. He was appointed as Corporation Secretary/Chief Legal Officer in acting capacity with effect from 29th January 2013 pursuant to the KAA Board of Directors meeting held on 28th January 2013.
- ii. He never played any role whatsoever in any of the committees from the initiation of the Apron Buses concept to the tendering stages of the Contract award.
- iii. The contribution he made in his capacity as Acting Corporation Secretary/Chief Legal Officer began at the tail end of the tendering process, when legal enforcement of Contract Award had to be effected on the strength of the Tender Committee approvals which were already in records.
- iv. He confirmed that during the 146th (Special) KAA Board of Directors Meeting held on 11th February 2011, the Board approved the JKIA Master Plan in respect of outsource of both purchase of Airside five (5) Buses and also management by way of concession.
- v. In the course of perusal of the Tender Documents, he never came across any disputed procurement process issues of legal nature requiring his legal advice or

intervention on the matter. Therefore, it was appropriate that with the strength of the above mentioned approvals, the Legal Department was to go ahead and prepare contract as instructed.

- vi. His subsequent legal action was guided by and based on the provisions of Section 68(1) of Public Procurement and Disposal Act (2006) on Creation of Contract.
- vii. By a letter dated 23rd January 2014 the law firm of M/s Robson Harris & Company Advocates was instructed to prepare contract by way of Concession Agreement.
- viii. The Legal Department sought and obtained Tender Committee's for approval for inclusion of Lease Agreement and Building Agreement given that land allocation was required to enable the successful bidder to set up requisite facilities (the maintenance yard and fueling station) needed for implementation of the project.

4.3.2 Ms. Lillian Okidi – Procurement Manager

She briefed the Committee as follows:-

That:-

- i. Bidders were invited through an open tender method in the month of December 2011 for provision of the passengers transfer services.
- ii. The initial opening /closing date of the tender was 30th December 2011 but the date was extended to 10th February, 2012 through four addendums.
- iii. As at the time of opening the tender only two bidders had responded that is M/s. Relief and Mission Logistics Ltd and Pewin Cabs Ltd
- iv. An Evaluation Committee was formed comprising Mr. Benard Mogambi, Winfred Ndegwa - Airport Accountant, Christopher Warutere-JKIA Engineer and David Ngetich-Procurement.
- v. On 27th February 2012, the Committee issued the evaluation report recommending to the Tender Committee the award of the tender to M/s. Relief and Mission Logistics Ltd at monthly cost of US \$ 120,000.
- vi. The other bidder M/s. Pewin Cabs Ltd was disqualified at the preliminary evaluation stage for failing to submit the tender security and CV copies for its key personnel as a requirement.
- vii. The procurement of the Apron Buses done pursuant to the provisions of the Public Procurement and Disposal Act, 2005.

4.3.3 Eng. Christopher Warutere:- Airport Engineer, JKIA

He briefed the Committee as follows:-

That:-

- i. Passengers and aircraft traffic at JKIA has grown tremendously over the years with the airport handling over 4.2 million passengers in 2005 to over 4.4 million in 2006.
- ii. In order for KAA to meet the increased passenger requirements, KAA undertook major expansion of its facilities. The expansion covered both passenger's terminal and aircraft parking stands. Aircraft parking stands with proximity to the passengers' terminal building is ordinarily equipped with boarding bridges. However, it was not possible to achieve this configuration. Remote stands had to be provided and other means of movement of passengers had to be availed. This necessitated KAA to moot the idea of procuring Apron buses.
- iii. The KAA management formed a committee to evaluate and propose the modalities of offering the Apron Bus Services. The Committee proposed the following mode of the provision of the said service.
 - a. The first option was for KAA to purchase, operate and maintain the Apron Buses. This option however, was found unsuitable due to logistics constraints and not within the Authorities core business mandate.
 - b. The second option was for KAA to concession a third party to buy own, operate and maintain the Apron Buses. Upon consideration of this proposal, the committee found it unsuitable since the interest of the concessionaire would be profit driven.
 - c. The third option was for KAA to purchase the Apron Buses and concession a third party to operate and maintain them. Upon further consideration the Committee found this option most suitable given that it would balance the issues in aforementioned options.
- iv. The tender was awarded to M/s. Relief and Mission Logistics Ltd at monthly cost of US \$ 120,000. Under the Concession Agreement, M/s. Relief and Mission Logistics Ltd was required to develop an operations and maintenance facility, which included workshops and offices on land that was to be availed by KAA. The workshop was to include maintenance yard, bus parking yard, service pit and storage.

1.3.4 Mr. Martin Kamau: - Head of Examination, Finance

He briefed the Committee as follows:-

That:-

- i. He was involved at first in the tail end of procurement process during the first Negotiation Committee which recommended the tender process be stopped and the tender be floated afresh due to unavailability of funds.
- ii. He however noted that the Tender Committee during its 214th meeting of 13th September, 2013, recommended for renegotiation and expanded the Negotiation Committee to include AOC chairman, General Manager- Finance, General Manager- Marketing and Business Division, General Manager- Procurement and Logistics.
- iii. The team presented their report almost a year later after the Renegotiation Committee which justified the charging USD 120,000,000 using non fundamental figures including depreciation.

On 18th June, 2015 the Committee met with the interdicted Managing Director, Ms. Lucy Mbugua and the General Manager, in charge of Finance, Mr. John Thumbi who briefed the Members the procurement process of the Apron Buses as follows.

4.3.5 Mr. John Thumbi, Suspended General Manager, Finance

Mr. John Thumbi presented before the Committee as follows:-

That:-

- i. The KAA Board of Directors recommended and approved the outsourcing for both purchase and management of Apron Buses by way of concession in the 146th sitting of the Board of Directors' held on 11th February 2011.
- ii. Subsequent to KAA Board approval, the Managing Director approved the procurement of the five Apron Buses in form of business concession through open tender.
- iii. The advertisement was placed in two newspapers; the Daily Nation and the Standard on 6th and 7th December 2011 respectively.

- iv. The successful bidder was to fund the entire project; hence a budget was not required.
- v. A budget was made available in the financial year 2012/2013 when the operation of the buses was to commence to cater for any deficit.
- vi. The scope of the concession tender required the successful bidder to purchase and deliver five Apron Buses, construct an operation facility which will include offices, stores, workshop, underground fuel storage and pump, washing bay and paved parking. The contractor would also meet all running costs including staff cost, fuel, maintenance, tyre, office expenses , consumables, insurance and all other costs.
- vii. The tenders were evaluated based on the criteria in bidding documents and the Tender Committee awarded to the successful M/S Relief and Mission Logistics Ltd on 3rd May 2012. A letter of notification of the award dated 14th May 2012 was issued to the successful bidder.
- viii. The KAA was to pay US\$ 120,000 per month for the provision of airside transfer services to M/S Relief and Mission Logistics Ltd. this translates to approximately KES 74,000 per day (24 hours) per bus as compensation for the services and facilities.
- ix. The Tender Committee adjudicated and approved the award subject to negotiations. The Tender Committee gave out the terms of reference for negotiation which were on operations and maintenance issues for inclusion in the contract. The bid price was not included in the terms of reference and therefore did not require to be negotiated.
- x. A Negotiation Committee was formed in compliance with the regulation 58 of the Public Procurement and Disposal Act to negotiate with the terms of reference given by the Tender Committee. According to the Act, a negotiation process can only commence after the Tender Committee has awarded the tender.
- xi. The Negotiation Committee came back to the Tender Committee with a report that there was inadequate budget and the process should be stopped and re-tendered.
- xii. The Tender Committee in its deliberation pointed out that the Negotiation Committee did not adhere to the terms of references and expanded the Negotiation Committee and asked to adhere to the terms of references.

- xiii. The expanded Committee presented its report to the Tender Committee on 30th August 2013 and Tender Committee approved the contract preparation. Thereafter, the contract was signed with the successful bidder on 7th April 2014.
- xiv. The concessionaire delivered the five Apron Buses in March 2015. The bus model is Cobus whose origin is from Germany and the current market price for this model is KES 45 million per bus.

4.3.6 MS. Lucy Mbugua - Suspended Managing Director

MS. Lucy Mbugua made her presentation before the Committee as follows:-

That:-

- i. The KAA Board of Directors recommended and approved the outsourcing of both purchase and management of Apron Buses by way of concession in the 146th sitting of the Board of Directors' held on 11th February 2011.
- ii. Subsequent to KAA Board approval, the Managing Director approved the procurement of the five Apron Buses in form of business concession through open tender.
- iii. The advertisement was placed in two newspapers; the "Daily Nation" and the "Standard" on 6th and 7th December 2011, respectively.
- iv. The successful bidder was to fund the entire project; hence a budget was not required.
- v. A budget was made available in the financial year 2012/2013 when the operation of the buses was to commence to cater for any deficit.
- vi. The scope of the concession tender required the successful bidder to purchase and deliver five Apron Buses, construct an operation facility which will include offices, stores, workshop, underground fuel storage and pump, washing bay and paved parking. The contractor would also meet all running costs including staff cost, fuel, maintenance, tyre, office expenses, consumables, insurance and all other costs.
- vii. The tender was evaluated based on the criteria in bidding documents and the Tender Committee awarded to the successful M/s Relief and Mission Logistics Ltd on 3rd May

2012. A letter of notification of the award dated 14th May 2012 was issued to the successful bidder.

- viii. The KAA was to pay US\$ 120,000 per month for the provision of airside transfer services to M/S Relief and Mission Logistics Ltd. this translates to approximately KES 74,000 per day (24) per bus as compensation for the services and facilities.
- ix. The Tender Committee adjudicated and approved the award subject to negotiations. The Tender Committee gave out the terms of reference for negotiation which were on operations and maintenance issues for inclusion in the contract. The bid price was not included in the terms of reference and therefore didn't require to be negotiated.
- x. A Negotiation Committee was formed in compliance with the regulation 58 of the Public Procurement and Disposal Act to negotiate with the terms of reference given by the Tender Committee. According to the Act, a negotiation process can only commence after the Tender Committee has awarded the tender.
- xi. The Negotiation Committee came back to the Tender Committee with a report that there was inadequate budget and the process should be stopped and retendered.
- xii. The Tender Committee in its deliberation pointed out that the Negotiation Committee did not adhere to the terms of references and expanded the Negotiation Committee and asked to adhere to the terms of references.
- xiii. The expanded Committee presented its report to the Tender Committee on 30th August 2013 and Tender Committee approved the contract preparation. Thereafter, the contract was signed with successful bidder on 7th April 2014.
- xiv. The concessionaire delivered the five Apron Buses in March 2015. The bus model is Cobus whose origin is from Germany and the current market price for this model is KES 45 million per bus.

4.4 Submission by the Board of Directors of KAA

On 30th June, 2015 the Committee met with the Chairperson of the Board of Directors of Kenya Airports Authority, Mr. David Kimaiyo, who informed the Committee as follows:-

That:-

- a. The project of procuring the Apron Bus at JKIA was first conceived in 2007. Consequently the KAA management formed a task force to evaluate and propose the modalities of offering the Apron Bus Services. The task force proposed the following mode of the provision of the said service:-
 - i. The first option was for KAA to purchase, operate and maintain the Apron Buses. This option however, was found unsuitable due to logistics constraints and not within the Authorities core business mandate
 - ii. The second option was for KAA to concession a third party to buy own, operate and maintain the Apron Buses. Upon consideration of this proposal, the committee found it unsuitable since the interest of the concessionaire would be profit driven.
 - iii. The third option was for KAA to purchase the Apron Buses and concession a third party to operate and maintain them. Upon further consideration the Committee found this option most suitable given that it would balance the issues in aforementioned options.
- b. The task force recommended that the Authority acquire five Apron Buses, four buses to be used at JKIA and one at Moi International Airport. The Acquisition was to be fast tracked since the remote parking stands were still under construction.
- c. During KAA Board meeting held on 18th February 2015 the issue of Apron Buses was brought before the Board by the Managing Director when the board was deliberating the general master plan of Jomo Kenyatta International Airport. The Board also informed the Committee Members that KAA purchases five Apron Buses and the first bus was brought in November 2014 and the remaining four buses were coming.
- d. During the Board meeting held on 22nd April 2015, the Board Members were deeply concerns when they learnt that the buses that had been bought did not belong to KAA, but to a concessionaire. Subsequently, the Board of Directors passed a resolution and directed Audit and Risk Committee of the Board to audit the matter of the Apron Buses.
- e. There was no business case in acquiring the Apron Buses and the entire project was freight with irregularities from the start. There was no value for the money to spend Kshs 11 million per month for the buses.

- f. There was no supporting budget for the Apron Buses as recommended by the first Negotiation Committee that the tender process be stopped and the tender be floated afresh due to unavailability of funds.
- g. The tender submission date was extended through addendum three times. The lowest bidder, M/s. Pewin Cabs Ltd was disqualified at the preliminary evaluation stage for failing to submit the tender security documents. However, the said document was in a separate envelope that the company submitted.
- h. The Board were not convinced on the reason one tenderer was duty paid and the other duty free. However, the Board established that M/s. Relief and Mission Logistics Ltd smuggled the Apron Buses to the country without paying taxes to Kenya Revenue Authority.
- i. The second Negotiation Committee members were interdicted by the Board following the role they played in the negotiation.

4.5 Submission by the Management of Kenya Airways Ltd

On 18th June, 2015 the Committee met with the Kenya Airways Ltd Chief Executive Officer, Mr. Mbuvi Ngunze with a view of ascertaining the unit cost and operations of the Apron Buses owned by Kenya Airways Ltd in comparison with the price for each bus procured by M/S. Relief and Missions Logistics. Mr. Ngunze briefed the Committee on the issues surrounding the procurement of the Apron Buses as follows.

That:-

- i. The need for KQ to have the Apron Buses was necessitated by challenges such as decrease in mobility faced after the fire that gutted down the Airport the JKIA. The Company had to acquire the buses to help transport passengers within the airport.
- ii. KQ is operating eleven (11) Apron Buses of which nine buses were bought from China while two are from Germany. The Company paid approximately Sh22 million for each bus bought in China and Kshs. 26 million for each of those from Germany.

- iii. The Company charges their customer airlines \$60 (Kshs. 6,000) per trip and Kenya Airport Authority \$50 (Kshs. 5,000) for each trip. He also revealed that the operating cost for each bus is Kshs. 800,000 per month.

4.6 Submission by the Public Procurement Oversight Authority (PPOA)

On 2nd July, 2015 the Committee met with the Director General of the Public Procurement Oversight Authority, Mr. Maurice Juma who briefed the Committee on the issues surrounding the procurement of the Apron Buses as follows.

That:-

The Authority received procurement records from Kenya Airports Authority which PPOA analyzed and made the following observations:-

- i. The tender was advertised in the “Daily Nation” Newspaper on 6th and 7th December, 2011. The initial deadline for the submission of the tender was 30th December, 2011 at 11:00 am. However, the deadline for submission/opening dates was extended three times.
- ii. The following six bidders bought the tender documents:-
 - (a) Airport ground handling Services
 - (b) The Strand Hotel
 - (c) Motor Gari Ltd
 - (d) Relief & Mission Logistics
 - (e) Pewin Cabs Ltd
 - (f) Take me There Safaris
- iii. The tenders were opened in the presence of the bidders’ representatives on 10th February 2012 by the Tender Committee comprising of three members namely Abraham Ngetich, Nelson Obwoye and Isaiah Oluoch. Only two bids were received: M/s Relief and Mission Logistics Ltd and Pewin Cabs Ltd.
- iv. The evaluation was conducted by a committee of members namely: Bernard Mogambi, Wilfred Ndegwa, David Ngetich and C.N Warutere. The process of the evaluation were conducted in three stages; preliminary, technical and financial evaluation.
- v. Preliminary Evaluation was based on the criteria set out under 2.1 of the Appendix to Instruction to Tenderers to determine the responsiveness of the tenders to the mandatory requirement. These criteria were:-

- (a) Registration certificate
 - (b) Tender security
 - (c) Form of Tender
 - (d) Tax compliance
 - (e) Tender validity
 - (f) Litigation history
 - (g) Declaration on debarment
 - (h) Audited accounts (2008-2010)
 - (i) Manufacturers authorization
 - (j) Power of attorney
 - (k) Brochures and technical documentation
 - (l) CV of key personnel
 - (m) Draft programme of acquiring the buses Operation Plans
 - (n) One original and one copy of tender document
 - (o) Acceptance for further evaluation
- vi. M/s. Pewin Cabs Ltd was disqualified from further evaluation after failing to meet two mandatory requirements which are failure to submit tender security and CVs of key personnel in the company.
- vii. Technical evaluation was based on the criteria that was set out under clause 2.11 of the Appendix to Instruction to Tenderers;
- a) Audited accounts for the period ending in the year 2008, 2009 and 2010 to demonstrate minimum average annual turnover of KES 100 million.
 - b) Access to cash flow of KES 200 million.
 - c) Compliance with the requirement of the tender supported by brochure
 - d) Commitment from manufacturer to provide spare parts and support on equipment for contract period and not less than eight years.
 - e) Proposed operations plan to demonstrate understanding of the operation requirements.
- viii. As regards to financial evaluation, the tender processing committee considered arithmetic errors and noted that there were none. The Committee therefore recommended the award of the tender to Relief & Mission Logistics Ltd at monthly cost of USD 24, 000 per bus per month. This translated to USD 120,000 for the five buses per month. The evaluation report was signed by all members of the evaluation committee. The report is dated 27th February 2012.
- ix. Subsequently the evaluation report was presented to the Tender Committee in its meeting held on 29th March 2012. The Committee deferred the award until next

meeting in order to get break down of the cost and to invite an observer. In the said next meeting held on 3rd May 2012, the Committee approved the award subject to negotiation. The Committee also came up with terms of reference for the negotiation.

- x. The successful and unsuccessful bidders were notified vide letters dated 14th May 2012. The latter to the bidder informed them that their tender was accepted and would be invited for negotiation. The bidder was invited for negotiation vide a letter ref. KAA/JKIA/752 dated 29th April 2013
- xi. The Negotiation Committee was appointed by the Accounting Officer on recommendation by the Head of the Procurement Unit. It comprise of Mr. Benard Mogambi (Chairman), Mr. Patrick Chonde, Eng. Christopher Warutere, Ms. Lilian Okidi and Ms. Margret Munene. The Committee prepared a report recommending cancellation of the procurement proceedings and that the tender be floated afresh due to unavailability of funds. The negotiation report was dated 25th July 2012 and was not signed.
- xii. The negotiation report was presented to the Tender Committee in its meeting held on 2nd August, 2012. The Committee deliberated on the report but deferred approval to next meeting.
- xiii. In its meeting held on 13th September 2012, the Tender Committee was informed that a Negotiation Committee was appointed to negotiate with the M/s. Relief and Mission Logistics Ltd based on the terms and reference set out by the Tender Committee. The Committee recommended that the Negotiation Committee renegotiate with the M/S. Relief and Mission Logistics Ltd and that the Negotiation Committee be expanded to include General Manager (Marketing & Business Development) and General Manager (Procurement & Logistics). The team prepared a negotiation report dated 12th August 2013 recommending the procuring entities approve increase of the buses to be provided immediately to ten buses at the same rate of USD 24, 000 per month per bus. The negotiation report was signed by the following officers:-
 - a) Ms. Lucy Mbugua
 - b) Mr. Edward Kobuthi
 - c) Mr. John Thumbi
 - d) Mr. Allan Muturi
 - e) Mr. C.N Warutere
 - f) Mr. Martin Kamau
 - g) Ms. Lilian Okidi

- h) Mr. Gitonga Kihoro
- i) Mr. George Thairu

- xiv. In its meeting held on 30th August 2013, the Tender Committee concurred with the recommendation of the negotiation report and awarded the tender to M/s. Relief and Mission Logistics Ltd at USD 120,000 per month for five buses.
- xv. Subsequently M/S. Relief and Mission Logistics Ltd was informed of the tender award vide a letter dated 6th September 2013. The award was at USD 120,000 per month for five buses.
- xvi. The contract between the Procuring Entity and M/S. Relief and Mission Logistics Ltd is dated 7th April 2014. The contract was for eight years commencing 1st June 2014 and ending 31st May 2022. Among the provisions of the contract was that payment were to be done in advance on quarterly basis and within 30 days of invoice.
- xvii. The Authority analyzed the procurement documents submitted by the Kenya Airports Authority and observed as follows:-

That:-

- a) There were no records provided by the Procuring Entity to show that feasibility studies were conducted by the Procuring Entity to ascertain the viability of the project and the possible cost of the project.
- b) The copy of the tender document submitted by Pewin Cabs Ltd did not have tender security of KES 1,000,000. The document also did not have CVs for key personnel. The manufacturer's authorization submitted by M/S. Pewin cabs Ltd was not in the format set out in the tender document.
- c) The Procuring Entity didn't carry out post qualification to determine whether the lowest responsive bidder was qualified to perform the contract prior to making the award as envisaged by Clause 2.24 of the Instruction to the Tenderers.
- d) The tender documents required the contractor to develop workshop and offices which included a maintenance yard, bus parking yard, a services pit and storage and operation offices on the land to be provided by the Procuring Entity. However, the tender document did not provide the BQs for the structure to guide

the bidders in preparation of tenders to make it competitive and easily comparable.

- e) The Appendix to Instruction to Tenderers amended Clause 2.10.1 which required the price quoted to be in Kenya Shillings and the required the quoted price to be United States Dollars only. The circumstances which lead to the Procuring Entity to prefer the dollar over the local currency are not clear.
- f) Though the Tender Committee deliberated the negotiation report that recommended cancellation of the tendering process due to lack of funds, the minutes of the Tender Committee were silent on all other issues (recommendations).
- g) The specifications given in the tender documents appeared to be sketchy as they provided very little information on the technical aspect of the buses such as the capacity. The specifications were descriptive in nature and did not conform to section 34 of the Public Procurement and Disposal Act 2006 which requires the specifications to be clear, correct and provide a complete description of what is being procured among other things in order to make the tenders received comparable on equal basis. The tender documents did not also provide the estimated distances to be covered which would have guided the costing. Further, specifications were not evaluated on item by item basis during evaluation.
- h) The requirement that the payment were to be done in advance may subject to the Procuring Entity to a financial loss in the event of unsatisfactory performance by the service provider.
- i) Though the Tender Committee recommended for negotiation, the negotiation was not provided for in the tender documents. Indeed, negotiations are not envisaged under open tender procurement method. However, post qualification of tender is envisaged under Regulation 52 of the Public Procurement and Disposal Regulations, 2006 and Procuring Entities are required to do market surveys before award of a tender to satisfy themselves that they are getting value for money.
- j) The Negotiation Committee went beyond its mandate by recommending an increase in the number of buses to ten buses in order to meet passenger transfer demand by then. This was not provided for in the tender documents.

- k) It is not clear whether the three persons (Lucy Mbugua, John Thumbi and Allan Muturi) that were proposed by the Tender Committee to be added in the Negotiation Committee were appointed by the Accounting Officer as required by the Procurement Law.
- l) Although the tender was awarded at USD 120,000 per month for five buses, the actual cost could not be ascertained since the Procuring Entity was also expected to cater for any deficit in the event the fee collected from the airlines is less than the amount that M/s. Relief and Mission logistics Ltd were contracted for. As indicated in the Tender Committee minutes of the meeting held on 30th August 2013 that awarded the tender, the Procuring Entity was to negotiate with the Airlines on the rate to apply.
- m) The inadequacies noted in the specifications of the buses, as provided in the tender documents and the absences of the BQs for the maintenance workshop, the bid documents used by the Procuring Entity were not able to adequately enough to enable a competitive bidding process. It may also explain the reason why out of the six bidders who bought the tender documents, only two submitted their tenders.

4.7 Submission by the Kenya Revenue Authority

On 14th July, 2015 the Committee met with the Commissioner for Customs, Mr. Jukias Musyoki, who informed the Committee as follows:-

That:-

- i. The first Apron Bus was imported on November 2014 by M/S. Relief and Mission Logistics Ltd and the remaining four buses were imported on January 2015.
- ii. The tax payable amount for the five buses was Kshs 30.5 million and this money was paid by the company. The taxes paid were the following tax categories:-
 - Value added tax (VAT)
 - Import Declaration Fee (IDF)
 - Railway Development Levy (RDL)

- iii. The law exempts import duty pursuant to Fifth Schedule of the East Africa Community Custom Management.
- iv. KRA waived import duty from the company based on the contract that Kenya Airports Authority entered with M/s. Relief and Mission logistics Ltd as ground handlers at the airports. KRA used this contract documents among other correspondences between KRA and M/S. Relief and Mission logistics Ltd to waive the import duty and the amount of the import duty exempted was Kshs 38 million.
- v. Tax exemption was based on usage, the entity handling it and where the goods/services are to be used. In this case the place the Apron Buses to be used at Jomo Kenyatta international Airport (JKIA). M/S. Relief and Mission logistics Ltd was mandated by KAA to be their ground handlers.
- vi. M/S. Relief and Mission Logistics Ltd imported a total of five Apron Buses of which four of them were brand manufactured in the year 2014 and the remaining one was manufactured in 2011 and it was fairly old.

4.8 Submission by Mr. Patrick Chonde, Ag. General Manager Finance

On 14th July, 2015 the Committee met with Mr. Patrick Chonde, Ag. General Manager Finance but failed to admit his submissions on the account that it had questions and responses that the Committee asked the previous witnesses. The Committee further raised concerns on whether the presentation presented by the officer to the meeting was prepared by another person and his role was to read before the Committee.

4.9 Submission by M/S. Relief and Mission Logistics Ltd

On 28th July, 2015 the Committee met with the Managing Director, M/S. Relief and Mission Logistics Ltd, Mr. John Kihoro who made his presentation on the procurement of the Apron Buses. In his submissions he stated as follows:-

That:-

- i. M/S. Relief and Mission Logistics Ltd sought import duty exemption on the basis that the East Africa Customs Management act exempts import duty on goods that ground airport handlers' imports. Therefore the Company being the successful bidder to provide Apron Bus services at JKIA and having signed a contract with the Kenya

Airports Authority applied for the import duty exemptions and the Kenya Revenue Authority accepted the waiver.

- ii. The company did costs analysis before they bid the tender to provide Apron Buses at JKIA and quoted bid price of \$ USD 120,000 per months for five buses. This price is inclusive of all relevant taxes. The cost of operation was prepared during the tendering process and the only thing that changed is the exchange rate of the \$ USD against the Kenya Shilling. The tender was an open one and KAA was at liberty to reject.
- iii. The company was a profit driven company which made investment in anticipation of good returns.
- iv. The company spent over Kshs. 250 million to purchase the Apron Buses among other things and their invoices submitted to KAA were not honoured.

5.0 FACT FINDING VISIT BY THE COMMITTEE TO JKIA

On Monday, 20th July, 2015 the Committee undertook a fact finding visit to JKIA. The objective of the visit was to ascertain the actual presence of the buses operated by M/s. Relief and Mission Ltd and secondly, to draw comparisons in terms of specifications and comfort between the Apron Buses operated by Kenya Airways Ltd and those by M/s. Relief and Mission Logistics Ltd . During its visit, the Committee toured the five Apron Buses owned by M/s. Relief and Mission Logistics Ltd. The Committee confirmed that the buses had stopped operations following the termination of the contract. The Committee learnt that one of the five buses was smaller in size than the others yet the purchase price was similar with the rest.

The Committee further inspected Apron Buses operated by Kenya Airways Ltd. The Committee noted that the specifications of the Apron Buses operated by Kenya Airways Ltd and those by M/s. Relief and Logistics Ltd were similar.

6.0 COMMITTEE OBSERVATIONS AND FINDINGS

Arising from the various meetings with the witnesses, the Committee made the following observations and conclusions:-

- i. The Authority ignored the option for KAA to purchase the Apron Buses and concession a third party to operate and maintain them despite the recommendation by the Committee tasked to come up with mode of provision of the bus services.
- ii. KAA procured the apron bus services from M/s. Relief and Mission Logistics Ltd without the existence of an adequate budget in contravention of the Public Procurement and Disposal Regulations of 2006 specifically regulation 10(2d) which state there should be no commencement of any procurement process without the provision of funds.
- iii. The tendering process was commenced before negotiating with the airlines on the service charge so as to gauge the viability of the business. More importantly, there was no evidence on record to show KAA negotiated with Airlines on this issue.
- iv. The Authority established a Negotiation Team after awarding the tender to M/s Relief and Mission Logistics Ltd instead of the vice versa contrary to Public Procurement and Disposal Act, 2005.
- v. The Authority disregarded the recommendation by the 1st Negotiation Committee to have the tender process stopped and the tender be floated afresh due to lack of adequate funds but instead the Tender Committee established a second Negotiation Team, which had members from the Tender Committee who were to finally approve the negotiation report (**see Appendix I**).
- vi. The tender price for the provision of the five Apron Buses is outrageous and is not sustainable.
- vii. The KAA management approved Kenya Airways to own and operate Apron Buses and yet the Authority targets Airlines which Kenya Airways was one of them to hire the five buses leased from M/s Relief and Mission Logistics Ltd.

- viii. The Committee further observed that M/s. Relief and Mission Logistics Ltd imported a total of five Apron Buses of which four of them were brand manufactured in the year 2014 and the remaining one was manufactured in 2011 and it is fairly old.
- ix. It has been observed that the Authority was granted US\$ 2.1 M by the World Bank to procure seven buses, however it was noted that the tendering process took too long bearing in mind this was to address an emergency situation i.e JKIA fire tragedy.
- x. The contractor had not constructed the maintenance yard and the fueling station as provided for in the contract and the fueling was done through a mobile unit. In addition the legal department did not have the performance guarantee in their custody and proof of insurance for the Apron Buses and their staff.
- xi. M/s. Relief & Mission Logistics Ltd forwarded invoices Ref. KAA 01-14 USD 74,400 KAA 02 -15 of USD 72,000 dated 28/12/2014 and 1/3/2015 respectively for payment before fulfilling all the conditions (**see Appendix II**).
- xii. Though the Tender Committee recommended for negotiation, the negotiation was not provided for in the tender documents. Indeed, negotiations are not envisaged under open tender procurement method. However, post qualification of tender is envisaged under Regulation 52 of the Public Procurement and Disposal Regulations, 2006 and Procuring Entities are required to do market surveys before award of a tender to satisfy themselves that they are getting value for money.
- xiii. The Negotiation Committee went beyond its mandate by recommending an increment of buses to ten buses in order to meet passenger transfer demand by then. This was not provided for in the tender documents.

7.0 COMMITTEE RECOMMENDATIONS

Having heard oral submissions from the witnesses the Committee recommends that:-

- I. Kenya Airports Authority should expedite the procurement process of the seven (7) Apron Buses and utilize the US\$ 2.1 M granted to the Authority by the World Bank following the fire tragedy in August 2013 and concession a third party to operate and maintain them following the due process as provided for in the Public Procurement and Disposal Act, 2005.

- II. The acting Finance Manager, Mr. Patrick Chonde should be further investigated by EACC for abdicating from his role in the procurement process and delegating to a junior officer, one Mr. Martin Kamau.
- III. The following officers who participated in the Second Negotiation Team, namely Ms. Lucy Mbugua, former Managing Director; Messrs, John Thumbi, former General Manager (Finance), Martin Kamau, former Head of Examination (Finance), Eng. C.N. Warutere, JKIA Engineer and Ms. Lillian Okidi, former Procurement manager should be investigated by Ethics and Anti-corruption Commission for any procurement malpractice.

End

MINUTES OF THE 41ST SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON FRIDAY 14TH AUGUST, 2015 IN THE MEETING ROOM AT FLAMINGO BEACH HOTEL, MOMBASA FROM 11:10 AM

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. Grace Kipchoim, M.P
3. Hon. Aduma Owuor, M.P
4. Hon. (Eng.) Stephen Ngare, M.P.
5. Hon. Omulele Christopher, M.P.
6. Hon. Ahmed Abbas Ibrahim, M.P.
7. Hon. Mathias Robi, M.P,
8. Hon. Simon Nyaundi Ogari, M.P.
9. Hon. Stephen Manoti, M.P.
10. Hon. Mark Lomunokol, M.P.
11. Hon. Suleiman Dori, M.P.
12. Hon. Mishi Juma, M.P.
13. Hon. Omar Mwinyi, M.P.
14. Hon. (Capt.) Clement Wambugu, M.P
15. Hon. K.K. Stephen Kinyanjui Mburu, M.P
16. Hon. Johnson Manyana Naicca, M.P.
17. Hon. Emmanuel Wangwe, M.P.
18. Hon. Peter Shehe, M.P.
19. Hon. Barchilei Kipruto, M.P.
20. Hon. Edick Omondi Anyanga, M.P.
21. Hon. (Arch.) David Kiaraho, M.P.
22. Hon. Eng. John Kiragu, M.P

ABSENT WITH APOLOGY

1. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
2. Hon. Ali Wario, M.P.
3. Hon. Joseph Lomwa, M.P.
4. Hon. Chachu Ganya, M.P.
5. Hon. Cecily Mbarire, M.P.
6. Hon. Mukwe James Lusweti, M.P.
7. Hon. Gideon Konchella, M.P.

IN ATTENDANCE

1. Mr. Samuel Kalama
2. Mr. Abdifatah M. Bule
3. Mr. James Muguna
4. Ms. Mercy Wanyonyi

- NATIONAL ASSEMBLY

- Clerk Assistant
- Clerk Assistant
- Research officer
- Legal Counsel

MIN/DC-TPWH/2015/206

Preliminaries

The Chair called the meeting to order at 11:10 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Consideration and adoption of the Report on the inquiry into the procurement of the apron buses by Kenya Airports Authority
3. Any Other Business

Min/DC-TPWH/2015/207 Consideration and adoption of the Report on the inquiry into the procurement of the apron buses by Kenya Airports Authority

The Committee considered and adopted the report unanimously as proposed and seconded by the Hon. Simon Nyaundi Ogari, MP and Hon. Ahmed Abbas Ibrahim, M.P respectively

MIN/DC-TPWH/2015/208 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on a date to be communicated.

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

MINUTES OF THE 39TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON THURSDAY 28TH JULY, 2015 IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE AT 10:50 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. –**Vice Chairman**
3. Hon. Omulele Christopher, M.P.
4. Hon. Cecily Mbarire, M.P.
5. Hon. Emmanuel Wangwe, MP
6. Hon. (Capt.) Clement Wambugu, M.P.
7. Hon. Peter Shehe, MP
8. Hon. Edick Omondi Anyanga, M.P.
9. Hon. Ali Wario, M.P.
10. Hon. Aduma Owuor, M.P
11. Hon. Ahmed Abbas Ibrahim, M.P.
12. Hon. Omar Mwinyi, M.P.
13. Hon. K.K. Stephen Kinyanjui Mburu, M.P
14. Hon. Johnson Many Naicca, M.P.
15. Hon. Gideon Konchella, MP
16. Hon. Grace Kipchoim, M.P
17. Hon. Suleiman Dori, M.P.
18. Hon. Mark Lomunokol, M.P.
19. Hon. Mukwe James Lusweti, M.P.
20. Hon. Eng. John Kiragu, M.P.
21. Hon. Barchilei Kipruto, MP
22. Hon. Mishi Juma, M.P.
23. Hon. (Arch.) David Kiaraho, M.P.

ABSENT WITH APOLOGY

1. Hon. Chachu Ganya, M.P.
2. Hon. Joseph Lomwa, M.P.
3. Hon. Stephen Manoti, M.P.
4. Hon. Simon Nyaundi Ogari, MP
5. Hon. (Eng.) Stephen Ngare, M.P
6. Hon. Mathias Robi, M.P,

IN ATTENDANCE

- **NATIONAL ASSEMBLY**

- | | |
|-----------------------|------------------|
| 1. Samuel Kalama | Clerk Assistant |
| 2. Mr. Abdifatah Bule | Clerk Assistant |
| 3. Ms. Nuri Kitel | Clerk Assistant |
| 4. Mr. James Muguna | Research Officer |
| 5. Mr. Abdirahim Omar | Fiscal Analyst |

IN ATTENDANCE

RELIEF AND MISSION LOGISTICS LTD

- | | |
|----------------------|-------------------|
| 1. Mr. John Kihoro | Managing Director |
| 2. Mr. George Thairu | Project Director |

MIN/DC-TPWH/2015/197

Preliminaries

The Chair called the meeting to order at 10:50 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Meeting with the M/s Relief & Mission Logistics Ltd on the inquiry into the procurement of Apron Buses by KAA
3. Any Other Business
4. Adjournment

Min/DC-TPWH/2015/198 Meeting with the M/s Relief & Mission Logistics Ltd on the inquiry into the procurement of Apron Buses by KAA

The Chairperson invited the Managing Director for M/s. Relief & Mission Logistics Ltd, Mr. John Kihoro to make his presentation on the issues surrounding the procurement of the Apron buses to transfer passengers at Jomo Kenyatta International Airport (JKIA). He made his presentation as follows:-

That:-

1. Relief & Mission Logistics Ltd sought import duty exemption on the bases that the East Africa Customs Management act exempts import duty on goods that ground airport handlers' imports. Therefore the Company being the successful bidder to provide apron

bus services at JKIA and subsequent contract the company entered with the Kenya Airports Authority applied the import duty exemptions and the Kenya Revenue Authority accepted the waiver.

2. The company did costs analysis before they bid the tender to provide apron buses at JKIA and quoted bid price of \$ USD 120,000 per month for five buses. This price is inclusive of all relevant taxes. The cost of operation was prepared during the tendering process and the only thing that changed is the exchange rate of the \$ USD against the Kenya Shilling. The tender was an open tender and KAA was at liberty to reject.
3. The company is a profit driven company which made investment in anticipation of good returns.
4. The company spent over KShs. 250 million to purchase the apron buses among other things and their invoices submitted to KAA were not honoured.

Committee concerns

1. On whether the five apron buses were new or used, the MD confirmed that all the buses are new despite one that was manufactured in the year 2011.
2. On how much was the cost of each apron bus, the MD informed the meeting that each bus costed KSh. 42 million except the one that was manufactured the year 2011 which costed KShs. 22 million.
3. In regard to whether Relief & Mission Logistics offered the operation facilities as indicated in the contract between them and KAA, the MD informed the meeting that his company has applied for approval from Kenya Civil Aviation Authority (KCCA) to construct various operation facilities but it took long to get approvals. However, he further informed the meeting that lack of such facilities never stopped the operations of the apron services.
4. On what basis was the Bill of Quantity (BQ) to construct the operation facilities was prepared, he informed the meeting that the BQ was prepared based on the architectural drawings submitted to Kenya Civil Aviation Authority for approval.

MIN/DC-TPWH/2015/199 ANY OTHER BUSINESS

The Committee nominated the following Members to participate an inspection tour of the Matangini Primary School in Ivingoni-Nzambani Ward in Kibwezi East Constituency on Monday, 10th August 2015:-

- I. Hon. Maina Kamanda, MP – Chairperson
- II. Hon. Christopher Omulele, MP
- III. Hon. Clement Wambugu, MP
- IV. Hon. Johnson Naicca, MP

The secretariat was tasked to consult with other five (5) members of the committee to confirm their availability and participation in the activity on the said date.

The Committee also agreed to hold a report writing retreat from 13th to 16th August 2015 preferably at Whitesands Hotel in Mombasa. The Committee will consider and adopt the following reports in the said retreat:-

- I. Report on the inquiry of the procurement of the Apron buses by Kenya Airports Authority
- II. Report on the Petition by Hon. Jessica Mbali, MP on behalf of parents, teachers, pupils and stakeholders of Matangini Primary School in Ivingoni-Nzambani Ward in Kibwezi East Constituency on the impending relocation of the school to sub-standard temporary structure
- III. Report on the Petition by Hon. Sunjev Birdi, MP regarding alleged corrupt practices at the weighbridges

MIN/DC-TPWH/2015/200 ADJOURNMENT

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on Thursday, 30th July, 2015 at 10.00 am

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

MINUTES OF THE 36TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 14TH JULY, 2015 IN THE COMMITTEE ROOM ON 5TH FLOOR, CONTINENTAL HOUSE AT 10:30 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. Omulele Christopher, M.P.
3. Hon. Mukwe James Lusweti, M.P.
4. Hon. Eng. John Kiragu, M.P.
5. Hon. Cecily Mbarire, M.P.
6. Hon. Emmanuel Wangwe, MP
7. Hon. (Arch.) David Kiaraho, M.P.
8. Hon. Mathias Robi, M.P.
9. Hon. Omar Mwinyi, M.P.
10. Hon. Mishi Juma, M.P.
11. Hon. (Capt.) Clement Wambugu, M.P.
12. Hon. Stephen Manoti, M.P.
13. Hon. Barchilei Kipruto, MP

ABSENT WITH APOLOGY

1. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
2. Hon. K.K. Stephen Kinyanjui Mburu, M.P
3. Hon. Johnson Many Naicca, M.P.
4. Hon. Gideon Konchella, MP
5. Hon. Edick Omondi Anyanga, M.P.
6. Hon. Chachu Ganya, M.P.
7. Hon. Peter Shehe, MP
8. Hon. Joseph Lomwa, M.P.
9. Hon. (Eng.) Stephen Ngare, M.P
10. Hon. Grace Kipchoim, M.P
11. Hon. Suleiman Dori, M.P.
12. Hon. Ali Wario, M.P.
13. Hon. Mark Lomunokol, M.P.
14. Hon. Ahmed Abbas Ibrahim, M.P.
15. Hon. Simon Nyaundi Ogari, MP
16. Hon. Aduma Owuor, M.P

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|-----------------------|--------------------|
| 1. Mr. Abdifatah Bule | Clerk Assistant |
| 2. Ms. Nuri Kitel | Clerk Assistant |
| 3. Mr. Abdirahim Omar | Fiscal Analyst |
| 4. Mr. James Muguna | Researcher Officer |

IN ATTENDANCE

KENYA REVENUE AUTHORITY

- | | |
|-----------------------|-------------------------------------|
| 1. Mr. Jukias Musyoki | Ag. Commissioner |
| 2. Mr. Benson Chacha | Chief Manager |
| 3. Mr. Jato Syong'oh | Team Leader, Stakeholder Engagement |

IN ATTENDANCE

KENYA AIRPORTS AUTHORITY

- | | |
|--------------------|-----------------------------|
| Mr. Patrick Chonde | Ag. General Manager Finance |
|--------------------|-----------------------------|

MIN/DC-TPWH/2015/185

Preliminaries

The Chair called the meeting to order at 10:30 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Preliminaries/Introduction
3. Communication from the Chairperson
4. **Inquiry into the procurement of Apron buses by Kenya Airports Authority**
 - Meeting with the Commissioner General Kenya Revenue Authority
 - Meeting with Mr. Patrick Chonde, Ag. General Manager Finance
5. Any Other Business

Min/DC-TPWH/2015/186 Meeting with Mr. Patrick Chonde, Ag. General Manager Finance

The Chairperson invited the Ag. General Manager for Finance, Mr. Chonde to make his presentation on the duty waiver of the apron buses. He presented a written submission to the Committee. The Committee went through the presentation and observed that the presentation was inadmissible given that it had questions and responses that the Committee had ask the previous witnesses. The Committee further raised concerns on whether the presentation presented by the officer to the meeting was prepared by another person and his role was to read before the Committee. However, he assured that the presentation was his. The Committee thereupon rejected his submission and asked the officer to leave the meeting room.

Min/DC-TPWH/2015/187 Meeting with the Commissioner General Kenya Revenue Authority

The Chairperson invited the Commissioner, Customs for the Kenya Revenue Authority (KRA) to make his presentation on the duty waiver of the apron buses.

The Commissioner made his presentation to the Committee as follows:-

That:-

1. The first apron bus was imported on November 2014 by the Relief & Mission Logistics Ltd and the remaining four buses were imported on January 2015.
2. The tax payable amount for the five buses were Kshs 30.5 million and this money was paid by the company. The taxes paid were the following tax categories:-
 - Value added tax (VAT)
 - Import Declaration Fee (IDF)
 - Railway Development Levy (RDL)
3. The law exempts import duty pursuant to Fifth Schedule to the East Africa Community Custom Management.
4. KRA waived import duty from the company based on the contract that Kenya Airports Authority entered with Relief & Mission logistics as ground handlers at the airports. KRA used this contract documents among other correspondences between KRA and Relief & Mission logistics to waive the import duty and the amount of the import duty exempted was Kshs 38 million.
5. Tax exemption is based on usage, the entity handling it and where the goods/services are to be used. In this case the place the apron buses to be used at Jomo Kenyatta international Airport (JKIA). Relief & Mission logistics was mandated by KAA to be their ground handlers.
6. Relief & Mission Logistics Ltd imported a total of five apron buses of which four of them were brand manufactured in the year 2014 and the remaining one was manufactured in 2011 and it is fairly old.

Committee concerns

The following concerns were raised by the members during the meeting

1. On whether it was procedural for KRA to exempt the import duty tax for M/s. Relief & Mission Logistics Ltd without KAA writing to their parent ministry of Transport and Infrastructure requesting for such waiver, the Commissioner informed the meeting that any

item that is not indicated in the Fifth Schedule to the East Africa Community Custom Management should be requested through the Treasury for exemption. The Treasury will write to KRA requesting for such exemptions. However, any item under the Fifth Schedule is being implemented directly by KRA.

2. The Committee also raised concerns as to why KRA went ahead and waived the import duty taxes in respect of M/s. Relief & Mission Logistics Ltd without getting officials confirmation that actually the company was awarded the contract by KAA; the Commissioner admitted that KRA did not confirm the same with KAA on the existence of the contract between the company and KAA. Further, the Commissioner informed the meeting that the Apron buses are unique vehicles which can only be used in airports.
3. On whether there is provision in the contract documents between KAA and Relief & Mission Logistics Ltd for the said import duty tax waiver, the Commissioner informed the meeting that there was no such provisions in the contract documents and he admitted that KRA waived the import duty tax based on their mandates pursuant to Fifth Schedule to the East Africa Community Custom Management Act.
4. On whether Kenya Bureau of Standard (KEBS) was involved during the importation of the apron buses to determine the quality of the buses imported, the Commissioner informed the meeting that KRA only involves KEBS when the year of manufacture of a product is in doubt and for that matter, KEBS was not involved.
5. On whether the exempted import duty tax will reflect on the users in terms of charging the services not at commercial rate, the Commissioner informed the meeting that he was not in position to respond to the question and the best entity to respond to it were the contracting parties. He further informed the meeting that given that KAA terminated the contract they had with Relief and Mission Logistics, KRA will claim the waived import duty from the company.

MIN/DC-TPWH/2015/188 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on Thursday, 23rd July, 2015 at 10.00 am

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

MINUTES OF THE 35TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 7TH JULY, 2015 IN THE PSC BOARDROOM ROOM 108, COUNTY HALL AT 10: 50 AM.

Present

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. Ahmed Abbas Ibrahim, M.P.
3. Hon. Stephen Manoti, M.P.
4. Hon. (Eng.) Stephen Ngare, M.P.
5. Hon. Joseph Lomwa, M.P.
6. Hon. Cecily Mbarire, M.P.
7. Hon. (Eng.) John Kiragu, M.P.
8. Hon. Ali Wario, MP.
9. Hon. Emmanuel Wangwe, M.P.
10. Hon. MishiJuma, M.P.
11. Hon. Johnson ManyNaicca, M.P.
12. Hon. Suleiman Dori, M.P.
13. Hon. Omulele Christopher, M.P.
14. Hon. K.K. Stephen KinyanjuiMburu, M.P.
15. Hon. Grace Kipchoim, M.P.
16. Hon. Mark Lomunokol, M.P.
17. Hon. Peter Shehe, M.P.
18. Hon. (Arch.) David Kiaraho, M.P.
19. Hon. Mukwe James Lusweti, M.P.

Apologies

1. Hon. (Eng.) Mahamud M. Mohamed, M.P. –**Vice Chairman**
2. Hon. Mathias Robi, M.P.
3. Hon. Simon NyaundiOgari, M.P.
4. Hon. AdumaOwuor, M.P.
5. Hon. BarchileiKipruto, M.P.
6. Hon. ChachuGanya, M.P.
7. Hon. (Capt.) Clement Wambugu, M.P.
8. Hon. EdickOmondiAnyanga, M.P.
9. Hon. Omar Mwinyi, M.P.
10. Hon. Gideon Konchella, M.P.

In Attendance

1. Mr. Samuel Kalama
2. Ms. Nuri K. Nataan
3. Mr. AbdifatahBule
4. Mr. JamesMuguna

- National Assembly

First Clerk Assistant
Third Clerk Assistant
Third Clerk Assistant
Research Officer

Min/DC-TPWH/2015/178**Preliminaries**

The Chair called the meeting to order at 10:50 am and then proceeded to say the opening prayer. He then invited those present to introduce themselves.

Min/DC-TPWH/2015/179**Confirmation of Minutes**

The agenda was deferred.

Min/DC-TPWH/2015/1810**Matter Arising**

The agenda was deferred.

Min/DC-TPWH/2015/181 Meeting with the Kenya Airways Management on the Management and Operation of KQ.

The Chair invited the Chief Executive Officer (CEO) Mr. Mbuvi Ngunze to inform the Committee on the Management, Operations and challenges faced by the Kenya Airways (KQ). The Chairperson informed the KQ management that there are general concerns on the service delivery, financial challenges experienced by the National Carrier.

On his part, Mr. Ngunze thanked the Committee for extending its invite to him to appear before it. He then proceeded to inform the Committee as follows:-

That;

The Company has incurred losses of approximately 10 Billion which can be attributed to two factors

- i) Operating loss of 5 Billion
- ii) Expansion Capacity, where the Company invested approximately 5 Billion in acquiring new aircrafts.

Other issue such as security has also played a major role in the Company's loss due to decrease in Tourism.

He further assured the Committee that the Management had a plan on how to turn up their profit margins, which included the following;

- i) Refinance operations by selling old aircrafts
- ii) Redesign the waves from 24hours to 18 hours operation by creating more traffic by increasing connectivity.
- iii) Commercial diagnostic, the commercial competitiveness has changed over the years hence need for the Company to re-evaluate its strategies in the industry
- iv) Cost containment

The Company has had to borrow from the Government and one of the shareholders that is KLM to help it bridge the gap as the Company plan for long term solutions.

Min/DC-TPWH/2015/182 Meeting with the Kenya Airways Management on the Management on the operation of Apron Buses by KQ

The Chair informed the KQ management that the Committee has been carrying out inquiry into the procurement of Apron buses by the Kenya Airports Authority. He further informed the KQ management that the Committee has held meetings with several witnesses involved in the matter. In the course of such meetings the Committee learnt that Kenya Airways is operating Apron buses. He requested the Managing Director to brief the Committee on the cost of operation of the buses as well as the initial cost of the buses they are operating.

The KQ Chief Executive Officer, Mr. Ngunze informed the Committee as follows:-

That:-

The need for KQ to have the Apron Buses was necessitated by challenges such as decrease in mobility faced after the fire that gutted the Airport the JKIA. The Company had to acquire the buses to help transport passengers within the airport.

KQ is operating eleven (11) Apron Buses of which nine buses were bought from China while two are from Germany. The Company paid approximately Sh22 million for each bus bought in China and Sh26 million for each of those from Germany.

The Company charges their customer airlines \$60 (Kshs. 6, 000) per trip and Kenya Airport Authority \$50 (Kshs. 5,000) for each trip. He also revealed that the operating cost for each bus is Kshs. 800, 000 per month.

The Committee Members raised the following concerns of which the Mr. Ngunze responded to them as follows:-

1. On whether KQ is not able to manage its profit since it's been making a lot of losses in the recent years; Aviation industry globally goes through profit and loss curves but it's the objective of KQ management to help the Company realize profitability through increase in revenues.
2. On whether it is true that there is a possibility of change in the shareholding of the Kenya Airways; the Committee was informed that there is no eminent shareholding change taking place within the Company.
3. Concerns regarding poor customer service relations by the KQ staff; the Committee was informed that KQ Management takes the views of their customers seriously and promised to deal the matter since a customer is a very important component in any business.
4. On the confirmation that KQ is not going under; the CEO informed the Committee that KQ has a tight liquidity position but with the help they have received from the Government there is hope of increasing its revenues and thus there should be no cause of alarm.
5. On whether it is true that most of KQ aircrafts are owned by individuals; the Committee was informed that the correct position is that the Company acquires its aircrafts through buying through debts which they pay over a period of years and leasing from Manufacturers.
6. Regarding what percentage of customer handled by the KQ; the Committee was informed that KQ handles approximately 60% of the customers.
7. On whether it is conventional to have several operators of Apron buses in major airports; the Committee was informed that different Airports operates differently where by apron buses may be provided by only the Airport Authority or each Airline may operate its own apron buses.

Way Forward

The Committee resolved on the following;

1. To have the Kenya Bureau of Standards avail a pre-shipment inspection report on the Apron Buses before the Committee to help them determine if the buses were new or reconditioned.
2. The Secretariat to request the Kenya Revenue Authority vides a letter to avail all import documents relating to the Apron Buses on 14th July, 2015 while attending the Committee Meeting.


Min/DC-TPWH/2015/183 Any Other Business

The following matter was raised;

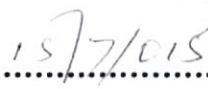
The Chair informed the Committee Members that they need to improve on time management in regards to showing up to Committee Meetings within the Parliament Buildings and outside Parliament.

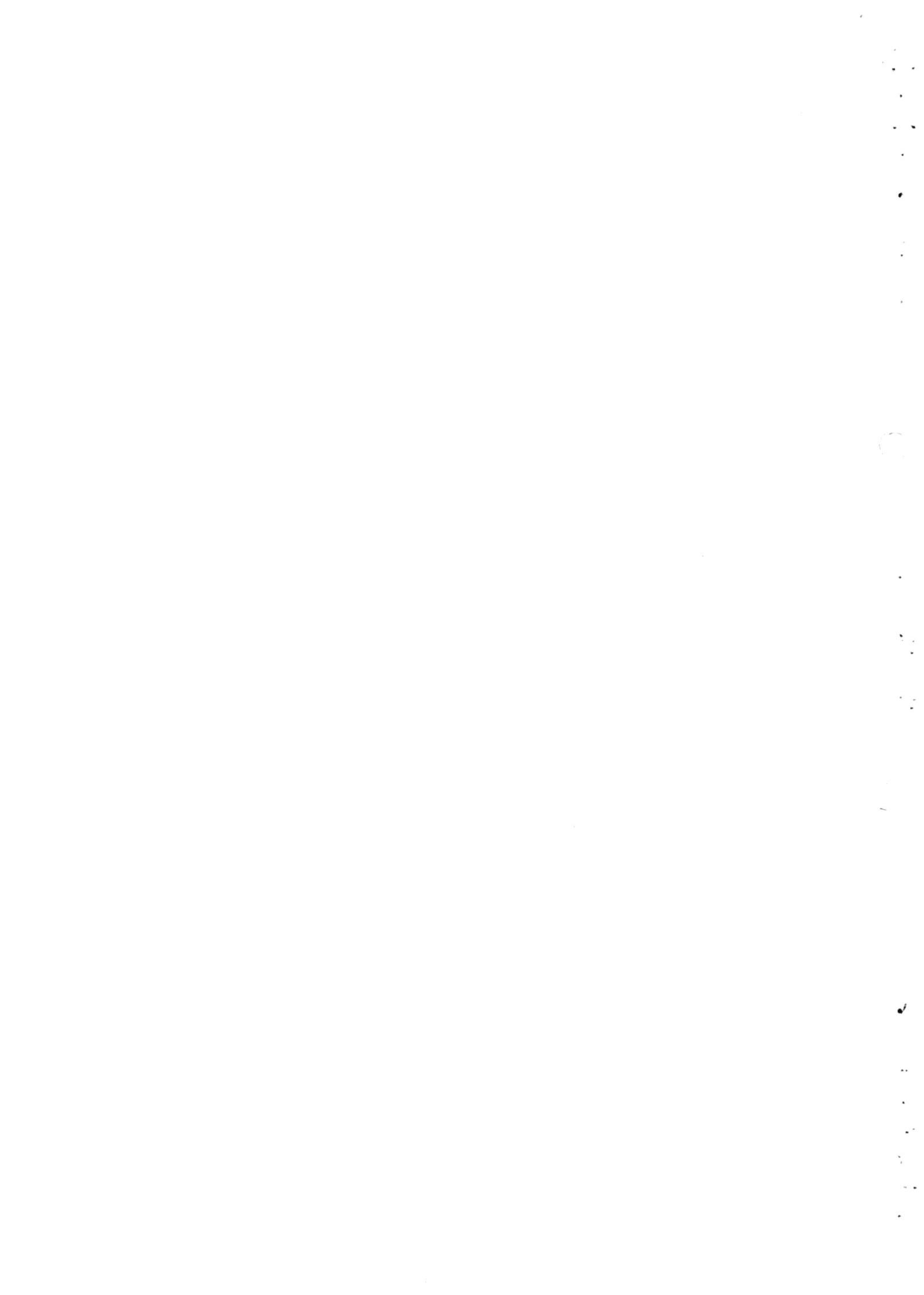
Min/DC-TPWH/2015/184 Adjournment

And the time being 12.20 pm the meeting was adjourned to be reconvened on Thursday, 9th July, 2015 at 10.00 am.

SIGNED.....

HON MAINA KAMANDA, M.P
(Chairperson)

DATE.....



MINUTES OF THE 34TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON THURSDAY 2ND JULY, 2015 IN THE BOARD ROOM, ON 11TH FLOOR, PROTECTION HOUSE AT 11:10 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Stephen Ngare, M.P. –
3. Hon. Omulele Christopher, M.P.
4. Hon. Joseph Lomwa, M.P.
5. Hon. Grace Kipchoim, M.P
6. Hon. Omar Mwinyi, M.P.
7. Hon. Suleiman Dori, M.P.
8. Hon. Mukwe James Lusweti, M.P.
9. Hon. Ali Wario, M.P.
10. Hon. Eng. John Kiragu, M.P.
11. Hon. Ahmed Abbas Ibrahim, M.P.
12. Hon. Simon Nyaundi Ogari, MP
13. Hon. AdumaOwuor, M.P
14. Hon. Cecily Mbarire, M.P.
15. Hon. Mark Lomunokol, M.P.
16. Hon. Barchilei Kipruto, MP
17. Hon. Peter Shehe, MP

ABSENT WITH APOLOGY

1. Hon. (Eng.) MahamudMaalim, M.P. –**Vice Chairman**
2. Hon. Stephen Manoti, M.P.
3. Hon. Mathias Robi, M.P,
4. Hon. (Arch.) David Kiaraho, M.P.
5. Hon. K.K. Stephen Kinyanjui Mburu, M.P
6. Hon. Johnson ManyNaicca, M.P.
7. Hon. Emmanuel Wangwe, MP
8. Hon. Gideon Konchella, MP
9. Hon. (Capt.) Clement Wambugu, M.P.
10. Hon. Edick OmondiAnyanga, M.P.
11. Hon. Chachu Ganya, M.P.
12. Hon. Mishi Juma, M.P.

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|-----------------------|-----------------|
| 1. Mr. Samuel Kalama | Clerk Assistant |
| 2. Mr. Abdifatah Bule | Clerk Assistant |
| 3. Ms. Nuri Kitel | Clerk Assistant |
| 4. Mr. Abdirahim Omar | Fiscal Analyst |

IN ATTENDANCE

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY

- | | |
|---------------------|-------------------------------------|
| 1. Mr. Maurice Juma | Director General |
| 2. Ms. Jane Njoroge | General Manager, Technical Services |
| 3. Mr. Peter Wangai | Senior Compliance Officer |

MIN/DC-TPWH/2015/174

Preliminaries

The Chair called the meeting to order at 10:45 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Preliminaries/Introduction
3. Communication from the Chairperson
4. **Meeting with the Public Procurement Oversight Authority on the inquiry into the procurement of Apron buses by Kenya Airports Authority**
5. Any Other Business

Min/DC-L/2015/175 Meeting with the Public Procurement Oversight Authority on the inquiry into the procurement of Apron buses by Kenya Airports Authority

The Chairperson invited the Director General (DG) for the Public Procurement Oversight Authority to make his presentation on the issues of the apron buses.

The DG made his presentation to the Committee as follows:-

The Authority received procurement records from Kenya Airports Authority which PPOA analyzed and made the following observations:-

1. The tender was advertised in the Daily Nation Newspaper on 6th and 7th December, 2011. The initial deadline for the submission of the tender was 30th December, 2011 at 11:00 am. However, the deadline for submission/opening dates was extended three times.

- II. The following six bidders bought the tender documents:-
- Airport ground handling Services
 - The Strand Hotel
 - Motor Gari Ltd
 - Relief & Mission Logistics
 - Pewin Cabs Ltd
 - Take me There Safaris
- III. The tenders were opened in the presence of the bidders' representatives on 10th February 2012 by the tender Committee comprising of three members namely Abraham Ngetich, Nelson Obwoye and Isaiah Oluoch. Only two bids were received: Relief & Mission Logistics and Pewin Cabs Ltd.
- IV. The evaluation was conducted by a committee of members namely: Bernard Mogambi, Wilfred Ndegwa, David Ngetich and C.N Warutere. The process of the evaluation were conducted in three stages; preliminary, technical and financial evaluation stages.
- V. Preliminary Evaluation was based on the criteria that set out under 2.1 of the Appendix to Instruction to Tenderers to determine the responsiveness of the tenders to the mandatory requirement. These criteria are:-
- Registration certificate
 - Tender Security
 - Form of Tender
 - Tax Compliance
 - Tender Validity
 - Litigation History
 - Declaration on debarment
 - Audited accounts (2008-2010)
 - Manufacturers Authorization
 - Power of Attorney
 - Brochures and technical documentation
 - CV of key personnel
 - Draft programme of acquiring the buses
 - Operation Plans
 - One original and one copy of tender document
 - Acceptance for further evaluation

M/s. Pewin Cabs Ltd was disqualified from further evaluation after failing to meet two mandatory requirements which are failure to submit tender security and CVs of key personnel in the company.

- VI. Technical evaluation was based on the criteria that were set out under clause 2.11 of the Appendix to Instruction to Tenderers;
1. Audited accounts for the period ending in the year 2008, 2009 and 2010 to demonstrate minimum average annual turnover of KES 100 million.
 2. Access to cash flow of KES 200 million.
 3. Compliance with the requirement of the tender supported by brochure
 4. Commitment from manufacturer to provide spare parts and support on equipment for contract period and not less than eight years.
 5. Proposed operations plan to demonstrate understanding of the operation requirements.
- VII. As regards to financial evaluation, the tender processing committee considered arithmetic errors and noted that there was none. The committee therefore recommended the award of the tender to Relief & Mission Logistics Ltd at monthly cost of USD 24, 000 per bus per month. This translated to USD 120,000 for the five buses per month. The evaluation report was signed by all members of the evaluation committee. The report is dated 27th February 2012.
- VIII. Subsequently the evaluation report was presented to the tender committee in its meeting held on 29th March 2012. The Committee deferred the award until next meeting in order to get break down of the cost and to invite an observer. In the said next meeting held on 3rd May 2012, the Committee approved the award subject to negotiation. The Committee also came up with terms of reference for the negotiation.
- IX. The successful and unsuccessful bidders were notified vide letters dated 14th May 2012. The latter to the bidder informed them that their tender was accepted and would be invited for negotiation. The bidder was invited for negotiation vide a letter ref. KAA/JKIA/752 dated 29th April 2013
- X. The negotiation committee was appointed by the Accounting Officer on recommendation by the Head of the Procurement Unit. It Comprised of Mr. Benard Mogambi (Chairman), Mr. Patrick Chonde, Eng. Christopher Warutere, Ms. Lilian Okidi and Ms. Margret Munene. The Committee prepared a report recommending cancellation of the procurement proceedings

and that the tender be floated afresh due to unavailability of funds. The negotiation report is dated 25th July 2012 and was not signed.

- XI. The negotiation report was presented to the tender committee in its meeting held on 2nd August, 2012. The Committee deliberated on the report but deferred approval to next meeting.
- XII. In its meeting held on 13th September 2012. The tender committee was informed that a negotiation committee was appointed to negotiate with the Relief & Mission Logistics based on the terms and reference set out by the tender committee. The committee recommended that the negotiation committee renegotiate with the Relief & Mission Logistics Ltd and that the negotiation committee be expanded to include General Manager (Marketing & Business Development) and General Manager (Procurement & Logistics). The team prepared a negotiation report dated 12th August 2013 recommending the procuring entities approve increase of the buses to be provided immediately to ten buses at the same rate of USD 24, 000 per month per bus. The negotiation report was signed by the following officers:-
- I. Ms. Lucy Mbugua
 - II. Mr. Edward Kobuthi
 - III. Mr. John Thumbi
 - IV. Mr. Allan Muturi
 - V. Mr. C.N Warutere
 - VI. Mr. Martin Kamau
 - VII. Ms. Lilian Okidi
 - VIII. Mr. Gitonga Kihoro
 - IX. Mr. George Thairu
- XIII. In its meeting held on 30th August 2013, the tender committee concurred with the recommendation of the negotiation report and awarded the tender to Relief & Mission Logistics Ltd at USD 120, 000 per month for five buses.
- XIV. Subsequently M/S. Relief & Mission Logistics Ltd was informed of the tender award vide a letter dated 6th September 2013. The award was at USD 120, 000 per month for five buses.
- XV. The contract between the Procuring Entity and Relief & Mission Logistics Ltd is dated 7th April 2014. The contract was for eight years commencing 1st June 2014 and ending 31st May 2022. Among the provisions of the contract was that payment were to be done in advance on quarterly basis and within 30 days of invoice.

**Min/DC-L/2015/176 Findings by Public Procurement Oversight Authority on
the procurement of Apron buses by Kenya Airports Authority**

The Director General informed the Committee that the Authority analyzed the procurement documents submitted by the Kenya Airports Authority and found out as follows:-

That:-

- I. There were no records provided by the Procuring Entity to show that feasibility studies were conducted by the Procuring Entity to ascertain the viability of the project and the possible cost of the project.
- II. The copy of the tender document submitted by Pewin Cabs Ltd did not have tender security of KES 1,000,000. The document also did not have CVs for key personnel. The manufacturer's Authorization submitted by Pewin cabs Ltd was not in the format set out in the tender document.
- III. The Procuring Entity didn't carry out post qualification to determine whether the lowest responsive bidder was qualified to perform the contract prior to making the award as envisaged by Clause 2.24 of the Instruction to the Tenderers.
- IV. The tender documents required the contractor to develop workshop and offices which included a maintenance yard, bus parking yard, a services pit and storage and operation offices on the land to be provided by the Procuring Entity. However, the tender document did not provide the BQs for the structure to guide the bidders in preparation of tenders to make it competitive and easily comparable.
- V. The Appendix to Instruction to Tenderers amended Clause 2.10.1 which required the price quoted to be in Kenya Shillings and the required the quoted price to be in United States Dollars only. The circumstances which lead to the Procuring Entity to prefer the dollar over the local currency are not clear.
- VI. Though the tender committee deliberated the negotiation report that recommended cancellation of the tendering process due to lack of funds, the minutes of the tender committee were silent on all other issues (recommendations).
- VII. The specifications given in the tender documents appeared to be sketchy as they provided very little information on the technical aspect of the buses such as the capacity of the buses. The specifications were descriptive in nature and didn't conform to section 34 of the Public Procurement and Disposal Act 2005 which requires the specifications to be clear, correct and provide a complete description of what is being procured among other things in order to make the tenders received comparable on equal basis. The tender documents didn't also

provided the estimated distances to be covered which would have guided the costing. Further, specifications were not evaluated on item by item basis during evaluation.

- VIII. The requirement that the payment were to be done in advance may subject to the Procuring Entity to a financial loss in the event of unsatisfactory performance by the service provider.
- IX. Though the tender committee recommended for negotiation, the negotiation was not provided for in the tender documents. Indeed, negotiations are not envisaged under open tender procurement method. However, post qualification of tender is envisaged under Regulation 52 of the Public Procurement and Disposal Regulations, 2006 and Procuring Entities are required to do market surveys before award of a tender to satisfy themselves that they are getting value for money.
- X. The negotiation committee went beyond its mandate by recommending an increament of buses to ten buses in order to meet passenger transfer demand by then. This was not provided for in the tender documents.
- XI. It is not clear whether the three persons (Lucy Mbugua, John Thumbi and Allan Muturi) that were proposed by the tender committee to be added in the negotiation committee were appointed by the Accounting Officer as required by the Procurement Law.
- XII. Although the tender was awarded at USD 120,000 per month for five buses, the actual cost could not be ascertained since the Procuring Entity was also expected to cater for any deficit in the event the fee collected from the airlines is less than the amount that Relief & Mission Ltd were contracted for. As indicated in the tender committee minutes of the meeting held on 30th August 2013 that awarded the tender, the Procuring Entity was to negotiate with the airlines on the rate to apply.
- XIII. In view of the above, coupled with inadequacies noted in the specifications of the buses, as provided in the tender documents and the absences of the BQs for the maintenance workshop, the bid documents used by the Procuring Entity were not able to adequately to enable a competitive bidding process. It may also explain the reason why out of the six bidders who bought the tender documents, only two submitted their tenders.

Committee concerns

1. The Committee raised concerns on the role the Public Procurement Oversight Authority plays in the event that there is no disputes and how the Authority gets involved in the undisputed procurement process. However, the DG informed the meeting that the procurement laws made mandatory for all public entities that's procures any good or services worth above KES five million makes a report on the same to the Authority. He also further informed the meeting that no procurement process can commence without the provision of a budget.

2. The Committee also raised concerns on why the tender closing date for the apron buses was extended three time, the DG informed the meeting that the procurement laws allows such extension of tender closing date particularly when the bidder requests such extensions.
3. On what the Authority is doing to curb tailor-made kind of procurement in the public organizations to save public resources , the DG informed the meeting that the Public Procurement and Disposal Act is eight years old and is being reviewed to ensure procurement gaps are accommodated. He also informed the meeting that the electronic procurement that is currently been implemented by the government in all public institutions will eliminate fraud and tailor-made procurements.
4. In regards to what the procurement laws says about advance payments to the successful bidder, Relief and Mission Logistics Ltd, the DG informed the meeting that the laws allows such payment as long as it is contained in the bid documents.

MIN/DC-TPWH/2015/177 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on a date to be communicated.

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

MINUTES OF THE 31ST SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON THURSDAY 18TH JUNE, 2015 IN THE COMMITTEE ROOM, ON 5TH FLOOR, CONTINENTAL HOUSE AT 10:45 AM.

PRESENT

1. Hon. (Eng.) Stephen Ngare, M.P. – **Acting Chairperson**
2. Hon. Omulele Christopher, M.P.
3. Hon. K.K. Stephen Kinyanjui Mburu, M.P
4. Hon. Johnson Manya Naicca, M.P.
5. Hon. Emmanuel Wangwe, MP
6. Hon. Joseph Lomwa, M.P.
7. Hon. Grace Kipchoim, M.P
8. Hon. Mishi Juma, M.P.
9. Hon. Omar Mwinyi, M.P.
10. Hon. Suleiman Dori, M.P.
11. Hon. Chachu Ganya, M.P.
12. Hon. Mukwe James Lusweti, M.P.
13. Hon. Edick Omondi Anyanga, M.P.
14. Hon. Ali Wario, M.P.
15. Hon. (Capt.) Clement Wambugu, M.P.
16. Hon. Eng. John Kiragu, M.P.
17. Hon. Gideon Konchella, MP
18. Hon. Ahmed Abbas Ibrahim, M.P.
19. Hon. Simon Nyaundi Ogari, MP

ABSENT WITH APOLOGY

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
3. Hon. Aduma Owuor, M.P
4. Hon. Cecily Mbarire, M.P.
5. Hon. Stephen Manoti, M.P.
6. Hon. Peter Shehe, MP
7. Hon. Mathias Robi, M.P,
8. Hon. (Arch.) David Kiaraho, M.P.
9. Hon. Barchilei Kipruto, MP
10. Hon. Mark Lomunokol, M.P.

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|-----------------------|-----------------------|
| 1. Mr. Abdifatah Bule | Third Clerk Assistant |
| 2. Ms. Nuri Kitel | Third Clerk Assistant |
| 3. Mr. James Muguna | Research officer |
| 4. Mr. Abdirahim Omar | Fiscal Analyst |

IN ATTENDANCE

KENYA AIRPORTS AUTHORITY (KAA)

- | | |
|--------------------|--------------------------|
| 1. MS Lucy Mbugua | Managing Director |
| 2. Mr. John Thumbi | General Manager, Finance |

MIN/DC-TPWH/2015/163

Preliminaries

The Chair called the meeting to order at 10:45 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Preliminaries/Introduction
3. Communication from the Chairperson
4. **Inquiry into the procurement of side buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority**
5. Any Other Business

Min/DC-L/2015/164 Inquiry into the procurement of Apron buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority

The Chairperson invited the witnesses to brief the Committee on what they know about the procurement process of the Apron buses by KAA.

The witnesses briefed the Committee in the following orders:-

1. **Mr. John Thumbi** **Suspended General Manager, Finance**

Mr. John Thumbi made his presentation before the Committee as follows:-

That:-

1. The KAA Board of Directors recommended and approved the outsourcing for both purchase and management of apron buses by way of concession in the 146th sitting of the Board of Directors' held on 11th February 2011.

2. Subsequent to KAA Board approval, the Managing Director approved the procurement of the five apron buses in form of business concession through open tender.
3. The advertisement was placed in two newspapers; the Daily Nation and the Standard on 6th and 7th December 2011 respectively.
4. The successful bidder was to fund the entire project; hence a budget was not required.
5. A budget was made available in the financial year 2012/2013 when the operation of the buses was to commence to cater for any deficit.
6. The scope of the concession tender required the successful bidder to purchase and deliver five apron buses, construct an operation facility which will include offices, stores, workshop, underground fuel storage and pump, washing bay and paved parking. The contractor would also meet all running costs including staff cost, fuel, maintenance, tyre, office expenses , consumables, insurance and all other costs.
7. The tenders were evaluated based on the criteria in bidding documents and the tender committee awarded to the successful M/S Relief and Mission Logistics Ltd on 3rd May 2012. A letter of notification of the award dated 14th May 2012 was issued to the successful bidder.
8. The KAA was to pay US\$ 120,000 per month for the provision of airside transfer services to M/S Relief and Mission Logistics Ltd. this translates to approximately KES 74,000 per day (24) per bus as compensation for the services and facilities.
9. The Tender Committee adjudicated and approved the award subject to negotiations. The Tender Committee gave out the terms of reference for negotiation which were on operations and maintenance issues for inclusion in the contract. The bid price was not included in the terms of reference and therefore didn't require to be negotiated.
10. A negotiation committee was formed in compliance with the regulation 58 of the Public Procurement and Disposal Act to negotiate with the terms of reference given by the Tender Committee. According to the Act, a negotiation process can only commence after the Tender Committee has awarded the tender.
11. The negotiation Committee came back to the Tender Committee with a report that there was inadequate budget and the process should be stopped and retendered.
12. The Tender Committee in its deliberation pointed out that the negotiation committee didn't adhere to the terms of references and expanded the negotiation committee and asked to adhere to the terms of references.

13. The expanded Committee presented its report to the Tender Committee on 30th August 2013 and Tender Committee approved the contract preparation. Thereafter, the contract was signed with successful bidder on 7th April 2014.
14. The concessionaire delivered the five apron buses in March 2015. The bus model is Cobus whose origin is from Germany and the current market price for this model is KES 45 million per bus.

Issues raised by the Committee with him

1. On whether KAA collected any money from the airlines for the use of the buses, Mr. John Thumbi informed the meeting that, KAA management exempted the airlines from paying any money for the use of the services for a period of two months. In addition, the Authority did not enter into agreement with the airlines in regards to how they will pay the services of using the apron buses.
2. In regards to whether the KAA management advised the KAA Board of Directors wisely, before the Board approved the Apron buses, he informed the meeting that a task force was formed to look into the ways the Authority could get the services of the Apron buses and the task force recommended that the Authority enters into concession from third party.
3. On whether the invoices presented by Relief & Mission Logistics Ltd to KAA will be paid or not, he informed the meeting that the invoices are work done for three months according to the contract and they will be paid as agreed in the contract.
4. On why he was interdicted from KAA, he informed the meeting that the reason why he was interdicted is that he participated the negotiation team and failed to protect KAA. However, he informed the meeting that the terms of references of the negotiation team were clear and they didn't had a say on the bid price.

2. MS. Lucy Mbugua - Suspended Managing Director

MS. Lucy Mbugua made her presentation before the Committee as follows:-
That:-

1. The KAA Board of Directors recommended and approved the outsourcing both purchase and management of apron buses by way of concession in the 146th sitting of the Board of Directors' held on 11th February 2011.
2. Subsequent to KAA Board approval, the Managing Director approved the procurement of the five apron buses in form of business concession through open tender.
3. The advertisement was placed in two newspapers; the Daily Nation and the Standard on 6th and 7th December 2011 respectively.
4. The successful bidder was to fund the entire project; hence a budget was not required.
5. A budget was made available in the financial year 2012/2013 when the operation of the buses was to commence to cater for any deficit.
6. The scope of the concession tender required the successful bidder to purchase and deliver five apron buses, construct an operation facility which will include offices, stores, workshop, underground fuel storage and pump, washing bay and paved parking. The contractor would also meet all running costs including staff cost, fuel, maintenance, tyre, office expenses, consumables, insurance and all other costs.
7. The tender were evaluated based on the criteria in bidding documents and the tender committee awarded to the successful M/S Relief and Mission Logistics Ltd on 3rd May 2012. A letter of notification of the award dated 14th May 2012 was issued to the successful bidder.
8. The KAA was to pay US\$ 120,000 per month for the provision of airside transfer services to M/S Relief and Mission Logistics Ltd. this translates to approximately KES 74,000 per day (24) per bus as compensation for the services and facilities.
9. The Tender Committee adjudicated and approved the award subject to negotiations. The Tender Committee gave out the terms of reference for negotiation which were on operations and maintenance issues for inclusion in the contract. The bid price was not included in the terms of reference and therefore didn't require to be negotiated.
10. A negotiation committee was formed in compliance with the regulation 58 of the Public Procurement and Disposal Act to negotiate with the terms of reference given by the Tender Committee. According to the Act, a negotiation process can only commence after the Tender Committee has awarded the tender.
11. The negotiation Committee came back to the Tender Committee with a report that there was inadequate budget and the process should be stopped and retendered.

12. The Tender Committee in its deliberation pointed out that the negotiation committee didn't adhere to the terms of references and expanded the negotiation committee and asked to adhere to the terms of references.
13. The expanded Committee presented its report to the Tender Committee on 30th August 2013 and Tender Committee approved the contract preparation. Thereafter, the contract was signed with successful bidder on 7th April 2014.
14. The concessionaire delivered the five apron buses in March 2015. The bus model is Cobus whose origin is from Germany and the current market price for this model is KES 45 million per bus.

Issues raised by the Committee with her

1. On the reason why the process of KAA acquiring the apron buses services took long from when the concept of apron buses was first contemplated in the year 2007 to date 2015, Ms. Lucy Mbugua informed the meeting that each stage of the procurement process took too long hence delayed the entire process.
2. In regard to why she stepped aside from her position as the managing Director of KAA, she informed the meeting that she did so following her name been in the list the president submitted to the parliament on corruption allegations involving irregularities in the procurement of Duty Free shops at JKIA and the matter was under investigation by Ethic and Anti-corruption Commission.
3. On why KAA didn't enter agreement with the airlines on how much they will charge for the use of the Apron Bus, she informed the meeting that KAA was aware the rough estimate to charge the airlines and this is uniform across major airports in the world.
4. On the issues of whether the successful bidder provided the apron buses operation facility such as offices, stores, workshop, underground fuel storage and pump, washing bay and paved parking, the MD informed the meeting that by the time she was leaving the office none of these facilities were provided, however, the bidder was in the process of getting clearance from Kenya Civil Aviation Authority.
5. On whether it was justifiable for the quoted price of USD\$ 120,000 per month for the five buses, she informed the meeting that the price translates approximately KES 74,000 per bus per day (24 hours). Further, she informed the meeting that the current hire price for a 62 seater bus for 6 hours is KES 45,000, hence the cost is acceptable.

6. In regards to whether she initiated the concept for KAA to acquire apron buses when she was the General Manager in charge of Marketing and Business Development, she informed the meeting that she only implemented the Board of KAA resolution.
7. With the respect to the Kenya Airways apron buses operations at JKIA, she informed the Committee that KAA took unprecedented time to acquire the apron buses and Kenya Airways moved faster and acquired the buses within nine months. She also informed the meeting it's the core business of KAA to provide the apron buses services to all airlines and one of the terms of references of the 2nd negotiation team was to consolidate the apron buses operations at the JKIA.

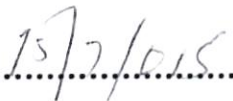
MIN/DC-TPWH/2015/165 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on a date to be communicated.

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

IN ATTENDANCE

- NATIONAL ASSEMBLY

- | | |
|-----------------------|-----------------|
| 1. Mr. Samuel Kalama | Clerk Assistant |
| 2. Mr. Abdifatah Bule | Clerk Assistant |
| 3. Ms. Nuri Kitel | Clerk Assistant |
| 4. Mr. Abdirahim Omar | Fiscal Analyst |

IN ATTENDANCE

KENYA AIRPORTS AUTHORITY BOARD OF DIRECTORS

- | | |
|-------------------------|---------------------------|
| 1. Rtd IG David Kimaiyo | Chairperson |
| 2. Mr. Butisi Mutiso | Director |
| 3. Mr. Kevin Kihara | Director |
| 4. Mr. Yatich Kangugo | Ag. Managing Director |
| 5. Mr. Samson Kinuihi | General Manager- RM & IA |
| 6. Ms. Juliet Oteino | Ag. General Manager HRM |
| 7. Mr. Dominic N. Ngigi | Corporate affairs Manager |

MIN/DC-TPWH/2015/171 Preliminaries

The Chair called the meeting to order at 10:45 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Preliminaries/Introduction
3. Communication from the Chairperson
- 4. Inquiry into the procurement of Apron buses by Kenya Airports Authority**
5. Any Other Business

Min/DC-L/2015/172 Inquiry into the procurement of Apron buses by Kenya Airports Authority

The Chairperson informed the Chairperson of the KAA Board of Directors that the Committee has met several witnesses on the procurement of Apron buses by KAA. He invited the chairperson for the KAA Board of Director to make his presentation on the issue of procurement of the apron buses.

The Rtd IG David Kimaiyo briefed the Committee as follows:-

1. The project of procuring the Apron Buses at JKIA was first conceived in 2007. Consequently the KAA management formed a task force to evaluate and propose the modalities of offering the Apron Bus Services. The task force proposed the following mode of the provision of the said service.

- a. The first option was for KAA to purchase, operate and maintain the apron buses. This option however, was found unsuitable due to logistics constraints and not within the Authorities core business mandate
 - b. The second option was for KAA to concession a third party to buy own, operate and maintain the apron buses. Upon consideration of this proposal, the committee found it unsuitable since the interest of the concessionaire would be profit driven.
 - c. The third option was for KAA to purchase the apron buses and concession a third party to operate and maintain them. Upon further consideration the Committee found this option most suitable given that it would balance the issues in aforementioned options.
2. The task force recommended that the Authority acquire five apron buses, four buses to be used at JKIA and one at Moi International Airport. The Acquisition was to be fast tracked since the remote parking stands were still under construction.
3. During KAA Board meeting held on 18th February 2015 the issue of apron buses was brought before the Board by the Managing Director when the board was deliberating the general master plan of Jomo Kenyatta International Airport. The Board also informed that KAA purchases five apron buses and the first bus was brought in November 2014 and the remaining four buses were coming.
4. During the Board meeting held on 22nd April 2015, the Board Members were shocked to be informed that the buses are not owned by KAA but owned by a concessionaire. Subsequently, the Board of Directors passed a resolution and directed Audit and Risk Committee of the Board to audit the matter of the apron buses.
5. There was no business case in acquiring the apron buses and the entire project was upside-down from the start. There was no value for the money to spend KES 11 million per month for the buses.
6. There was no supporting budget for the apron buses as recommended by the first negotiation committee that the tender process be stopped and the tender be floated afresh due to unavailability of funds.
7. The tender submission date was extended through addendum three times. The lowest bidder, M/s. Pewin Cabs Ltd was disqualified at the preliminary evaluation stage for failing to submit the tender security documents. However, the said document was in a separate envelope that the company submitted.
8. The Board were not convinced on the reason one tenderer was duty paid and the other duty free. However, the Board established that Ms. Relief \$ Mission Logistics Ltd smuggled the apron buses to the country without paying taxes to Kenya Revenue Authority as shown in annex 1.

9. The second negotiation committee members were interdicted by the Board following the role they played in the negotiation.

Committee concerns

The following concerns were raised by the members during the meeting

1. In regards to the role KAA Board on matters of procurement, the Chairperson informed the Committee that the Board has no role in the procurement process. However, he further informed the meeting that the KAA management cannot enter into agreement with another entity without the knowledge of the Board.
2. On the issues of the duty waiver requested by the KAA management directly from KRA on t' buses, the chairperson informed the meeting that there is laid down communication procedure and that the management could not have written directly to KRA but to their parent Ministry of Transport and Infrastructure requesting the said waiver.
3. On whether KAA Board of Directors approved the tendering of the Apron buses, the chairperson informed the meeting that the Board only approved the master plan for the expansion of the JKIA.
4. On whether all the officers in the 2nd negotiation Committee were interdicted, the Chairperson informed the meeting that some officers are still under investigation.
5. On whether KAA negotiated with the airlines on how much to charge, the Board informed the meeting that there are no such records to ascertain whether such negotiation took place.
6. In regards to whether the USD 2.1 million grants from World Bank meant for the purchase of seven (7) apron buses were unutilized, Mr. Kimaiyo informed the meeting that the money had not been utilized but the process of procuring the buses will commence soon.

MIN/DC-TPWH/2015/173 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on a date to be communicated later.

SIGNED.....

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

MINUTES OF THE 29TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 11TH JUNE, 2015 IN THE COMMITTEE ROOM, ON 4TH FLOOR, CONTINENTAL HOUSE AT 10:50 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. –**Vice Chairman**
3. Hon. Aduma Owuor, M.P
4. Hon. (Eng.) Stephen Ngare, M.P.
5. Hon. Omulele Christopher, M.P.
6. Hon. K.K. Stephen Kinyanjui Mburu, M.P
7. Hon. Johnson Many Naicca, M.P.
8. Hon. Emmanuel Wangwe, MP
9. Hon. Simon Nyaundi Ogari, MP
10. Hon. Barchilei Kipruto, MP
11. Hon. Joseph Lomwa, M.P.
12. Hon. Grace Kipchoim, M.P
13. Hon. Mishi Juma, M.P.
14. Hon. Omar Mwinyi, M.P.
15. Hon. Mark Lomunokol, M.P.
16. Hon. Suleiman Dori, M.P.
17. Hon. Chachu Ganya, M.P.
18. Hon. Mukwe James Lusweti, M.P.
19. Hon. Edick Omondi Anyanga, M.P.

ABSENT WITH APOLOGY

1. Hon. Cecily Mbarire, M.P.
2. Hon. Ali Wario, M.P.
3. Hon. (Capt.) Clement Wambugu, M.P.
4. Hon. Eng. John Kiragu, M.P.
5. Hon. Gideon Konchella, MP
6. Hon. Stephen Manoti, M.P.
7. Hon. Peter Shehe, MP
8. Hon. Mathias Robi, M.P,
9. Hon. Ahmed Abbas Ibrahim, M.P.
10. Hon. (Arch.) David Kiaraho, M.P.

IN ATTENDANCE

1. Mr. Samuel Kalama
2. Mr. Abdifatah M. Bule
3. Ms. Nuri Kitel
4. Mr. James Muguna
5. Mr. Abdirahim Omar

- **NATIONAL ASSEMBLY**

- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Research officer
- Fiscal Analyst

IN ATTENDANCE

KENYA AIRPORTS AUTHORITY (KAA)

1. Mr. Martin Kamau Head of Examinations
2. Mr. Victor Arika Legal Counsel
3. Eng. C. N Warutere Airport Engineer
4. Ms. Lilian Okidi Procurement Manager

MIN/DC-TPWH/2015/151 Preliminaries

The Chair called the meeting to order at 10:50 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Preliminaries/Introduction
3. Communication from the Chairperson
4. **Inquiry into the procurement of side buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority**
5. Any Other Business

Min/DC-L/2015/152 Inquiry into the procurement of Apron buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority

The Chairperson invited the first witnesses to brief the Committee on what they know about the procurement process of the Apron buses by KAA.

The witnesses briefed the Committee in the following orders:-

1. Mr. Martin Kamau- Head of Examinations

He briefed the Committee as follows:-

That:-

- I. He was involved at first in the tail end of procurement process during the First negotiation Committee which recommended the tender process be stopped and the tender be floated afresh due to unavailability of funds.
- II. He however noted that the Tender Committee during its 214th meeting of 13th September, 2013, recommended for renegotiation and expanded the negotiation committee to include AOC chairman, General Manager- Finance, General Manager- Marketing and Business Division, General Manager- Procurement and Logistics.
- III. The team presented their report almost a year later after the renegotiation committee which justified the charging USD 120,000,000 using non fundamental figures including depreciation.

Issues raised by the Committee

1. In regards to whether the KAA management advised the KAA Board of Directors wisely before the Board approved the Apron buses, he informed the meeting that a task force was formed to look into the ways the Authority can get the services of the Apron buses and the task force recommended that the Authority enters into concession from third party.
2. On whether the invoices presented by Relief & Mission Logistics Ltd to KAA will be paid or not, he informed the meeting that the invoices are work done for three months according to the contract and they will be paid as agreed in the contract.

2. Mr. Victor Arika – Legal Counsel

He briefed the Committee as follows:-

That:-

1. He was appointed as Corporation Secretary/Chief Legal Officer in acting capacity with effect from 29th January 2013 pursuant to the KAA Board of Directors meeting held on 28th January 2013.
2. He never played any role whatsoever in any of the committees from the initiation of the Apron Buses concept to the tendering stages of the contract Award.

3. The contribution he made in his capacity as Acting Corporation Secretary/Chief Legal Officer began at the tail end of the tendering process, when legal enforcement of Contract Award had to be effected on the strength of the Tender Committee approvals which were already in records.
4. He confirmed that during the 146th (Special) KAA Board of Directors Meeting held on **11th February 2011**, the Board approved the JKIA Master Plan in respect of outsource of both purchase of Airside five (5) Buses and also management by way of concession.
5. In the course of perusal of the Tender Documents, he never came across any disputed procurement process issues of legal nature requiring his legal advice or intervention on the matter. Therefore, it was appropriate that with the strength of the above mentioned approvals, the Legal Department was to go ahead and prepare contract as instructed.
6. His subsequent legal action was guided by and based on the provisions of Section 68(1) of Public Procurement and Disposal Act (2005) on Creation of Contract.
7. By a letter dated **23rd January 2014** the law firm of **M/S Robson Harris & Company Advocates** was instructed to prepare contract by way of Concession Agreement.
8. The Legal Department sought and obtained Tender Committee's for approval for inclusion of Lease Agreement and Building Agreement given that land allocation was required to enable the successful bidder to set up requisite facilities (the maintenance yard and fueling station) needed for implementation of the project.

Issues raised by the Committee

In regards to whether the KAA management advised the KAA Board of Directors wisely before the Board approved the Apron buses, he informed the meeting that a task force was formed to look into the ways the Authority can get the services of the Apron buses and the task force recommended that the Authority enters into concession from third party.

3. Ms. Lillian OKidi – Procurement Manager

She briefed the Committee as follows:-

That:-

1. Bidders were invited through an open tender method in the month of December 2011 for provision of the passengers transfer services.

- II. The initial opening /closing date of the tender was 30th December 2011 but the date was extended to 10th February, 2012 through four addendums.
- III. AS at the time of opening the tender only two bidders had responded that is M/s. Relief & Mission Logistics Ltd and Pewin Cabs Ltd.
- IV. An evaluation Committee was formed comprising Mr. Benard Mogambi, Winfred Ndegwa - Airport Accountant, Christopher Warutere-JKIA Engineer and David Ngetich-Procurement.
- V. On 27th February 2012, the Committee issued the evaluation report recommending to the Tender Committee the award of the tender to M/s. Relief& Mission Logistics at monthly cost of US \$ 120,000.
- VI. The other bidder Ms. Pewin Cabs Ltd was disqualified at the preliminary evaluation stage for failing to submit the tender security and CV copies for its key personnel as a requirement.
- VII. The procurement of the Apron buses done pursuant to the provisions of the Public Procurement and Disposal Act, 2005.

Issues raised by the Committee

1. On whether the invoices presented by Relief & Mission Logistics Ltd to KAA will be paid or not, she informed the meeting that the invoices are work done for three months according to the contract and they will be paid as agreed in the contract.
2. On why she was interdicted from KAA, she informed the meeting that the reason why she was interdicted is that she participated the negotiation team and failed to protect KAA. However, she informed the meeting that the terms of references of the negotiation team were clear and they didn't had a say on the bid price.

4. Eng. Christopher Warutere- JKIA Manager

He briefed the Committee as follows:-

That:-

1. Passengers and aircraft traffic at JKIA has grown tremendously over the years with the airport handling over 4.2 million passengers in 2005 to over 4.4 million in 2006.

- II. In order for KAA to meet the increase passenger requirements, KAA undertook major expansion of its facilities. The expansion covered both passenger's terminal and aircraft parking stands. Aircraft parking stands with proximity to the passengers' terminal building is ordinarily equipped with boarding bridges. However, it was not possible to achieve this configuration. Remote stands had to be provided and other means of movement of passengers had to be availed. This necessitated KAA to moot the idea of procuring Apron buses.
- III. The KAA management formed a committee to evaluate and propose the modalities of offering the Apron Bus Services. The Committee proposed the following mode of the provision of the said service.
 - a. The first option was for KAA to purchase, operate and maintain the apron buses. This option however, was found unsuitable due to logistics constraints and not within the Authorities core business mandate
 - b. The second option was for KAA to concession a third party to buy own, operate and maintain the apron buses. Upon consideration of this proposal, the committee found it unsuitable since the interest of the concessionaire would be profit driven.
 - c. The third option was for KAA to purchase the apron buses and concession a third party to operate and maintain them. Upon further consideration the Committee found this option most suitable given that it would balance the issues in aforementioned options.
- IV. The tender was awarded to M/s. Relief and Mission Logistics at monthly cost of US \$ 120,000. Under the Concession Agreement, Ms. Relief was required to develop an operations and maintenance facility, which included workshops and offices on land that was to be availed by KAA. The workshop was to include maintenance yard, bus parking yard, service pit and storage.

Issues raised by the Committee

1. On the issues of whether the successful bidder provided the apron buses operation facility such as offices, stores, workshop, underground fuel storage and pump, washing bay and paved parking, the he informed the meeting that by the time he was leaving the office none of these facilities were provided, however, the bidder was in the process of getting clearance from Kenya Civil Aviation Authority.
2. On why he was interdicted from KAA, he informed the meeting that the reason why he was interdicted is that he participated the negotiation team and failed to protect KAA. However, he informed the meeting that the terms of references of the negotiation team were clear and they didn't had a say on the bid price.

MIN/DC-TPWH/2015/153 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on Tuesday, 16th June, 2015 at 10.00 am

FOR: HON FRANCIS CHACHU GANYA, MP

SIGNED.....



HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....

19/11/2015

MINUTES OF THE 28TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 4TH JUNE, 2015 IN THE BOARDROOM ON 2ND FLOOR PROTECTION HOUSE AT 10:45 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
3. Hon. Grace Kipchoim, M.P
4. Hon. Aduma Owuor, M.P
5. Hon. (Eng.) Stephen Ngare, M.P.
6. Hon. Omulele Christopher, M.P.
7. Hon. Ahmed Abbas Ibrahim, M.P.
8. Hon. Mathias Robi, M.P,
9. Hon. Simon Nyaundi Ogari, M.P.
10. Hon. Stephen Manoti, M.P.
11. Hon. Chachu Ganya, M.P.
12. Hon. Ali Wario, M.P.
13. Hon. Mark Lomunokol, M.P.
14. Hon. Joseph Lomwa, M.P.

ABSENT WITH APOLOGY

1. Hon. Cecily Mbarire, M.P.
2. Hon. Suleiman Dori, M.P.
3. Hon. Mishi Juma, M.P.
4. Hon. Omar Mwinyi, M.P.
5. Hon. (Capt.) Clement Wambugu, M.P.
6. Hon. Mukwe James Lusweti, M.P.
7. Hon. K.K. Stephen Kinyanjui Mburu, M.P
8. Hon. Johnson Many Naicca, M.P.
9. Hon. Emmanuel Wangwe, M.P.
10. Hon. Peter Shehe, M.P.
11. Hon. Barchilei Kipruto, M.P.
12. Hon. Gideon Konchella, M.P.
13. Hon. Edick Omondi Anyanga, M.P.
14. Hon. (Arch.) David Kiaraho, M.P.
15. Hon. Eng. John Kiragu, M.P.

IN ATTENDANCE

1. Mr. Samuel Kalama
2. Mr. Abdifatah M. Bule
3. Mr. James Muguna
4. Mr. Abdirahim Omar

NATIONAL ASSEMBLY

- First Clerk Assistant
- Third Clerk Assistant
- Research officer III
- Fiscal Analyst III

MIN/DC-TPWH/2015/145**Preliminaries**

The Chair called the meeting to order at 10:45 am and opened it with word of prayer. The Chairperson presented the agenda as follows:-

1. Prayer
2. Confirmation of minutes
3. Matters arising
4. **Inquiry into the procurement of side buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority**
5. Any Other Business

Min/DC-TPWH/2015/146 Confirmation of minutes

The minutes of the 27th sitting were confirmed as the true records of the proceedings and signed by the Hon. Maina Kamanda, MP as proposed and seconded by Hon. Ahmed Abass, MP and Hon. Stephen K. Manoti, MP respectively.

Min/DC-TPWH/2015/147 Matters arising

The Committee resolved that minute number MIN.DC-TPWH/2015/142 be deleted from the record entirely.

Min/DC-TPWH/2015/148 Inquiry into the procurement of Apron buses to transfer passengers at Jomo Kenyatta International Airport by Kenya Airports Authority

To reach its logical conclusion on the procurement of Apron buses by Kenya Airports Authority (KAA), the Committee resolved to invite the following entities and individuals to shed light on the matter:-

- a) KAA Board of Directors
- b) Public Procurement Oversight Authority (PPOA)
- c) Kenya Airways
- d) The six officers suspended by KAA board
- e) M/s Relief & Mission Ltd

MIN/DC-TPWH/2015/149 Any other Business

- a) On the Engineering Technologists and Technicians that is under the deliberation of the Committee, it agreed to place an advertisement in the print media inviting members of the public to submit any memoranda they may have on the Bill as well as a public forum to be held on 29th June 2015.
- b) The Committee also constituted a sub-Committee to consider the Urban Areas and Cities (Amendment), Bill 2015. Its Members are as follows:-
 - 1. Hon. Chachu Ganya- Chairman
 - 2. Hon. Maina Kamanda, MP
 - 3. Hon. Ahmed Abass, MP
 - 4. Hon. Aduma Awour, MP
 - 5. Hon. Joseph Lomwa, MP
 - 6. Hon. Christopher Omulele, MP
 - 7. Hon. Mishi Juma, MP
 - 8. Hon. Peter Shehe, MP
 - 9. Hon. Grace Kipchoim, MP

MIN/DC-TPWH/2015/150 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on Tuesday, 9th June, 2015 at 10.00 am

SIGNED..........

HON MAINA KAMANDA, M.P

(Chairperson)

DATE..........

MINUTES OF THE 27TH SITTING OF THE TRANSPORT, PUBLIC WORKS AND HOUSING COMMITTEE HELD ON TUESDAY 2ND JUNE, 2015 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 10:40 AM.

PRESENT

1. Hon. Maina Kamanda, M.P. – **Chairperson**
2. Hon. Aduma Owuor, M.P
3. Hon. (Eng.) Stephen Ngare, M.P.
4. Hon. Omulele Christopher, M.P.
5. Hon. Ahmed Abbas Ibrahim, M.P.
6. Hon. (Arch.) David Kiaraho, M.P.
7. Hon. K.K. Stephen Kinyanjui Mburu, M.P
8. Hon. Eng. John Kiragu, M.P.
9. Hon. Mathias Robi, M.P,
10. Hon. Johnson Many Naicca, M.P.
11. Hon. Peter Shehe, M.P.
12. Hon. Emmanuel Wangwe, M.P.
13. Hon. Simon Nyaundi Ogari, M.P.
14. Hon. Barchilei Kipruto, M.P.
15. Hon. Gideon Konchella, M.P.
16. Hon. Edick Omondi Anyanga, M.P.
17. Hon. Stephen Manoti, M.P.

ABSENT WITH APOLOGY

1. Hon. (Eng.) Mahamud Maalim, M.P. – **Vice Chairman**
2. Hon. Grace Kipchoim, M.P
3. Hon. Cecily Mbarire, M.P.
4. Hon. Mark Lomunokol, M.P.
5. Hon. Suleiman Dori, M.P.
6. Hon. Ali Wario, M.P.
7. Hon. Mishi Juma, M.P.
8. Hon. Omar Mwinyi, M.P.
9. Hon. Joseph Lomwa, M.P.
10. Hon. (Capt.) Clement Wambugu, M.P.
11. Hon. ChachuGanya, M.P.
12. Hon. Mukwe James Luswet, M.P.

2. The Committee recommended that the Authority acquire five apron buses, four buses to be used at JKIA and one at Moi International Airport. The Acquisition was to be fast tracked since the remote parking stands were still under construction.
3. The Committee recommended that the Authority should procure and concession a third party to operate, maintain and collect fees from the airlines and pay concession to KAA.
4. The concessionaire was to provide five buses all operating at JKIA. The operator would charge the Authority on monthly bases and then KAA would charge the airline for the services. An annual provision of kshs. 75M for eight years starting FY 2012/2013 was to be set aside to cover any short falls incurred over the concession period.
5. The Committee recommended that the charges for the use of the buses to be charged at between 80-100% of the fee levied for use of the passenger boarding bridges. The air bridge is charged between \$75 for an aircraft with passenger capacity of 0-180 and \$100 for capacity of 180 and above passengers.
6. The Authority placed advertisement in the print media inviting bidders. However, it only received two bidders namely: M/s Relief & Mission Logistics Ltd and Pewin Cabs Ltd.
7. The Authority formed an evaluation Committee comprising of the following members:-
 - i. Mr. Bernard Mugambi- M & BD-Chairperson
 - ii. Mr. Wilfred Ndegwa- Airport Accountant- Member
 - iii. Mr. Christopher Warutire-JKIA Engineer- Member
 - iv. Mr. David Ngetich- Procurement Officer- Member
8. On 27th February 2012 the Evaluation Committee issued an evaluation report recommending to the Tender Committee the award of the tender to Ms. Relief & Mission Logistics Ltd at a monthly cost of US \$ 120,000.
9. The said evaluation report disqualified Ms. Pewin Cabs Ltd at the preliminary evaluation stage for failing to provide the tender security and CV copies for its key personnel as a requirement. The bidder had quoted a monthly payment of \$ 86,876.24 (Duty paid) or \$ 80,653 (Duty free).

10. The evaluation report, tender paper no. 1953 (2862) was presented to the tender committee for approval. From the tender Committee minutes there were a series of questions and issues which the tender committee wished to be clarified. For example the tender committee queried how the figure of US \$ 120,000 recommended was arrived at.
11. During the 192nd meeting of the Tender Committee held on 3rd May. 2012 adjudicated and approved awards of the tender subject to negotiation. Subsequently a negotiation team was constituted.
12. On 14th May, 2012 the Authority issued a letter of notification of award to M/s Relief & Mission Logistics Ltd. The letter stated that the Authority had accepted their bid and formally invited successful bidder for negotiation as per the Tender Committee instructions.
13. During the 214th meeting of the Tender Committee held on 13th September 2012, the negotiation team recommended that the tender process be stopped and the tender be floated afresh due to unavailability of funds. However, the Tender Committee recommended that there should be a renegotiation team and that the negotiation team to be expanded to include AM-JKIA (AOC Chairperson-JKIA), General Manager in charge of Finance, General Manager- M & BD and General Manager-P & L. The members of the Tender Committee who were finally to approve the tender became part of the negotiation team.
14. During the 267th meeting of the tender Committee held on 30th August 2013, Mr. Martin Kamau in charge of Finance informed the tender Committee that the second negotiation Committee recommended that KAA contracts M/S. Relief & Mission Logistics Ltd at their tender price of US \$ 120,000 per month for provision of five apron buses. The tender committee approved the committee report and instructed the M & D department to negotiate with airlines on the rates for the use of the apron buses. However, no negotiation and agreement has been reached with airlines.
15. On 6th September 2013, the then Acting Managing Director, Ms Lucy Mbugua issued a letter to M/S. Relief & Mission Logistics Ltd informing them of the acceptance of the bid for five apron buses at a cost of US \$ 120,000 per month.
16. On 2nd October 2013, the Authority forwarded a letter of offer outlining the terms ah license agreement to M/s Relief & Mission Logistics Ltd.
17. On 7th April 2014, a concession agreement was signed between KAA and M/s Relief & Mission Logistics Ltd

18. On 22nd April 2015, the Board of Directors of KAA passed a resolution and directed Audit and Risk Department to audit the matter of the apron buses and to submit a report to the Board by 30th April 2015.
19. On 14th May 2015, the Board Audit and Risk Management Committee met and deliberated on the preliminary report. Subsequently, the Committee met on 18th and 19th May 2015 and reviewed the documentation on a chronological order and prepared presentation to the Board with the specific recommendations.
20. On 19th May 2015, the Board of Directors, KAA in their special sitting approved the report of the Board Audit Committee, interdicting all the staff involved in the second negotiation committee together with the acting Corporation Secretary.

The Managing Director reiterated the need for the apron buses and informed the Committee that KAA vide a letter dated 27th June, 2007 authorized Kenya Airways to operate its own buses. Kenya Airways currently own and operates twelve apron buses.

Committee Concerns

1. The Committee raised concern as to why the Authority concession a third party to operate the apron buses and not the Authority. However, the Ag. Managing Director (MD) informed the Meeting that operating the Buses is not the core mandate of the Authority.
2. In regards to the number of bidders who bought the tender documents, the KAA MD informed the meeting that only he was not in a position to provide the exact number of persons who bought the tender documents but he undertook to furnish the committee with the same on or before 5th Friday, 2015.
3. The Committee raised concerns on the amount the Authority had earmarked to spend on procuring the apron buses was too high compared to the price KQ used to buy their buses.
4. The Committee raised concerns as to why the Authority did not utilize the \$2.1 million from World Bank to purchase seven buses. However, the MD informed the meeting that the \$2.1 million is intact and the Authority is currently in the process of purchasing the seven buses.
5. On the issue of the number of Apron buses required for transfer of passengers at the Airport, the MD informed the Committee that he could not provide a definite number of buses that could serve the airport, however, he did indicate that currently there 24 Apron buses operating at the airport.
6. On whether, the KAA Board of Directors had approved the tender on the procurement of apron buses, the Ag. Managing Director informed the Committee that the Board of Directors

has no role in awarding of tenders, such approvals are done by the tender Committee which is more often than not is constituted by the Managing Director.

Min/DC-L/2015/142 Committee observations

Having listened to the submission made by the witnesses, the Committee observed that:-

- a. The Authority ignored the option for KAA to purchase the apron buses and concession a third party to operate and maintain them despite the recommendation by the Committee tasked to come up with mode of provision of the bus services.
- b. The Authority established a negotiation team after awarding the tender to M/s Relief and Mission Logistics Ltd instead of the vice versa.
- c. The Authority disregarded the recommendation by the negotiation Committee to have the tender process stopped and the tender be floated afresh but instead the tender Committee proposed for the establishment of a second negotiation team, to include members of the tender committee who were to finally approve the negotiation report.
- d. The tender price for the provision of the five apron buses is outrageous and is not sustainable.
- e. The KAA management Approved Kenya Airways to own and operate apron buses and yet the Authority targets Airlines which Kenya Airways is one of them to hire the five buses leased from M/s Relief and Mission Logistics Ltd.

The requested the Ag. Managing Director for KAA to furnish the Committee with the following documents on or before Friday, 5th June, 2015:-

1. Tender documents for the procurement of the Apron buses
2. Quantity surveyors report on the tender
3. Terms of reference of the First and Second negotiation Committees

MIN/DC-TPWH/2015/143 Any other Business

The Committee considered the invitation to participate in a workshop organized by the ministry of Transport and infrastructure scheduled for 11th June-14th June, 2015 at Mombasa. The Committee resolved to participate in the said workshop

MIN/DC-TPWH/2015/143 Adjournment

And time being 1.10 pm, the Chair adjourned the meeting and to be convened on Thursday, 4th June, 2015 at 10.00 am

SIGNED..........

HON MAINA KAMANDA, M.P

(Chairperson)

DATE.....4/6/2015.....

Appendix I



Kenya Airports Authority

NEGOTIATION REPORT

PROVISION OF PASSENGER TRANSFER SERVICES (APRON BUS SERVICES)

AT JOMO KENYATTA INTERNATIONAL AIRPORT, NAIROBI

TENDER NO. KAA/752/ 2011-2012

JULY 2012

I xibmg99A

A: BACKGROUND

Ms Relief and Mission Logistics Ltd were awarded tender for the Provision of Passenger Transfer Services (Apron Bus Services) at Jomo Kenyatta International Airport. The key services envisioned in the tender are;

- I. Procurement and delivery of 5 apron buses.
- II. Provision of passenger transfer services from the terminal gate to the aircraft and vice versa.

Ms relief and Mission Logistics Ltd offered to provide the services for a total sum of **US\$120,000.00** per month equivalent to **US\$24,000.00**- per bus per month.

While Ms Relief and Mission Logistics were best evaluated the following was observed:

1. That of the two bidders who responded to this public tender only Ms Relief and Mission Logistics Ltd passed through the mandatory stage and was subjected to a technical and financial evaluation.
2. That Ms Pewin Cabs Ltd, the second bidder had two options at **US\$86,876.24** and **US\$80,653.00**. Both quotes being significantly lower than that by the winning bidder.

From the above it was not conclusive whether the Authority was getting value for money from Ms Relief and Mission Logistics Ltd. In order to carry out such a determination and make necessary recommendations a negotiation comprising of the following members was constituted.

- Bernard Mogambi, Commercial Manager, R&C (Chairing)
- Patrick Chonde, Corporate Management Accountant
- Christopher Warutere, Airport Engineer
- Lilian Okidi, Procurement Manager
- Margaret Munene, Legal Counsel.

B: DOCUMENT REVIEW

The team reviewed a number of documents relating to the project background, the tendering process and the evaluation report. Following this exercise and taking cognisance of the prevailing circumstances the team observed the following;

1. That the number of buses had been arrived at following an analysis of the re-design of the apron stands and provision of remote stands. That this number was determined following established modelling techniques.
2. That while the number of 5 had been determined as suitable we do have already in operation 6 apron buses with carrying capacity of over 100 passengers.

The team approached the Airport Manager, who asserted that with the current traffic projections at JKIA needed no less than 10 Passenger Transfer Vehicles (>100pax) to effectively serve this traffic.

3. Since the tender documents did not require bidders to provide a breakdown of all the attendant costs, i.e O&M costs, the team was not able to immediately determine competitiveness of the offer.

On this the Airport Manager offered (informally) to get costs from Kenya Airways who are currently running the 6 existing buses. He was able to get the following information for the team;

Acquisition costs	= € 168,000 (Ksh18,480,000) (Chinese Origin).
▶ Annual Maintenance costs	= Ksh265,478/- p.a per bus. (inclusive of 2 tyres changes at Ksh39,000/- each).
▶ Fuel consumption	= 120 litres per bus per month.
▶ Wages for drivers	= (KQ has outsourced at Ksh33,000/- per driver).

The buses to be supplied by Ms Relief and Mission logistics Ltd are of German Origin and may cost upwards of € 300,000 per bus. This is double the costs of the Chinese equivalent. However the running costs may not be significantly different.

4. From the above information the team concluded that apart from initial acquisition costs it would appear that that running the buses is **NOT** such an expensive venture as to cost **Ksh24million** per bus per annum.

D: PROPOSED FINANCING THE SERVICES

The proposed payment for the services shall be made by the Authority to the service provider for a period of 8 years. It is proposed that this payment will be financed from proceeds obtained from operating the buses and any deficit met by KAA, a budgetary provision of **Ksh75million** has been made in the 2012/2013 financial year and subsequent years. The computed deficit for the five buses is over **Ksh45million** per annum.

At the conceptualisation stage it was anticipated that Apron Bus service would be offered at rate slightly lower than that of the Passenger Boarding Bridge. A rate of **US\$55** was proposed for a round trip service.

However the current operator proposed to offers the bus service at the rate of **US\$60** per trip. Thus for a craft with a load capacity of say 120 passengers, the total fees payable are **US\$120** for loading and off loading.

F: AVAILABILITY OF FUNDS

On further inquiry the committee was informed that the funds provided for in the budget 2012/13 are **NOT** adequate to finance the operation of the Passenger Transfer Buses at Jomo Kenyatta International Airport.

G: RECOMMENDATIONS

Having considered all the above the committee recommends the following;

- I. That due to the unavailability of funds the tender process for the Provision of Passenger Transfer Buses be stopped.
- II. That the tender be floated afresh.

MEMBERS

Bernard Mogambi, Commercial Manager, R&C (Chairing)

Patrick Chonde, Corporate Management Accountant

Christopher Warutere, Airport Engineer

Lilian Okidi, Procurement Manager

Margaret Munene, Legal Counsel.

>>>>>> 25th July 2012<<<<<<

RELIEF & MISSION

P.O. Box 45550 NAIROBI
Tel: 254-20-2323226/7
Telefax: 254-20-3870930,
Cellphone: 0722-775182/

SE
pani Rd
n,
airobi

Emergency Sourcing & Supplies

email: logistics@reliefmissions.org
or remilog@yahoo.com

INVOICE

Ref: KAA 01-14

M/s KENYA AIRPORT AUTHORITY

Date: 28/12/2014

Delivery Note Nos. As per contract (Also refer to Attached Email)

Units	Duration	Particulars	Rate	US Dollars
1 Bus	3 Months	Apron bus services for December, January & February.	@\$24,000 Per unit/ Month	72,000.00
1 Bus	3 Days	Apron Bus services from 28-30th November 2014	@\$800 per day	2,400.00
VAT INCLUSIVE @ 16%				
Total due on demand in US Dollars				74,400.00

SAA
Request
9/1/15

1000010561

Authorized Signature

[Handwritten Signature]

Contract - 1100000302
PO - 1150000676

TRIA: KISumu
M. Grant
Francis
23/1/15

S/S = 1000010561

4/1/15

Appendix II



Kenya Airports Authority

Paper posted
by BSD, KAA
on 30/6/2015

INVOICES FOR RELIEF AND MISSION LOGISTICS

This is to certify and confirm that we have received the documents.

Handed over by: Name: [Handwritten Name] Signature: [Handwritten Signature]
Date: 05.06.15

Received by: Name: [Handwritten Name] Signature: [Handwritten Signature]
Date: 05.06.15

Witnessed by: Name: PETER MUAHA Signature: [Handwritten Signature]
Date: 05.06.15



Kenya Airports Authority

Cash office 27/4/15

Seen.

MEMO

TO : AG. MANAGING DIRECTOR
 FROM : GENERAL MANAGER -FINANCE
 REF : KAA/06/01 VOL.1
 DATE : 14th APRIL 2015
 SUBJECT : PAYMENT SCHEDULE

GM / AS Per CS

Discuss the payment in the light of the decision before me that this amount is not in favour to authority.

National Bank of Kenya- A/C No.01003058234200

No.	Date	Payee	Purpose	Amount EUROS
1.	14.04.15	ACI-AFRICA	2015 Membership dues to the ACI-AFR Region	18,750.00
Totals				18,750.00

Equity Bank Limited- A/C No. 1480262341788

No.	Date	Payee	Purpose	Amount US\$	Amount Kshs
1.	14.04.15	Magal Security Systems Ltd	2 nd Interim payment supply and installation of Integrated Security Management System (ISMS) KAA/ES/JKIA/476B/ISMS	3,273,603.68	157,611,547.18
2.	14004.15	Principal Secretary, National Treasury	Repayment of World Bank Loan Interest.		
Totals				3,273,603.68	157,611,547.18

Barclays Bank of Kenya- A/C No.2029771084

No.	Date	Payee	Purpose	Amount US\$
1.	14.04.15	Relief & Mission Logistics Ltd	Apron Buses to carry out services -KAA/JKIA/752	70,551.72
Totals				70,551.72

Barclays Bank A/c No.2022988088

No	Date	Payee	Purpose	Amount Kshs.
1. ✓	14.04.2015	Parapet Cleaning Services	Cleaning for General areas and sanitary bins services for March 2015	2,493,730.03
2. ✓	14.04.15	Mitchell Cotts Freight K Limited	VAT on Emergency Terminal facilities-Temporary Arrivals Invoice 24718-13- 1 (schedule no.1) KAA/ES/JKIA/894/C	2,005,080.00
2. ✓	14.04.15	Mitchell Cotts Freight K Limited	VAT on Emergency Terminal facilities-Temporary Arrivals Invoice 24718-13-2 (schedule no.1) KAA/ES/JKIA/894/C	1,002,540.00
3. ✓	14.04.15	Abdulhakim Ahmed Bayusuf & Sons Ltd.	Strengthening & Extension of Runway & Associated works at Manda Airstrip phase1 KAA/ES/MANDA/736/C	13,979,363.30
Totals				19,480,713.33

We hereby confirm that the funds payments are authenticated and accurate for your approval.


JOHN THUMBI

INTERNATIONAL SERVICES & PAYMENTS

26578

Instructions to Customers
 1 This form should be filled in CAPITAL LETTERS
 2 Beneficiary's account number, name, bank and branch MUST be quoted
 3 The beneficiary bank BIC CODE MUST be provided. For ALL payments to the EURO zone a valid IBAN and BIC Code must be provided.
 4 For Terms & Conditions overleaf.

BARCLAYS BANK OF KENYA LTD
REQUEST FOR SWIFT CUSTOMER TRANSFER

Kindly make the following transfer on my/our behalf/w: have read and agree to be bound by the terms and conditions overleaf.

Date: 14/04/2015

Remitter's Details

Remitters Name: <u>KENYA AIRPORTS AUTHORITY</u>	Branch Code:
Branch Name: <u>ENTERPRISE RD</u>	Account Number: <u>209771084</u>
Address (MANDATORY) P.O. BOX 17 Telephone Number: <u>6611000</u>	
<u>NAIROBI, KENYA</u>	

Amount Details

Payment Currency: US DOLLARS (in words) US DOLLARS Value Date:

Payment Amount: FIFTY ONE (in figures) 70 (Amount in words) SEVENTY THOUSAND FIVE HUNDRED

Special Exchange Rate (if applicable): CENTS SEVENTY TWO ONLY (if Special Rate is used)

Please tick as appropriate: Rate (if applicable) ID (if Special Rate is used) Debit Credit

Appropriate: Amount to be debited to remitter's account Payment amount to remain static

Beneficiary Details

Name: BELLA

Beneficiary Address: MISSION LUIS

NAIROBI (MANDATORY) P.O. BOX: 45550

Account Number: 1167227436
 (For all payments to the EURO zone please quote valid IBAN)

Bank & Branch

Beneficiary Bank: KENYA COMMERCIAL BANK - HAREN BRANCH

SWIFT: KCBK BIC code:

Bar Code:

(Mandatory for all payments) Add beneficiary Bank details

Purpose of Payment: (MANDATORY) TRAVEL

Remitters reference/Details of payment: FEB 14

Charges to be paid by: Remitter (Shared)

Remitter's Signature(s): AS MD

Signature(s) verified: (delete whichever is not applicable)

Branch received stamp (show date & time):

To be completed by the branch

Amount Remitted (Currency):

Rate Applied:

Deal Id:

Local equivalent:

Commission/Charge:

Total Amount:

Comments to explain reasons for decline:

Call Back Done:

Call Back Date:

Call Back reason:

Authorised:

Authorised:

Authorised:



RELIEF & MISSION

R & M HSE
Bogam East Rd.
Karen
NAIROBI
KENYA.

Emergency Sourcing & Supplies

P.O. Box 45550 NAIROBI
Tel: 254-20-8076435 / 8076436
Tel/fax: 254-02-8076436.
Cellphone: +254-722775182
+254-723307990
email: remting@yahoo.com OR
logistics@relief-missions.org

March 23, 2015

FINANCE DEPARTMENT

KENYA AIRPORT AUTHORITY

JKIA

NAIROBI

Dear Sirs,

Re: Change of Banking Details - Relief & Mission Logistics

FROM:

Relief & Mission Logistics
Kenya Commercial Bank
Karen Branch
A/C No. 1112019812
Swift Code: KCBLKENX

The above subject refers our intention for your organisation name, the Finance Department to change our banking details from the above bank account details, to the below bank account details for the continued running of the smooth operations.

TO

Relief & Mission Logistics
Kenya Commercial Bank
Karen Branch
A/C No. 1167727436 (USD Account)
Swift Code: KCBLKENX

Kindly do not hesitate to contact the undersigned for any queries you may have.

Thanking you in advance

Kind regards

James M. Supeyo
SINTEI SUPEYO
FINANCE DIRECTOR



WMA
Kindly approve change of bank details.

LIV HQS
24/03/15.

3
M. F. N.
Please confirm change s
7/4/15

James Phi
bank details is updated

24/3/15

ANNEX ~~LM~~ A

RELIEF & MISSION

P.O. Box 45550 NAIROBI
Tel: 254-20-2323226/7
Fax: 254-20-3870930
Cellphone: 9722-775182

Emergency Sourcing & Supplies

email: logistics@reliefmissions.org
or: reliefm@yahoo.com

INVOICE

Ref: KAA 01-14

M/s KENYA AIRPORT AUTHORITY

Date: 28/12/2014

Delivery Note Nos. per contract (also refer to Attached Email)

Units	Duration	Particulars	Rate	US Dollars
1 Bus	3 Months	Airport bus services for December, January & February.	@\$24,000 per unit, Month	72,000.00
1 Bus	3 Days	Airport bus services from 28-30th November 2014	@\$800 per day	2,400.00
1000010561				
VAT INCLUSIVE @ 16%				
Total due on demand in US Dollars				74,400.00

Authorised Signature

26 contract - 1160000302
Pr. - 400000676

SES - 100010961

KAA - KISumu
Mr. G. G. G. G.
28/12/14



INSPECTION AND ACCEPTANCE COMMITTEE REPORT.

NATURE OF SERVICES/WORKS/GOODS
To carry out services

TENDER NO: KAA/ JKIA/752

REF: TENDER NO. KAA/ JKIA/752

PURPOSE OF INSPECTION: - Confirm that services were executed in accordance with the concession agreement

SUPPLIER/CONTRACTOR:
M/s RELIEF & MISSION LOGISTICS LTD

ITEM		Rate	Total Amount	Actual date of Services
Apron bus services for 3 months:- December, January and February Year 2014	1 Bus	US Dollars 24,000 per unit/Month	US Dollars 72,000.00	December, January and February Year 2014
Apron bus services From 5 th to 30 th November 2014	1 Bus	US Dollars 800 per day	US Dollars 2,400.00	28 th to 30 th November 2014
			TOTAL US Dollars 74,400.00	

USER ACCEPTANCE: The above goods/services conform to my requirements. (Any other Remarks)

Name: Mohamed Karama Sign: _____ Date: _____

INSPECTION AND ACCEPTANCE COMMITTEE

1. Name Simon Njoroge
Sign: _____ Date: 26-02-2015

2. Name: John Kamau
Sign: _____ Date: 26-02-2015

INSPECTION AND ACCEPTANCE COMMITTEE: REMARKS

Confirmed Services carried out satisfactorily
Please pay

Payment Approved/

US Dollars 74,400.00

TENDER NO. KAA/ JKIA/752

*Work was completed
26/2/15*

paid

3 FEES

In consideration of the services the Authority shall pay to the Concessionaire the following fees:-

- (i) A total of USD 120,000.00, per month, for five (5) apion buses payable quarterly in advance inclusive of all government taxes.
- (ii) The Fees shall be payable within a period of thirty (30) days of invoice. PROVIDED HOWEVER that the Concessionaire will have complied with and fulfilled all its conditions under this Agreement, the Building Agreement, Service Level Agreement and the Lease including such inspections and reports as will be required by the Authority's technical and financial departments.
- (iii) Any late payments by the Authority shall SUBJECT TO fulfillment OF THE Concessionaire's obligations as stated in clause 3 (ii) above accrue interest at the rate of 3% p.a..

Upon request by the Authority, the concessionaire may supply additional buses for the services. The fee for any additional bus shall be prorated using the rates in Clause 3 (i) above.

4 PERFORMANCE

The obligation of the Concessionaire in accepting this concession shall be:

- a) To perform the Services in compliance with the provisions of the Kenya Airports Authority Act, and all relevant government laws, rules and regulations in force from time to time as they apply to the activities of the Concessionaire under the Agreement.
- b) To comply with international standards for Passenger Transfer Services procedures as recommended by ICAO and IATA.

ARTICLE III

GENERAL OBLIGATIONS OF THE CONCESSIONAIRE

The Concessionaire hereby covenants and agrees with the Authority as follows:-

- a) To provide the Services in an efficient and competent manner and to standards prevailing in the industry.
- b) To employ adequate staff for purposes of providing the Services.
- c) At its own cost to provide and replace all equipment required for the provision of the Services and maintain such equipment in good order and condition.

U.G.

Handwritten notes in the top right corner:
1 bus → USD 24,000
5 buses → USD 120,000
7/30 x 24,000 = 20000
USD 20000