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REPUBLIC OF KENYA

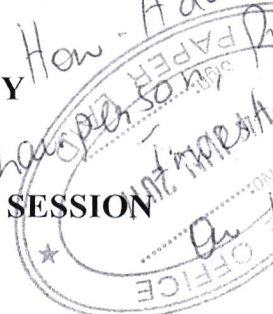


THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION

Directorate of Committee Services

*Paper laid by
Hon. Adam Keynar, MP
Chairman, Public
Investment
Committee
On 14/6/2017 (am)*



THE PUBLIC INVESTMENTS COMMITTEE

SPECIAL REPORT ON THE INQUIRY INTO THE COMPLETION OF
THE NATIONAL SOCIAL SECURITY FUND'S HAZINA TRADE
CENTRE OFFICE TOWERS PROJECT AND IMPLEMENTATION OF
THE PROPOSED JOINT VENTURE PROPERTY DEVELOPMENT ON
KENYATTA AVENUE IN THE NAIROBI CENTRAL BUSINESS
DISTRICT AND MAVOKO SUB COUNTY IN MACHAKOS COUNTY

JUNE, 2017

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LIST OF ABBREVIATIONS AND ACRONYMS

AIA	-	Adventis Inhouse Africa Limited
BQ	-	Bills of Quantity
Cap.	-	Chapter
CBD	-	Central Business District
CS	-	Cabinet Secretary
CO. LTD.	-	Company Limited
COTU	-	Central Organisation of Trade Unions
EIA	-	Environmental Impact Assessment
EOI	-	Expression of Interest
KES	-	Kenya Shillings
MLSSS	-	Ministry of Labour, Social Security & Services
MD	-	Managing Director
MT	-	Managing Trustee
NCC	-	Nairobi City Council
NCCG	-	Nairobi City County Government
NEMA	-	National Environmental Management Authority
NSSF	-	National Social Security Fund
PPARB	-	Public Procurement Administrative Review Board
PPD Act	-	Public Procurement and Disposal Act
PPOA	-	Public Procurement Oversight Authority
PPP	-	Public Private Partnership
PPPU	-	Public Private Partnership Unit
PS	-	Principal Secretary
RBA	-	Retirement Benefits Authority
RFP	-	Request for Proposals
SDPW	-	State Department of Public Works
T & A	-	Tana & Associates

1.0 CHAIRMAN'S FOREWORD

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

Committee Mandate

The Committee is mandated to: -

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

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173–203. The Committee has powers, under Article 125 of the Constitution, National Assembly Powers and Privileges Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act, 2003, to summon witnesses, examine them on oath and receive evidence.

Committee Membership

The Committee comprises the following Members: -

1. Hon. Adan Wehliye Keynan, CBS, MP - **Chairperson**
2. Hon. Anthony Kimani Ichung'wah, MP - **Vice Chairperson**
3. Hon. Francis Mwanzia Nyenze, EGH, MP
4. Hon. (Dr.) Oburu Oginga, MGH, MP
5. Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP
6. Hon. Adan Mohammed Nooru, MP
7. Hon. Franklin Mithika Linturi, MP
8. Hon. Wafula Wamunyinyi, MP
9. Hon. Elias Bare Shill, MP
10. Hon. Sammy Silas Komen Mwaita, MP
11. Hon. (Dr.) Paul Otuoma Nyongesa, EGH, MP
12. Hon. John Olago Aluoch, MP
13. Hon. (Eng.) John Kiragu, MP
14. Hon. Dorcas Kedogo, MP
15. Hon. Abdullswamad Sheriff Nassir, MP
16. Hon. Beatrice Nkatha Nyaga, HSC, MP
17. Hon. Bernard Munywoki Kitungi, MP

18. Hon. (Dr.) Chrisanthus Wamalwa Wakhungu, CBS, MP
19. Hon. Cornelly Serem, MP
20. Hon. Eng. Stephen Ngare, MP
21. Hon. Irungu Kang'ata, MP
22. Hon. Johana Kipyegon Ng'eno, MP
23. Hon. John Muchiri Nyaga, MP
24. Hon. John Ogutu Omondi, MP
25. Hon. Korei Ole Lemein, MP
26. Hon. Mary Sally Keraa, MP
27. Hon. Onesmus Muthomi Njuki, MP

Committee Secretariat

The Committee Secretariat is comprised of the following officers: -

- | | | |
|------------------------|---|-----------------------|
| 1. Ms. Susan Maritim | - | First Clerk Assistant |
| 2. Mr. Philip Lekarkar | - | Third Clerk Assistant |
| 3. Mr. Mohamed Boru | - | Third Clerk Assistant |
| 4. Ms. Clarah Kimeli | - | Legal Counsel II |
| 5. Mr. Charles Atamba | - | Research Officer III |

Justification for the Inquiry

This Special Report was prepared pursuant to Standing Order No. 206 which mandates the Public Investments Committee to “examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.”

The main objective of the Inquiry was to establish whether or not the National Social Security Fund managed the following capital projects in accordance with sound business principles, prudent commercial practices and public procurement laws:

- i. Hazina Trade Centre Office Towers;
- ii. Joint Venture Property Development on Kenyatta Avenue in Nairobi CBD and Mavoko Sub-County in Machakos County.

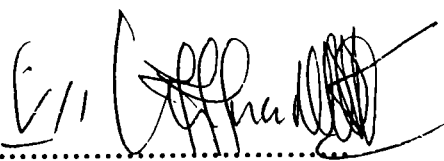
In preparation of the Report, the Committee heard and received both oral and written evidence from various witnesses, as indicated in Section 2.0 of this Report.

Acknowledgement

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the work of the Committee in fulfilment of its mandate. The

Committee is also grateful to all the witnesses who appeared and adduced evidence before it. Further, the Committee is grateful to the staff of the Office of the Auditor-General, the Inspectorate of State Corporations and the National Treasury for the services they rendered to the Committee. It is their commitment and dedication to duty that made the production of this Report possible.

On behalf of the Members of the Public Investments Committee, I beg to table the Special Report on the Completion of NSSF Hazina Trade Centre Office Towers and Implementation of Proposed Joint Venture Property Development in Mavoko Sub County and Kenyatta Avenue in Nairobi CBD, pursuant to Standing Order 199.

Sign: 

Date: 4-5-2016

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

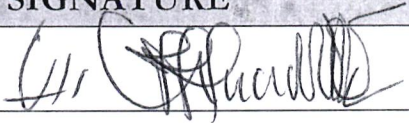
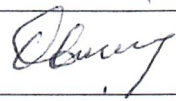

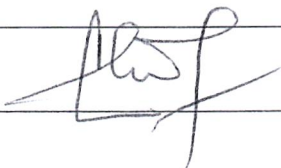


PUBLIC INVESTMENTS COMMITTEE

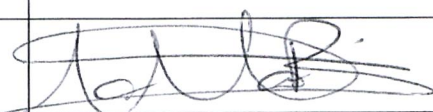
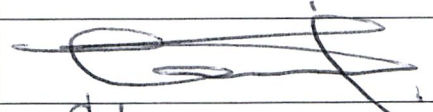
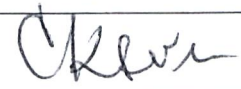

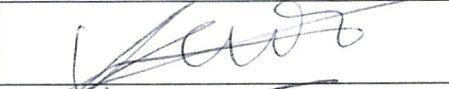
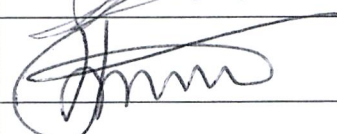
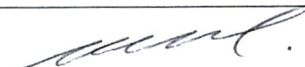
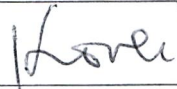

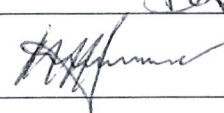
ADOPTION LIST

SPECIAL REPORT ON THE COMPLETION OF THE NATIONAL
SOCIAL SECURITY FUND'S HAZINA TOWERS IN NAIROBI CBD,
JOINT VENTURE PROPERTY DEVELOPMENT ON KENYATTA
AVENUE IN NAIROBI COUNTY AND MAVOKO SUB-COUNTY

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 4TH MAY, 2017

	NAME	SIGNATURE
1.	Hon. Adan Wehliye Keynan, CBS, MP	
2.	Hon. Anthony Kimani Ichung'wah, MP	
3.	Hon. Francis Mwanzia Nyenze, EGH, MP	
4.	Hon. (Dr.) Oburu Oginga, MGH, MP	
5.	Hon. (CPA) Thomas Ludindi Mwadeghu, CBS, MP	
6.	Hon. Adan Mohammed Nooru, MP	
7.	Hon. Franklin Linturi Mithika, MP	
8.	Hon. Athanas Wafula Wamunyinyi, MP	
9.	Hon. Elias Bare Shill, MP	
10.	Hon. Sammy Silas Komen Mwaita, MP	
11.	Hon. John Olago Aluoch, MP	
12.	Hon. (Dr.) Paul Nyongesa Otuoma, EGH, MP	
13.	Hon. (Eng.) John Kiragu, MP	

	NAME	SIGNATURE
14.	Hon. (Eng.) Stephen Ngare, MP	
15.	Hon. Abdullswamad Sheriff Nassir, MP	
16.	Hon. Beatrice Nkatha Nyaga, HSC, MP	
17.	Hon. Bernard Munywoki Kitungi, MP	
18.	Hon. Chrisanthus Wamalwa, CBS, MP	
19.	Hon. Cornelly Serem, MP	
20.	Hon. Dorcas Kedogo, MP	
21.	Hon. Irungu Kang'ata, MP	
22.	Hon. Johana Kipyegon Ng'eno, MP	
23.	Hon. John Muchiri Nyaga, HSC, MP	
24.	Hon. John Ogutu Omondi, MP	
25.	Hon. Korei Ole Lemein, MP	
26.	Hon. Mary Sally Keraa, MP	
27.	Hon. Onesmus Muthomi Njuki, MP	

2.0 EXECUTIVE SUMMARY

The main objective of the Inquiry was to establish whether or not the implementation of Hazina Trade Centre Office Towers and Proposed Joint Venture Property Development in Mavoko Sub County and Kenyatta Avenue in the Nairobi CBD were managed in accordance with sound business principles, prudent commercial practices and public procurement laws.

The Committee held several sittings in which it closely received and examined evidence from the following witnesses: -

- (i) *Amb. Raychelle Omamo – former Ag. Cabinet Secretary, Ministry of Labour, Social Security and Services;*
- (ii) *Hon. Kazungu Kambi- Former Cabinet Secretary, Ministry of Labour, Social Security and Services;*
- (iii) *Mr. Ali Noor Ismail – former Principal Secretary, MLSSS;*
- (iv) *Mr. Alex Kazongo, former NSSF Managing Trustee;*
- (v) *Mr. Tom Odongo, former NSSF Managing Trustee;*
- (vi) *Mr. Richard Lang'at, former NSSF Managing Trustee;*
- (vii) *Current NSSF Management led by Dr. Anthony Omerikwa, Acting Managing Trustee;*
- (viii) *Hon. Daniel Ndambuki - current NSSF Board of Trustee Chairman;*
- (ix) *Mr. Adan Daud Mohammed - former NSSF Board of Trustee Chairman;*
- (x) *Mr. Francis Atwoli – NSSF Trustee;*
- (xi) *Mr. Salmann Hameed - Partner, Salmann Mruttu*
- (xii) *Hazina Project Consultants: Mr. Patrick Tana Mutisya, Eng. David Maganda and Mr. James Kisa;*
- (xiii) *Mr. Maurice Juma – Director General, Public Procurement Regulatory Authority;*
- (xiv) *Hazina Trade Centre Office Towers Project Bidders: Cementers Ltd., FUBECO Ltd., N.K Brothers Ltd., China Wu Yi Co. Ltd., Parbat Siyani Construction Co. Ltd.;*
- (xv) *China Jiangxi Ltd. – Contractor, Hazina Trade Centre Office Towers Project;*
- (xvi) *Mr. Atul Shah - Nakumatt Holdings Ltd.;*
- (xvii) *Nairobi County Government;*
- (xviii) *Prof. Geoffrey Wahungu – Director-General, NEMA;*

- (xix) *Adventis Inhouse Ltd. – Consultant for Mavoko and Kenyatta Avenue Joint Venture Projects; and*
- (xx) *Sinohydro Tianjin Ltd. and Reverof Consult - Mavoko & Kenyatta Avenue Project bidders.*

The Committee also conducted a site visit to Hazina Trade Centre Office Towers Project in the Nairobi Central Business District, currently under development.

The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's General Observations and Recommendations as outlined in this section and Section 5.0 of this Report. These observations and recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent investment and financial management in state corporations.

GENERAL OBSERVATIONS ON THE NSSF HAZINA TRADE CENTRE OFFICE TOWERS PROJECT IN THE NAIROBI CENTRAL BUSINESS DISTRICT

The Committee made the following General Observations: -

- (i) **THAT**, the procurement process for the completion of the NSSF Hazina Trade Centre Office Towers in Nairobi Central Business District was shrouded in opaqueness and as such, the process lacked fairness, equity, transparency and competitiveness.
- (ii) **THAT**, approval for the project from the then Nairobi City Council was conducted before the full scope of the project was determined to establish traffic management master plan, public safety environmental and social risks the project poses to businesses operating within the vicinity, neighbouring buildings and streets due the nature of the site.
- (iii) **THAT**, there was an oversight in renewal of the building plan approvals and extension of the National Environment Management Assessment Authority (NEMA) licence, in that, renewals were undertaken without appropriate validation of the Environmental Impact Assessment and traffic study report. This means that urban development changes that have taken place over the period which have a bearing on the proposed development in as far as planning and environmental acceptability is concerned, were not reviewed and taken into consideration.
- (iv) **THAT**, Mr. Alex Kazongo, the former Managing Trustee reappointed the consultants on 1st December, 2010 without subjecting them to a competitive procurement process. The reappointment letters referred to a project which had commenced but stalled twelve years

earlier. This was in total disregard of Articles 3 and 227 of the Constitution and the Public Procurement and Disposal Act 2005.

- (v) **THAT**, the revival and the enhancement of the Hazina Trade Centre Office Towers Project in the year 2013 should have been treated as a new contract and thus subject to the Public Procurement and Disposal Act, 2005. The re-engagement of the Project Consultants from the original project to oversee the enhanced Hazina Tower Project, therefore, was in breach of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.
- (vi) **THAT**, China Jiangxi International Ltd. was found to have made an arithmetic error of KES 115,329,300 in its financial bid. The Company accepted the arithmetic error and consequently adjusted their tender sum upwards from KES 6,599,888,888 to KES 6,715,218,188. NSSF informed China Jiangxi about the arithmetic error after the evaluation process and not before, contrary to Section 63 of the PPDA 2005 and clause 5.7, Instruction to Bidders, in the bid document.
- (vii) **THAT**, the financial evaluation of the tender for the completion of the NSSF Hazina Trade Centre Office Towers was not carried out by an Evaluation Committee established in accordance with Regulation 16(7) of the Public Procurement and Disposal Regulations, 2006. This is evidenced by a letter Ref. No. TA/454/13 from Tana & Associates dated 7th February, 2013 forwarding the financial evaluation report. In addition, the unsigned report did not recommend which firm was to be awarded the tender although from the Report, China Jiangxi International (K) Ltd. was the lowest evaluated bidder even after correcting the arithmetic error of KES 115,329,300.
- (viii) **THAT**, the successful bidder repeated provisional sums for some un-quantified works in the Bill of Quantities (BQ) in its financial bid documents. For example, in the BQ for sub contract for mechanical ventilation and air conditioning installation, which tellingly the Fund failed to subcontract against the mandatory tender requirements, the following provisional sums were provided:
 - (a) *PC for Plenum Chamber and associated works = KES 5,000,000*
 - (b) *PC for basement fans automation = KES 5,000,000*
 - (c) *Provisional Sum for contingency sum = KES 2,000,000**Still in the same BQ the Company included the following provisional sums: -*

- (a) *Provided the sum of KES 80,000,000 to cover the cost of mechanical builders in plenum chambers, fans in basement and services refurbishment and interconnection.*
- (b) *Under the subcontract for mechanical ventilation and air conditioning, China Jiangxi International (K) Ltd. was the sub-contractor at KES 33,973,867 which included provisional sums of KES 5,000,000; KES 5,000,000; and KES 2,000,000*
- (c) *The total tender sum of KES 6,715,218,488 awarded to China Jiangxi International (K) Ltd. included all these provisional sums listed above that is KES 80,000,000; and KES 2,000,000.*

This double provision may have significantly escalated the cost of the project and loss of funds, and the Fund, therefore, stands to lose funds through double counting.

- (ix) **THAT**, China Railways No. 5 Engineering Group Co. Ltd. and China Wu Yi Ltd. did not provide Certificate of Incorporation which was a mandatory requirement, but were considered responsive during preliminary evaluation against the provisions of Section 64(1) of the Act. The failure to disqualify the two firms was inconsistent with Regulation 48(1) of the PPDR 2006 and this may have been done to make the process appear competitive. The procuring entity did not correct errors noted in the financial bid of the successful bidder in accordance with Section 63 of the Act and clause 5.7, Instruction to Bidders, in the bid document.
- (x) **THAT**, the Evaluation Committee failed to adhere to the provisions of Section 64(1) of the Act by not considering the audited accounts of the joint venture partners (sub-contractors) of the winning bid and in consequence made the Company responsive.
- (xi) **THAT**, the Fund failed to put in place satisfactory mitigation measures during the construction of the Hazina Office Towers and as a result the Nairobi City County issued an order putting in abeyance the proposed development of the office towers from July 2013 to December 2013.
- (xii) **THAT**, the Nairobi City County Government approved the building plan for the enhanced project subject to vacation by all existing tenants including the main tenant Nakumatt Holdings Ltd. This is bound to attract compensation claims for loss of business and breach of an existing 20-year lease tenancy agreement entered into by the Fund (lessor) and Nakumatt Holdings Ltd. (lessee).

- (xiii) **THAT**, Nakumatt Holdings Ltd has sued the Fund vide Milimani Land Case No. 1170 of 2014 for among others, seeking to restrain NSSF from continuing with construction of Hazina Trade Centre Office Towers until all the contentious issues are settled including compensation for loss of business amounting to KES1.6 billion. This negates the very objective for which the project was conceived, which is, return on investments for its members.
- (xiv) **THAT**, the NSSF may not realize value for money owing to the delay in completing the Project, which will likely attract claims from the Contractor. Further, should the Fund abandon strengthening of the columns as per State Department of Public Works' advice, the Fund will have made a loss of KES 244,728,603, which is 3.6% of the tender figure of KES 6,715,218,488. The amount already spent on column strengthening is KES 192,925,750.00. The remaining column strengthening works amounts to KES 51,802,853.
- (xv) **THAT**, on governance matters, the Fund has had a high turnover of Managing Trustees. For instance, between the years 2010 and 2017, the Fund has had five (5) Managing Trustees managing the Fund. This high turnover affected the effective implementation of various projects including the Hazina project.

GENERAL OBSERVATIONS ON THE JOINT VENTURE PROPERTY DEVELOPMENT IN MAVOKO SUB-COUNTY AND KENYATTA AVENUE (NAIROBI CBD)

a) The Joint Venture Property Development in Mavoko Sub-County

The Committee made the following general observations:

- (i) **THAT**, there is disparity in acreage of land for the proposed project development. According to PPOA, 960 acres are available while NSSF informed the Committee that 1,010 acres are available. It's not clear what the true position is and this also has a bearing on the value of the exact land available for development.
- (ii) **THAT**, the Fund's Mavoko land is an expansive parcel of land which has been lying idle since 1993 when it was acquired and there are fears of encroachment by squatters. In 2010, the Board, while reviewing its idle assets and upon the recommendation of management, decided to tender for Expression of Interest from international bidders seeking optimal use of the land.

- (iii) **THAT**, the Board of Trustees approved the development of the land through a joint venture scheme, whereby NSSF was to contribute land (10%) while the winning bidder would inject cash (90 %) necessary to build 20,000-30,000 houses with amenities targeting (lower) middle class owners. The profit from this development would be shared proportionately to capital contribution.
- (iv) **THAT**, the procuring entity was advised by PPOA that the original tender was invalidated by enactment and implementation of the Public Private Partnership (PPP) Act, 2013, and the law cannot, therefore, be applied retrogressively. Despite the advice, the Fund proceeded to invite for new tenders through restricted tendering method using the list of the bidders of the lapsed tender. It was improper for the Fund's Tendering Committee to use a list of bidders who responded to a terminated tender. The Fund should have instead conducted the re-tendering process through open tendering.
- (v) **THAT**, further, the Cabinet approval on the project was a policy decision, but not necessarily an approval of procurement and compliance to procurement regulations by the contracting entity.
- (vi) **THAT**, the tender was terminated on 13th May, 2015 owing to negative publicity surrounding it. The termination was done in accordance with section 36(1) of the Public Procurement and Disposal Act, 2005 on recommendation of the Tender Processing Committee.
- (vii) **THAT**, although the tender was cancelled, public funds were spent in the procurement process of the joint ventures as well as in advertisements to cancel the tender.

(b) Kenyatta Avenue (Nairobi CBD)

The Committee made the following observations:

- (i) **THAT**, the Fund planned to undertake a development on 3.6 acres of land it owns along Kenyatta Avenue in Nairobi Central Business District in order to improve returns on investment. Currently, the piece of land is not optimally utilized other than capital appreciation.
- (ii) **THAT**, the development was approved by the Board's Operation and Investment Committee in its 13th meeting held on 31st August, 2010.
- (iii) **THAT**, International Request for Proposals (IRFP's) No. 8/2013 – 2014 for Joint Venture Property Development in CBD was advertised on 22nd October, 2013.

- (iv) **THAT**, the closing and opening of the IRFPs for the project was successfully concluded on 22nd April, 2014, two firms responded. Following the implementation of the PPP Act, 2013, the Fund sought clarification from the Public Private Partnership (PPP) Unit on whether the Kenyatta Avenue project as originally conceptualized fell under the PPP arrangement.
- (v) **THAT**, the tender was terminated on 13th May, 2015 owing to negative publicity surrounding it. The termination was done in accordance with section 36(1) of the Public Procurement and Disposal Act, 2005 on recommendation of the Tender Processing Committee.
- (vi) **THAT**, the Cabinet approval on the project was a policy decision, but not necessarily an approval of procurement and compliance to procurement regulations by the contracting entity.
- (vii) **THAT**, although the tender Kenyatta Avenue was cancelled, public funds were spent in the procurement process of the project as well as in advertisements to cancel the tender.

COMMITTEE GENERAL RECOMMENDATIONS

From the evidence adduced (oral and written) and the observations made, the Committee makes the following recommendations:

- (i) **THAT**, the Ethics and Anti-Corruption Commission investigates the conduct of Mr. Alex Kazongo, the former Managing Trustee for contravention of Section 74 of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 in the re-appointment of the Project Consultants for the revived Hazina Trade Centre Office Towers project. This re-appointment of consultants is tantamount to direct procurement.

The Ethics and Anti-Corruption Commission to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;

- (ii) **THAT**, the Fund and all State Corporations in general, must strictly adhere to the requirements of the Constitution of Kenya, the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012 in the implementation of projects. Sufficient due diligence should be carried out prior to project implementation to avoid claims and losses that may accrue from interrupted implementation, similar to the

Hazina Trade Centre Office Towers Project, for which Nakumatt Holdings Ltd. is claiming KES 1.6 billion for losses incurred through breach of contract;

- (iii) **THAT**, the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development should urgently convene a meeting of all relevant stakeholders to agree on the structural viability of the Hazina Trade Centre project and its completion at minimum cost within the stipulated timelines.

The Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development to report to the National Assembly, the implementation status of this recommendation, not later than three (3) months after the adoption of this Report;

- (iv) **THAT**, the impasse between NSSF and Nakumatt Limited ought to be urgently resolved in the interest of the public, to allow for completion of the project.

The Managing Trustee, NSSF to report to the National Assembly, the implementation status of this recommendation, not later than three (3) months after the adoption of this Report;

- (v) **THAT**, in future, the Fund should conduct a feasibility study on capital projects to determine the viability of the investments before commencement of the projects;

- (vi) **THAT**, the Fund should urgently secure its property in Mavoko to avoid encroachment by private developers;

- (vii) **THAT**, to mitigate against the high turnover of Managing Trustees, the NSSF Act should be amended with a view to improving the governance structure of the Fund and provide for security of tenure for the Managing Trustee.

Conclusion and Way Forward

Taking into account the inordinate delay to complete the Hazina Trade Centre Office Towers project, the opportunity cost, contractual obligations and the colossal amount of funds already spent on the Project, **the most prudent and reasonable way-forward for the project is for all the concerned parties including the National Social Security Fund, the Ministry of EAC, Labour and State Protection, the Ministry of Transport, Infrastructure, Housing and Urban Development, the Nairobi City County Government, the Project Consultants and Nakumatt Holdings Limited, to urgently address the contentious issues hindering completion of the Project. This will create a conducive environment for the contractor to**

meet his contractual obligations as per the contract and ensure that the Project is completed as envisaged and pensioners obtain value for their money.

3.0 INTRODUCTION

Background of NSSF

The National Social Security Fund (NSSF) was established in 1965 through an Act of Parliament Cap 258 of the Laws of Kenya. The Fund initially operated as a Department of the Ministry of Labour until 1987 when the NSSF Act was amended, transforming the Fund into a State Corporation under the Management of Board of Trustees.

The Fund was established as a mandatory national scheme, whose main objective was to register members, receive their contributions, manage the funds prudently and provide basic financial security benefits to members upon retirement or pay out benefits to eligible members. The Fund was set up as a Provident Fund providing benefits in the form of a lump sum.

At inception, the Fund operated as a government department under the Ministry of Labour. However, as its membership grew and the operations became complex, the NSSF Act was amended in 1987 to transform NSSF into a State Corporation under a Board of Trustees who provide policy and oversight role while and a Managing Trustee.

The National Social Security Fund Act No. 45 of 2013 was assented by the President of the Republic of Kenya on 24 December 2013 and came into force on 10th January 2014. The Act is meant to provide social security for workers and self-employed persons and their dependents.

The Act establishes two Funds, namely, the Pension Fund and the Provident Fund, to provide for contributions to and payment of benefits out of the Funds.

The Fund operates under a Board of Trustees comprising of the following:

- a) *The Chairperson appointed by the Cabinet Secretary, Ministry of Labour, Social Services and Security from amongst the Trustees;*
- b) *The Principal Secretary responsible for matters relating to finance;*
- c) *The Principal Secretary in the Ministry for the time being responsible for matters relating to social security;*
- d) *Seven (7) persons appointed by the Cabinet Secretary as follows:*
 - (i) *Two persons, one of whom shall be of opposite gender, nominated by the most representative employers' organization with knowledge and experience in matters relating to employers to represent employers in Kenya;*

- (ii) *Two persons, one of whom shall be of opposite gender, nominated by the most representative workers' organization by virtue of their knowledge and experience in matters relating to employees to represent employees in Kenya*
- (iii) *Three persons, one of whom shall be of opposite gender, not being public officers nor employees or directors of any public company, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to administration of scheme funds, actuarial science, insurance, accounting and auditing or law;*
- (iv) *The Managing Trustee is an ex-officio member.*

4.0 EVIDENCE AND SUBMISSION BY WITNESSES

4.1 SUBMISSION BY MR. ALEX KAZONGO, FORMER MANAGING TRUSTEE (2009-2012)

Mr. Alex Kazongo, former NSSF Managing Trustee, appeared before the Committee on 2nd September, 2015 to adduce evidence on his role as Managing Trustee in implementation of NSSF development projects namely Hazina Trade Centre Office Towers, Mavoko and Kenyatta Avenue Joint Venture Projects.

He informed the Committee THAT –

1. He was the Fund's Managing Trustee between May 2009 and February 2012.
2. When he joined the Fund in 2009, the Fund was already in the process of re-evaluating its idle assets and stalled projects among them, Mavoko, Kenyatta Avenue and Hazina Trade Centre Office Towers. He was appointed against a backdrop of the Fund's reforms agenda intended to enhance its productivity and public stature. The reviews and activities were deemed necessary to enhance cash flow and return on investment of the Fund.
3. Mr. Kazongo left the Fund after he failed to attain the requisite seventy (70%) pass mark in a performance appraisal conducted by the Board. His contract was not renewed.

4.1.1 Hazina Trade Centre Office Towers Project

4. The Hazina Trade Centre Office Towers originally designed in 1994 to reach twenty-four (24) storeys on plot no. 209/6708, was restructured in 1998 to only eight (8) floors (4 basements, 2 mezzanines, ground and 1st floor) due to cash flow constraints then facing NSSF.

5. The construction was undertaken by Mavji Construction Co. Ltd. under Salmann Mruttu & Associates as the Project Architects. Upon completion in 2003, the building was leased to Nakumatt Holdings Ltd. for twenty (20) years.
6. When the Fund's liquidity improved in 2009, the Board, upon the recommendation of consultants and management, decided to revive the project in order to enhance its return on investment.
7. It was the Board's decision to re-appoint the Consultants in 2010, having been prequalified by the Fund in 1998. Management only implemented the decision after consulting Public Procurement Oversight Authority on the matter. *(Mr. Kazongo however did not present any evidence to support this position.)*
8. In the re-evaluation process, it transpired that the Project could be elevated by several floors to thirty (34) storeys with twin towers to achieve its peak design, giving fourteen (14%) return on investment and payback period of thirteen (13) years as detailed in the feasibility report by the Consultants. Necessary approvals from relevant authorities, including City Hall and NEMA were then sought. Specifically, NEMA license No. 009531 dated 20th September, 2011 and Building Plan Renewal by City Hall dated 9th March, 2011, were obtained.
9. Nakumatt Holdings Ltd. was consulted from the beginning in 2011, when the completion of Hazina Trade Centre Office Towers was decided upon. Initially, Nakumatt Holdings Ltd. had no objections, with their main condition being that the project could proceed as long their business is not interrupted. It however appears they changed their mind and have hardened their stand, resulting in a court case.
10. After factoring adequate budgetary allocations for the project in 2010/2011, the Fund proceeded to tender for the Project, under competitive bidding. The tender (No. 14/2010-11) was evaluated and awarded to Cementers Ltd., being the lowest evaluated bidder at KES 5.99 billion. Total cost estimate for the project was KES 6.5 billion.
11. The award was, however, challenged by two bidders, namely China Jiangxi Ltd. and China Wu Yi Ltd., citing mainly the technicality in the registration and evaluation of their sub-contractors (under self-nomination).
12. Mr. Kazongo left NSSF in February 2012 before the appeal was concluded. He later learnt that the Public Procurement Appeals & Review Board ruled that the tender be re-

advertised. He further gathered that Cementers Ltd. went to court but lost. The tender was eventually awarded to China Jiangxi Ltd. on 26th February, 2013.

13. Prior to the Hazina Project, the Company had earlier been commissioned to undertake Nyayo Estate Embakasi Phase 4 & 5 in 2010 through competitive bidding.

4.1.2 Mavoko Joint Venture Property Development

1. The Fund's Mavoko land is an expansive parcel of land of approximately 1,100 acres. The land had been lying idle since 1993 when it was acquired and there were real fears of encroachment by squatters as at 2009.
2. In 2010, the Board, while reviewing its idle assets and upon the recommendation of Management, decided to tender for Expression of Interest from international bidders seeking optimal use of the land.
3. Nine (9) bids under Tender No. 5/2010-11 were obtained and the Fund settled on Ms. Adventis Inhouse Africa Ltd., proposing to develop the land through a joint venture scheme, whereby NSSF was to contribute land (10%) while the winning bidder would inject cash (90 %) necessary to build 20,000-30,000 houses with amenities targeting (lower) middle class owners. The profit from this development would be shared proportionately to capital contribution.
4. While evaluating the concepts, the Board was cognizant of restrictions placed by the Retirement Benefits Authority rules, whereby the maximum investment in real estate was limited to 30% of the Fund's total investments. This meant that the Fund could hardly contribute more than the value of Mavoko land; then estimated at KES 3 billion, as the Fund was already fast approaching the RBA limit.
5. The ratio of its property assets to total assets was 29% as at June 2010. This ratio would ease once the houses were sold as intended.
6. Since the Project was estimated to cost more than US\$10 million and fell under the definition of Public Private Partnerships (PPP), the Board directed that a suitable Cabinet Paper be prepared for onward presentation to the Cabinet for their approval.
7. Mr. Kazongo exited NSSF in February 2012 before the Cabinet Paper was finalised and tabled before Cabinet for approval. He later learnt that the Cabinet approval was obtained on 26th August, 2013, which increased the units to 60,000.

4.1.3 Kenyatta Avenue (Nairobi CBD) Joint Venture Property Development

On Kenyatta Avenue Joint Venture Property Development, Mr. Kazongo informed the Committee THAT –

8. The Kenyatta Avenue plot measuring 3.6 acres (1.4 ha) was sold and transferred to Delta Square Ltd. whose sister company, Delta Resources Ltd., paid 10% of total sale amounting to KES 1.375 billion in January, 2008. The balance (90%) was deposited at CFC's Escrow Account maintained by the Fund's lawyers.
9. The buyers later disputed the sale and wanted price reduction arguing that the actual size on the ground was smaller than shown in the Title Deed. The Fund declined their request, citing exhaustive due diligence and took the matter to court. The Fund won the case in 2010 and the Title duly reverted to it.
10. Upon the recommendation of the Management, the Board resolved to put the plot to its optimal use by inviting suitable development concepts from international bidders under tender No. 5/2010-11.
11. Seven (7) bidders submitted their Expressions of Interest which were evaluated by the Fund. The Board settled on high-end mixed urban commercial development with a conventional centre proposed by Adventis Inhouse Africa Ltd.
12. The Project was, however, subject to the provisions of PPP which requires Cabinet approval, and RBA 30% limitation on property investment.
13. On RBA limitation, the Board ear-marked View Park Towers and Hazina Plaza along Uhuru Highway for disposal. It will be recalled that NSSF was already nearing the Retirements Benefits Authority limit and any significant additional investment in property would definitely upset the limit, if the two properties were not sold to pave way for new construction. Moreover, the new Hazina Trade Centre Office Towers would add another KES 6 billion to the property portfolio upon completion.
14. The Fund's Management, together with a consultant, prepared the Concept Paper on Mavoko Joint Venture Project, which was tabled before the Board, who then approved a feasibility study to be done. The Mavoko land was valued at 10% of the entire estimated project amount of KES 30 billion. It was the Board's decision for NSSF to contribute the land, while the developer contributes 90% of the project cost.

15. Mr. Kazongo exited NSSF in February 2012, before the Cabinet Paper was finalised and submitted for approval. Also, the two properties along Uhuru Highway earmarked for disposal, were still awaiting the conclusion of documentation for open tender.

Specific Observations

The Committee made the following Observations: - THAT

- (i) NSSF, during Mr. Kazongo's tenure as Managing Trustee re-appointed Consultants who had been prequalified ten (10) years earlier for completion of Hazina Trade Centre Towers, without subjecting them to an open tendering process as the procurement law requires.
- (ii) Article 226(5) of the Constitution is explicit on personal liability for any loss(es) occasioned by a public officer, whether the person remains the holder of the office or not. Mr. Kazongo should therefore be held responsible for the loss occasioned to the Fund through flouting of the procurement law and Art. 226(5) of the Constitution.

4.2 SUBMISSION BY MR. TOM ODONGO, FORMER MANAGING TRUSTEE (2012-2013)

Mr. Tom Odongo, former NSSF Managing Trustee appeared before the Committee on 21st May, 2015 to adduce evidence on his role as Managing Trustee in implementation of NSSF development projects namely Hazina Trade Centre Office Towers, Mavoko and Kenyatta Avenue Joint Venture Projects.

He informed the Committee THAT –

1. He joined NSSF in October 2009 as Investments General Manager, following a competitive interview conducted by PricewaterhouseCoopers (now trading as pwc).
2. He was appointed to the position of Managing Trustee in November, 2012 after a competitive interview process conducted by the Board of Trustees, following the sacking of the former Managing Trustee Mr. Alex Kazongo.
3. He served as the Managing Trustee for a period of nine (9) months until 22nd July 2013 when he was dismissed from service vide letter Ref: ML/20/3A/Vol. III by the Cabinet Secretary (CS) for Ministry of Labour, Social Security and Services, Hon. Kazungu Kambi. He was neither given a show cause letter nor offered any reasons for termination of his services by the CS.

4. Following his dismissal for unexplained reasons, he moved to court seeking to stop the recruitment of his replacement and to be reinstated by the Board, stating that the decision by the CS was arbitrary and did not involve the Board of Trustees, to whom he was answerable to as the Managing Trustee.
5. By the time of going to court, the Board had already appointed his successor. The Cabinet Secretary's lawyers approached him and requested for an out of court settlement, to which he agreed to. He was paid a year's salary for wrongful dismissal.

4.2.1 Hazina Trade Centre Office Towers Project

6. The Project was conceived in 1994 before he joined the Fund and was abandoned in 1998 due to financial challenges.
7. In 2010, the Board of Trustees directed that the office tower should be completed in order to enhance the viability of the building. A team of Project Consultants, led by Mruttu Salman & Associates, were re-commissioned with instructions that they should explore possibilities of improving the building designs in order to maximize the projects viability. **(Annex 1)**
8. The following were the appointed Project Consultants: -
 - (i) Mruttu Salmann - Project Architects
 - (ii) Tana& Associates - Project Quantity Surveyors
 - (iii) Abdul Mullick & Associates - Structural/Civil Engineers
 - (iv) Kisa & Partners - Electrical & Mechanical Engineers
9. The Consultants designed a twin tower office block comprising of 34 floors and 40 metres communication mast, with a total area 41,800 square metres or 418,000 square feet and height of 200 metres. This makes it the highest building in East and Central Africa and the 3rd highest in Africa. In order to enhance the structural stability for the building the existing columns will be strengthened with carbon fibre wrap.
10. A detailed feasibility study report was submitted by the consultants to the Board in 2011 with the following estimates **(Annex 2)**:
 - (i) Cost estimate - KES 6.63 billion
 - (ii) Returns on investment per annum - 14 %
 - (iii) Payback period - 13 years

11. The Board of Trustees approved the project to be implemented, based on the feasibility study viability. Management implemented the decision by advertising for Tender No. 14/2010-2011.

12. The following firms submitted their tenders with details as follows: -

Bidder No.	Bidder's Name	Bid Sum (KES)	Delivery Period
1	China Jiangxi Int. Ltd.	6,236,557,784	156 weeks
2	EPCO Builders	6,497,116,084	160 weeks
3	FUBECO (China Fushun)	6,354,016,059	140 weeks
4	Cementers Ltd.	5,997,711,380	170 weeks
5	Sichuan Huashi Enterprises	6,439,171,049	139 weeks
6	Tulsi Construction Co.	6,720,527,089	190 weeks
7	Seyani Brothers Co. Ltd.	6,731,607,984	212 weeks
8	N. K Brothers	6,313,909,101	199 weeks
9	China Wu Yi Co. Ltd.	5,715,752,876.73	130 weeks
10	Parbat Siyani Construction Co. Ltd.	5,951,291,730	159 weeks

13. After evaluation of the bids, the tender was awarded to **M/s. Cementers Ltd.**, who was the lowest evaluated bidder at **KES 5,997,711,380** and a contract period of **170 weeks**. However, 2 bidders appealed at the Public Procurement Appeals and Review Board (PPARB), who directed that the tender should be repeated.

14. The bidder who had won the tender, M/s. Cementers Ltd., was not satisfied with the judgment and proceeded to court to appeal against the judgment by PPARB. The case took more than one year to conclude and in December, 2012 the court upheld the decision of the Appeals Board and the Fund complied with the directive.

Re-tendering

15. Immediately after the judgment the Fund instructed the consultant to confirm the validity of cost estimate. The consultant revised the cost to be KES 7.3 billion. The Fund then proceeded to retender the Project and the opening results of the tender were as follows:

16. The procurement was an open tender that was advertised in the dailies, Nation and Standard on 9th January 2013 (**Annex 3**) and closed on 30th January 2013 at 11:00am. NSSF used a two-envelope system in which the technical documents were opened on the materials date.

The following six firms responded to the tender: -

Bidder No.	Bidder's Name
1	Sinohydro Corporation Ltd.
2	China National AERO Technology
3	China Railway No. Engineering Group Co. Ltd.
4	China Jiangxi Int. Ltd.
5	EPCO Builders Ltd.
6	Parbat Siyani Construction Co. Ltd.
7	China Wu Yi Co. Ltd.

17. According to the Evaluation Report, the tender evaluation was done in three stages, preliminary, technical and financial, by a committee of four evaluators. Preliminary evaluation of the tender was based on the conditions stated in the advertisement notice and the bid documents issued to the bidder. Three firms, China National Aero-Technology International Corporation; China Jiangxi International (K) Limited and China Wu Yi Ltd. met all the conditions.

18. Technical evaluation was carried out using the criteria stipulated in the bid documents. The cut off mark for the bidder to move to the financial evaluation, the next stage, it must score at least 80%. Only two bidders, China National Aero – Technology International Corporation, and China Jiangxi International (K) Limited, qualified.

19. The financial bids were opened on 5th February, 2013 by a committee of five officers and witnessed by the two bidders' representatives. The financial bids were as follows:

- (i) China National Aero–Technology International Corporation KES 6,741,174,428
- (ii) China Jiangxi International (K) Limited – KES 6,599,888,888.

20. It was noted that the financial evaluation of the tender was not carried out by an evaluation committee established in accordance with Regulation 16 (7) of the Public Procurement and Disposal Regulations, 2006.
21. A letter Ref. No. TA/454/13 from Tana & Associates dated 7th February, 2013 forwarding the financial evaluation report was evidence that the evaluation was done by Tana & Associates (**Annex 5**). In addition, the unsigned report did not recommend which firm was to be awarded the tender although from the report, **China Jiangxi International (K) Ltd. was the lowest evaluated bidder even after correcting arithmetic error of KES 115,329,300.**
22. NSSF's Tender Committee awarded the subject tender in its meeting held on 11th February, 2013 to China Jiangxi International (K) Ltd., at a tender price of KES 6,599,888,888 subject to the bidder's confirmation of tender arithmetic error of KES 115,329,300.
23. China Jiangxi International (K) was notified of the tender award on 11th February, 2013 vide the NSSF's letter Ref. No. SF/A/10/16/VOLXX111 (**Annex 6**) and accepted the offer vide their letter Ref. No. CJIC/003/2013 dated 12th February, 2013 (**Annex 7**) and accepted the arithmetic error and consequently adjusted their tender sum upwards from 6,599,888,888 to KES 6,715,218,188. This was an increment of KES 115,329,300 being the arithmetic error.
24. NSSF subsequently signed a contract dated 26th February, 2013 with China Jiangxi International (K) Ltd. at the corrected tender sum of KES 6,715,218,188 with a completion period of 155 weeks (**Annex 8**). None of the bidders objected to the second tender.
25. The existing tenant, M/s Nakumatt Holdings Ltd., was consulted and several consultative meetings held between the Fund and themselves and it was agreed that the project proceed with minimal interruptions to the tenant.
26. The ground breaking for the Project took place on 12th July 2013 and was presided over by the CS, Ministry of Labour, Social Security and Services, Hon. Kazungu Kambi.

Committee Observations on Hazina Trade Centre Office Towers Project

The Committee observed that:

- (i) Mr. Tom Odongo oversaw the procurement of the NSSF Hazina Trade Centre Office Towers Project after it was re-tendered. Appointment of the Project Consultants was done by his predecessor, Mr. Alex Kazongo.
- (ii) The procurement process for the completion of the Project was fraudulent, inconsistent and in breach of the procurement laws as evidenced by the following examples:-
 - a. The Project Consultants were all single-sourced without justifiable reasons in contravention of Section 29 (1) of PPDA, 2005 which obligates the procuring entity to advertise tenders.
 - b. China Railways No.5 Engineering Group and China Wu Yi did not provide Certificate of Incorporation, which was a mandatory requirement and were responsive during preliminary evaluation against the provisions of Section 64 (1) of the Act.
 - c. The Company awarded the contract to China Jiangxi Int. Ltd., but did not subcontract works as indicated in the bid document as a mandatory requirement. The Company should therefore have been disqualified at the preliminary stage.
- (iii) It was illegal for the procuring entity to have signed the contract with the successful bidder China Jiangxi Int. Ltd. without having corrected the errors in accordance with Section 63 of the PPDA, 2005.
- (iv) The Fund stands to lose KES 1,620,148,507.00 as compensation claim for loss of business and damages during construction as claimed by the current tenant M/s Nakumatt Holdings Ltd.
- (v) If M/s Nakumatt Holdings Ltd. does not review its position on continuation of the Office Towers, development of the Project will be at stake and may lead to sinking of the pensioners' deposits worth over more than KES 6 billion.

4.2.2 Mavoko and Kenyatta Avenue Joint Venture Development Projects

Mr. Odongo informed the Committee that:

1. The Board Committee for Operations and Investments at its meeting on 31st August 2010 directed the Management to advertise international Expression of Interest (EOI) by 30th September 2010 for the proposed development of Mavoko, Kenyatta Avenue and State House/Milimani plots. The EOI 05/2010-2011 advertisements were subsequently placed in

The Daily Nation, The Standard and The Economist in October 2010, for the purposes of identifying Joint Venture Partners.

2. The EOI was then evaluated by M/s. Adventis Inhouse Africa (AIA), who was the Project Consultant, because the Fund lacked capacity to evaluate and manage projects of such magnitude.
3. Subsequently, the Fund Tender Committee (FTC) sitting on 26th May, 2011, adopted a report by AIA and approved the following firms for invitation to submit Request for Proposals (RFP):

Mavoko Project

- (i) China CAMC Engineering Co. Ltd.
- (ii) Housing Finance
- (iii) Joel E. D Nyaseme & Associates
- (iv) Africa Legend
- (v) Spencon Development Co. Ltd.

Kenyatta Avenue Project

- (i) China CAMC Engineering Co. Ltd.
 - (ii) Africa Legend
 - (iii) Sichuan Huashi Enterprise Corporation East Africa Ltd.
 - (iv) Spencon Development Co. Ltd.
 - (v) SIECO Ltd.
4. The Management briefed the Board of Trustees on the outcome of EOI tender and invited the consultants, M/s Adventis Inhouse Africa Ltd. to make a presentation to the Board. The Concepts were summarized and presented to the Board at a Special Board Meeting held on 10th May, 2011.
 5. Approval was granted for a mixed development project for a self-sufficient independent township comprising of up to up to 30,000 housing units, inclusive of all amenities.
 6. Owing to the magnitude of the Project, he as the CEO consulted widely with the National Treasury and the Fund was advised to generate a Memo for Cabinet Approval.
 7. A Cabinet Memo was subsequently generated and signed by the then Minister for Labour, Hon. John Munyes on 28th January, 2013.

8. Mr. Francis Kimemia, Permanent Secretary and Secretary to the Cabinet, responded vide letter Ref: OP/CAB dated 20th May, 2013 to the Principal Secretary, Ministry of Labour. The PS forwarded the said letter to the Fund through a letter Ref: ML/HRD 2/1/A Vol. III (67) dated 3rd June, 2013. The letters informed NSSF that the approval for the projects had been deferred and since there was a new minister, the Memo was to be re-submitted for consideration by the Cabinet.
9. The tenders for Mavoko and Kenyatta Avenue Joint Venture projects were suspended on 13th May, 2014.

Specific Observations by Mr. Odongo on Mavoko and Kenyatta Avenue Projects

The Committee observed that: -

- (i) Mr. Odongo conducted due diligence on the Project as evidenced by his consultations with the National Treasury and the Ministry of Labour. A Cabinet Memorandum was subsequently prepared, but the Board was advised to await a new Cabinet Secretary to re-submit the Memorandum to the Cabinet for approval.
- (ii) The two tenders for Mavoko and Kenyatta Avenue Joint Venture Projects were subsequently suspended.

4.3 SUBMISSION BY MR. RICHARD LANG'AT, FORMER MANAGING TRUSTEE (2013 –2015)

Mr. Richard Lang'at, the suspended Managing Trustee National Social Security Fund appeared before the Committee on 21st July 2015 to adduce evidence on his role as the Managing Trustee in the implementation of NSSF development projects namely Hazina Trade Centre Office Towers, Mavoko and Kenyatta Avenue Joint Venture Projects.

Mr. Lang'at informed the Committee that being the then Managing Trustee, although on suspension, he was constrained to submit the same information that had been submitted by the Ag. Managing Trustee, because the same was prepared using available records at the Fund. Mr. Lang'at further informed the Committee that he acted as the Managing Trustee from 1st November 2013 until April 2014 when he was confirmed as the substantive MT.

The Committee observed that Mr. Lang'at ought to have prepared his own submission as a substantive witness.

He, however, made the following oral submission: -

1. **External interference from the parent Ministry:** Mr. Lang'at refuted claims of external interference from the Parent Ministry in the management of NSSF.
2. **The circumstances surrounding his suspension:** Mr. Lang'at informed the Committee that he was forced to step aside following the Presidential directive that anyone mentioned in the EACC Report on allegations of corruption, steps aside. He was mentioned in the report for his role in the Tassia Project.
3. **Appointment of Dr. Omerikwa as Acting Managing Trustee:** Mr. Lang'at informed the Committee that following the directive to step aside, he made arrangements for smooth handing over. Without a functioning Board in place, he wrote to the Ministry of Labour, Social Security & Services asking for a nominee to handover to, but by 30th March 2015, which was the deadline to handover, he had not received instructions from the Principal Secretary, as to whom to handover to. On 1st April 2015, Dr. Omerikwa was appointed by the Cabinet Secretary and Mr. Lang'at handed over to him.
4. **Other Projects Contracted to China Jiangxi Ltd. by NSSF:** He informed the Committee that the company has undertaken the following projects for NSSF: two Phases of Nyayo Embakasi Estate, Tassia Estate and Hazina Trade Centre Office Towers.

On Hazina Trade Centre Office Towers Project, he informed the Committee THAT –

5. The decision to revive Hazina Trade Centre Office Towers Project was made in 2010, before he took office as Managing Trustee. The Board made the decision to treat it as a continuing project although with a different contactor who was identified through a competitive tendering process.
6. The Contract for completion and increase in the number of floors at the Trade Centre was signed in early 2013, but the works on the building began in 2014. The Project temporarily stalled at 15th Floor out of 40 floors.
7. The Consultants recommended strengthening of columns to support the additional floors, some of which are inside Nakumatt premises. Nakumatt has, however, sued NSSF for damages and the matter is currently pending determination in court.
8. Nakumatt Holdings Ltd. were well informed about plans for completion of the building and several meetings held on the same. What was not made clear to them was whether their request for an extension of their lease of 20 years by a further 3 years was acceptable, as well

as rent rebates NSSF would grant them, for disrupting their operations in the period they were required to move out.

9. The draft Consent Agreement was forwarded to NSSF, but without a functioning Board, it could not be effected. Nakumatt Holdings Ltd. is claiming KES 1.6 billion in compensation for disruption of business.
10. NSSF may also be forced to compensate the Contractor for extension of contract period arising out of the delay in completing the Project.

Committee Specific Observations

The Committee made the following Observations: - THAT

- (i) No written evidence was adduced to prove that adequate consultations were conducted between NSSF and Nakumatt Holdings Ltd. before commencement of the current Project.
- (ii) The uncertainty of the outcome of the court case may result in variation of the project costs for Hazina Trade Centre Office Towers Project.
- (iii) NSSF may also be forced to compensate the Contractor for extension of contract period arising out of the delay in completing the Project.

4.4 SUBMISSION BY DR. ANTHONY OMERIKWA, ACTING MANAGING TRUSTEE (2015 TO DATE)

Dr. Antony Omerikwa, Acting Managing Trustee accompanied by Mr. Austin Ouko, Acting General Manager (Corporate Affairs/Company Secretary); Mr. Evans Moturi, Acting Finance Manager); Mr. George Mwandembo (Acting Procurement Manager); Ms. Josephine Mutiso, Acting Manager, Property Development; Ms. Hellen Koech, Acting Manager, Legal and Mr. Moses Cheseto (Manager, Property Development) appeared before the Committee on 22nd April and 6th May 2015 to adduce evidence on NSSF Hazina Trade Centre Office Towers, NSSF Joint Venture Property Development in Mavoko Sub County and NSSF Kenyatta Avenue Joint Venture Project.

The Acting Managing Trustee informed the Committee that the substantive Managing Trustee, Mr. Richard Lang'at stepped aside following the Executive Order issued by the President on public officers named by Ethics and Anti-Corruption Commission on allegations of corruption. Section 15 (1) of the NSSF Act No. 45 of 2013 gives the Board of Trustees powers to appoint a Managing Trustee of the Fund. The NSSF Board of Trustees, as was constituted then, lacked the requisite quorum and was unable to exercise its powers and responsibilities as per the Act. With

the foregoing state of affairs, Dr. Omerikwa was appointed in an acting capacity as CEO/Managing Trustee on 10th April 2015 by the acting Cabinet Secretary, Ministry of Labour, Social Security & Services to safeguard public interest in the Fund.

Committee Observations on Management of NSSF

The Committee observed that most of the officers in the senior Management level are serving in acting capacities and recommends that the Board of Trustees should move with speed to substantively fill the vacant positions.

4.4.1 Hazina Trade Centre Office Towers

Dr. Omerikwa informed the Committee THAT –

Project Background

1. The Fund conceived the construction of a multi-storey commercial building named Hazina Trade Centre Office Towers in 1994 on a plot of land measuring 1.121 acres located within Nairobi City Centre between Monrovia and Moktar Daddah Streets. The development was designed to have an office tower comprising of 24 floors, parking in 4 basements and shops on ground and 2 mezzanine floors.
2. After going through a tender process, M/s Mavji Construction Co. Ltd. was awarded the tender to carry out the works at a contract sum of KES 3,181,468,427.10 and contract period of 160 weeks.
3. Owing to financial constraints, the Board of Trustees in its 103rd meeting dated 25th November 1999, the Fund restructured the project by omitting the 24-floor tower. The contractor then proceeded and completed 4 basements, ground floor, 2 mezzanines and 1 podium floor in 2003. After completion, the building was leased to Nakumatt Holdings Ltd. for a period of 20 years.

Completion of the Office Tower

4. On 31st August, 2010, the Fund's Operations and Investments Committee recommended the completion of the Office Tower with a budget of KES 2.19 Billion. The commencement date was projected to be 3rd February, 2011.
5. The Operations and Investments Committee recommended that the original Project Consultants comprising of Mruttu Salmann and Associates (Project Architects), Tana and

Associates (Quantity Surveyors), Abdul Mullick & Associates (Structural/Civil Engineers) and Kisa & Partners (M&E Consulting Engineers) be retained, as they would ensure continuity and faster implementation of the Project.

6. The NSSF Management, then headed by Mr. Alex Kazongo was directed to: -
 - (i) Confirm whether the retention of the previous Project Consultants would be in accordance with the Procurement Act;
 - (ii) Consider developing and selling the office space;
 - (iii) Advertisises for contractors for the completion of the Tower and a report be issued during the October 2010 meeting.
 - (iv) Formally inform the existing tenant of the Fund’s intention to complete the Tower.
7. The Board of Trustees, in its 151st meeting held on 9th December 2010, approved the completion of the Hazina Centre and directed that the contractor moves to site by 1st March 2011.
8. The Consultants designed a twin tower office block, comprising of 34 floors and 40 metres communication mast with a total area 418,000 square feet and height of 200 metres. In order to enhance the structural stability for the building, the existing columns will be strengthened with carbon fibre wrap, a process which will lead to demolition and re-instatement of the partitions next to the columns within Nakumatt Lifestyle Supermarket (the tenant).
9. In 2011, the consultants worked out and submitted cost estimates and the feasibility study of the new project as follows:

<i>Cost estimates</i>	-	<i>KES 6.63 billion</i>
<i>Returns on investment per annum</i>	-	<i>14 %</i>
<i>Pay-back period</i>	-	<i>13 years.</i>

10. The Fund found the project to be viable and proceeded to tender under no. 14/2010–2011 with the following results:

Bidder No.	Bidder’s Name	Bid Sum (KES)	Delivery Period
1	China Jiangxi Int. Ltd.	6,236,557,784	156 weeks
2	EPCO Builders	6,497,116,084	160 weeks

3	FUBECO (China Fushun)	6,354,016,059	140 weeks
4	Cementers Ltd.	5,997,711,380	170 weeks
5	Sichuan Huashi Enterprises	6,439,171,049	139 weeks
6	Tulsi Construction Co.	6,720,527,089	190 weeks
7	Seyani Brothers Co. Ltd.	6,731,607,984	212 weeks
8	N. K Brothers	6,313,909,101	199 weeks
9	China Wu Yi Co. Ltd.	5,715,752,876.73	130 weeks
10	Parbat Siyani Construction Co. Ltd.	5,951,291,730	159 weeks

11. After evaluation of the bids the tender was awarded to M/s. Cementers Ltd., who was the lowest evaluated bidder at KES **5,997,711,380** and a contract period of **170 weeks**. However, two (2) bidders appealed to the Public Procurement Appeals and Review Board (PPARB) who directed that the tender should be repeated. The bidder who had won the tender, M/s. Cementers Ltd., was not satisfied with the judgement and proceeded to court to appeal against the judgment by PPARB. The case took more than 1 year to conclude and in December, 2012 the Court upheld the decision of the Appeals Board and the Fund complied with the directive.
12. Immediately after the judgement, the Fund instructed the consultant to confirm the validity of the cost estimate. The consultant revised the cost to be KES 7.3 billion.
13. The Fund then proceeded to re-tender the project and the opening results of the tender were as follows:

Bidder No.	Bidder's Name
1	Sinohydro Corporation Ltd.
2	China National AERO Technology
3	China Railway No. Engineering Group Co. Ltd.
4	China Jiangxi Int. Ltd.
5	EPCO Builders Ltd.
6	Parbat Siyani Construction Co. Ltd.
7	China Wu Yi Co. Ltd.

14. Only two (2) bidders proceeded to the **financial evaluation** stage as follows:

Bidder No.	Bidder's Name	Bid Sum (KES)
2	China National AERO Technology	6,741,174,428
4	China Jiangxi Int. Ltd.	6,599,888,888

15. After evaluation, it was found that China Jiangxi Int. Ltd. had made an error of KES 115,329,300.00, which was notified to them by the Tender Committee before the award. However, the Company declined to absorb the error hence their bid sum changed to KES **6,715,218,188.00** which was still lower than the bid sum of China National AERO Technology. Subsequently the tender was awarded to China Jiangxi Int. Ltd. at a contract sum of **6,715,218,188.00** for a contract period of **155 weeks**.

Impasse with Nakumatt Holdings Ltd.

16. The Project commenced on 2nd January, 2014, a year later than scheduled, because of the fears raised by Nakumatt Holdings Ltd. and cancellation of drawing approvals by the Nairobi City County Government.
17. The existing tenant, M/s Nakumatt Holdings Ltd., was consulted and it was agreed that the project should proceed with minimal interruptions to the tenant. As proof of consultations with the tenant, the Fund produced copies of two (2) sets of Minutes held on 28th May, 2013 and 11th June 2013 as proof that Nakumatt Holdings Ltd. was represented in the consultative meetings held to discuss project implementation.
18. MetroEng Consultants also called for a joint site inspection, which was held on 29th May, 2013, with the view of assessing the scope of mechanical and electrical services that required re-routing, to pave way for enlargement of selected structural columns for B1-B1, ground floor, mezzanine floor and podium level.
19. In a letter to Mr. Atul Shah, Managing Director, Nakumatt Holdings Ltd., Ref. SF/A/10/43/1 VOL.XXXV(96) dated 20th June, 2013, the then Managing Trustee Mr. Tom Odongo assured Nakumatt Holdings Ltd. that there would be minimal inconveniences during the construction process, to mitigate against loss of business. The Fund also worked out rebate of KES 17 million on rent, based on the area/parking and time the contractor will take when working on the spaces held by Nakumatt.
20. On 25th June, 2014, M/s Nakumatt Holdings Ltd. had a change of mind and wrote to the Fund claiming KES 1,620,148,507.00 as compensation for loss of business and damages during the construction. **(Annex 12)**

21. On 1st September 2014, the court issued orders restraining further construction. On 10th September 2014, the Court lifted the orders, pending the full hearing of the case.
22. The Fund engaged Wetangula, Adan, Makokha and Co. Advocates to represent it in the matter at a cost of Kenya Shillings three million (KES 3,000,000/=).

Requisite Approvals

23. The Fund obtained all requisite approvals as follows: -
 - (i) Nairobi City County approval dated 9th March, 2011 and renewed twice on 15th March, 2013 and 14th May, 2015;
 - (ii) Environmental Impact Assessment Licence No. 9531 dated 20th September, 2011 and renewed for an additional twenty-four (24) months vide Licence No. 326 effective 6th June, 2013. (**Annex 9**)

Project Status as at February 2017

24. The court case HCC ELC No. 1170 of 2014 is still pending determination in court. (**Annex 13**)
25. As at May 2015, the project was ongoing and the contractor had cast the 12th floor. Strengthening of columns has been done in basements 3, 4 and podium floor.

Committee Specific Observations

The Committee made the following Observations: - THAT

- (i) There is no evidence of a feasibility study undertaken on the commercial viability of the project prior to its commencement;
- (ii) That Cementers Ltd. did not re-tender for the Project after nullification of the first tender, following a ruling by the Public Procurement Appeals and Review Board, despite having won the first tender as the lowest bidder. NSSF was not able to adequately respond to the reasons why the Company did not bid in the second round.
- (iii) EPCO Builders Ltd. and Parbat Siyani Construction Co. Ltd. both of whom had responsive bids during the first tendering, were disqualified at technical evaluation stage during the re-tendering process, without any satisfactory reasons given by the procuring entity.

- (iv) Out of the nine (9) companies that submitted their tenders, only two companies (China National AERO Technology and China Jiangxi Int. Ltd.) were qualified to proceed to the financial evaluation stage. This prohibited a fair and competitive bidding.
- (v) The tender was awarded to China Jiangxi Int. Ltd. which had been disqualified during the first tendering process but successfully appealed against the award of the tender to M/s. Cementers Ltd. at the PPARB.
- (vi) The Tender Committee breached Section 44 of the Public Procurement and Disposal Act, 2005 by canvassing and disclosing information relating to bids and error notification to bidders during the tender evaluation process. This is in relation to error of KES 115,329,300.00 in the financial bid submitted by China Jiangxi Int. Ltd., an error which was notified to the Company but declined to correct or absorb.
- (vii) The resumption and enhancement of the Hazina Towers Project in 2013 should have been treated as a fresh project in adherence to Public Procurement and Disposal Act and the attendant Regulations. Thus, the re-appointment and re-engagement of the Project Consultants from the original project to oversee the enhanced the Hazina Towers project was contrary to the procurement law.
- (viii) There is no evidence that Nakumatt Holdings was adequately consulted before commencement of the Project.

4.4.2 Mavoko Joint Venture Property Development

Project Background

1. The Fund planned to undertake a Joint Venture Property Development Project on 1,010 acres of land it owns in Mavoko Municipality. The objective of the project is to improve returns on the investment. The development was approved by the NSSF Board of Operations and Investment Committee in its 13th Meeting held on 31st August 2010. **(Annex 14)**
2. The tender was advertised as an international tender and Expression of Interest (EOI) No. 5/2010-2011, the advertisement was placed in The Daily Nation newspaper on 18th October, 2010, The Standard newspaper on 19th October, 2010 and The Economist on 23rd October, 2010. **(Annex 15)**

3. The purpose of the tender was to identify a Joint Venture Partner with whom the Fund would develop the project jointly and subsequently sell the development and then share the profits proportionately according to the capital contribution of each of the partner.
4. The Board of Trustees, in a Special Board Meeting held on 10th May, 2011, approved for a mixed development for a self-sufficient township comprising of up to 30,000 housing units plus amenities. **(Annex 16)**
5. Cabinet approval was sought and subsequently granted on 27th August, 2013, in which the housing units were increased to 60,000. **(Annex 17)**

Request for Proposals

6. New International Request for Proposals (IRFP's) No. 09/2013-2014 for Joint Venture Project Development in Mavoko Municipality, comprising of 30,000 units as phase 1 of the project was advertised on 22nd October, 2013. The closing and opening of the IRFP's for the projects was successfully concluded on 24th April, 2014. A total of 4 firms responded. **(Annex 18)**
7. Following the implementation of the Public Private Partnership (PPP) Act, 2013, the Fund sought clarification from the Public Private Partnership Unit **(Annex 19)** who advised that the project does not fall under the PPP but rather, a Joint Venture Project that may be procured under the PPDA, 2005. **(Annex 20)**
8. The Fund wrote to the Public Procurement Oversight Authority (PPOA) on 19th September and 10th December, 2014, requesting for advice on whether it would be appropriate to evaluate the bids outside the stipulated evaluation period, of which the Authority advised against. **(Annex 21 and 22)**

Fresh Bid – February 2015

9. The Fund invited fresh bids through a restricted tender from a total of fifteen (15) firms/consortia, which had responded to EOI and RFPs as per Section 73(2) of the PPDA, 2005. The 15 bidders had a clear understanding of the Project, having participated in the earlier tenders that had been advertised both locally and internationally.
10. The invitation for RFPs for the project was sent out on 15th February, 2015. The RFP No. 15/2014-2015 for Joint Venture Development in Mavoko was due for opening on 17th

March, 2015. However due to requests made by the invited firms during a pre-tender meeting held on 25th February 2015, the opening date was extended to 8th April, 2015 and subsequently extended to 15th April, 2015.

11. To speed up the process and save time, the Fund invited fresh bids through restricted tender from a total of 15 firms/consortia, which had responded to the EOI and RFP's as per Section 73(2) of the PPDA, 2005. The 15 bidders had participated in the earlier tenders that had been advertised.

Project Financing

12. It was envisaged that the joint venture project will be financed through contribution of land by NSSF while the joint venture partner was expected to provide finances for the Project. The value of the Kenyatta Avenue land as at 26th August, 2014 was KES 3.275 billion **(Annex 23)**
13. The design and viability would be based on the proposals to be submitted by the bidders. The cost of the project was, therefore, to be established once the tender process was finalized.
14. The purpose of the tender was to identify a joint venture partner with whom the Fund would develop the project jointly with, and subsequently sell the development and share the profits proportionately according to the capital contribution of each of the partners.

4.4.3 Kenyatta Avenue (Nairobi CBD) Joint Venture Property Development

Project Background

1. The Fund planned to undertake a development on 3.6 acres of land it owns along Kenyatta Avenue in Nairobi Central Business District in order to improve returns on investment. Currently, the piece of land is not optimally utilized other than capital appreciation.
2. The development was approved by the Board's Operation and Investment Committee in the 13th meeting held on 31st August 2010. **(Annex 24)**

Tendering Process

3. The tender was advertised as an international tender and Expression of Interest (EOI) No. 5/2010-2011. The advertisement was placed in The Daily Nation newspaper on 18th

October, 2010, The Standard Newspaper on 19th October, 2010 and The Economist on 23rd October, 2010. A total of 7 firms/consortia responded. (Annex 25)

4. In the 153rd Meeting of the Board of Trustees held on 24th May, 2011, approval was granted for a mixed urban commercial complex development with a convention centre. (Annex 26)
5. Due to the lapse of time, International Request for Proposals (IRFP's) No. 8/2013 – 2014 for Joint Venture Property Development in CBD was advertised on 22nd October, 2013. (Annex 27)
6. The closing and opening of the IRFPs for the project was successfully concluded on 22nd April, 2014, two firms responded. Following the implementation of the PPP Act, 2013 the Fund sought clarification from the Public Private Partnership (PPP) Unit on whether the Kenyatta Avenue project as originally conceptualized fell under the PPP arrangement.
7. The Fund had two options, under the PPP arrangement to co-manage with the private partner after completion of the project or outright sell through a joint venture arrangement. The Fund has since opted for outright sale after completion of the project as a joint venture.

Project Financing

8. It was envisaged that the Joint Venture financing of the project will be the Fund's land contribution and the Joint Venture Partner is expected to finance the project. The design and viability will be based on the proposals to be submitted by the bidders. The cost of the project was to be established once the tender process was finalized. The cost of the Mavoko land as at 26th August, 2014 was KES 3,141,000,000.00.
9. To speed up the process and save time, the Fund invited fresh bids through restricted tender from a total of 15 firms/consortia, which had responded to the EOI and RFP's as per Section 73(2) of the PPDA, 2005. The 15 bidders had participated in the earlier tenders that had been advertised.
10. The invitation for RFPs for the project was sent out on 5th February, 2015. The RFP No. 16/2014-2015 for Joint Venture Property Development along Kenyatta Avenue in Nairobi CBD was due for opening on 19th March, 2015. However, based on the requests made by the invited firms during a pre-tender meeting held on 25th February, 2015, the opening dates were extended to 9th April, 2015 and further extended to 16th April 2015.

11. The purpose of the tender was to identify a Joint Venture Partner with whom the Fund would develop the project jointly and subsequently sell the development and share the profits proportionately according to the capital contribution of each of the partner.

Committee's Specific Observations

The Committee observed that;

- (i) The NSSF Management did not carry out any feasibility studies on the project designs and engineer's estimates before tendering. Given the financial magnitude of the Project, the Fund would have lost billions of shillings had the Project commenced. The Management did not adequately respond to the issue of the envisaged/projected returns on the investment after completion;
- (ii) It was improper for the Fund's Tender Committee to use a list of bidders who responded to a lapsed tender, which were supposed to be returned unopened;
- (iii) The Fund did not advertise for Expression of Interest for consultancy as provided under Section 78 (3) of the Public Procurement and Disposal Act, 2005. It was contrary to the PPDA, 2005 for the Fund's Tender Committee to use a list of bidders who responded to a lapsed tender, which was supposed to be returned unopened.
- (iv) The procuring entity used restricted tendering method instead of open tendering, without sufficient reasons for the choice of the method; this was done in contravention of the provisions Section 73 (2) of the PPDA, 2005, which provides for the conditions under which a procuring entity may use restricted tendering method.
- (v) The Cabinet approval of the Project was a policy decision on the project, different from the actual tendering process which the procuring entity ought to have fully adhered to.

4.5 SUBMISSION BY MR. ADAN MOHAMMED, FORMER NSSF BOARD CHAIRMAN (2009 –2015)

Mr. Adan Mohammed, former Chairman of NSSF Board of Trustees appeared before the Committee on 7th July 2015 to adduce evidence on his role in the matter of NSSF Hazina Towers, Mavoko and Kenyatta Avenue Joint Venture projects.

He informed the Committee THAT –

1. He served as the Chairman of the NSSF Board of Trustees for two, three-year terms, starting from 1st March, 2009 and the other from 3rd March, 2012. He exited as the Chair on 6th February, 2015, three weeks before the expiry of his second and final term which was due to end on 3rd March, 2015. His term subsequently ended on 3rd March 2015 through a Gazette Notice by the Cabinet Secretary for Labour, Social Security and Services Hon. Kazungu Kambi. His successor was subsequently appointed. He couldn't, however, attribute his exit to either expiry of his tenure in accordance with the NSSF Act or premature termination/revocation by the Cabinet Secretary.
2. On the matter of NSSF Hazina Towers, Mavoko and Kenyatta Avenue Joint Venture projects, he informed the Committee that he did not have access to documentation to support any information he may give to the Committee concerning the projects. He made phone calls to NSSF management requesting for the information on the projects but the management was unwilling to avail the same to him. He was therefore not in a position to prepare any submission with factual and material evidence on the issues raised by the Committee concerning the projects. He was advised by the Committee to put his request to NSSF in writing and inform the Committee of the outcome, which he never did.
3. As to the reason why there has been instability and high turn-over of Managing Trustees at the Fund in the recent past, he informed the Committee that according to the former NSSF Act the Managing Trustee was forced to report to both the appointing authority, i.e., Board of Trustees and the Cabinet Secretary/Minister, who had powers to dismiss the MT. The new NSSF Act, 2013 that came into operation on 10th January, 2014, remedied the situation by clearly spelling out the process of appointment, tenure of office, procedure and grounds for removal of the Managing Trustee by the Board. The Cabinet Secretary no longer has powers to appoint or remove the Managing Trustee from office.
4. On the appointment of the current acting Managing Trustee, Dr. Antony Omerikwa, he informed the Committee he was not in a position to provide an adequate response because the appointment was done by the Cabinet Secretary, after he had left office.

Committee Specific Observation

The Committee observed that Mr. Adan did not make a written submission to the Committee as instructed. The Committee was therefore not in a position to substantially interrogate the witness on his role in the implementation of the three projects.

4.6 SUBMISSION BY HON. GEDION NDAMBUKI, NSSF BOARD CHAIRMAN

Hon. Gideon Ndambuki, the Chairperson of the National Social Security Fund, accompanied by Dr. Anthony Omerikwa, Ag. Managing Trustee; Mr. Austin Ouko, Ag. Company Secretary; Mr. Lwenye Mwandembo, Ag. Procurement Manager; Mr. Moses Cheseto, Ag. General Manager, Finance and Investments and Mr. Evans Moturi, Ag. Finance Manager, appeared before the Committee on 31st January, 2017 to adduce evidence on the implementation status of the Hazina Trade Centre Tower project.

He submitted as follows: –

Implementation Status of Hazina Trade Centre Tower Project as at 31st January, 2017

1. Although there was delay in the commencement of the project due to fears raised by Nakumatt Holdings Limited (the tenant) and Nairobi City County Government cancellation of drawings approval, eventually the project commenced on 2nd January, 2014, a year later than scheduled.
2. The Contractor has cast the 15th floor, and is waiting for Nakumatt Holdings Limited to provide space for column strengthening.
3. The strengthening of column works has been done in basements 3, 4 and podium floors. The State Department of Public Works engineers have been asked to review the column strengthening for structural integrity.
4. On 25th June, 2014, after consideration of the construction mitigation factors and acceptance of the project, the tenant (Nakumatt Ltd.) wrote claiming Kshs. 1,620,148,507 as compensation for likely loss of business.
5. M/S Nakumatt Holdings Ltd. reviewed their position on the continuing project and went to court. On 1st September, 2014, the court issued orders restraining further construction.
6. On 10th September, 2014, the court lifted the order, pending the full hearing of the case. The case was mentioned on 16th June, 2015 for purpose of obtaining a ruling date.

7. Meanwhile, the Project Consultant and Main Contractor, have been instructed to ensure that all mitigating actions have been executed to avoid escalation of claims.
8. An ad hoc committee of the Board of Trustees has been formed to negotiate with Nakumatt Holdings Limited and has already held its first negotiation meeting between NSSF and Nakumatt Holdings.
9. The Project Consultants have been instructed to obtain all statutory approvals and clearance for the project with Nairobi City County to enable project implementation.
10. The Board of Trustees directed that an independent consultant be approached to give guidance on the issue of structural strengthening approval. Subsequently, NSSF management wrote to the State Department of Public Works on 11th March, 2016.
11. The State Department of Public Works (SDPW) officers reviewed the project designs and held a meeting with the Project Consultants. They gave a preliminary recommendation that the higher tower can be constructed up to twenty (20) floor levels above the podium while the lower tower can accommodate fourteen (14) floor levels above the podium.
12. The SDPW instructed the State Department of Infrastructure to perform structural tests for the existing structure, to allay the fears of structural integrity. Based on the Material Testing and Research Division (MTRD) test results, the State Department of Public Works advised that the building structure is adequate to carry the load of 40 suspended floors.

Court Case No. ELC NO. 170 OF 2014

13. After negotiations and consultation with M/S Nakumatt Holdings Limited, it was agreed that the construction would proceed while they were in occupation and the contractor was to put mitigation measures to minimize disruption to their business. Nakumatt Holding Limited was in agreement with the measures put in place and only requested for a reduction of the applicable annual rent by 50%, which the Fund declined, as there was no basis for the reduction and the Fund only gave Nakumatt Holdings Limited justifiable rebates on the rent.
14. Subsequently, after the Contractor had moved to the site and began construction, Nakumatt Holdings Limited went ahead and filed a suit (ELC No. 1170 of 2014) against the Fund, claiming Kshs. 1,620,148,507 for loss of business. On 1st September, 2014, they obtained an

ex-parte interim injunction against the continued construction of the building. However, after inter-parties hearing, the interim injunction was lifted on 10th September, 2014.

15. On 3rd December, 2015, the matter came up for highlighting of submissions on the 2nd interlocutory application being (1) Nakumatt's Notice of Motion dated 28th August, 2014 for injunction and (2) the second defendants (China Jiangxi International) Notice of Motion dated 15th September, 2014, seeking to have the plaintiff's suit struck out as against the second defendant with costs.
16. The matter was scheduled for ruling on the 2nd interlocutory application on Friday 30th July, 2016 before Lady Justice Gacheru, but the same was not ready. The Judge apologized for the delay and said she would deliver the same on notice to be served on all parties.
17. There being no injunction, Nakumatt Holdings Limited has since January, 2015 refused to grant the contractor access to Basement 1, 2 and ground floor, Mezzanine 1 and Mezzanine 2 for the column strengthening works. This is despite the Fund writing to Nakumatt Holdings Limited on 21st January, 2015, notifying them to give the contractor access. **(Annex 11)** The works thereby stalled, a situation which will definitely give rise to contractual claims for the delay.
18. On the 29th September, 2015, the Fund wrote to Nakumatt Holdings Limited, issuing it with a Notice of breach of Clause 5 (a) of the Lease for refusing the Fund's Contractor access to the 3 columns in basements 1 and 3, which lie at the edge of their store for strengthening. The Notice gave Nakumatt Holdings Limited 21 days whereupon if they didn't comply with the Lease dated 12th August 2003, the Fund would be free to re-enter and re-possess the entire premises.
19. The 21-day Notice ran from the day of service and lapsed on the 22nd October, 2015. The letter also put Nakumatt Holdings Limited on notice that the Fund would claim indemnity and damages from them for any financial loss, penalties and interests that may be levied by the contractor on account of their non-compliance with the Fund's earlier notices.
20. The Fund wrote again to Nakumatt Holdings Limited on 9th October, 2015 setting out the facts of the matter and urging Nakumatt Holdings Limited to give access before the notice

period lapsed and again reminded them that they risked being charged for costs and damages for the delay occasioned by their refusal to give access.

21. The Fund's Board of Trustees formed an ad-hoc committee of the Board to engage Nakumatt Holdings Limited on an out-of-court settlement. The committee held a meeting with Nakumatt Holdings Limited directors on 7th June, 2016, wherein it was agreed that the Fund should make a counter offer to Nakumatt Holdings Ltd.'s proposal to settle the matter out of court.
22. The NSSF counter-offer was communicated to Nakumatt Holdings Limited but it was rejected. Further consultations are ongoing.
23. On 11th February, 2017, the court declined all the orders sought, key reasons being: -
 - (ii) Under clause 2(c) of the lease agreement, it is clear that the defendants reserved the right to build or into any wall or roof of the premises; the plaintiff thus willingly entered into the lease agreement knowing that NSSF had a right to build or execute any works;
 - (iii) Clause 5(h) of the lease agreement gives NSSF the right as it deems reasonable to carry out any alterations, additions or any improvements;
 - (iv) The court did not find any special circumstances to grant a mandatory injunction on the interlocutory application to restrain the defendants until the suit is heard and determined.

The court therefore found the Motion as being unmerited but ordered the main suit be heard expeditiously.

Committee Specific Observations

The Committee made the following observations. THAT;

- (i) The presiding Judge of the High Court has taken inordinately long to deliver a ruling on court case no. ELC No. 1170 of 2014.
- (ii) NSSF ought to proceed with construction of the building noting that the High Court has lifted the initial injunction restraining further construction of the building.

4.7 SUBMISSION BY MR. FRANCIS ATWOLI, NSSF BOARD TRUSTEE

Mr. Francis Atwoli, NSSF Board Trustee, accompanied by his Personal Assistant, Mr. Adams Baraza appeared before the Committee on 12th May, 2015 to adduce evidence on the matter of NSSF Hazina Trade Centre Office Towers, Mavoko and Kenyatta Avenue Joint Venture Projects.

He informed the Committee THAT –

4.7.1 Hazina Trade Centre Office Towers

1. In his opinion, the Project is not viable and not good value for money but that his advice was disregarded and the project commenced.
2. The initial project cost was KES 3.2B but now stands at KES 6.7B.

4.7.2 Mavoko and Kenyatta Avenue Joint Venture Projects

Project Background

3. The Board's Committee for Operations and Investments at its meeting on 31st August 2010 directed NSSF management to advertise internationally for Expression of Interest (EOI) by 30th September 2010 for the proposed development of Mavoko, Kenyatta Avenue and State House/Milimani plots. The EOI 05/2010-2011 advertisements were subsequently placed in The Daily Nation, The Standard and The Economist in October 2010 for purposes of identifying Joint Venture Partner(s).
4. The EOI was then evaluated by M/s Adventis Inhouse Africa (AIA) who was the Project Consultant, because the Fund lacked capacity to evaluate and manage projects of this magnitude.
5. Subsequently, the Fund Tender Committee (FTC) sitting on 26th May, 2011, adopted a report by AIA after varying the cut off score from 60% to 50%, to allow for broader participation and approved the following firms for invitation to submit Request for Proposals (RFP).

Mavoko Property

- a) China CAMC Engineering Co. Ltd.
- b) Housing Finance
- c) Joel E.D Nyaseme & Associates
- d) Africa Legend

- e) Spencon Development Co. Ltd.

Kenyatta Avenue Property

- a) China CAMC Engineering Co. Ltd.
- b) Africa Legend Ltd.
- c) Sichuan Huashi Enterprise Corporation (EA) Ltd.
- d) Spencon Development Co. Ltd.
- e) SIEICO Ltd.

6. The following firms picked Tender Nos 16-17/2011-2012 Joint Property Development for Mavoko and Kenyatta Avenue.

Mavoko Property

- a) China CAMC
- b) Housing Finance
- c) J.E.D Nyaseme & Associates
- d) African Legend

Kenyatta Avenue Property

- a) African Legend
- b) China CAMC
- c) Sichuan Huashi

7. The bids lapsed due to sheer passage of time.
8. Another attempt was made through Tender Nos 08/2013-2014: Proposed Joint Venture Property Development, Mavoko Sub County and 09/2013-2014: Proposed Joint Venture Property Development, Nairobi CBD advertised on 23rd October 2013 and opened 24th April 2014 respectively. These, too, lapsed due to passage of time and were subsequently terminated by the Fund Tender Committee on 22nd January 2015.
9. The Fund Tender Committee of 22nd January 2015, chaired by Dr. Anthony Omerikwa recommended termination of tender process and invitation of fresh bids through restricted tendering for Mavoko Project, using a list of firms that had responded to previous invitations.
10. On 26th January, 2015, Mr. George Mwandembo, the Ag. Procurement Manager sent a Memo to the Manager, Property Development, informing her of Termination of Tender No. 9/2013-2014 (IFRP) for Mavoko Joint Property Development, owing to lapse of time. In the

same Memo, he also informed her that the Fund Tender Committee did not approve use of restricted tendering for the project.

11. However, on 28th January 2015, the FTC approved commencement of restricted tendering for Mavoko Joint Property Development and Kenyatta Avenue Joint Property Development, using 15 firms mentioned above. Sinohydro Tianjin Engineering Co Ltd. & Sinohydro Real Estate Co Ltd. were also listed.
12. Prior to this decision, the Fund had requested guidance from Public Private Partnership Unit (PPPU) which opined that Mavoko should be managed under the Public Procurement & Disposal Act 2005 and Kenyatta Avenue under Public Private Partnerships Act 2012 No 15 of 2012.
13. The Fund had further requested Public Procurement Oversight Authority (PPOA) to guide on the circumstances under which time lapsed tenders can be evaluated. PPOA advised that there is no such provision in law.
14. Interestingly, on 28th January 2015, with blatant disregard to relevant statutes, the Fund Tender Committee approved a list of fifteen (15) firms drawn from previous procurements (lapsed and terminated tenders). The firms approved are the following:
 - (i) *Davuruk Builders and Contractors*
 - (ii) *Weihai International Economic & Technical Cooperative Company Ltd.*
 - (iii) *Sinohydro Tianjin Engineering Co Ltd. and Sinohydro Real Estate Co Ltd.*
 - (iv) *Baseline Architects Consortium & Zakhem International Construction Ltd.*
 - (v) *Housing Finance Ltd.*
 - (vi) *Markem Ltd.*
 - (vii) *Epix Investments Ltd.*
 - (viii) *Joel E.D. Nyaseme & Associates*
 - (ix) *Edermann Properties Ltd.*
 - (x) *African Legend Ltd.*
 - (xi) *Symbion Kenya Ltd.*
 - (xii) *Spenco Development Co. Ltd.*
 - (xiii) *China CAMC Engineering Co. Ltd.*
 - (xiv) *20th Century*
 - (xv) *Group 5 Structured Ingenuity*

15. Restricted Tender Nos 15-16/2014-2015 Joint Property Development - Mavoko Sub County and Nairobi CBD respectively were issued, closing on 17th March 2015 and 19th March but were rescheduled to open on 8th April 2015 and 9th April 2015 respectively.
16. With the foregoing, the following gaps in the procurement proceedings are too glaring and point to fraud, conspiracy to commit economic crimes and high-level malfeasance.
- (i) That no request has been submitted to PPOA by the Fund to be allowed to use a specified permitted procurement procedure as per Public Procurement and Disposal Act 2005 Section 92.
 - (ii) That the Public Partnership Unit was involved in the approvals of the concept and or documentation as required under the Public Private Partnership Act (PPPA).2012
 - (iii) That no feasibility study was carried out for projects estimated at KES 130 billion of pensioners' savings, is quite telling and point at management interested only in making quick money by letting interested parties carry out skewed feasibility study and issue favourable reports only for individual benefit.
 - (iv) That the approval by the Cabinet vide reference letter ML/ADM4/128 VOL.V dated 26th August 2013 by Hon. Samwel Kazungu Kambi, Minister for Labour, Social Security and Services, therefore was irregular and may have been based on misinformation, because no feasibility report, project road map or concept has been done.
 - (v) That if tender lapses by sheer passage of time and/or is terminated, it is illogical to rely on lapsed and terminated information to progress the same.
 - (vi) That it is irregular to use previous respondents as a basis for restricted tender and yet the proceedings thereto lapsed or were terminated.
 - (vii) That is there is no evidence that the projects budget of KES 1.8B provided in FY 2012/2013 has been rolled over.
 - (viii) That a project cannot be undertaken without planning. As per Public Procurement and Disposal Act 2005 Section 26 as amended on 18th June 2013 under Gazette Notice 106, no procurement proceedings can begin without a budget. It appears the new tender advertisements are pegged on the provision for KES 1.6B in the budget estimates for FY 2015/2016, which can only take effect from 1st July, 2015, if approved. This is scandalous!

17. The tender documents go on to suggest that a feasibility study will be done once the joint partners are identified. This means pensioners' money will be spent long before the viability of the projects is established. This is not and cannot be prudent use of public resources. It is pure plunder, as this is meant to align the report to individual interest (subjective not objective). Such a study can only be done by an independent consultant, who should not be part of the project contractors. In this instance, the prospective joint venture partner(s) are being asked to provide feasibility study and on this account alone, they will score a maximum of 20 marks.
18. That these projects estimated value is beyond threshold allowed for restricted tenders under PPD Act 2005 and the Regulations 2007 and no explanation can justify it without an EOI process.
19. That the list approved by FTC has not been subjected to due diligence to establish their legal existence, financial standing and as at now, so it is possible the Fund is dealing with paper tigers.
20. To date, no forensic audit has been done to establish whether the Fund makes any profit for pensioners, with many investments in real estate.
21. In conclusion, the Cabinet Secretary, Management and Trustees involved in this flagrant abuse process should be named, investigated, called to account and be charged for abuse of office, committing public money without planning and conspiracy to commit economic crimes among others. The tenders should be suspended forthwith and the EACC, CID, Ombudsman and DPP move in quickly and carry out multiagency investigation and provide a report in not more than 30 days. In the interim, all those mentioned in this saga must be directed to step aside to allow for impartial investigations.
22. When asked whether he had any interest in the two projects or related contractors, Mr. Atwoli responded that his only interest was to safeguard pensioners' funds from mismanagement.

Committee Specific Observations

The Committee observed THAT –

- (i) Dr. Omerikwa did not disclose that he chaired the Fund Tender Committee meetings where key decisions were made regarding Mavoko and Kenyatta Avenue projects.
- (ii) The Contract Agreement signed between Sinohydro Tianjin Ltd. and Reverof Consulting Ltd. is not dated and its motive is suspect.

4.8 SUBMISSION BY HON. KAZUNGU KAMBI, FORMER CABINET SECRETARY, MLSSS (2013-2015)

Hon. Kazungu Kambi, former Cabinet Secretary Ministry of Labour, Social Security and Services appeared before the Committee on 12th May, 2015 to adduce evidence his role in the matter of the procurement of Hazina Trade Centre Office Towers Project, Mavoko and Kenyatta Avenue Joint Venture Property Development Projects.

He informed the Committee THAT –

4.8.1 Hazina Trade Centre Office Towers Project

1. Advertisement, tendering, tender evaluation and award of the re-tendered contract for the proposed completion of the NSSF Hazina Trade Centre Office Towers Office Block Tower (Hazina Towers) Project was done between 9th January, 2013 and 11th February, 2013 before he was appointed into office.
2. The Tender was awarded to M/s China Jiangxi International (K) at a contract price of KES 6,715,218,188.00 with a completion period of 155 weeks. Contract was signed on 26th February, 2013 which allowed for an advance payment of up to 10% of the contract sum. The Contractor was therefore paid KES 67,1521,818.80 as 10% of the contract value on 6th March, 2014 to facilitate commencement of the Project. Construction of the Hazina Office Towers is ongoing.
3. According to the Contract Agreement, payments to the contractor are to be made on monthly basis upon submission of the applications, giving sufficient details of works done and materials on site. However, the contracting entity shall make the payment upon certification of the same by the Project Architect.

4.8.2 Mavoko and Kenyatta Avenue Joint Venture Projects

4. Following termination of the contract of the former NSSF Managing Trustee, he issued a press release, cancelling all NSSF projects that were tendered but had not been awarded, including the Mavoko Sub County Joint Venture and Kenyatta Avenue Joint Venture projects.
5. The projects will be re-tendered afresh. Further, all Projects which have been awarded and are ongoing will be subject to a comprehensive audit by the Efficiency Monitoring Unit (EMU).
6. Mr. Kambi was hard-pressed to give actual figures of the total cost of the two Joint Venture Property Development projects. He however indicated that NSSF's contribution in both Kenyatta Avenue and Mavoko Sub County Joint Venture Property Development projects is land.
7. Kenyatta Avenue Joint Venture project is 3.6 acres of land along Kenyatta Venue in Nairobi CBD while Mavoko Sub County Joint Venture Project measures 1,010-acres which he approximated the value to be KES 30 million per acre, which would make it worth at least KES 30 billion.
8. NSSF developed a Concept Note that he used to develop a Cabinet Memorandum, which he forwarded to the Cabinet. The Cabinet's rationale for doubling the number of the proposed low-cost housing units (from 30,000 to 60,000) was because of the rising demand for houses in Nairobi.

Committee Specific Observations

The Committee observed that:

- (i) Hon. Kambi interfered with the procurement process of a procuring entity by cancelling the advertised tenders for Mavoko and Kenyatta Avenue Joint Venture Projects.
- (ii) Should NSSF Management undertake the proposed development projects without joint venture partner substantial funding, the developments would put a strain on the Fund's financial portfolio.

4.9 SUBMISSION BY AMB. RAYCHELLE OMAMO, FORMER AG. CABINET SECRETARY, MLSSS

Amb. Raychelle Omamo, the then acting Cabinet Secretary for Ministry of Labour, Social Security and Services (MLSSS) accompanied by Mr. Ali Noor Ismail, former Principal Secretary, MLSSS appeared before the Committee on 9th April and 6th May 2015, to adduce evidence on the matter of the procurement process for the Completion of Hazina Trade Centre Office Towers in Nairobi and Joint Venture Property Development Projects at Mavoko and Kenyatta Avenue.

On the matter of contracts for proposed development projects in Mavoko, Hazina Towers and Kenyatta Avenue, Amb. Omamo assured the Committee that she would not sanction any unlawful decision that may lead to loss of members' contributions and that no major investments would be made by the Fund until the Board was properly constituted. She issued a Moratorium to this effect.

Committee Specific Observation

The Ag. Cabinet Secretary safeguarded public funds through issuance of a Moratorium to prevent loss of funds through committal of funds in the absence of a duly constituted Board of Trustees at the time of her appearance.

4.10 SUBMISSION BY MR. MAURICE JUMA, DIRECTOR-GENERAL, PPRA

Mr. Maurice Juma, Director-General, Public Procurement Regulatory Authority accompanied by Mr. Peter K. Ndung'u, Procurement Officer appeared before the Committee on 21st May, 2015 to adduce evidence on the National Social Security Fund's (NSSF) Hazina Trade Centre Office Towers Project in Nairobi County and Joint Venture Property Development Projects in Mavoko Sub County and Kenyatta Avenue in Nairobi in Nairobi City.

The Director General informed the Committee **THAT– (Annex 4)**

4.10.1 Hazina Trade Centre Office Towers Project

1. PPOA noted that the procuring entity had initiated a procurement process, tender No. 14/2010-2011 for Completion of Hazina Trade Centre Office Towers-Nairobi and awarded it to Cementers Ltd. at KES 5,997,771,380.

2. This award was challenged at the Public Procurement Administrative Review Board (PPARD) by China Wu Yi (Kenya) Co. Ltd. and China Jiangxi International Kenya Ltd. under Application Nos. 14/2011 of 20th April 2011 and 15/2011 of 21st April, 2011. The PPARD, upon review of the procurement evidence and testimony from the witnesses, found the tender process was flawed and annulled the award of the tender.
3. The successful bidder, Cementers Ltd. challenged the PPARB decision in the High Court in 2011. The High Court, upon hearing the parties, found the application failed for lack of merit. Upon dismissal of the case by the High Court, NSSF initiated fresh procurement, under tender No. 21/2012-2013 for Completion of Hazina Trade Centre Office Towers-Nairobi.
4. On 26th July 2013, PPOA received an anonymous letter from a concerned NSSF staff, alleging that the processing of the tender No. 21/2012-2013 was not done fairly.
5. Pursuant to section 101 and 102 of the Public Procurement and Disposal Act, 2005, PPOA vide letter Ref. No. PPOA 4/30/100 Vol. 11(35) dated 1st August, 2013 wrote to comprehensively demonstrate that the tendering process adhered to the Act and its attendant Regulations. In the same letter, NSSF was requested to submit all documents which were used in the processing of the subject tender in order to review the conduct of the subject tender. NSSF, vide letter Ref. SF/A/10/16 Vol XXV dated 19th August 2013 NSSF, submitted some of the documents PPOA requested.

Conduct of the Procurement Process

6. The procurement was an open tender that was advertised in the dailies, Nation and Standard on 9th January 2013 and closed on 30th January 2013 at 11:00am. NSSF used a two-envelope system in which the technical documents were opened on the materials date.
7. The following six firms responded to the tender: -
 - (i) *Sinohydro Corporation*
 - (ii) *China National Aero – Technology International Engineering Corporation*
 - (iii) *China Railways No. 5 Engineering Group Co. Limited*
 - (iv) *China Jiangxi International(K) Limited*
 - (v) *EPCO Builders Limited*
 - (vi) *Parbat Siyani Construction Ltd.*
 - (vii) *China Wu Yi Ltd.*

8. According to the Evaluation Report, the tender evaluation was done in three stages, preliminary, technical and financial, by a committee of four evaluators. Preliminary evaluation of the tender was based on the conditions stated in the advertisement notice and the bid documents issued to the bidder. Three firms, China National Aero-Technology International Corporation; China Jiangxi International (K) Limited and China Wu Yi Ltd. met all the conditions.
9. Technical evaluation was carried out using the criteria stipulated in the bid documents. The cut off mark for the bidder to move to the financial evaluation, the next stage, it must score at least 80%. Only two bidders, China National Aero – Technology International Corporation, and China Jiangxi International (K) Limited, qualified.
10. The financial bids were opened on 5th February, 2013 by a committee of five officers and witnessed by the two bidders’ representatives. The financial bids were as follows:
 - i. China National Aero–Technology International Corporation KES 6,741,174,428;
 - ii. China Jiangxi International (K) Limited – KES 6,599,888,888.
11. It was noted that the financial evaluation of the tender was not carried out by an evaluation committee established in accordance with Regulation 16 (7) of the Public Procurement and Disposal Regulations, 2006.
12. A letter Ref. No. TA/454/13 from Tana & Associates dated 7th February, 2013 forwarding the financial evaluation report was evidence that the evaluation was done by Tana & Associates. In addition, the unsigned report did not recommend which firm was to be awarded the tender although from the report, **China Jiangxi International (K) Ltd. was the lowest evaluated bidder even after correcting arithmetic error of KES 115,329,300.**
13. NSSF’s Tender Committee awarded the subject tender in its meeting held on 11th February, 2013 to China Jiangxi International (K) Ltd., at a tender price of KES 6,599,888,888 subject to the bidder’s confirmation of tender arithmetic error of KES 115,329,300.
14. China Jiangxi International (K) was notified of the tender award on 11th February, 2013 vide the NSSF’s letter Ref. No. SF/A/10/16/VOLXX111 and accepted the offer vide their letter Ref. No. CJIC/003/2013 dated 12th February, 2013 and accepted the arithmetic error

and consequently adjusted their tender sum upwards from 6, 599,888,888 to KES 6,715,218,188. This was an increment of KES 115,329,300 being the arithmetic error.

15. NSSF subsequently signed a contract with China Jiangxi International (K) Ltd. at the corrected tender sum of KES 6,715,218,188 with a completion period of 155 weeks.

Observations on the Conduct of the Procurement Process

16. China Railways No. 5 Engineering Group Co. Ltd. and China Wu Yi Ltd. did not provide a Certificate of Incorporation, which was a mandatory requirement, but were considered responsive during preliminary evaluation against the provisions of Section 64(1) of the Act. The failure to disqualify the two firms was inconsistent with Regulation 48(1) of the Regulations.
17. China Jiangxi International did not sub-contract works (b), (c) and (d) (mechanical; plumbing; firefighting and air-conditioning) as indicated in the bid document against the mandatory requirements of the tender but were considered responsive in preliminary evaluation contrary to the requirements of Section 64(1) of the Act;
18. NSSF informed China Jiangxi about the arithmetic error after the evaluation process and not before, contrary to Section 63 of the PPDA 2005 and clause 5.7, Instruction to Bidders, in the bid document
19. The procuring entity did not correct errors noted in the financial bid of the successful bidder in accordance with Section 63 of the Act and clause 5.7, Instruction to Bidders, in the bid document.
20. The Evaluation Committee failed to observe the provisions of Section 64(1) of the Act by not considering the audited accounts of the joint venture partners of the winning bid and in consequence made him responsive.
21. Provisional sums for some un-quantified works were repeated in the BQ which may have escalated the cost of the project and loss of funds through double counting, for example, in the BQ for sub contract for mechanical ventilation and air conditioning installation page No MV/MS provided the following provisional sums:

a) PC for Plenum Chamber and associated works = KES 5,000,000

b) PC for basement fans automation = KES 5,000,000

c) *Provisional Sum for contingency sum = KES 2,000,000*

22. Still in the same BQ Section No. 15 titled Prime Cost (PC) and provisional sums, page 15/2 provided as follows:

(ii) *Provided the sum of KES 80,000,000 to cover the cost of mechanical builders in plenum chambers, fans in basement and services refurbishment and interconnection.*

(iii) *Under the subcontract for mechanical ventilation and air conditioning, China Jiangxi International (K) Ltd. was the sub-contractor at KES 33,973,867 which included provisional sums of KES 5,000,000; KES 5,000,000; and KES 2,000,000.*

(iv) *The total tender sum of KES 6,715,218,488 awarded to China Jiangxi International (K) Ltd. included all these provisional sums listed above, that is KES 80,000,000; and KES 2,000,000.*

23. PPOA was not aware of the compensation claim of KES 1.6 Billion by Nakumatt Holdings Ltd. for loss of business occasioned by interruptions due to ongoing construction works.

24. PPOA had advised NSSF to consult with their lawyers on the next step because they had signed a contract which is illegal and which if not honoured would occasion loss of public funds.

25. They would also recommend that the person who had signed the contract on behalf of NSSF be held personally responsible for this.

26. PPRA normally advises state corporations to plan their procurement and follow the procurement law to avoid a situation where they commit an illegality and rush to the Authority for advice on the way forward.

Conclusion

27. The Report was brought to the attention of NSSF, whose response did not address the findings contained in the report. As a result of the breaches of the procurement law cited above in the conduct of the procurement process, the process was inconsistent with procurement law.

Committee Specific Observations

The Committee observed that that PPOA found the procurement process for Completion of Hazina Centre Office Towers Project inconsistent with several provisions of the PPDA 2005 as evidenced by the following instances: -

- (i) That although the PPDA 2005 is silent on whether Certificate of Incorporation can be an international or local one, both China Railways No. 5 Engineering and China Wu Yi did not provide the certificates, a mandatory requirement and the two were considered responsive and proceeded to the next stage of evaluation contrary to Sec 64(1) of the Act. This failure to disqualify the firms was inconsistent with Regulation 48(1) of the Regulations.
- (ii) NSSF informed China Jiangxi International of the arithmetic error and they did not correct the errors noted in financial bid contrary to section 63 of the PPDA 2005 and clause 5.7, Instruction to Bidders, in the bid document.
- (iii) China Jiangxi International did not sub contract works of mechanical, firefighting, plumbing and air-conditioning as indicated in the bid document against the mandatory requirements of the tender but were considered responsive contrary to sec 64(1) of the PPDA 2005.

4.10.2 Mavoko and Kenyatta Avenue Joint Venture Development Projects

The Director General informed the Committee THAT –

1. The procurement processes were initiated through Expression of Interest (EOI) which were advertised in the Daily Nation Newspapers of 18th October, 2010, the Standard Newspaper on 19th October, 2010 and The Economist on 23rd October, 2010. The deadline for submission of EOI was 15th December, 2010 at 11.00 a.m.
2. The NSSF invited interested parties to express their interest in partnering with them in the development of:
 - (i) *960 acres of land in Mavoko Municipality, Machakos County.*
 - (ii) *3.6-acre property at the junction of Kenyatta Avenue and Uhuru Highway.*
3. Interested companies or consortia were expected to express interest in designing, development, financing and selling or operating the developments on joint venture basis.

4. The EOI documents were opened on 15th December, 2010 by a committee comprising of five (5) officers. According to the tender opening minutes, the EOI were received from the following bidders:

Mavoko Sub County Project

- (i) Housing Finance
- (ii) Marken Ltd.
- (iii) Lordship Group
- (iv) Joel Nyaseme
- (v) Edermann Property
- (vi) Africa Regent Ltd.
- (vii) Symbion International
- (viii) Spedex (Spenco)
- (ix) China CAMC Engineering Co. Ltd.

Kenyatta Avenue (Central Business District) Project

- (i) Hewani Consortium
- (ii) Sichuan Huashi Corp.
- (iii) African Legend
- (iv) Symbion International
- (v) Spedex (Spenco)
- (vi) Sietco Ltd.
- (vii) China CAMC Engineering Co. Ltd.

5. Evaluation was conducted by a committee comprising of seven (7) members. The evaluation process was conducted in three (3) stages, based on the requirements provided in the tender notice. The requirements were technical profile evaluation, financial profile evaluation and proposal submission
6. The committee recommended as follows:

Mavoko Project

- (i) China CAMC Engineering Co. Ltd.
- (ii) Housing Finance
- (iii) Joel E. D Nyaseme & Associates

Kenyatta Avenue Project

- (i) China CAMC Engineering Co. Ltd.
- (ii) African Legend Ltd.
- (iii) Sichuan Huashi Enterprise Corporation E. A. Ltd.

7. According to the Tender Committee Minutes dated 26th May, 2011, the Committee lowered the cut-off score from 60% which appeared to have been set by Mr. Tom Odongo, General Manager (Investment) to 50% and as a result two bidders were accommodated in each tender. These were Spencon Development Co. Ltd. for both Mavoko Project and Kenyatta Avenue project and SIECO Ltd. for CBD Project. The firms approved were: -

Mavoko Sub County

- (i) China CAMC Engineering Co. Ltd.
- (ii) Housing Finance
- (iii) Joel E. D Nyaseme & Associates
- (iv) African Legend Ltd.
- (v) Spencon Development Co. Ltd.

Kenyatta Avenue/CBD Property

- (i) China CAMC Engineering Co. Ltd.
- (ii) African Legend Ltd.
- (iii) Sichuan Huashi Enterprise Corporation E.A Ltd.
- (iv) Spencon Development Company Ltd.
- (v) SIECO Ltd.

8. The outcome of the EOI was communicated to the bidders, vide letters dated 21st June, 2011. The successful bidders were informed that they will be invited to respond to Request for Proposal later. It is noted that the notification letters for Spencon Development Company Ltd. and SIECO Ltd. were not availed and therefore it could not be ascertained whether they were notified or not, despite having been approved by the tender committee.
9. From the documents submitted by NSSF, it is not clear whether the process went beyond short listing of the firms.
10. NSSF advertised the two (2) Requests for Proposals in The Daily Nation newspaper on 22nd October, 2013. The RFPs were tender No.08/2013-2014 for Proposed Joint Venture Property Development in Nairobi Central Business District and tender No.09/2013-2014 for Proposed Joint Venture Property Development in Mavoko Municipality, Machakos County. The deadline for submission of proposals was 4th December, 2013 and 30th November, 2013 respectively.

11. The tender opening minutes were not available. However, the process was terminated before the evaluation was conducted. The termination was approved by the tender committee vide minutes of meeting No.17 held 22nd January, 2015. According to NSSF, termination was necessitated by lapsing of the tender evaluation period before it was concluded. Bidders were notified of termination, vide letters dated 4th February, 2015.
12. The Tender Committee approved the use of restricted procurement method for the Mavoko and Kenyatta Avenue (CBD) projects vide its meeting held on 28th January, 2015. The committee also approved the following firms who had participated in the same tenders in the previous procurements that were not finalized.
 - (i) Davuruk Builders and Contractors
 - (ii) Weihai International Economic and Technical Cooperative Co. Ltd.
 - (iii) Sinohydro Tianjin Engineering Co. Ltd. and Sinohydro Real Estate Co. Ltd.
 - (iv) Baseline Architects Consortium and Zakhem International Construction Ltd.
 - (v) Housing Finance
 - (vi) Markem Ltd.
 - (vii) Epix Investment Ltd.
 - (viii) Joel E. D Nyaseme & Associates
 - (ix) Edermann Properties Ltd.
 - (x) African Legend Ltd.
 - (xi) Symbion Kenya Ltd.
 - (xii) Spencon Development Co. Ltd.
13. Invitations were sent out through letters dated 5th February 2015. A review of the invitations shows that four (4) firms namely China CAMC Engineering Co. Ltd., Trans Century Investment in Africa and Group 5 Structured Ingenuity Waterfall Business Estate, were invited but were not in the list approved by the tender committee.
14. According to the tender opening minutes, tender for Mavoko Project closed/opened on 15th April, 2015 and the following bidders responded:
 - (i) Zakhem Construction Ltd. and Baseline Architect Construction Ltd.
 - (ii) Sinohydro Tianjin Engineering Co. Ltd. and Sinohydro Real Estate Co. Ltd.
 - (iii) Edermann Property Ltd. and China Railway No.10 Engineering
 - (iv) Weihai International Economic Technical Cooperative Co. Ltd.
15. Tender for Kenyatta Avenue (CBD) Project was opened on 16th April, 2015 and only one bidder, Trans Century Ltd. responded.

16. Evaluation was conducted by a committee comprising of five (5) members and a secretary. The committee was appointed by the Accounting Officer. The Evaluation Committee did not evaluate the tenders but recommended termination of the tenders due to negative publicity surrounding the tenders as per Section 36(1) of the Public Procurement and Disposal Act, 2005. The report was signed by all members.
17. In its meeting held on 13th May, 2015, the Tender Committee concurred with the recommendation of the tender processing committee and terminated the two (2) tenders. NSSF issued termination notices to the bidders vide letters dated 14th May, 2015.
18. The termination reports for the two tenders referred to above are yet to be submitted to the Authority in accordance with Section 36 (8) of the Act and PPOA Circular No. 4/2009 of 24th June, 2009.
19. The procurement process has taken inordinately long to conclude, taking into consideration that the process started through EOI in October, 2010.

Committee Specific Observations

The Committee observed that –

- (i) There is disparity in acreage of land for Mavoko Project development. According to PPOA 960 acres are available while NSSF informed the Committee that 1,010 acres are available. It's not clear what the true position is and this also has a bearing on the value of the exact land available for development.
- (ii) Although the tenders for Mavoko and Kenyatta Avenue were cancelled, money was spent in the procurement process of the joint venture partners as well as advertisements to cancel the tender.

4.11 SUBMISSION BY HAZINA TRADE CENTRE OFFICE TOWERS PROJECT CONSULTANTS

Hazina Trade Centre Office Towers Project Consultants namely Mr. Salmann Hameed (Partner, Mruttu Salmann & Associates), Mr. James Kisa (Partner, Kisa & Partners Consulting Engineers Ltd.), Mr. Patrick Tana Mutisya (Quantity Surveyor, Tana & Associates) and Eng. David Maganda (Abdul Mullick & Associates) appeared before the Committee on 12th May, 2015 and 7th February, 2017 to adduce evidence on the Hazina Trade Centre Office Towers Project.

4.11.1 Submission by Mr. Salmann Hameed, Partner, Mruttu Salmann & Associates

Mr. Hameed informed the Committee THAT–

1. Mruttu Salmann & Associates were re-appointed by NSSF as the Project Architects for the project namely: Development of Office and Shopping Complex on Monrovia Street, Nairobi-LR. No. 209/6708 - Completion of Tower for Offices via letter dated 1st December 2010.
2. The terms of commission and scale of fees were in accordance with the latest “Conditions of Engagement and Scale of Fees for Professional Services for Building and Civil Engineering Works” issued by Ministry of Public Works (Sec 200 and 300).
3. Vide letter dated 1st December 2010, they informed the client that their original commission was based on Cap 525 of the Laws of Kenya and requested that their current commission be on similar terms.

4.11.2 Submission by Mr. Patrick Tana Mutisya (Quantity Surveyor, Tana & Associates)

Mr. Tana informed the Committee THAT–

4. Vide letter dated 1st December 2010, NSSF re-appointed them as the Quantity Surveyor Consultants for the project namely: Development of office and shopping complex Monrovia Street, Nairobi-LR. No. 209/6708 - Completion of Tower for Offices. The terms of commission and scale of fees were in accordance with the latest “Conditions of Engagement and Scale of Fees for professional services for building and civil engineering works” issued by Ministry of Public Works (sec 200 and 400).
5. Tana & Associates (T & A) prepared the Tender Documents in form of Bills of Quantities, incorporating measured works, specification and the Client’s brief. They were requested by the Client to check for errors in the arithmetic calculations of the last two contractors who qualified for financial evaluation.
6. T & A gave factual report dated 7th February to NSSF on the outcome of the arithmetic checking showing the error and the financial effect of the outcome. That brought to an end their engagement with NSSF on the procurement process and they were not part of the evaluation committee and did not therefore participate in the evaluation.

7. They were not aware of the contractors who were invited to tender and learnt of them for the first time at the tender opening session.

4.11.3 Submission by Eng. David Maganda (Director, Abdul Mullick Associates)

Eng. Maganda informed the Committee THAT–

8. Abdul Mullick Associates were called by the Client NSSF as Project Consultants for Phase 1 of the Project and were given the brief and scope of the Project.
9. This was followed with confirmation of engagement by way of appointment letter dated 1st December 2010. The Terms of Reference were to provide Structure and Civil Engineering Services.
10. Commissioning of the Consultants was not competitive but was based on the Consultant's capacity to handle the project and present workload.
11. The Scope of the Works was the construction of Hazina Towers from existing floor for a further 34 floors within specification given by the architects and engineers. The key action areas on the project were to give structural drawings and validate Traffic Study Report on the project area.
12. The Terms of Engagement were as prescribed in the Letter of Appointment, which is the latest "Conditions of Engagement and Scale of Fees for Professional Services for Building and Civil Engineering Works" issued by Ministry of Public Works. In particular Sections 200 and 600 of the said conditions.
13. The estimated cost for the project was KES 6,631,825,234.

Issues Surrounding the Project from Inception

14. **Confined State:** There were difficulties of developing the size of the building in the confined area due to neighbouring developments. This was adequately captured and articulated in the Tender Documents and Contractors were aware of the limitations as they bid.
 - i. **Environmental Impact Assessment Study:** A firm of experts was commissioned and got approval with mitigation measures from NEMA.
 - ii. **Sitting Tenants:** The Consultants raised the issue of sitting tenants in particular Nakumatt Holdings. It was made clear that was a matter between the Client and the

tenants (Nakumatt) and that the issues would be settled. Abdul Mullick Associates provided the Tender Documents for the construction to proceed when the sitting tenants would be going on with his business but in a controlled safe way.

4.11.4 Submission by Mr. James Kisa (Kisa & Partners)

Mr. James Kisa informed the Committee THAT–

15. **Kisa & Partners** were involved in the earlier scheme to design and supervise the completion of Hazina Towers Project then called Monrovia Street Project on LR No. 209/6708 Nairobi in the late 1990s. It was completed in 2003 and handed over to NSSF.
16. NSSF vide letter dated 1st December 2010, re-appointed them as the Electrical & Mechanical Engineering Consultants for the project namely: Development of Office and Shopping Complex Monrovia Street, Nairobi-LR. No. 209/6708 - Completion of tower for offices. The terms of commission and scale of fees were in accordance with the latest “Conditions of Engagement and Scale of Fees for Professional Services for Building and Civil Engineering Works” issued by Ministry of Public works (sec 200 and 500).
17. The firm carried out design, prepared bills of quantities and gave the estimates and documents for the commission to the client on 14th January 2011.
18. In January 2011, the client directed the consultants to submit prices of bills of quantities for their use before tender.
19. On 3rd February 2011, they advised NSSF that as per the Ministry of Public Works terms of commission, pricing of bills of quantities falls under additional/special services; there is a due process to be followed by the consultant.
20. On 14th Feb 2011, NSSF acknowledged receipt but claimed that the consultant had no intention of complying with their instructions. The consultant wrote back advising them that they required NSSF to confirm the pricing documents as forwarded to them before the consultant could price them.
21. NSSF terminated its contract with Kisa & Associates vide letter dated 14th February 2011.
22. By this period, the client had all the bills of quantities and drawings. Kisa & Associates wrote to them on 10th March 2011, attaching all necessary documents.

4.11.5 Joint Oral Evidence by the Consultants

The Consultants made the following joint presentation: - THAT

1. All the consultants had been involved from the beginning of the project in the 1990s and had a history of the project which led them to be re-appointed. They did not view their re-appointment as an illegality since in their view the project never lapsed.
2. The original design was for 28 floors and the sub structure from which the office towers are being built from are the same ones designed in the 1990s. NSSF did not have funds to complete the superstructure in the 1990s as envisaged but had recommenced and restructured for the work to be completed. The main project contractor in the 1990s is different from the current Hazina Towers Project contractor.
3. The client wanted to increase the floors of the office tower from the original 28 floors to 36 floors. They, as the structural engineers had to do an analysis and mathematical modelling to confirm whether the foundation and structural beams could take the additional floors at an additional cost to NSSF.
4. The terms of reference and architectural fees remained the same as in 1990s.
5. They had not had a prior relationship with NSSF before the commencement of the 1st project in 1998. But because the final accounts prolonged even after the project had technically been completed, their relationship with NSSF had continued on after the completion of the shopping complex in 2003.
6. It was the responsibility of the client, not the consultant, to ensure that they complied with all relevant legal requirements.
7. There **was no competitive bidding for their services in 1994**. The Architect who is the visualizer of the Project, M/s Mruttu Salmann & Associates was in the NSSF panel of Consultants and was invited to design the Project in 1994 and submit to the Board of Trustees.
8. Over time, in the 12 years that the project had stalled, NSSF would request the Quantity Surveyor how much it would cost to complete the project. All the consultants were actually called for a meeting once a decision had been reached at NSSF to complete the project where they were informed of the decision. The letters re-appointing them followed soon

after. There was no prior written communication requesting NSSF to employ them on the stalled project nor letter of offer from NSSF on the same.

9. They did not have a contact at NSSF to keep them briefed on the status of the project, but the Quantity Surveyor, on request, submitted his responses to the Managing Trustee who kept changing over time.
10. The original tender for the project in 1994 was KES 3.181 Billion while the current project was tendered for KES 6.63 Billion.

4.11.6 Consultants' Response to the State Department of Public Works' Report

Foundation

1. The Consultants are in agreement that the foundation is adequate for the designed 40 floors.

Column Strengthening

2. The original design has been superseded by cantilevered floor outside by 1.5m on both towers and inside 1.7m on both towers.
3. Additional 8 floors were also added to conform to the new tower design. The net result is that the gross floor area has increased by 65% compared to original design.
4. 66 columns out of 128 needed strengthening. Out of these 66 columns, only 27 have not been strengthened because they are located in Nakumatt stores (Basement B2 and B3) and business areas where access was denied.
5. Arising out of the detailed analysis and results of core tests, it was recommended that the column dimension be increased with a steel jacket of between 125 and 150mm.

Column Calculation Checks (C30)

6. The State Department of Public Works used Procon software for analysis while current practice for high rise buildings, ETABS – 3D is the recommended software.
7. The State Department of Public Works used axial load of 40,470 Kn – slightly lower than actual 47,007.61 Kn used in design.
8. The major discrepancy however, is that:
 - Design check is based on axial load (compression) while the column is also subjected to bi-axial loading – (bending movement) which were left out;

- The main problem with the calculations is that rebar and concrete strength adopted are much higher than the actual and column configuration are round-shaped and NOT square.
- Schmidt hammer test indicate 50.8N/mm², however 55 N/mm² is adopted for calculations.
- The area of steel entered is 32,170mm² as opposed to 28,944m².

Justification for reinforcement of Columns using Carbon Fibre

9. During the design check of original design to accommodate the client's requirement of additional eight (8) floors and extension of the floor plates by about 30% per floor, the Consultants found it prudent to check the concrete strength of the existing columns by extracting cylindrical cores for testing.
10. Arising from the tests results, the strength grades used in EYABS model was 40 N/mm². From the model assessment, the columns required strengthening.
11. The tower columns were assessed in terms of current rebar (reinforcement) and compared with rebar amounts as determined by ETABS model with additional 8 floors.
12. From the assessment above, it shows that the total number of 66 columns out of 128 columns required strengthening and would be disruptive to the tenant. At that stage, the strengthening method adopted was "steel jacketing."
13. When the contract was awarded, the contractor expressed concern about the jacketing methodology.
14. On June 3rd, 2013, AMA Consulting proposed an alternative method for strengthening – i.e. Sika-wrap method due to the following advantages over reinforced concrete jacket/steel channel:
 - (i) Increased axial load carrying up to 200%;
 - (ii) Increase ductility up to tenfold;
 - (iii) Increased column shear, flexural and seismic strength;
 - (iv) Minimal change to structural weight, shape and appearance;
 - (v) Easy to handle and requires minimal clearance for instalment hence reduces disruptions to the tenants;
 - (vi) Faster and cleaner in its application.

15. As a way forward, the Consultants proposed that the structure can either be finished as it is and occupied up to the 14th floor or completed as redesigned with the strengthening of the 27 columns that are pending.

Additional Oral Submissions

16. The Consultants stood by their position on the need for column strengthening owing to design changes which the State Department of Public Works did not seem to have taken cognizance of in their Report. **The SDPW Report on the building did not take into account the bending movement caused by the extension of the floor plates by about 30% per floor, hence concluding that strengthening of columns was not necessary.**
17. The original design, as per the contract, had provisions for strengthening of columns. The controversy arose after Nakumatt Holdings Limited denied the contractor access to the columns.
18. The lease agreement between NSSF and Nakumatt Holdings Limited had a caveat stipulating that the building could be subject to development during the duration of the lease.
19. On the matter of alleged limited parking space, the Consultants informed the Committee that the building has adequate parking space of 500 parking slots in the basement, which Nakumatt Holdings Ltd. continues to generate revenue from.

COST-BENEFIT ANALYSIS OF COLUMNS STRENGTHENING WITH SIKA WRAP/CONCRETE JACKETING

Preamble

20. The Columns strengthening was a process identified by the Engineers by appropriate testing methods and rigorous re-analysis and redesign before the contract documents went to tender.
21. The cost of columns strengthening was included in the Bills of Quantities and was not an afterthought.
22. The total number of columns identified as requiring strengthening was 66 in number covering basements, areas occupied by Nakumatt up to podium level only.
23. The concrete jacketing (traditional) method which was in the Bills of Quantities was modified in methodology to have more sika wrap and less concrete. This modification was special consideration to the tenant M/S Nakumatt Holdings so that there was least

disruption to his operations. This was effective because it was fast, required less operational area and least debris (cleaning).

24. According to the Engineer, it was even stronger. The contractor welcomed the sika wrap method as it was faster and more convenient. Nakumatt gave the impression that they had agreed access to the areas occupied and indeed gave access for 39 columns to be strengthened. It was not clear how and why they changed their mind midstream. They refused access to the remaining 27 columns which are yet to be strengthened.

Cost Considerations

		AMOUNT (KES)
B1	Cost of Sika Wrap/Concrete jacketing as provided in the BQ to be applied on 66 no of columns (KES)	244,728,603.00
B2	Cost of Sika Wrap works already done on the 39 no of columns for the works up to 14th floor including unfixed materials	<i>Value of work done - 145,685,750.00 Unfixed materials - 47,240,000.00 TOTAL = 192,925,750.00</i>
B3	Cost of Sika Wrap/Concrete jacketing UNDONE on remaining 27 columns	<i>Value of Works done when complete as in 1 above - 244,728,603.00 Less value of works done in 2 above - 192,925,750.00 Total of remaining works undone = 51,802,853.00</i>

Cost Benefit Analysis Options

25. Option of constructing 14 floors only without further column strengthening
26. Option of constructing 40+ floors without further column strengthening.
27. Option of constructing 40+ floors as per design with full concrete strengthening.

Cost benefit analysis for OPTION 1 of work up to 14 floors without further strengthening

28. The structure is done up to 14th floor with 39 columns strengthened to take full development. The columns from 1st to 14th floor were also designed and built to carry the

full height of the Tower but these did not require strengthening. The reinforced shear walls were also done to take full development.

29. The amount already spent on column strengthening is **KES 192, 925,750.00** as per item B2 above.
30. This option does not benefit from the decision to omit columns strengthening because its costs are already substantially incurred up to **KES 192, 925,750.00**.
31. The strengthened columns to 14th floor and shear walls will all remain underutilized if the building stops at 14th floor.
32. The cost of saving if no further strengthening is done is only **KES 51,802,853** as in B3 above.
33. The investor will lose all the prospected income of full development. The investor will be required to pay for all other costs arising from delays once they're determined. The project will not be viable due to optimizing use of his plot on the development. The money spent against the much reduced income from the 14 floors will not give payback for a long time.
34. This option is least viable.

Cost benefit analysis for OPTION 2 of work up to 40+ floors without further column strengthening

35. The structure is done up to the 14th floor as in Option 1 above
36. The amount already spent on column strengthening is **KES 192, 925,750.00** as per item B2 above.
37. This option will benefit from the decision to omit columns strengthening by saving the cost of **KES 51,802,853** for the undone columns reported above in B3.
38. The option will further benefit the investor the full realisation of the development. This will in the long run pay back the investor for the investment. The full development will generate more income to help mitigate against other costs arising from the delays when determined.
39. In this option, there will always be the unsettling fear that the building is not sitting well due to weak columns and may collapse. This arises from the fact that the Consulting Engineers M/S Abdul Mullick Associates have reiterated that they take no responsibility of the structure without complete strengthening of the columns. This is a different stand from

the State Department of Public Works position that the building does not need columns strengthening.

40. This fear can be removed if there is a professional meeting of minds between the Consulting Engineers and SDPW.
41. This option is viable except for the disparity between the Consulting Engineers and SDPW explained above.

Cost benefit analysis of OPTION 3 of work up to 40+ floors with full identified columns strengthened

42. The structure is done up to 14th floor as Option 1 above.
43. The amount already spent on column strengthening is **KES 192, 925,750.00** as per item B2 above.
44. This option will cost more for the remaining work in strengthening the columns by **KES 51,802,853** as reported in B3 above.
45. This option will benefit the investor with full realisation of the development. This will in the long run pay back to the investor for the investment. The full development will generate more income to help mitigate against other costs arising from the delays when determined.
46. In this option, if the two Engineers parties (Consultants and SDPW) agree and strengthen all columns, confidence will be brought into the building and there will be no fears of collapse.
47. A substantial cost of strengthening (**KES 192, 925,750.00**) has already been incurred.
48. This option is viable.

Consultants' Observations

49. The SDPW and the Consultant Engineers M/S Abdul Mullick Associates have agreed on a very fundamental position that the 40+ floors can be built and the foundations can take this.
50. The point of difference is the strengthening of the columns, which SDPW says is not necessary, and Abdul Mullick Associates says there is need for strengthening to the selected columns.

51. The present position of the project is that most of the strengthening is already done. The cost of strengthening the remaining columns is the only thing now the client can save. This cost is about **KES 51,802,853**.
52. The client/investor has already or will incur other costs due to delays as will be determined whether they stop at 14 floor or got 40+ floors.
53. It is up to the decision makers to decide if the client can just stop on the 14th floor and fail to reap the benefits of full development, which will reasonably mitigate some of the incurred costs and in time recover the investment, because of the disagreement of **KES 51,802,853** which is the cost of the remaining columns strengthening.
54. The other remaining obstruction to full development if this option is adopted is the access to strengthen the remaining columns. As of now, Nakumatt have refused access. The impasse between the Client and Nakumatt needs to be resolved for the bigger good.
55. All other matters of who bears the blame for this and that, can continue to be sorted out in appropriate forums as this building goes on, if that is so decided.
56. The cost of strengthening the columns at **KES 244,728,603** is **3.6%** of the tender figure of **KES 6,715,218,488**. If this amount could be saved, it would certainly be good for the investment but the strengthening was found necessary by the Consulting Engineers.
57. The final consideration to this Report is that between SDPW and Abdul Mullick Associates, the process of checking whether the strengthening was necessary or not, was not expected to bring an identical outcome. It may have been intended to see a reasonable extent of their disparity in design because, it is probably not possible that two engineers will come up with exact design.
58. The Consultants may therefore be persuaded to start thinking about whether the disparity of **3.6%** of costs in design tolerance is admissible or not.
59. It must not get lost that SDPW and Abdul Mullick Associates Engineers are agreeable in over **95%** of the outcome of their evaluation.
60. Option No. 2 and 3 viable if a consensus is reached on the disparity of the design.

Committee Specific Observations on the Consultants' Submission

The Committee observed THAT –

- (i) In line with the Public Procurement and Disposal Act 2005, the then Managing Trustee (in 2010) had no legal standing to appoint or re-appoint the consultants without going through

- a competitive procurement process for their services. Further that the letters all dated 1st December 2010, re-appointing them, were in fact illegal as per the PPDA 2005 and were referring to a project which had commenced but stalled twelve years earlier.
- (ii) Mavji Construction Co. Ltd. was the contractor in the first phase of the Project that was handed over in 2003, while the current contractor is China Jiangxi Ltd.
 - (iii) Pursuant to the Article 3 and 227 of the Constitution of Kenya, the Consultants were also obligated to follow the applicable laws. They could also be sanctioned, under Article 227(c) of the Constitution, for failure to perform according to professionally regulated procedures, contractual agreements or legislation.
 - (iv) The cost of strengthening the columns at **KES 244,728,603** is 3.6% of the tender figure of **KES 6,715,218,488**.
 - (v) Should column strengthening be abandoned, NSSF will save **KES 51,802,853**. However, the amount already spent on column strengthening is **KES 192, 925,750.00**.
 - (vi) The SDPW and the Consultant Engineers M/S Abdul Mullick Associates have agreed on a very fundamental position that the 40+ floors can be built and the foundations can take this.
 - (vii) The impasse between NSSF and Nakumatt ought to be urgently resolved in interest of the public.
 - (viii) The State Department of Public Works and the Consulting Engineers Abdul Mullick & Associates should, in the interest of the public, have a professional meeting of minds to address the matter of whether column strengthening is really necessary. This will remove the fear of the building collapsing, should further column strengthening be abandoned as per SDPW advice.

4.12 SUBMISSION BY HAZINA TRADE CENTRE OFFICE TOWERS BIDDERS

4.12.1 Submission by Cementers Ltd.

Mr. Ramesh Vishram, the Managing Director of Cementers Ltd. accompanied by Legal Counsel Mr. G. Getao appeared before the Committee on 14th May, 2015 to adduce evidence on the procurement of National Social Security Fund (NSSF) Hazina Trade Centre Office Towers Project contract by NSSF.

Mr. Vishram informed the Committee THAT–

1. Cementers Ltd. is a limited liability company incorporated in Kenya. The Company tendered for the Tender No. 14/2010-2011 advertised by NSSF on 1st February, 2011 in The Daily Nation and The Standard newspapers for the completion of the Hazina Trade Centre Office Towers.
2. The tenders opened/closed on 4th March, 2011 and ten (10) bids out of the total twenty (20) that bought the tender documents were evaluated. The bids opened are as tabulated below:

Bidder No.	Bidder's Name	Bid Sum (KES)	Delivery Period
1	China Jiangxi Int. (K) Ltd.	6,236,557,784	156 weeks
2	EPCO Builders Ltd.	6,497,116,084	160 weeks
3	FUBECO (China Fushun)	6,354,016,059	140 weeks
4	Cementers Ltd.	5,997,711,380	170 weeks
5	Sichuan Huashi Enterprises	6,439,171,049	139 weeks
6	Tulsi Construction Co.	6,720,527,089	190 weeks
7	Seyani Brothers Co. (K) Ltd.	6,731,607,984	212 weeks
8	N. K Brothers Ltd.	6,313,909,101	199 weeks
9	China Wu Yi (K) Co. Ltd.	5,715,752,876.73	130 weeks
10	Parbat Siyani Construction Co. Ltd.	5,951,291,730	159 weeks

Evaluation

3. The evaluation was carried out in three stages; namely Preliminary Evaluation, Technical, Evaluation and Financial Evaluation.

Preliminary Evaluation

4. At the Preliminary Evaluation stage, all the mandatory requirements were evaluated to determine the tenderers' responsiveness. The criteria for evaluation included:
 - a) Tender submitted in the required format;
 - b) Tender security in the required format, amount and validity;
 - c) Tender signed by the lawfully authorised to do so;
 - d) Required number of copies;
 - e) Tender validity period;
 - f) The provision of mandatory documents which included Certificate of Incorporation, valid NSSF compliance certificate, valid tax certificate, directors, audited account for the last years; and

g) Current certificate from the Ministry of Public Works “A”, Electricity Regulatory Commission Class 1A, Communications Commission of Kenya Licence and the joint agreements (with the subcontractors).

5. Only Cementers Ltd. had a responsive bid, which underwent evaluation on the technical parameters.

Technical Evaluation

6. M/s Cementers’ bid was evaluated and assessed on its level of compliance to the technical requirements and awarded marks. The bidder was evaluated on the following parameters:

- a) Completion and compliance of the particular specifications;
- b) Personnel;
- c) Relevant experience;
- d) Machinery and Equipment
- e) Business support;
- f) Referees; and
- g) Completion program for the works.

7. The cut off marks was 75% and M/s Cementers Ltd. attained a score of 91.2% and therefore proceeded to the financial evaluation stage.

Financial Evaluation

8. The tender sum was checked for full compliance to the specifications, arithmetic errors and consistency in price and was summarised as below:

Bidder’s Name	Bid Sum (KES)	Arithmetically corrected amount	Tender error amount	Error percentage	Remarks
Cementers Ltd.	5,997,711,380.00	5,997,840,822.00	129,442.00	-0.002%	Error too insignificant

9. The Evaluation Committee then noted that the tenderer complied fully with the technical specifications, had arithmetic error that was too insignificant and its price distributions were consistent.

10. The Committee then recommended that the tender for the completion of the Hazina Trade Centre Office Towers- Nairobi be awarded to M/s Cementers at its quoted price of KES 5,997,711,380.00 inclusive of taxes with a completion period of 170 weeks.

11. The Bidders were notified of the award of the tender to Cementers Ltd. vide notification letters dated 17th April, 2011.

Request for Review of the Award

12. Two companies, China Wu Yi (K) Co. and China Jiangxi lodged separate requests at the Public Procurement Administrative Review Board (PPARB) on 20th April, 2011 and 21st April, 2011, for review of the decision by NSSF to award the Tender No. 14/2010-2011 to Cementers Ltd.

13. The PPARB made the following ruling: -

- iii. All grounds of appeal of the award of the tender to Cementers Ltd. as raised by China Wu Yi Company failed and subsequently their request for review was dismissed.*
- iv. Tender Evaluation Committee wrongfully disqualified China Jiangxi from the tender process as there was no written evidence from Ministry of Public Works (MOPW) that their proposed Mechanical Ventilation and Air Conditioning sub-contractor M/s Raerex lacked a current MOPW Registration Certificate. China Jiangxi had submitted a letter from MOPW that was to serve as certificate until such a time a formal certificate is issued to the sub-contractor. The Evaluation Committee had confirmed the sub-contractor's registration verbally with the MOPW.*
- v. The successful bidder, Cementers Ltd., did not demonstrate in its tender documents that it ever carried out projects comparable in nature and value to the description of the project in the tender documents.*
- vi. The Tender Evaluation Committee acted contrary to Section 66 (2) PPDA, 2005 which provides "that evaluation and comparison shall be done using that procedures and criteria set out in the tender documents and no other criteria shall be used."*
- vii. Tender Evaluation Committee had allowed only one bidder to proceed to the technical and financial stages of the process, thereby defeating the objects of Section 2 of the PPDA, 2005 Act which seek to promote fair competition, ensure that competitors are treated fairly; ensure integrity and fairness of the*

procedures used and increase transparency and accountability in the procedures used.

viii. In the circumstances, PPARB found the manner in which evaluation was done was flawed and China Jiangxi was wrongfully disqualified from the tender process, and accordingly their appeal succeeded. Pursuant to Section 98 of the Act, PPARB annulled the award of the tender to Cementers Ltd.

Judicial Review

2. Cementers Ltd. filed an application on 2nd November, 2011 in the High Court for judicial review of the decision of PPARB. They also sought to prohibit NSSF from retendering the tender for completion of Hazina Trade Centre Office Towers.
3. On 29th November, 2011, the Court ruled that Cementers Ltd. failed to disclose any reasons to warrant grant of orders it sought and in the circumstances the application failed for lack of merit.
4. Upon dismissal of the case by the High Court, NSSF initiated fresh procurement, under Tender No. 21/21012-2013 for the completion of Hazina Trade Centre Office Towers.
5. Cementers did not seek a further judicial review at the Court of Appeal after the High Court ruling because the Company did not expect different verdict from the one made by PPARB and the High Court.
6. The Company has never been contracted by NSSF for any business or services and has been in the construction industry for the last 40 years.
7. **The Company did not tender for the re-advertised tender because one of the specifications in the tender documents was that a tenderer must have had constructed and completed two 40-storey buildings in the previous 5 years, which practically all local (Kenyan) companies did not have.**
8. Cementers Ltd. has been in the construction industry for 48 years and is currently undertaking construction of a 28 storey building on Lenana Road. Prior to the first award of the contract to Cementers, the Company had not done any business with NSSF.

Committee Specific Observation

The Committee observed that the requirement set out in the tender documents in the re-advertised tender for having completed two 40-storey building was discriminatory, prejudicial and designed to lock out local (Kenyan) companies from tendering.

4.12.2 Submission by FUBECO Limited

Mr. Shi Zaizhi, Managing Director, FUBECO (China Fushun No. 1 Building Engineering Company Ltd. submitted the following written evidence dated 12th May 2015 on the Company's engagement with NSSF on the matter of NSSF Hazina Towers Project: -

Mr. Zaishi informed the Committee THAT—

1. FUBECO Ltd. tendered for the Project namely “Proposed Hazina Trade Centre Office Towers- Tender Bo. 14/2010-2011 as advertised in the Daily Nation Newspaper of 1st February 2011.
2. They were declared unsuccessful and communication received from NSSF, vide letter dated 7th April 2011, Ref SF/A/10/VOL.XVIII and were requested to collect their Bid Bond vide letter dated 8th April.
3. The Company did not have further communication with NSSF and has no knowledge or evidence on the tender process, evaluation, award or complaints on the project.

4.12.3 Submission by N. K Brothers Ltd.

Mr. Pravin Khoda, Director, N.K. Brothers Ltd. presented the following written evidence dated 13th May, 2015 on the Company's engagement with NSSF on the matter of NSSF Hazina Towers Project: -

Mr. Khoda informed the Committee THAT—

1. The Company responded to the tender notice published in the local dailies on 1st February, 2011 and 16th February, 2011 and consequently submitted their bid on 4th March 2011 with tender amount of KES 6,313,909,101 and expected time frame of 199 weeks.
2. The tenders were publicly opened on 4th March, 2011.
3. The tenders were evaluated by NSSF, who subsequently informed them that their tender was unsuccessful, vide letter Ref. SF/A/10/16/VOL.XVIII dated 7th April 2015.
4. The Company did not lodge any complaints regarding the tender award process as the process was done in conformity with normal tendering procedures.
5. The Company did not participate in the second tender for the project on account of its heavy workload at the time.

4.12.4 Submission by China Wu Yi Co. Ltd.

Mr. Liu Hui, Managing Director, China Wu Yi Co. Ltd. informed the Committee, vide letter dated 19th May, 2015, that the Company participated in the tender for the construction of Hazina Trade Centre Office Towers Tower but lost the bid and accepted the results without reservations.

4.12.5 Submission by Parbat Siyani Construction Co. Ltd.

Mr. Mukesh Halai, Director, Parbat Siyani Construction Ltd. informed the Committee, vide letter Ref. MMH/NACC/001/2015 dated 13th May, 2015, that the Company participated in tender for the proposed NSSF Hazina Trade Centre Office Towers Tower in Nairobi CBD but were unsuccessful. He further added that they did not lodge any complaint or appeal against NSSF's verdict.

4.13 SUBMISSION BY CHINA JIANGXI LTD., HAZINA TRADE CENTRE OFFICE TOWERS CONTRACTOR

Mr. Zhang Jian, Managing Director China Jiangxi Company Limited accompanied by Mr. Zhong Zang, Engineer appeared before the Committee on 28th July, 2015 to adduce evidence on the Tender for the Completion of Hazina Trade Centre Office Towers Project.

Mr. Jian informed the Committee THAT –

1. In January 2011, the National Social Security Fund (NSSF) advertised for the Tender for the Completion of Hazina Trade Centre Office Towers, Nairobi (NSSF Tender No. 14/2010 – 2011).
2. China Jiangxi International participated in the tender and obtained the tender documents after paying the requisite non-refundable fee of KES 5000. The tenders were opened on 4th February, 2011, after which NSSF commenced the evaluation process.
3. Through a letter dated 7th April 2011, the Company received a notification from NSSF to the effect that the tender bid was not successful and were asked to collect their tender security and tender bid bond.
4. Being aggrieved by the decision of NSSF, as communicated through a later dated 7th April 2011, the Company filed a request for review dated 21st April before the Public Procurement Administrative Review Board (PPRAB).
5. The request for review was heard on 13th May 2011. The PPRAB delivered its decision on 17th May, 2011, in which it declared that the tender process was flawed and upheld the

request for review. It accordingly annulled the award of the tender to M/s Cementers Limited and directed NSSF to retender.

6. Being dissatisfied by the decision of the PPRAB, successful bidder Cementers Limited filed a judicial review proceeding in the High Court Being Judicial Review No. 134 of 2011.
7. After hearing the matter, the High Court rendered his Judgement on 29th November, 2012 in which he dismissed the Notice of Motion requesting for judicial review.
8. Cementers Limited, again dissatisfied with the High Court decision filed an appeal at the Court of Appeal vide a notice of Appeal dated 3rd September 2012.
9. The said Cementers also filed an application for stay for execution and injunction being Civil Application No. 2 of 2013. This application was never certified as urgent or heard.
10. The Company was awarded the tender following a fresh tender process, at a contract sum of **6,715,218,188.00** for a contract period of **155 weeks**.

Committee Specific Observation

The Committee observed that following a fresh tender process after nullification of the award to Cementers Ltd., China Jiangxi Ltd. won the tender for the completion of the Hazina Trade Centre Office Towers at a contract sum of 6,715,218,188.00 for a contract period of 155 weeks.

4.14 SUBMISSION BY MR. ATUL SHAH, MD NAKUMATT HOLDINGS LTD.

Mr. Atul Shah, Managing Director Nakumatt Holdings Ltd. accompanied by Advocate, Mr. Manasses Mwangi appeared before the Committee on 18th August 2015 to adduce evidence on the Status the Company's Lease Agreement with NSSF on Hazina Trade Centre Office Towers and its objection to further continuation of the Project.

He informed the Committee THAT-

1. On 12th August 2003, Nakumatt Holdings Limited entered into a lease agreement with NSSF where Nakumatt Holdings leased the entire premises situated on L.R No. 209/6708 Nairobi lying between Monrovia Street and Moktar Daddah Street in the Central Business District of Nairobi, premises otherwise known as Hazina Trade Centre Office Towers. The leased premises comprised basement floors 1, 2, 3 and 4; the ground floor; mezzanine floors 1 and 2; and podium level.
2. The lease agreement was to commence on 1st January, 2004 and run for a period of 20 years, up to 31st December 2023 after which Nakumatt Holdings would quit possession of

- the leased premises. It was a condition of the lease agreement *inter alia* that Nakumatt Holdings Ltd. shall enjoy quiet possession of the leased premises. Nakumatt Holdings Ltd. have not terminated the lease agreement and no notice has been issued requiring termination of the lease agreement. However, NSSF has resulted to harassing Nakumatt Holdings Ltd., interrupting the commercial activities of Nakumatt Holdings and its agents, including customers without just cause.
3. Nakumatt Holdings operates the business of a retail supermarket, trading in the name of 'Nakumatt Lifestyle'. Other tenants and/or agents of Nakumatt Holdings operate the business dealing with foods, drinks, pubs, shops, art shops, beauty shops, banks and other forms of businesses that demand maintenance of high standards of cleanliness and hygiene.
 4. The Nairobi County Government (then Nairobi City Council), having foreseen the haphazard and hurried manner in which the project was being undertaken, had issued several **conditions** which were to be met by NSSF before, during and even after the completion of the project namely: -
 - (i) *The Fund takes responsibility and indemnifies the County against any premise's claims regarding safety of the public and tenants likely to be affected during the development of the Project.*
 - (ii) *Undertake to appraise the pre-construction traffic study report and the subsequent Traffic Management Plan and formulate a responsive post-construction Traffic Management Plan and commit funds to implement the same to support the completed development.*
 - (iii) *The Fund undertakes a full EIA study, complete with full disclosure of the scope of the referred proposal, with full participation of all parties likely to be impacted by the proposed project and avail a written undertaking to implement satisfactory Environmental Mitigation Plan.*
 - (iv) *Provide written commitment to compensate tenants and business operators likely to suffer material or business losses as a result of the implementation of the project.*
 5. These conditions have not been met so far by NSSF before, during and even after the completion of the same project.

6. NSSF required a single tenant and despite the building not being to standard, Nakumatt agreed to lease the whole premises, considering that NSSF was supposed to invest the money that belongs to employees, where Nakumatt is a major employer in the country.
7. The Company sub-let the eateries and the shops, which they could not run or manage but always paid NSSF in one cheque, in tandem with their desire to have one tenant.
8. The leases premises were to be redeveloped up to 28 floors. NSSF needed money, and as it did not have the money, NSSF pleaded with Nakumatt Ltd to lease the building as it was.
9. NSSF wanted one person as a tenant and though the building was not conducive for us, Nakumatt Holdings Ltd. decided to take it up, considering that NSSF was supposed to invest the moneys that belonged to employees, where Nakumatt is one of the major employers in the country. Nakumatt agreed on rent based on usage of the whole premises and they sub-let the eateries and the shops that they could not run or manage but always paid NSSF in one cheque in tandem with their desire to have one tenant.
10. Though the lease provides for future development, the redevelopment was not to be undertaken arbitrarily with impunity and/or in a derogatory and spiteful manner.
11. In March 2011, NSSF indicated that they intended to re-develop 28 more floors and they consequently held a meeting. In April 2013, they requested Nakumatt Holdings to send a representative to their meeting to hear what NSSF was proposing to do. Later on, Nakumatt Holdings saw minutes that were never agreed upon as their representatives in the meeting had their role limited to listening to proceedings of the meeting.
12. Initially, the building was to be redeveloped into 28 floors, then later, the number changed to 36 floors and eventually NSSF indicated that they were constructing 39 floors and these haphazard proposals left Nakumatt Holdings wondering what the true position was and whether NSSF was really settled on what it was proposing to do and how the proposed developments would affect the sitting tenants.
13. Concerned with the safety of the shoppers and members of the general public, the amount of dust generated at the construction site, noise pollution, blockade of entrances to the shopping mall, sanitary standards, injuries that may be occasioned on the public, waste management, security issues and who to bear liability for any injuries, Nakumatt Holdings asked NSSF to terminate the lease to allow them move out of the building so that construction could go on uninterrupted. NSSF objected the termination of the lease and

undertook to develop a comprehensive proposal on how the construction would be undertaken while the shopping mall remained operational.

14. NSSF failed to address the concerns raised by Nakumatt and forcefully commenced redevelopment of the building. Most of the areas under occupation were affected and those businesses closed down and the affected tenants, refused to pay any rent due to loss of business.
15. On commencement of the exercise of strengthening the pillars at the basement, one side of the building was blocked off and entrances to the car park were closed off and this greatly affected the usage of the car park. Further the blocking of the entrance and exit on Moktar Daddah Street impacted on the usage of the street by the public because the scaffolding erected around the blocked entrance blocked off the street as well; thus affecting the business.
16. Nakumatt Holdings Ltd. has lost majority of its customers with a customer base of about 25% being maintained currently. Nakumatt Lifestyle thus risks loss of goodwill and eventual closure.
17. As the unhappy situation continues, NSSF continues to demand full rent, a situation that is hard to understand since Nakumatt Holdings Ltd. operates at an under capacity of 30%. The company considers this to be frustrations intended to force them out of the building.
18. The Directorate of Occupational Safety and Health Services inspected the leased premises and in their report on 26th May, 2014 raised various concerns on the safety of the leased premises.
19. On the 5th of June 2014, they issued a revised report countermanding their earlier one of 26th May 2014. The space of time between the two reports was very short and considering that there was an intervening weekend and a public holiday that fell on a week day, there was no sufficient time for the Directorate to conduct appraisals so as to generate another report and having in mind that NSSF is also a landlord to the Directorate, they got concerned that they could have been improperly influenced to issue a positive report. It is unlikely that the revision was not based on professional considerations.
20. Another concern is that loading more weight on the pre-existing structure without prior strengthening of all the pillars and the continued loading of weight on the said structure

would render the building a liability and a threat to life and safety of its occupants and the members of the public. Strengthening of all columns has not been done.

21. The construction occupied space that was initially under use by Nakumatt and it was imperative to rework the area occupied by Nakumatt, renegotiate the reimbursements of the costs of maintaining hygiene and cleanliness, due to increased dirt and waste as a result of the construction site.
22. Nakumatt attempted to halt the construction by filing Environment and Land Court Case No. 1170 of 2014 Nakumatt Holdings Ltd. Vs the Board of Trustees and another by filing an Application under Certificate of Urgency on 29th August 2014. The case has not been heard.
23. The construction of the Hazina Trade Centre Office Towers is thus being carried out not only irregularly but also in disregard to the constitutional dictates and statutory provisions. For instance, the said construction is in total violation of the principle of sustainable development and it completely and totally disregards legal principles and best practices governing environmental conservation and sustainability. Failure to involve Nakumatt Holdings Ltd. in the goings on in the Project, when Nakumatt Holdings is an affected party is in total violation of Nakumatt's right to fair administrative action as enshrined in Article 47 of the Constitution of Kenya 2010.
24. Nakumatt has suffered losses attributed to the ongoing construction and has made a demand of KES 1,620,148,507 from NSSF, reflecting the current loss suffered so far by the Company due to reduced business tabulated as follows:

Item Description	Cost (KES)
Reduction in Sales	738,419,768.07
Rental Losses	45,06,140.52
Advertising	210,000,000.00
Staff	70,291,204.50
Rental Increase	27,600,000.00
Parking Slots (50)	9,450,000.00
Additional Cleaning Staff	30,558,642.46
Legal Risk (expected claims from tenants)	500,000,000.00
Goodwill/Uncertainty	400,000,000.00
TOTAL LOSSES	2,031,383,755.55

25. It is for these reasons and among others that the court proceedings were instituted against continued implementation of the project and Nakumatt Holdings Ltd. continues to maintain its objections to further construction of the building.
26. If Nakumatt exits the building located in CBD, it will suffer loss of good will and reputation from the public.

Status of the Lease

27. The lease was entered into on 12th August 2003 for a term of 20 years commencing on 1st January 2004 and has not been terminated or notice issued for termination. Despite the failure to terminate the lease, NSSF has been acting in a manner inconsistent with the rights of Nakumatt Holdings Ltd. to enjoy quiet possession of the leased premises. This is an indication of the intention of NSSF to compel Nakumatt Holdings Ltd. to terminate the lease agreement.

Objections to Construction of the Project

28. Nakumatt Holdings Ltd. strongly objects to the continued construction of the project for the following reasons:
 - (i) The construction is being carried out without the necessary regulatory consents and the approvals and without meeting the prerequisite conditions set by the regulatory or approving authority.
 - (ii) The construction is contrary to several statutory and legal provisions, some of which NSSF has failed to remedy, despite the notice requiring them to do so.
 - (iii) The continued construction has gravely and negatively affected the business and interests of Nakumatt Holdings at the leased premises.
29. The impugned construction is in total violation of the constitutional principle of sustainable development, as embodied in Article 10 of the Constitution of Kenya, which binds all public officers and individuals, to observe the rule of law and to treat everyone equally before the law, and not to discriminate any person for whatever reason. Further, the construction violates Article 60 of the Constitution, that requires that land shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable.
30. NSSF is pursuing a scheme of construction eviction against Nakumatt where NSSF is engaging in cryptic and dishonest acts and conduct that has the effect of ensuring that

Nakumatt is no longer able to maintain any meaningful business at Hazina Trade Centre Office Towers, which will eventually lead to Nakumatt vacating the premises. Once Nakumatt leaves the premises, through coercive machinations of NSSF, rather than through the elaborate process set out under the lease agreement, then, Nakumatt will only have itself to blame as it will have no *locus standi* to recover any relief against NSSF but on the other hand, NSSF would maintain a valid claim to recover against Nakumatt for the remainder of the ten years which are now not accounted for. NSSF would have a semblance of cogent argument to the effect that Nakumatt would have voluntarily vacated the demised premises, thereby, terminating the lease agreement unilaterally, contrary to the provisions of the said lease agreement.

Committee Specific Observations

The Committee observed THAT–

- (i) There seems to have been no adequate, meaningful and conclusive consultations or agreement between NSSF and their client Nakumatt Holdings to address the concerns raised by Nakumatt on redevelopment of the building and to resolve the underlying issues related to the lease agreement.
- (ii) Something on the lease agreement if it provided for Nakumatt to give room for NSSF to expand the construction.
- (iii) NEMA ought to have considered the issues which emerged after the original EIA license was issued (namely safety of the public, waste management, traffic management and security) before extending the validity of the same license.

4.15 SUBMISSION BY THE NAIROBI COUNTY GOVERNMENT

Mr. Patrick Tom Odongo, County Executive Committee Member for Urban Planning, Housing and Lands accompanied by Mr. Gregory Mwakanongo (the Acting Nairobi City Government County Secretary), Ms. Rose Muema (Chief Officer Urban Planning), Mr. John Barreh (Director Urban Planning, Mr. Justus Kathenge (Director Housing and Lands) Mr. John Ojwang (Ag. Assistant Director) and Mr. Gad Awuonda (County Attorney) appeared before the Committee on 5th October 2015 to adduce evidence on compliance of the NSSF Hazina Towers Project on plot LR. NO 209/6708 along Monrovia Street with City County Government Building By-laws & Regulatory Framework.

Mr. Odongo informed the Committee THAT –

1. The original plan for the development of the NSSF Hazina Towers Project on plot LR No. 209/6708 along Monrovia Street was approved in 1995. The original plan comprised of 25 floors. However, the development was implemented up to ground, mezzanine 1 and 2 (podium level) with 4 number of basements and 387 parking bays.
2. In 2011, additional 9 floors were approved making a total approved development to 34 floors consisting of 4 basement floors for parking, commercial facilities on the podium levels from ground to mezzanine 2 and offices.
3. In March 2013, the City County renewed development plans for 34 floors, vide building plan Reg. No FE 322.
4. In May 2015, another building plan for renewal was submitted, vide plan Reg. No. FF108 and approved but later the plans were disapproved on 18th September, 2015, when it was discovered that the plot number used to submit the plans was incorrect.
5. A building approval issued by NCCG to execute a project is only valid for 2 years and the developer must commence the project within 12 months after obtaining an approval.
6. The following were **statutory requirements that NSSF was required to comply with:**
 1. Secure the approval of building plans, structural designs and hoarding prior to commencing implementation; which they NSSF did.
 2. Secure the site with an approved hoarding, scaffolding and netting to protect the public and users of the building from dust. The hoarding and dust netting were poorly done. Corrective enforcement action was undertaken.
 3. Developer, contractor and consultants to notify the Nairobi City County Government to undertake statutory inspection as required, a condition which has not been complied with.
 4. During the construction, the contractor was required to ensure that noise is maintained at acceptable level at all times during construction activities – this was partially done leading to complaints by neighbours at times.

NSSF Compliance with Conditions Contained in County Letter Dated 18th December, 2013

7. The above mentioned letter spelt out several performance conditions to be observed during the implementation of the project. Some of these conditions include: -;

- (i) *The Fund indemnifies Nairobi City County against any possible losses regarding safety of the public, claims by sitting and contiguous tenants likely to be affected during the development of the project;*
 - (ii) *Responsive post construction traffic management plan;*
 - (iii) *The Fund undertakes full EIA study with full disclosure of the scope of the project with participation of all contiguous property owners as well as public facilities likely to be impacted negatively by the development;*
 - (iv) *Provide written commitment to compensate tenants likely to suffer material or business losses as a result of the implementation of the development;*
 - (v) *Annual statutory payments to NCCG as per its approved fees and charges;*
 - (vi) *Project Consultants should jointly and severally commit to undertake all statutory inspections and document the same as per the NCCG requirements.*
8. As at the time of their appearance before the Committee, there was no tangible evidence for satisfactory compliance with the conditions by the County.
9. Arising from the above realization that NSSF had failed to comply, NCC wrote a letter to NSSF Ref UP&H/PCED/00100 dated 17th August, 2015 reiterating the need to comply with the condition as earlier set out. In addition, the NCC noticed that the earlier approved building plans and hoarding drawings had expired. Subsequently, an enforcement notice was served on 14th August, 2015 on the developers requiring them to stop further construction until they secure satisfactory approval from NCCG.
10. Though NSSF responded to the NCCG letter dated 17th August, 2015 vide their letter dated 27th August, 2015 Ref. No. SA/A/10/155VOL.XXVII/48, NCCG was of the view that NSSF had not addressed the issues at hand. The last communication to NSSF on the matter was on 7th September, 2015, vide NCCG letter Ref. No. NCC/UP&H/DC/L/OO169/JAO/jnm.

Response to Nakumatt Holdings letter dated 24/3/2014

11. The City County Government could not establish the receipt of the above referred letter. However, Nakumatt Holdings and other tenants operating in the building occupied the premises with full knowledge that the building was incomplete and construction was still to continue.

Complaints Received by NCCG on unforeseen adverse issues concerning the Project

12. The NCCG has received some verbal complaints, especially on noise and corrective action taken accordingly.

Project Status as at October 2015

13. As at 5th October 2015, the construction was at 13th floor. However, after realization that the building plans had expired, an enforcement notice was issued stopping the same until satisfactory approvals are secured by the developer. No construction is taking place. It is however possible to continue with the Project, if all and adequate mitigation measures are put in place.

Committee Observations

The Committee made the following observations: - THAT

- (i) The development is located in a busy and highly congested part of the City with existing occupied development. Nairobi City County Government (NCCG) should therefore not have allowed the developer and the contractor to commence the development prior to complying with all County Government Building By-Laws & Regulatory Framework and the precedent license conditions. It is the responsibility of NCCG to ensure compliance with the attendant laws.
- (ii) Explicit consensus has not been reached with the tenants of the building, owners and the operators of the neighbouring buildings prior to commencement of the construction activities, regarding the inherent potential negative impact on their businesses, safety and logistics, shortage of parking spaces and traffic management plan.
- (iii) The developer and the contractor failed to adequately comply in a comprehensive manner with the project implementing conditions as directed by the NCCG in letters Ref. CPD/ADMIN/006719/JK/jsk dated 20th November, 2013 and Ref. CPD/ADMIN/001105/jsk dated 18th December, 2013 particularly on public safety, environmental impact and security of those of the surrounding properties. The non-compliance led to arrest and prosecution of the contractor on 18th February 2014.
- (iv) The developer (NSSF) failed to make full disclosure of the actual scope of the project when Environmental Impact Assessment for the project was undertaken, and therefore the mitigation measures put in place were inadequate. Thus matters of occupational, health and safety and safe operations of the businesses within the vicinity were not adequately

considered. This has resulted in complaints from the adjacent commercial establishments including Lilian Towers and Methodist University Plaza.

4.16 SUBMISSION BY PROF. GEOFFREY WAHUNGU, DIRECTOR-GENERAL, NEMA

Prof. Geoffrey Wahungu, Director General, National Environmental Management Authority accompanied by Ms. Salome Machia (Deputy Director – Enforcement) appeared before the Committee on 1st October 2015 to adduce evidence on the Environmental Impact Assessment of the Hazina Trade Centre Office Towers.

The Director General informed the Committee THAT–

1. The Environmental Impact Assessment Report for the proposed extension of Hazina Trade Centre Office Towers by additional 34 floors on Plot LR. No. 209/6708 between Moktar Daddah Street and Monrovia Streets, Nairobi CBD was received on 11th April 2011 and was given a reference number NEMA/EIA/5/2/726.
2. The proponent, NSSF, proposed to construct 34 additional floors on the existing building, currently housing Nakumatt Lifestyle supermarket. The works were estimated at KES 2 billion.
3. The EIA Study Reports were dispatched for comments on 12th April 2011 to the lead agencies namely: - Director Housing, Ministry of Housing, Director, Directorate Occupational Health and Safety Services, Department of Physical Planning, Ministry of Lands, Managing Director, Nairobi City Water and Sewerage Company Ltd., Chief Architect, Ministry of Public Works, District Environment Committee and the Town Clerk, City Council of Nairobi.
4. A public notice was prepared on 12th April, 2011 for NSSF to advertise the project in both the Kenya Gazette and the local dailies and submit copies of the adverts to NEMA as evidence of public disclosure. NSSF, submitted copies of advertisements, indicating the advertisements had been done as follows:

The Kenya Gazette – 24th June 2011 and 1st July 2011

The Star Newspaper – 6th May 2011 and 13th May 2011

5. Of all the lead agencies consulted, only the City Council of Nairobi responded, vide a letter dated 16th May 2011. It had no objection to the project, however, it gave specific

recommendations and measures to be observed while undertaking the project. The measures included:

- (i) The proponent obtains the requisite planning permits from the City Council.*
 - (ii) That firefighting equipment be installed at the building*
 - (iii) The proponent puts in place a proper and effective traffic management plan.*
 - (iv) The proponent obtains written clearance from the Kenya Civil Aviation Authority with regard to the height of the building and the aviation routes.*
6. NEMA issued an EIA licence reference 0009531 on 20th September 2011 (**Annex 8**) with the above recommendations. NSSF applied to vary the licence to extend the EIA licence validity period by additional 24 months on the 4th of June, 2013, citing a delay in soliciting of funds. The Authority issued a certificate of variation, allowing the extension of the EIA licence validity period by additional 24 months on 13th June 2013 vide certificate number 000326. (**Annex 10**)

Complaints and Concerns arising from the Project

7. Nginyo Towers had, vide letters dated 9th February 2011, 17th June 2011 and 15th November 2011 complained on issues relating to noise, leaking/burst water pipes and blocked water sewers among others. Gakoi Maina and Company advocates acting for the tenants of the existing building, vide a letter dated 25th February, 2014, complained of disruption of business by the contractor; China Jiangxi International. They also raised the issue of project construction works going on without consultations and due regard to the tenants' safety and security.

Actions Taken by the Nairobi City County Government

8. The Nairobi City County Government, vide a letter dated 22nd July 2013 suspended the renewal of the plan for the development and demanded that: -
- i. NSSF revalidates the EIA to include issues of public safety and safe operations of the businesses within, until the issue of public safety and safe operations of the existing businesses within the vicinity is ensured;
 - ii. The re-validated EIA to include traffic studies and fresh stakeholder participation.
 - iii. The mitigation measures to include the new information arising from the studies.

Actions Taken by NEMA

9. NSSF, on 26th July 2013 sought NEMA's guidance on the validity of the EIA licence and the certificate of variation in light of the letter from the Nairobi City County.
10. NEMA, on 6th August 2013 confirmed the validity of EIA licence and the certificate of variation, but noted that due to the predictive nature of the EIA process, appropriate improvement orders can be issued to NSSF to address any emerging environmental concerns to the satisfaction of the Authority as provided for on the EIA licence conditions.
11. NEMA, through the Nairobi County Office, inspected the site on 12th March, 2014 and confirmed the ongoing preparatory/preliminary works.
12. On the current status of the project, NEMA has established that no construction work is currently being undertaken on site.

Committee Specific Observations

The Committee observed THAT —

- i. NEMA licensed the Hazina Project through issuance of EIA and extended validity of the licence by twenty-four (24) months on 13th June 2013.
- ii. NSSF did not satisfy the outlined conditions specified in the EIA, despite giving assurances to meet and adhere to the licence conditions.
- iii. NSSF duly advertised on The Kenya Gazette – 24th June 2011 and 1st July 2011 and The Star Newspaper – 6th May 2011 and 13th May 2011 for anyone with complaints or reservations on the construction of Hazina Trade Centre Office Towers. The Committee, however, took issue with The Star's limited circulation in the year 2011 and observed that it would have been more prudent to advertise on the Daily Nation and The Standard which have wider circulation than The Star newspaper.
- iv. NSSF did not carry out substantive consultations with the public, Nairobi City Council, tenants in the building and the owners of the other buildings within the vicinity of the proposed project to reach a consensus on how the development will progress without interrupting their businesses and security.

4.17 SITE VISIT TO HAZINA TRADE CENTRE OFFICE TOWERS

The Committee undertook a site visit to Hazina Trade Centre Office Towers on 27th July 2015. In attendance in the meeting were NSSF Senior Management led by Dr. Anthony Omerikwa, Project Consultants (Tana & Associates, Abdul Mullick Associates and Mruttu & Salmann Associates), Nakumatt Holdings represented by the Nakumatt Lifestyle Branch Manager and Project Contractor, China Jiangxi Ltd.

The delegation was given a guided tour of the construction site which included inspection of viewing of column strengthening works using carbon fibre technology. Hazina Trade Centre Office Towers is the second building reinforced using carbon fibre in Kenya.

Project Brief and Status

The Committee heard THAT –

Presentation by NSSF

1. The contractor moved to site on 22 January, 2014 and to date has done column strengthening work from Basement 4 and 3, partly done basement 1 and 2, while the entire 2nd floor is complete. They are yet to gain access to the columns inside Nakumatt Supermarket to strengthen them. The contractor has cast 15 floors.
2. Nakumatt Holdings has sued NSSF for compensation owing to loss of business arising out of on-going construction work that has negatively affected its business. The contractor is therefore unable to proceed vertically to add the remaining floors until all the columns are strengthened, including the ones inside the Supermarket.
3. NSSF further informed the Committee that they put in place the mitigating measures they had agreed with Nakumatt which included construction works being done from one side of the building and not interfering with the supermarket area except the column strengthening works. Though there is no signed agreement on the same, there are Minutes of the meetings between them where they agreed on the column strengthening works and the mitigating measures to be put in place.
4. NSSF Management informed the Committee that the lease agreement with Nakumatt Holdings contained a clause that allowed completion of the building to be undertaken. Several meetings were held with the Nakumatt Managing Director, where they agreed on column strengthening and scheduling of works within the supermarket to reduce interruption.

5. NSSF's Legal Counsel informed the Committee that there was no arbitration clause in the Lease Agreement.
6. Regarding the status of the court case, the Committee heard that NSSF had filed the relevant documents by 7th July, 2015 and both parties were awaiting judgement.
7. The Project Manager NSSF informed the Committee that the contractor, China Jiangxi Limited had notified them of the delays experienced and that if the matter is not urgently resolved there was a possibility of the contractor filing for claims for the period extending beyond the contract period. NSSF however hopes for a speedy resolution to the stalemate with Nakumatt Holdings and the good working relationship with the contractor to forestall any unintended claims.
8. NSSF further informed the Committee that there was fair competition in the award of the tender and that after re-tendering of the project following the PPOA ruling, 7 out of the 10 initial bidders re-tendered but only two proceeded to the financial evaluation stage and China Jiangxi won and was awarded the tender.
9. On the apparent preferential treatment of contract awards to China Jiangxi Ltd., NSSF informed the Committee that the tenders were awarded through an open tendering process. NSSF has so far awarded the Company 5 projects and 4 to EPCO Builders.
10. NSSF management further informed the Committee that Nakumatt Holdings sent them a proposal, asking that their lease be extended by three years during the construction period and in return they would withdraw the court case. Unfortunately, NSSF did not have a functioning Board of Trustees who could ratify the proposal.

Presentation by Nakumatt Ltd.

11. The Branch Manager, Nakumatt Lifestyle Supermarket admitted that Nakumatt Holdings management was aware of the impending completion of the project.
12. There are 66 columns in the building and 39 requiring reinforcement including the ones inside Nakumatt Supermarket. The Branch Manager, Nakumatt Holdings informed the Committee that the columns which require reinforcement are on the 1st, 2nd and 3rd floors in the Supermarket. During the strengthening works, for safety reasons, clients will not be

a) Mavoko Sub County Property

- (i) China CAMC Engineering Company Limited- 86 marks
- (ii) Joel E.D Nyaseme& Associates-77 marks
- (iii) Housing Finance-65 marks

b) Kenyatta Avenue property

- (i) China CAMC Engineering Company Limited- 86 marks
- (ii) Sichuan Huashi Enterprises Corporation(EA) Limited- 72 marks
- (iii) African Legend Limited- 61 marks

10. AIA requested that great emphasis be placed on the details of the bidder's proposals, level of investment and the expected returns to the Fund.

11. On 8th June 2011, NSSF Board of Trustees informed AIA of the approval to proceed to phase II of the works as per the contract. The instructions were as follows:

- (i) **Mavoko Plots:** - a mixed development for self-sufficient township comprising up to 30,000 housing units plus all amenities. The cut off marks for bidders is 60% and therefore African Legend with 61 marks is added to the other three bidders.
- (ii) **Kenyatta Avenue plots:** - a mixed urban complex development with a convention centre and only the three bidders will be invited to participate.

12. The Client NSSF further specified that

- (i) All RFP bidders be subjected to stringent criteria to sift proposals
- (ii) An analysis on the risks of handing over two contracts to one contractor be provided
- (iii) Economic viability of all the concepts be provided.
- (iv) Ensure optimization of the plot coverage
- (v) Clear responsibility levels on joint ventures (where necessary) be indicated.

13. On 14th July 2011, NSSF requested them to revise in line with the standard tender documents and in compliance with PPOA, for procurement of works (Turnkey Projects). AIA forwarded copies of the revised copies of the Request for Proposal draft documents for Mavoko, Kenyatta Avenue and Milimani plots for NSSF to review.

14. On 8th June 2011, AIA received further instructions from NSSF Ref SFG/10/266/Vol 27 (.

15. On 15th June, 2011, the client wrote to them again asking them to forward bid proposals as received from the bidders on the projects. AIA responded the same day under forwarding letter Ref AIA/11/371-CL 003.
16. They were instructed by the Client on 21st June 2011 to proceed and prepare RFP documents. AIA forwarded the same vide letter Ref AIA/11/371-CI 004 dated 8th July 2011 for Mavoko, Kenyatta Avenue and Milimani Projects.
17. On 14th July, 2011, they received a letter from the Client asking them to revise the RFP documents, which they did and forwarded vide letter Ref AIA/11/371-CL 005.
18. There was a lull until 27th September 2012 when NSSF advised AIA that they had been retained as consultants even though the Request for Proposals No. 16 and 17 for captioned projects had collapsed. They were retained in a bid to jump start and fast track the process as follows:
 - (i) *Facilitate the acquisition of various government organs approvals for the projects to proceed.*
 - (ii) *Prepare revised Request for Proposal (RFP) documents after receiving the requisite approvals.*
 - (iii) *Assist in the evaluation of the re-issued bids.*
 - (iv) *All other terms under contract 10/2010-2011 including project management remain as provided in the contracts.*
19. AIA responded, vide letter Ref AIA/11/371-CL 008 dated 28th September, 2012, giving a proposal on how to proceed, based on the aforementioned letter.
20. On 25th June 2014, they wrote to NSSF seeking a confirmation of project status after noticing activity on the Milimani project as advertised in the local dailies.
21. On 23rd July 2014, the Client responded, vide letter Ref SF/A/10/272 VOL II. (5) stating that Stage 2 of the Projects “collapsed” and that “the Fund did not instruct” them to proceed to evaluate and submit recommendations on the Joint Venture Partner to undertake the Joint Venture Project”.
22. NSSF further explained that AIS progressed from Stage 1 evaluation of EOI for which they were paid KES 2,296,800, but Milimani project ceased to be part of the joint venture at this

stage. They proceeded to stage 2 i.e. for Mavoko and Kenyatta Avenue plots and prepared and submitted acceptable Requests for Proposal (RFPs) tender documents for which service you rendered and were paid KES 454,720 all inclusive. However, due to the collapse of stage 2, NSSF did not instruct them to proceed to evaluate and submit recommendation on Joint Venture Partner to undertake the Joint Venture Project and as a result of the failure, AIA was unable to progress to stage 3 and 4 to undertake project management since the contract automatically lapsed at stage 2.

23. AIA wrote back to the Client on 8th August 2014 vide letter Ref AIA/11/371B-CL 002 giving the correct tender reference in lieu of the incorrect one quoted by the Client in their letter Ref SF/A/10/272 VOL II (5) above, maintaining that their contract had not lapsed and also reiterating that they would be entitled to contract fees as the project are implemented.
24. AIA cannot be held responsible for not progressing to the 3rd and 4th stages. They informed NSSF that the project management stage 4 was a distinct and independent component of the contract and was never premised on the failure to progress to stage 3 but was anchored on actual commencement of the project. They contend that the contract does not allude to lapsing or automatic termination except where the consultant becomes unable to provide the services. They therefore contend that they are still contracted by NSSF until the implementation of the projects of Mavoko, Kenyatta Avenue and Milimani. The sites have not moved, they still stand.
25. Vide letter Ref. AIA/11/371B-CL 003 dated 28th October 2015, AIA sought response to the above letter.
26. NSSF responded on 3rd November 2014 vide letter Ref SF/A/10/272/VOL. II. /63 maintaining that their position conveyed vide SF/A/10/272 VOL.II(5) stands.
27. AIA will seek legal redress on the matter since the client has proceed with the projects without their professional input despite the fact that they have been duly retained to offer the services and have also been partly paid.
28. Asked whether acreage in Mavoko Sub County is sufficient for 60,000 housing units, Mr. Munyanya responded that 60,000 units would be too dense for Mavoko Sub County and may not be supported by the local infrastructure and bylaws.

29. The choice of joint venture property however makes good business sense and NSSF requires a lot of resources and the right partner for the joint venture to be successful.

Committee Specific Observations

The Committee made the following observations: THAT–

- i. The process leading to procurement of AIA was not clear since they were randomly picked among others but not subjected to a competitive tendering process as per the PPDA 2005.
- ii. Although NSSF has terminated AIA contract, AIA contends that it was based on the wrong contract and that they are still available to continue with the work they were contracted to do.
- iii. Unless the stalemate is resolved, the tax payer could lose money if AIA proceeds with legal redress.
- iv. It was not clear whether the high density of the Mavoko Project initially projected at 30,000 units but later increased to 60,000 units was allowed in the County by-laws.

4.20 SUBMISSION BY SINOHYDRO TIANJIN ENGINEERING CO. LTD.

Mr. Eric Mutua, Advocate for Sinohydro Tianjin Engineering Co. Ltd. one of the bidders of Mavoko Joint Venture Property Development made the following written evidence vide letter ref. EM/1468/08 dated 12th June, 2015: - THAT–

1. Following a newspaper notice advertised by NSSF on 22nd October, 2013, Sinohydro Engineering Ltd. tendered for the Joint Venture Property Development in Mavoko Sub County on 24th April, 2014.
2. NSSF requested for extension of the bid security for ninety (90) days. The Company subsequently confirmed acceptance of the request and submitted an extended bid security on 27th October, 2014.
3. On 4th February, 2015, the Company was notified by NSSF that the tender had been terminated and was invited to submit new proposals for the project. The Company subsequently submitted the new bid on 15th April, 2015.
4. Vide letter Ref. SF/A/11/60/VOL.1/25 dated 14th May, 2015, NSSF informed the Company that the new tender had also been terminated.

5. The Company entered into a consulting agreement with M/s Reverof Consult International Ltd. to provide expertise services in documentation for the tender and ensure compliance with the relevant laws. The said agreement was however terminated on 1st December, 2014 without performance from either party.
6. The Company informed the Committee that it was not involved in the Kenyatta Avenue Project.

4.21 SUBMISSION BY REVER OF CONSULT INTERNATIONAL LTD

Mr. Kioko Kilukumi, advocate for Mr. Solomon Muthamia who is a representative of Reverof Consult International Ltd., informed the Committee vide letter Ref. KK/GEN/SM/012/2015 THAT–

1. Reverof Ltd. entered into a contract with Sinohydro Tianjin Engineering Co. Ltd. to provide consulting services. Art. 1.2 and 1.3 of the consultancy agreement stated that there was no partnership and agency between the contracting parties.
2. Art. 3 of the Consulting Agreement further specifies that Reverof's role was to ensure that the tender documents were correctly completed and in compliance with the applicable procurement laws and practices in Kenya.
3. Reverof Ltd. was involved in the tendering process of the Mavoko Project and its involvement was limited to the terms of the consultancy service agreement dated 30th June, 2014.
4. Mr. Muthamia signed the agreement with Sinohydro Tianjin Ltd. as a duly authorized representative of Reverof Consult International Ltd., a foreign company registered in the United Arab Emirates.
5. The Agreement was cancelled on 1st December 2014 and Reverof Ltd. had no further dealings regarding the project.
6. In accordance with Art. 5.1 of the Agreement, Reverof Ltd. was to be paid upon the award of the tender to Sinohydro Tianjin Engineering Co. Ltd. Since the tender was terminated, no payment was made to Reverof Ltd.

5.0 COMMITTEE GENERAL OBSERVATIONS

GENERAL OBSERVATIONS ON THE COMPLETION OF THE NSSF HAZINA TRADE CENTRE OFFICE TOWERS IN THE NAIROBI CENTRAL BUSINESS DISTRICT

From the oral and written evidence submitted, the Committee made the following general observations and findings —

- (i) **THAT**, the procurement process for the completion of the NSSF Hazina Trade Centre Office Towers in Nairobi Central Business District was shrouded in opaqueness and as such, the process lacked fairness, equity, transparency and competitiveness.
- (ii) **THAT**, approval for the project from the then Nairobi City Council was conducted before the full scope of the project was determined to establish traffic management master plan, public safety environmental and social risks the project poses to businesses operating within the vicinity, neighbouring buildings and streets due the nature of the site.
- (iii) **THAT**, there was an oversight in renewal of the building plan approvals and extension of the National Environment Management Assessment Authority (NEMA) licence, in that, renewals were undertaken without appropriate validation of the Environmental Impact Assessment and traffic study report. This means that urban development changes that have taken place over the period which have a bearing on the proposed development in as far as planning and environmental acceptability is concerned, were not reviewed and taken into consideration.
- (iv) **THAT**, Mr. Alex Kazongo, the former Managing Trustee reappointed the consultants on 1st December, 2010 without subjecting them to a competitive procurement process. The reappointment letters referred to a project which had commenced but stalled twelve years earlier. This was in total disregard of Articles 3 and 227 of the Constitution and the Public Procurement and Disposal Act, 2005.
- (v) **THAT**, the revival and the enhancement of the Hazina Trade Centre Office Towers Project in the year 2013 should have been treated as a new contract and thus subject to the Public Procurement and Disposal Act, 2005. The re-engagement of the Project Consultants from the original project to oversee the enhanced Hazina Tower Project, therefore, was in breach of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

- (vi) **THAT**, China Jiangxi International Ltd. was found to have made an arithmetic error of KES 115,329,300 in its financial bid. The Company accepted the arithmetic error and consequently adjusted their tender sum upwards from KES 6,599,888,888 to KES 6,715,218,188. NSSF informed China Jiangxi about the arithmetic error after the evaluation process and not before, contrary to Section 63 of the PPDA 2005 and clause 5.7, Instruction to Bidders, in the bid document.
- (vii) **THAT**, the financial evaluation of the tender for the completion of the NSSF Hazina Trade Centre Office Towers was not carried out by an Evaluation Committee established in accordance with Regulation 16(7) of the Public Procurement and Disposal Regulations, 2006. This is evidenced by a letter Ref. No. TA/454/13 from Tana & Associates dated 7th February, 2013 forwarding the financial evaluation report. In addition, the unsigned report did not recommend which firm was to be awarded the tender although from the Report, China Jiangxi International (K) Ltd. was the lowest evaluated bidder even after correcting the arithmetic error of KES 115,329,300.
- (viii) **THAT**, the successful bidder repeated provisional sums for some un-quantified works in the Bill of Quantities (BQ) in its financial bid documents. For example, in the BQ for sub contract for mechanical ventilation and air conditioning installation, which tellingly the Fund failed to subcontract against the mandatory tender requirements, the following provisional sums were provided:
- (a) *PC for Plenum Chamber and associated works = KES 5,000,000*
 - (b) *PC for basement fans automation = KES 5,000,000*
 - (c) *Provisional Sum for contingency sum = KES 2,000,000*
- Still in the same BQ the Company included the following provisional sums: -*
- (d) *Provided the sum of KES 80,000,000 to cover the cost of mechanical builders in plenum chambers, fans in basement and services refurbishment and interconnection.*
 - (e) *Under the subcontract for mechanical ventilation and air conditioning, China Jiangxi International (K) Ltd. was the sub-contractor at KES 33,973,867 which included provisional sums of KES 5,000,000; KES 5,000,000; and KES 2,000,000*

(f) The total tender sum of KES 6,715,218,488 awarded to China Jiangxi International (K) Ltd. included all these provisional sums listed above that is KES 80,000,000; and KES 2,000,000.

This double provision may have significantly escalated the cost of the project and loss of funds, and the Fund, therefore, stands to lose funds through double counting.

- (ix) THAT,** China Railways No. 5 Engineering Group Co. Ltd. and China Wu Yi Ltd. did not provide Certificate of Incorporation which was a mandatory requirement, but were considered responsive during preliminary evaluation against the provisions of Section 64(1) of the Act. The failure to disqualify the two firms was inconsistent with Regulation 48(1) of the PPDR 2006 and this may have been done to make the process appear competitive. The procuring entity did not correct errors noted in the financial bid of the successful bidder in accordance with Section 63 of the Act and clause 5.7, Instruction to Bidders, in the bid document.
- (x) THAT,** the Evaluation Committee failed to adhere to the provisions of Section 64(1) of the Act by not considering the audited accounts of the joint venture partners (sub-contractors) of the winning bid and in consequence made the Company responsive.
- (xi) THAT,** the Fund failed to put in place satisfactory mitigation measures during the construction of the Hazina Office Towers and as a result the Nairobi City County issued an order putting in abeyance the proposed development of the office towers from July 2013 to December 2013.
- (xii) THAT,** the Nairobi City County Government approved the building plan for the enhanced project subject to vacation by all existing tenants including the main tenant Nakumatt Holdings Ltd. This is bound to attract compensation claims for loss of business and breach of an existing 20-year lease tenancy agreement entered into by the Fund (lessor) and Nakumatt Holdings Ltd. (lessee).
- (xiii) THAT,** Nakumatt Holdings Ltd has sued the Fund vide Milimani Land Case No. 1170 of 2014 for among others, seeking to restrain NSSF from continuing with construction of Hazina Trade Centre Office Towers until all the contentious issues are settled including compensation for loss of business amounting to KES1.6 billion. This negates the very objective for which the project was conceived, which is, return on investments for its members.

- (xiv) **THAT**, the NSSF may not realize value for money owing to the delay in completing the Project, which will likely attract claims from the Contractor. Further, should the Fund abandon strengthening of the columns as per State Department of Public Works' advice, the Fund will have made a loss of KES 244,728,603, which is 3.6% of the tender figure of KES 6,715,218,488. The amount already spent on column strengthening is KES 192, 925,750.00. The remaining column strengthening works amounts to KES 51,802,853.
- (xv) **THAT**, on governance matters, the Fund has had a high turnover of Managing Trustees. For instance, between the years 2010 and 2017, the Fund has had five (5) Managing Trustees managing the Fund. This high turnover affected the effective implementation of various projects including the Hazina project.

OBSERVATIONS ON THE JOINT VENTURE PROPERTY DEVELOPMENT IN MAVOKO SUB-COUNTY AND KENYATTA AVENUE (NAIROBI CBD)

a) The Joint Venture Property Development in Mavoko Sub-County

The Committee made the following observations:

- (i) **THAT**, there is disparity in acreage of land for the proposed project development. According to PPOA, 960 acres are available while NSSF informed the Committee that 1,010 acres are available. It's not clear what the true position is and this also has a bearing on the value of the exact land available for development.
- (ii) **THAT**, the Fund's Mavoko land is an expansive parcel of land which has been lying idle since 1993 when it was acquired and there are fears of encroachment by squatters. In 2010, the Board, while reviewing its idle assets and upon the recommendation of management, decided to tender for Expression of Interest from international bidders seeking optimal use of the land.
- (iii) **THAT**, the Board of Trustees approved the development of the land through a joint venture scheme, whereby NSSF was to contribute land (10%) while the winning bidder would inject cash (90 %) necessary to build 20,000-30,000 houses with amenities targeting (lower) middle class owners. The profit from this development would be shared proportionately to capital contribution.
- (iv) **THAT**, the procuring entity was advised by PPOA that the original tender was invalidated by enactment and implementation of the Public Private Partnership (PPP) Act, 2013, and the law cannot, therefore, be applied retrogressively. Despite the advice, the Fund proceeded to

invite for new tenders through restricted tendering method using the list of the bidders of the lapsed tender. It was improper for the Fund's Tendering Committee to use a list of bidders who responded to a terminated tender. The Fund should have instead conducted the re-tendering process through open tendering.

- (v) **THAT**, further, the Cabinet approval on the project was a policy decision, but not necessarily an approval of procurement and compliance to procurement regulations by the contracting entity.
- (vi) **THAT**, the tender was terminated on 13th May, 2015 owing to negative publicity surrounding it. The termination was done in accordance with section 36(1) of the Public Procurement and Disposal Act, 2005 on recommendation of the Tender Processing Committee.
- (vii) **THAT**, although the tender was cancelled, public funds were spent in the procurement process of the joint ventures as well as in advertisements to cancel the tender.

(a) Kenyatta Avenue (Nairobi CBD)

The Committee made the following observations:

- (i) **THAT**, the Fund planned to undertake a development on 3.6 acres of land it owns along Kenyatta Avenue in Nairobi Central Business District in order to improve returns on investment. Currently, the piece of land is not optimally utilized other than capital appreciation.
- (ii) **THAT**, the development was approved by the Board's Operation and Investment Committee in its 13th meeting held on 31st August, 2010.
- (iii) **THAT**, International Request for Proposals (IRFP's) No. 8/2013 – 2014 for Joint Venture Property Development in CBD was advertised on 22nd October, 2013.
- (iv) **THAT**, the closing and opening of the IRFPs for the project was successfully concluded on 22nd April, 2014, two firms responded. Following the implementation of the PPP Act, 2013, the Fund sought clarification from the Public Private Partnership (PPP) Unit on whether the Kenyatta Avenue project as originally conceptualized fell under the PPP arrangement.
- (v) **THAT**, the tender was terminated on 13th May, 2015 owing to negative publicity surrounding it. The termination was done in accordance with section 36(1) of the Public Procurement and Disposal Act, 2005 on recommendation of the Tender Processing Committee.

(vi) **THAT**, the Cabinet approval on the project was a policy decision, but not necessarily an approval of procurement and compliance to procurement regulations by the contracting entity.

(vii) **THAT**, although the tender Kenyatta Avenue was cancelled, public funds were spent in the procurement process of the project as well as in advertisements to cancel the tender.

6.0 COMMITTEE GENERAL RECOMMENDATIONS

From the evidence adduced (oral and written) and the observations made, the Committee recommends as follows:

(i) **THAT**, the Ethics and Anti-Corruption Commission investigates the conduct of Mr. Alex Kazongo, the former Managing Trustee for contravention of Section 74 of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 in the re-appointment of the Project Consultants for the revived Hazina Trade Centre Office Towers project. This re-appointment of consultants is tantamount to direct procurement.

The Ethics and Anti-Corruption Commission to report to the National Assembly, the implementation status of this recommendation, not later than six (6) months after the adoption of this Report;

(ii) **THAT**, the Fund and all State Corporations in general, must strictly adhere to the requirements of the Constitution of Kenya, the Public Procurement and Asset Disposal Act, 2015 and the Public Finance Management Act, 2012 in the implementation of projects. Sufficient due diligence should be carried out prior to project implementation to avoid claims and losses that may accrue from interrupted implementation, similar to the Hazina Trade Centre Office Towers Project, for which Nakumatt Holdings Ltd. is claiming KES 1.6 billion for losses incurred through breach of contract;

(iii) **THAT**, the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development should urgently convene a meeting of all relevant stakeholders to agree on the structural viability of the Hazina Trade Centre project and its completion at minimum cost within the stipulated timelines.

The Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development to report to the National Assembly, the implementation status of this recommendation, not later than three (3) months after the adoption of this Report;

- (iv) **THAT**, the impasse between NSSF and Nakumatt Limited ought to be urgently resolved in the interest of the public, to allow for completion of the project.

The Managing Trustee, NSSF to report to the National Assembly, the implementation status of this recommendation, not later than three (3) months after the adoption of this Report;

- (v) **THAT**, in future, the Fund should conduct a feasibility study on capital projects to determine the viability of the investments before commencement of the projects;
- (vi) **THAT**, the Fund should urgently secure its property in Mavoko to avoid encroachment by private developers;
- (vii) **THAT**, to mitigate against the high turnover of Managing Trustees, the NSSF Act should be amended with a view to improving the governance structure of the Fund and provide for security of tenure for the Managing Trustee.

CONCLUSION & WAY FORWARD

Taking into account the inordinate delay to complete the Hazina Trade Centre Office Towers project, the opportunity cost, contractual obligations and the colossal amount of funds already spent on the Project in the completion, **the most prudent and reasonable way-forward for the project is for all the concerned parties including the National Social Security Fund, the Ministry of EAC, Labour and State Protection, the Ministry of Transport, Infrastructure, Housing and Urban Development, the Nairobi City County Government, the Project Consultants and Nakumatt Holdings Limited, to urgently address the contentious issues hindering completion of the Project. This will create a conducive environment for the contractor to meet his contractual obligations as per the contract and ensure that the Project is completed as envisaged and pensioners obtain value for their money.**

ANNEXURES

ANNEX I

BOARD OF TRUSTEES

Telegrams: "AKIBA", Nairobi
Telephone: Nairobi 2729911/2729494/2710552
Fax: 2710957
E-mail: mt@nssfkenya.co.ke
info@nssfkenya.co.ke
When replying please quote

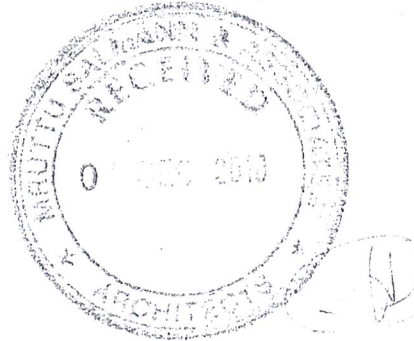


NATIONAL SOCIAL SECURITY FUND
SOCIAL SECURITY HOUSE
P. O. BOX 30599
NAIROBI, KENYA

SF/A/10/155 VOL.XXIV/72

1st December, 2010

Mruttu Salman & Associates
Architects
P O Box 12986-00400
NAIROBI



Dear Sirs

**RE: DEVELOPMENT OF OFFICE AND SHOPPING COMPLEX
MONROVIA STREET, NAIROBI – LR NO.209/6708 –
COMPLETION OF TOWER FOR OFFICES**

Following restructuring of the above referenced project in 1998 which led to omission of the building's office tower and subsequent completion of the shopping complex, the Fund intends to commence and complete the tower with some amendments as originally designed.

Subsequently, we are pleased to inform you of your re-appointment as the Consulting Architects for the above project.

The terms of Commission and Scale of Fees are in accordance with the latest "Conditions of Engagement and Scales of Fees for Professional Services for Building and Civil Engineering Works" issued by the Ministry of Public Works. Your attention is particularly drawn to Sections 200 and 300 of the said conditions.

The details of the Project for which you are commissioned will be passed to you.

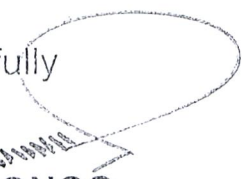
1 XENNA

You are expected to confirm that you are in a position to undertake this work immediately and complete it without undue delay.

You are further required to provide the names of staff in your firm to be assigned to the Project and their expected roles/input.

Please find attached two copies of the Memorandum of Agreement which you should complete and endorse to signify your acceptance of this Commission. One copy will be returned to you after execution by the Client.

Yours faithfully


ALEX KAZONGO
MANAGING TRUSTEE

C.C. Tana & Associates
Quantity Surveyors
P O Box 52768-00200
NAIROBI

Kisa & Partners
Electrical & Mechanical Engineers
P O Box 60203
NAIROBI

Abdul Mullick Associates
Structural/Civil Engineers
P O Box 47530
NAIROBI

Enclosure

FEASIBILITY REPORT

FOR

NSSF COMPLETION TOWER DEVELOPMENT AT
HAZINA TRADE CENTRE - NAIROBI

FEBRUARY, 2011

Prepared by:
Tana & Associates
Quantity Surveyors
P.O. Box 52768 - 00200
NAIROBI

FR/2011

Introduction:

1. This study constitutes a financial evaluation of the proposed development of office space and refurbishment of existing shopping mall situated in the Nairobi Central Business District (NCBD) between Moktar Daddah and Monrovia Streets. The objectives of the evaluation is to conceptually assess the viability of the proposed development as a basis of justifying the development to the developer. From the outset it is presumed that the developer will finance the project from own sources. The developer is NATIONAL SOCIAL SECURITY FUND (NSSF).

Proposed Project:

2. The project will be developed on one phase and will constitute:-
 - Two Office Towers rising from and including the existing building to a maximum of the thirty sixth floor in one of the Towers.
 - There is a Helipad and Communication Tower on the 35th and 36th Floors.
3. The proposed structure when fully complete is expected to give a highly savy outlook which stands out as a land mark on this part of the NCBD with its unique exterior disposition and well selected finishes both externally and internally.
4. It is envisaged that the proposed structure will revolutionise and awaken ~~this part of NCBD with the provision of all shopping, entertainment, recreational, banking and office facilities under one roof.~~ The proposed structure will comprise of the following features:-
 - A well articulated skylit arcade with shopping malls, restaurants, cafeteria, banks etc.
 - The Office Towers.

- Well designed office floors with possibility of executive ensuite offices and sufficient cross ventilation to floors.
 - Plenty of volumes and light in the arcade with plenty of innovative designs texture to attract prospective customers.
5. The breakdown of the total built up area and proposed lettable areas of the building is provided in Table 1 Page 9.
 6. The proposed lettable floor area represents 85% of the total built up area measured over the walls, staircases and lifts.

Project Planning:

7. The project proposal assumes that the project will be completed in three years from date of commencement. If construction started in 1st July, 2011 it will be complete by 31st June, 2014. Occupation can be counted as from 1st July, 2014.
8. The letting of space will start one year before actual completion so that all or most of the leases are concluded by completion date. This will reduce the period the space will stay unoccupied.
9. The preliminary cost estimates for the complete construction is Kshs. 6,631,825,234.00 and it is outlined on Table No. 2 on pages 10 and 11.

Proposed Financing and Arrangements:

10. Of the Kshs. 6,631,825,234.00 required, it is envisaged that with four quarters per year and a total of twelve quarters for three years, the Developer NSSF will provide the finance on batches of about 550,000,000.00 million per quarter. This will mean maturing the locked investments per quarter and minimising loss of interest.

The first batch will therefore be available on commencement. The next eleven batches will only be matured quarterly progressively.

11. The interest lost on the matured batches is not put in as a cost and it assumed easily recoverable as part of the investment.

Capital Funds Disbursements:

12. At table 3 on pages 12 and 13, we provide the expected capital funds disbursements schedule for the project. The table assumes that:
- Amount certified to be available for construction amounts to Kshs. 552,652,102.00 quarterly and will be certified and disbursed monthly subject to 10% retention, provided that such retention does not exceed 5% of the total construction costs.

In this case, the maximum retention amounts retained is Kshs. 331,591,260.00 which are paid out half the amount on completion and the entire balance six (6) months after the construction is complete.

Financial Analysis:

13. The financial analysis undertaken in respect of proposed project reflects the need to satisfy the developer of the viability of the project in terms of return on investment on the used funds, and of its ability to generate sufficient funds to recoup the used funds and interest regularly and comfortably. Accordingly, the analysis is for a period of 53 years comprising:
- 3 years pre-operational during construction when funds are disbursed and
 - The first 14 years of occupancy of the building during which the used funds are proposed to be recouped.
 - The next 36 years which in total with the 14 years constitute the economic life of the building, 50 years.

14. In order to facilitate the financial analysis, it has been found necessary to make certain assumptions about future operating income and the various costs associated with the project which in our view are consistent with the existing real estate development in Nairobi City. The assumptions are discussed herein below under the following main headings;

- Complex occupancy
- Rental charges
- Lease conditions
- Management
- Operating expenses

Office Complex Occupancy:

15. No specific market study has been undertaken exclusively for the purpose of this evaluation. However sampled data for the similar various facilities from Leading Real Estate Agents has been used. The project proposal assumes that it will not be possible for the entire block to be fully let at all times, reflecting interlia, the potential mismatch between cessation of various tenancies and the formalization of new leases.

16. Specifically, the purpose of our financial evaluation, the project proposal assumes the following fairly conservative average occupancy rates for the different facilities provided in the complex namely that:

-
- The offices are expected to have an average occupancy rate at 60% during year 1, rising to 70% in year 2 and 80% in year 3 and 95% in subsequent years.

Operating Expenses:

20. The following assumptions have been made with respect to operating expenses namely:-

- Utilities and maintenance costs will amount to 1% of the value of property, beginning the first year of occupation, rising by 5% of the basic costs in subsequent years.
- Insurance costs will amount to 10 million in year 1 - 2 rising by 10% every two years.
- ~~Renovation expenses will amount to Kshs. 10 million every 5 years and increased as the building ages. Major renovations will be delayed until year 15, when payback is achieved.~~
- The costs of formalizing and renewing leases and the costs of utilities will be borne by the leases.

Results:

21. In the following paragraphs, we discuss the results of financial analysis under the main headings, namely:-

- Project cash flows
Adequate cash flows indicated the project can sustain itself, particularly if this is so on the earlier years of construction and occupation.
- Return on investment.
And adequate return on investment satisfies the developers (NSSF) expectations.

Project Cash flows:

22. At table 4 on pages 14 to 21, we provide the projects cash flows under the basic assumptions. The table indicates positive cash flow of Kshs. 110 million from year 1 increasing progressively to a cumulative of Kshs. 6,838,368,407.00 on the 14th year. This means that this project will not need further injection of funds apart from the investments funds set aside. This again is an indication of a FEASIBLE and VIABLE project with a PAYBACK period of just over 13 years.

Return on Investment:

-
23. In this section, we provide our analysis of the return of investment under two main techniques:
- Net present value
 - Internal rate of return

Net Present Value:

24. At table 5 on page 22, we provide a calculation of the project's net present value using a discount of 20% as a surrogate of the cost of capital. The net cash flows shown at the column 2 of the table is arrived at from the net cash flows at table 4. We also assume that the net cash flow realised in year 14 will be maintained in the period years 15 - 40. Fourty years being the time horizon of economic value of the property. The table shows a net present value of a negative Kshs. 4,319,905,725.00.
-
25. A similar analysis table 6 on page 23 with a discount rate of 6% results in a NPV of a positive Kshs. 4,940,564,880.00.

Internal rate of return:

26. The NPV calculations presented above indicated that the project's internal rate of return (IRP), i.e the rate of return which equals NPV to zero, lies somewhere between 6% and 20%. The differences between NPVs 6% and 20% totals to Kshs. 9.26 billion (being Kshs. 4.32 billion and Kshs. 4.94 billion respectively). The project's IRP is thus obtained by assuming that the project's NPV equals zero at point represented by the fraction 4.94/9.26 between 6% and 20% as follows:-

$$\begin{aligned} \text{IRP} &= 6\% + (4.94/9.26) * (20\% - 6\%) \\ &= 6\% + (0.53 * 14\%) \\ &= 6\% + 7.47\% \\ &= 13.47\% \end{aligned}$$

Say 14%

Conclusion:

27. On the basis of the various analysis undertaken, in respect of this project. We conclude that the proposed project is a financially viable proposition under the basic assumption (which are nonetheless very conservative). The analysis demonstrates a healthy cash flow situation right from beginning thus avoiding any need for cash injection mid stream. The calculated internal rate of return at 14% is clearly an indication of a sound investment.

It must however be understood that a study of investment of this size and time stretch is based on reasonable assumptions to hold and any other marginal factors in play will bear on the actuals which for the purposes of the report is assumed to be within a marginal error tolerance.

Table No. 1

SCHEDULE OF APPROXIMATE LETTABLE AREA AND EXPECTED INCOME

LETTABLE AREAS

Approximate total built up area	39,612 sq. metres
Approximate lettable area (85%)	33,671 sq. metres

EXPECTED INCOME

Approximate lettable area	33,671 sq. metres
-----------------------------------	-------------------

Expected letting rate per sq. metre on completion	Kshs. 860 per month (80.00 per sq. ft)
---	---

Total expected income for FIRST year if full occupancy Kshs. $33,671 \times 860 \times 12 \times 60\%$

Kshs. 347,484,720.00

EXPECTED SERVICE CHARGE

Expected service charge for <u>FIRST</u> year if full occupancy Kshs. $347,484,720.00 \times 20\%$..	Kshs. 69,496,944.00
---	---------------------

Total Expected Income and Service Charge for First Year of full occupancy .. Kshs. 416,981,664.00

EXPECTED AVERAGE OCCUPANCY:

Year 1	:	60%
Year 2	:	70%
Year 3	:	80%
Year 4 and thereafter	:	95%

Table No. 2

PROPOSED COMPLETION OF OFFICE BLOCK TOWERS AT HAZINA
TRADE CENTRE

PRELIMINARY COST ESTIMATES

MAIN WORKS:

1.01: The Office Towers	Kshs. 3,326,880,472.00
1.02: Demolitions and Refurbishment of the existing centre	Kshs: 361,441,505.00

SPECIALISTS WORKS:

1.03: Electrical Installations	Kshs. 564,327,370.00
1.04: Plumbing and Drainage	Kshs. 206,811,775.00
1.05: Fire Fighting Installation	Kshs. 173,712,885.00
1.06: Structured Cable Installation	Kshs. 110,601,527.00
1.07: Mechanical Ventilation and A/C	Kshs. 63,609,000.00
1.08: Integrated BMS	Kshs. 43,160,000.00
1.09: Standby Generators	Kshs. 10,583,030.00
1.10: Window Cleaning Systems.. .. .	Kshs. 111,370,000.00
1.11: Hoisting Cranes Systems	Kshs. 13,500,000.00
<u>Carried Forward</u>	Kshs. 4,985,997,564.00

Table No. 2

Brought Forward . Kshs. 4,985,997,564.00

EXTERNAL WORKS:

1.12: Pavings and Drainage and all External
associated works Kshs. 15,747,670.00

P.C AND PROVISIONAL SUMS:

1.13: Selected works, fluctuations and
contingencies Kshs. 1,165,080,000.00

PRELIMINAARIES:

1.14: Operational costs Kshs. 465,000,000.00

Preliminary Cost Estimates Kshs. 6,631,825,234.00

Table No. 3

CAPITAL FUNDS DISBURSEMENT SCHEDULE

KSHS.

TOTAL FUNDS : 6,631,825,234.00

<u>Period</u>	<u>Amount certified for construction</u>	<u>Retention on construction</u>	<u>Total Disbursement</u>	<u>Total Cash Flow</u>
July, 2011	-	-	-	-
September, 2011	552,652,102.00	(55,265,210.00)	497,386,892.00	497,386,892.00
December, 2011	552,652,102.00	(55,265,210.00)	497,386,892.00	497,386,892.00
March, 2012	552,652,102.00	(55,265,210.00)	497,386,892.00	497,386,892.00
June, 2012	552,652,102.00	(55,265,210.00)	497,386,892.00	497,386,892.00
September, 2012	552,652,102.00	(55,265,210.00)	497,386,892.00	497,386,892.00
December, 2012	552,652,102.00	(55,265,210.00)	497,386,892.00	497,386,892.00
March 2013	552,652,102.00	-	552,652,102.00	552,652,102.00



Table No. 3

Table No. 3 Contd:

<u>Period</u>	<u>Amount certified for construction</u>	<u>Retention on construction</u>	<u>Total Disbursement</u>	<u>Total Cash Flow</u>
June, 2013	552,652,102.00	-	552,652,102.00	552,652,102.00
September, 2013	552,652,102.00	-	552,652,102.00	552,652,102.00
December, 2013	552,652,102.00	-	552,652,102.00	552,652,102.00
March, 2014	552,652,102.00	-	552,652,102.00	552,652,102.00
June, 2014	552,652,102.00	165,795,630.00	718,447,732.00	718,447,732.00
December, 2014	-	165,795,630.00	165,795,630.00	165,795,630.00
	6,631,825,234	0	6,631,825,234.00	6,631,825,234.00

Note: Although this schedule is shown on quarterly basis for convenience of tabulation, actual payments to the Contractor are on monthly basis. A monthly cash flow is therefore divided by three (3) for each quarter.

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Table No. 4

PROPOSED COMPLETION TOWER DEVELOPMENT AT HAZINA TRADE CENTRE, NAIROBI

PROJECTED CASH FLOWS

	Pre-operational	Year 1	Year 2	Year 3	Year 4
<u>INFLOWS</u>					
Equity (Construction Cost)	6,631,825,234.00	0	0		
<u>RENTAL INCOME</u>					
Office Block	0	208,490,832.00	229,339,915.00	333,585,331.00	416,981,664.00
Service Charges	0	41,698,166.00	45,867,983.00	66,717,066.00	83,396,332.00
Total Cash Inflows	6,631,825,234	250,188,998.00	275,207,898.00	400,302,397.00	500,377,996.00
Investment Cost	6,631,825,234	0	0	0	0

Table No. 4

	Year 1	Year 2	Year 3	Year 4
Pre-operational				
<u>OPERATIONAL EXPENSES</u>				
Utilities and Maintenance) 0	120,000,000.00	126,000,000.00	132,300,000.00	138,915,000.00
Management Fee) 0	10,000,000.00	10,500,000.00	11,025,000.00	11,576,250.00
Renovation Expenses) 0	0	0	0	0
Insurance Costs) 0	10,000,000.00	10,000,000.00	11,000,000.00	11,000,000.00
Interest payment) 0	0	0	0	0
Total Cash Flows	140,000,000.00	146,500,000.00	154,325,000.00	161,491,250.00
Net Cash Flows	110,188,998.00	128,707,898.00	245,977,397.00	338,886,746.00
Cumulative Cash Flows	110,188,998.00	238,896,896.00	484,874,293.00	823,761,039.00

Table No. 4

PROPOSED COMPLETION TOWER DEVELOPMENT AT HAZINA TRADE CENTRE, NAIROBI

PROJECTED CASH FLOWS

	Year 5	Year 6	Year 7	Year 8
<u>INFLOWS</u>				
Equity (Construction Cost)	6,631,825,234.00	0		
<u>RENTAL INCOME</u>				
Office Block	416,981,664.00	500,377,996.00	500,377,996.00	600,453,595.00
Service Charges	83,396,332.00	100,075,599.00	100,075,599.00	120,090,719.00
Total Cash Inflows	500,377,996.00	600,453,595.00	600,453,595.00	720,544,314.00
Investment Cost	0	0	0	0

Table No. 4

	Year 5	Year 6	Year 7	Year 8
Pre-operational				
<u>OPERATIONAL EXPENSES</u>				
Utilities and Maintenance) 0				
Management Fee) 0				
Renovation Expenses) 0				
Insurance Costs) 0				
Interest payment) 0				
	145,860,750.00	153,153,787.00	160,811,476.00	168,852,049.00
	12,154,800.00	12,762,540.00	13,400,667.00	14,070,700.00
	10,000,000.00	0	0	
	12,100,000.00	12,100,000.00	13,310,000.00	13,310,000.00
	0	0	0	0
Total Cash Flows	6,631,825,234.00	178,016,327.00	187,522,143.00	196,232,749.00
Net Cash Flows	0	422,437,268.00	412,931,452.00	524,311,565.00
Cumulative Cash Flows	0	1,566,460,753.00	1,979,392,205.00	2,503,703,770.00

Table No. 4

PROPOSED COMPLETION TOWER DEVELOPMENT AT HAZINA TRADE CENTRE, NAIROBI

PROJECTED CASH FLOWS

	Year 9	Year 10	Year 11	Year 12
<u>INFLOWS</u>				
Pre-operational				
Equity (Construction Cost)	0	0		
<u>RENTAL INCOME</u>				
Office Block	600,453,595.00	720,544,314.00	720,544,314.00	864,653,176.00
Service Charges	120,090,719.00	144,108,862.00	144,108,862.00	172,930,635.00
Total Cash Inflows	720,544,314.00	864,653,176.00	864,653,176.00	1,037,583,811.00
Investment Cost	0	0	0	0



Table No. 4

	Year 9	Year 10	Year 11	Year 12
Pre-operational				
<u>OPERATIONAL EXPENSES</u>				
Utilities and Maintenance) 0				
Management Fee) 0				
Renovation Expenses) 0				
Insurance Costs) 0				
Interest payment) 0				
	177,294,651.00	186,159,383.00	195,467,352.00	205,240,719.00
	14,773,500.00	15,512,175.00	16,287,783.00	17,102,172.00
	14,641,000.00	20,000,000.00	0	0
	12,100,000.00	14,641,000.00	16,105,100.00	16,105,100.00
	0	0	0	0
Total Cash Flows	218,809,151.00	236,312,558.00	227,860,235.00	238,447,991.00
Net Cash Flows	501,735,163.00	628,340,618.00	636,792,941.00	799,135,820.00
Cumulative Cash Flows	3,005,438,933.00	3,633,779,551.00	4,270,572,492.00	5,069,708,312.00

Table No. 4

PROPOSED COMPLETION TOWER DEVELOPMENT AT HAZINA TRADE CENTRE, NAIROBI

PROJECTED CASH FLOWS

Year 14

Year 13

Pre-operational

INFLOWS

Equity
(Construction
Cost)

6,631,825,234.00

0

RENTAL INCOME

Office Block

0

864,653,176.00

1,037,583,811.00

Service Charges

0

172,930,635.00

207,516,762.00

Total Cash
Inflows

6,631,825,234

1,037,583,811.00

1,245,100,573.00

Investment
Cost

6,631,825,234

0

0

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Table No. 4

	Year 13	Year 14
Pre-operational		
<u>OPERATIONAL EXPENSES</u>		
Utilities and Maintenance) 0		
Management Fee) 0		
Renovation Expenses) 0		
Insurance Costs) 0		
Interest payment) 0		
	215,502,754.00	226,277,891.00
	17,957,280.00	18,855,144.00
	0	0
	17,715,610.00	17,715,610.00
	0	0
Total Cash Flows	6,631,825,234.00	262,848,645.00
Net Cash Flows	0	982,251,928.00
Cumulative Cash Flows	0	6,838,368,407.00

Copy only 9/1/2013



NATIONAL SOCIAL SECURITY FUND

TENDER NOTICE

**NSSF TENDER NO. 21/2012-2013
COMPLETION OF HAZINA TRADE CENTRE OFFICE TOWER - NAIROBI**

The National Social Security Fund (NSSF) invites sealed Tender from eligible and competent Contractors for the completion of Hazina Trade Centre Office Tower - Nairobi.

Interested Contractors who must be qualified and registered with the Ministry of Public Works in category 'A' should obtain the Tender documents from the Procurement Office, 9th floor upon payment of **non-refundable fee of Kshs. 5,000.00** either in cash or bankers cheque payable to the National Social Security Fund at Podium Floor, NSSF Building, Block A, Western Wing, Bishops Road Nairobi.

Contractors who have any litigation with the Fund are not eligible for this contract.

Specific works for which tenders are invited include main works comprising of a) Builders' works, b) plumbing & drainage, c) Fire fighting, d) Mechanical Ventilation & Air Conditioning, e) Electrical and f) Structured Cabling installations among others (the documents are in two volumes).

Tender documents shall be accompanied by the following mandatory requirements for preliminary evaluation:-

1. Certificate of Company Incorporation.
2. Valid NSSF Compliance Certificate.
3. Valid Tax compliance certificate.
4. List of Directors with respective shareholding and citizenship details.
5. Audited accounts for the last 3 years (within 2008-2012).
6. Current registration Certificate Category 'A' Builders' works with the Ministry of Public Works.
7. Current Registration Certificate Category 'A' with the Ministry of Public Works for the above sub-contractors (b to e above) and also current ERC License class 'A1' for electrical sub-contractor.
8. Current class 'A' telecommunications license from CCK for structured cabling sub-contractor.
9. Bid Bond/Tender Security of **Kshs. 100 Million** from a reputable Bank or PPOA authorized insurance company located in Kenya and valid for 120 days from closing date for the tender.
10. Duly signed joint agreements with the proposed domestic subcontractors (b to f above).
11. Power of attorney (of Tender signatory - Applies in case of a joint venture, or where signatory is non-director).
12. Litigation history (sworn affidavit) on construction contractual matters (Not on Procurement process).
13. The Domestic subcontractors must also provide all the documents above except Bid Bond.

Completed Tender Documents in plain sealed outer envelope enclosing separately sealed envelopes (in "original" and two copies all clearly marked NSSF Tender No. 21/2012-2013 - Completion of Hazina Trade Centre Office Tower-Nairobi as per instructions and addressed to:-

**Managing Director
National Social Security Fund
P.O. Box 30599-00100
NAIROBI**

Should be deposited in the tender Box on 2nd Floor Block 'A' Western Wing, Social Security House, Nairobi on or before 11:00 a.m. local time on Wednesday 30th January 2013. Tenders will be opened immediately thereafter at the Seminar Room on 4th floor, Social Security House, Block 'A' western Wing, Nairobi in the presence of Tenderers representatives who choose to attend.

A pre-tender meeting for interested tenderers is scheduled to be held at 11:00 a.m. on 21st January 2013 at the Seminar Room on 4th floor, Social Security House, Block 'A' Western Wing followed by a guided tour of the project site.

NSSF reserves the right to reject any application either in whole or in part without giving reasons for either rejection or acceptance.

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ANNEX 3

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ANNEX 4



PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
Transforming Procurement

Telephone: +254(020) 3244000, 2213106, 2213107
Fax: +254(020) 2213105, 3244377, 3244277
E-mail: info@ppoa.go.ke
Website: www.ppoa.go.ke
When replying please quote:

National Bank Building, 10th Floor
Harambee Avenue
P.O. Box 58535-00200
NAIROBI
KENYA

A BRIEF ON PROCUREMENT PROCESS OF TENDER NO.21/2012-2013 FOR COMPLETION OF HAZINA TRADE CENTRE OFFICE TOWER IN NAIROBI TOWN AND JOINT PROPERTY DEVELOPMENT AT MAVOKO AND KENYATTA AVENUE

BACKGROUND INFORMATION

The Clerk of the National Assembly through letter Ref: KNA/PIC/CORR/CORR/2015/ (107) dated 30th April, 2015 requested the Public Procurement Oversight Authority (PPOA) to provide a written submission: ***“on involvement or lack thereof of PPOA in the procurement of NSSF Hazina Towers Project in Nairobi County, Joint Venture Property Development in Mavoko Municipality and Kenyatta Avenue Joint Venture Project in Nairobi Central Business District”.***

- 1. Involvement or lack thereof of PPOA in the procurement NSSF Hazina Towers Project in Nairobi County and Joint Venture Property Development in Mavoko Municipality and Kenyatta Avenue Joint Venture Project in Nairobi Central Business District.***
- 2. Opinion on adherence by NSSF to the requisite procurement law and regulations in undertaking the projects referred to in (1) above.***

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Our response to your request is as follows:

A. HAZINA TOWERS PROJECT

1. We noted that the Procuring Entity had initiated a procurement process, tender No.14/2010-2011 for Completion of Hazina Trade Center Office Tower-Nairobi and awarded it to Cementers Ltd at Kshs. 5, 997, 711, 380.00. This award of the subject tender to Cementers Ltd was challenged at the Public Procurement Administrative Review Board (the Board) by China WU Yi (Kenya) Co. Ltd and China Jiangxi International Kenya Ltd under Application Nos. 14/2011 of 20th April, 2011 and 15/2011 of 21st April, 2011. **Annex 1.** Upon hearing the parties and reviewing the procurement records, the Board found that the tender process was flawed and accordingly the Review Board annulled the award of the tender.
2. The successful bidder, Cementer Ltd filed Miscellaneous Civil Application No.JR 134 of 2011 at the High Court challenging the decision. Upon, hearing the parties, the Court heard the matter and found the application failed for lack of merit. **Annex 2.**

Upon the dismissal of the case by the High Court, NSSF initiated fresh procurement, under tender No.21/2012-2013 for Completion of Hazina Trade Center office Tower- Nairobi.

3. On 26th July, 2013, PPOA received an anonymous letter from a concerned National Social Security (NSSF) staff alleging that the processing of the above cited tender was not done fairly. Pursuant to Section 101 and 102 of the Public Procurement and Disposal Act, 2005(the Act), PPOA vide letter Ref. No. PPOA. 4/30/100 VOL.11 (35) dated 1st August, 2013 wrote to Hope Mwashumbe, the Acting Managing Trustee, NSSF to comprehensively demonstrate that the tendering process adhered to the Act and its attendant Regulations. In the same letter NSSF (the Fund) was requested to submit all documents which were used in the processing of the subject tender in

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order to review the conduct of the subject tender. (See **Annex 3**-Report on review of processing of tender No. 21/2012-2013 for proposed completion of office block towers at Hazina Trade Centre, Nairobi by NSSF).

4. The Fund vide their letter Ref. SF/A/10/16 VOLXXV dated 19th August, 2013 NSSF submitted some of the documents the Authority requested.

Based on the documentation submitted, the Authority noted the following regarding the processing of the subject tender:

Conduct of the Procurement Process

5. The subject procurement was an open tender that was advertised in the Daily Nation Newspaper and the Standard Newspaper on 9th January, 2013 and closed and opened on 30th January, 2013 at 11.00 a.m. The Fund used a two envelope system in which the technical documents were opened on the material date.

6. The following six firms responded to the tender:

- (i) M/s Synohydro Corporation,
- (ii) M/s China National Aero – Technology International Engineering Corporation,
- (iii) M/s China Railways No. 5 Engineering Group Co. Limited,
- (iv) M/s China Jiangxi International (K) Limited,
- (v) M/s EPCO Builders Limited,
- (vi) Parbat Siyani Construction Ltd and
- (vii) China Wu Yi Limited,

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7. According to the evaluation report, the tender evaluation was done in three (3) stages, preliminary, technical and financial by a committee of four evaluators. Preliminary evaluation of the tender was based on the conditions stated in the advertisement notice and the bid documents issued to the bidders. Three firms namely M/s China National Aero – Technology International Corporation, M/s China Jiangxi International (K) Limited and M/s China Wu Yi Limited met all the conditions.
8. Technical evaluation was carried using the criteria stipulated in the bid documents. The cut- off mark required that for a bidder to qualify to the next stage (financial evaluation), it must score at least 80%. Only two bidders, M/s China National Aero – Technology International Corporation, and M/s China Jiangxi International (K) Limited, qualified.
9. The financial bids were opened on 5th February, 2013 by a committee of five officers and witnessed by the two bidders' representatives. The financial bids were as follows:
 - (i) M/s China National Aero–Technology International Corporation **Kshs 6,741,174,428**
 - (ii) M/s China Jiangxi International (K) Limited – **Kshs 6,599,888,888.**
- ✓ 10. It was noted that the financial evaluation of the tender was not carried out by an evaluation committee established in accordance with Regulation 16(7) of the Public Procurement and Disposal Regulations, 2006. A letter Ref. NO. TA/454/13 from M/s Tana & Associates dated 7th February 2013 forwarding the financial evaluation report was evidence that the evaluation was done by M/s Tana Associates. In addition the unsigned report did not recommend which firm was to be awarded the tender although from the report M/s China Jiangxi International (K) Ltd was the lowest evaluated even after correcting arithmetic error of **Kshs 115,329,300. (Annex 3).**

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11. The Fund tender committee awarded the subject tender in its meeting held on 11th February, 2013 to M/s China Jiangxi International (K) Ltd at a tender price of Kshs. 6, 599,888,888 subject to the bidder's confirmation of tender arithmetic error of Kshs 115,329,300.
12. M/s China Jiangxi International (K) was notified of the tender award on 11th February, 2013 vide the Funds letter Ref. No. SF/A/10/16/VOLXX111.
13. M/s China Jiangxi International (K) accepted the offer vide their letter Ref. No. CJIC/003/2013 dated 12th February, 2013 and accepted the arithmetic error and consequently adjusted their tender sum upwards from 6, 599,888,888 to Kshs 6,715,218,188. This was an increment of Kshs 115,329,300 being the arithmetic error.
14. The Fund signed a contract with M/s China Jiangxi International (K) Ltd at the corrected tender sum of Kshs 6,715,218,188 with a completion period of 155 weeks.

Observations on the Conduct of the Procurement Process

15. M/s China Railways No. 5 Engineering Group Co. Ltd and M/s China Wu Yi Ltd did not provide certificate of incorporation which was a mandatory requirement but were considered responsive during preliminary evaluation against the provisions of Section 64(1) of the Act. The failure to disqualify the two firms was inconsistent with Regulation 48(1) of the Regulations.
16. M/s China Jiangxi International did not sub contract works (b), (c) and (d) as indicated in the bid document against the mandatory requirements of the tender but were considered responsive in preliminary evaluation contrary to the requirements of Section 64(1) of the Act;

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17. The procuring entity did not correct errors noted in the financial bid of the successful bidder in accordance with Section 63 of the Act and clause 5.7, Instruction to Bidders, in the bid document.
18. The evaluation committee failed to observe the provisions of Section 64(1) of the Act by not considering the audited accounts of the joint venture partners of the winning bid and in consequence made him responsive.
19. Provisional sums for some un-quantified works were repeated in the BQ which may have escalated the cost of the project and loss of funds through double counting, for example:

In the BQ for sub contract for mechanical ventilation and air conditioning installation page No MV/MS provided the following provisional sums:

- a) PC for Plenum Chamber and associated works = Kshs 5,000,000
- b) PC for basement fans automation = Kshs 5,000,000
- c) Provisional Sum for contingency sum = Kshs 2,000,000

Still in the same BQ Section NO. 15 titled Prime Cost (PC) and provisional sums, page 15/2 provided as follows:

- a) Provided the sum of Kshs 80,000,000 to cover the cost of mechanical builders in plenum chambers, fans in basement and services refurbishment and interconnection.
- b) Under the subcontract for mechanical ventilation and air conditioning, M/s China Jiangxi International(K) Ltd was the sub contract at kshs 33,973,867 which included provisional sums of kshs 5,000,000; 5,000,000; and kshs 2,000,000
- c) The total tender sum of kshs 6,715,218,488 awarded to M/s China Jiangxi International (K) Ltd included all these

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provisional sums listed above, that is kshs 80,000,000; and kshs 2,000,000.

Conclusion

The report in Annex 3 was brought to the attention of NSSF whose response did not address the findings contained in the report. As a result of the breaches of the Procurement Law cited above in the conduct of the procurement process, the process was inconsistent with Procurement Law

B: Joint Property Development at Mavoko Municipality and Kenyatta Avenue (Nairobi CBD) Projects.

1. Background

The procurement processes were initiated through Expression of Interest (EOI) which were advertised in the Daily Nation Newspapers of 18th October, 2010, the Standard Newspaper on 19th October, 2010 and the Economics on 23rd October, 2010. The deadline for submission of EOI was 15th December, 2010 at 11.00 a.m. The NSSF invited interested parties to express their interest in partnering with them in the development of:

- (i) 960 acres of land in Mavoko Municipality, Machakos County.
- (ii) 3.6 acre property at the junction of Kenyatta Avenue and Uhuru Highway.

Interested companies or consortia were expected to express interest in designing, development, financing and selling or operating the developments on joint venture basis.

2. Opening of EOI

The EOI documents were opened on 15th December, 2010 by a committee comprising of five (5) officers. According to the tender opening minutes, the EOI were received from the following bidders:

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A. Mavoko Municipality Project

- 1) Housing Finance
- 2) Marken Ltd
- 3) Lordship Group
- 4) Joel Nyaseme
- 5) Edermann Property
- 6) Africa Regent Ltd
- 7) Symbion International
- 8) Spedex (Spenco)
- 9) China CAMC Engineering Co. Ltd

B. Kenyatta Avenue (Central Business District) Project

- 1) Hewani Consortium
- 2) Sichuan Huash Corp.
- 3) African Legend
- 4) Symbion International
- 5) Spedex (Spenco)
- 6) Sietco Ltd
- 7) China CAMC Engineering Co. Ltd

The tender opening committee prepared tender opening minutes which were signed by all members of the committee.

3. Evaluation of EOI

Evaluation was conducted by a committee comprising of seven (7) members. The evaluation process was conducted in three (3) stages based on the requirements provided in the tender notice. The requirements were:

- (i) Technical profile evaluation
- (ii) Financial profile evaluation
- (iii) Proposal submission

The committee recommended as follows:

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Mavoko Project

- China CAMC Engineering Co. Ltd
- Housing Finance
- Joel E. D Nyaseme & Associates

Kenyatta Avenue Project

- China CAMC Engineering Co. Ltd
- African Legend Ltd
- Sichuan Huashi Enterprise Corporation E. A. Ltd

4. Tender Committee Approval

In its meeting held on 26th May, 2011, the tender committee approved the following firms:

Mavoko Municipality

- (i) China CAMC Engineering Co. Ltd
- (ii) Housing Finance
- (iii) Joel E. D Nyaseme & Associates
- (iv) African Legend Ltd
- (v) Spencon Development Co. Ltd

Kenyatta Avenue/CBD Property

- (i) China CAMC Engineering Co. Ltd
- (ii) African Legend Ltd
- (iii) Sichuan Huash Enterprise Corporation E.A Ltd
- (iv) Spencon Development Company Ltd
- (v) SIECO Ltd

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According to the tender committee minutes dated 26th May, 2011, the committee lowered the cut-off score from 60% which appeared to have been set by Tom Odongo, General Manager (Investment) to 50% and as a result two bidders were accommodated. These were Spencon Development Co. Ltd for both Mavoko Project and CBD project and SIECO Ltd for CBD Project.

Notification of the outcome of EOI

The outcome of the EOI was communicated to the bidders vide letters dated 21st June, 2011. The successful bidders were informed that they will be invited to respond to Request for Proposal later. It is noted that the notification letters for Spencon Development Company Ltd and SIECO Ltd were not availed and therefore it could not be ascertained whether they were notified or not despite having been approved by the tender committee. From the documents submitted by NSSF, it is not clear whether the process went beyond short listing of the firms.

PART TWO: REQUEST FOR PROPOSAL

Advertisement

NSSF advertised the two (2) Requests for Proposals in the Daily Nation Newspapers on 22nd October, 2013. The RFPs were tender No.08/2013-2014 for Proposed Joint Venture Property Development in Nairobi Central Business District and tender No.09/2013-2014 for Proposed Joint Venture Property Development in Mavoko Municipality, Machakos County. The deadline for submission of proposals was 4th December, 2013 and 30th November, 2013 respectively. **(Annex 1)**

Tender opening

The tender opening minutes were not availed.

However, the process was terminated before the evaluation was conducted. The termination was approved by the tender committee

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vide minutes of meeting No.17 held 22nd January, 2015. According to NSSF, termination was necessitated by lapsing of the tender evaluation period before it was concluded. Bidders were notified of termination vide letters dated 4th February, 2015.

PART III: RESTRICTED TENDER

The tender committee approved the use of restricted procurement method for the Mavoko and Kenyatta Avenue (CBD) projects vide its meeting held on 28th January, 2015. The committee also approved the following firms who had participated in the same tenders in the previous procurements that were not finalized.

1. Davuruk Builders and Contractors
2. Weihai International Economic and Technical Cooperative Co. Ltd
3. Synohydro Tianjin Engineering Co. ltd and Sinhydro Real Estate Co. Ltd
4. Baseline Architects Consortium and Zakhem International Construction Ltd
5. Housing Finance
6. Markem Ltd
7. Epix Investment Ltd
8. Joel E. D Nyaseme & Associates
9. Ederman Properties Ltd
10. African Legend Ltd
11. Symbion Kenya Ltd
12. Spenco Development Co. Ltd

Invitations to tender

Invitations were sent out through letters dated 5th February 2015. A review of the invitations shows that four (4) firms namely China CAMC Engineering Co. ltd, Trans Century Investment in Africa and

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Group 5 Structured Ingenuity Waterfall Business Estate were invited but were not in the list approved by the tender committee.

Tender Opening

According to the tender opening minutes, tender for Mavoko Project closed/opened on 15th April, 2015 and the following bidders responded:

Mavoko Project:

1. Zekhem Construction Ltd and Baseline Architect Construction Ltd
2. Sinohydro Tianjin Engineering Co. Ltd and Sinohydro Real Estate Co. Ltd
3. Erdermann Property Ltd and China Railway No.10 Engineering
4. Weihai International Economic Technical Cooperative Co. Ltd

Tender for Kenyatta Avenue (CBD) Project was opened on 16th April, 2015 and only one bidder, Trans Century Ltd responded.

Evaluation

Evaluation was conducted by a committee comprising of five (5) members and a secretary. The committee was appointed by the Accounting Officer. The evaluation committee did not evaluate the tenders but recommended termination of the tenders due to negative publicity surrounding the tenders as per Section 36(1) of the Public Procurement and Disposal Act, 2005. The report was signed by all members.

Termination of the tenders

In its meeting held on 13th May, 2015, the tender committee concurred with the recommendation of the tender processing committee and terminated the two (2) tenders.

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Termination notices

NSSF issued termination notices to the bidders vide letters dated 14th May, 2015.

Conclusion

The termination reports for the two tenders referred to above are yet to be submitted to the Authority in accordance with Section 36 (8) of the Act and PPOA Circular No. 4/2009 of 24th June, 2009.

The procurement process has taken unnecessarily too long period to conclude taking into consideration that the process started through EOI in October, 2010.

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tana & associates

QUANTITY SURVEYORS • CONSTRUCTION
COST CONSULTANTS • PROJECT MANAGERS

C3 Peponi Plaza, Peponi Road, Westlands

P.O. Box 52768, City square 00200

Nairobi, Kenya

Tel: 3740510, 3748716

Fax: 3750789

Dropping Zone No.68

Email: info@tanaqs.com

ANNEX 5

7th February, 2013

Our ref: TA/454/04/13

The Managing Trustee
National Social Security Fund
P.O. Box 30599 - 00100

NAIROBI

Attention: Mr. M. Nzatu

Dear Sir,

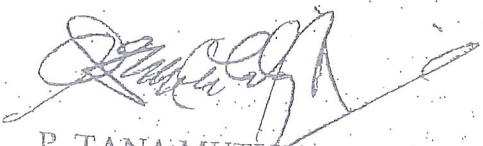
RE: PROPOSED COMPLETION OF HAZINA TRADE CENTRE OFFICE
BLOCK TOWER, NAIROBI:

Financial Evaluation.

We refer to the checking of errors exercise we carried out in your offices on 6th February, 2013 on the two bidders who qualified the Technical Evaluation.

~~Please find Financial Evaluation Report on errors and analysis for the two bidders.~~

Yours faithfully,
for: TANA & ASSOCIATES


P. TANA MUTISYA

PTM/jm

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PROPOSED COMPLETION OF OFFICE BLOCK TOWERS AT HAZINA
TRADE CENTRE

FINANCIAL EVALUATION

The following Tenderers are the ones who satisfied the Technical Evaluation Criteria and have made it for the Financial evaluation:-

1. China Jiangxi International Kenya Ltd.
2. China National Aerotechnology International Engineering Corporation.

The evaluation is to focus on arithmetical errors, error calculation, errors analysis and observation.

Arithmetical Errors

The Firm of Tana & Associates who are the Project Quantity Surveyors checked for the arithmetical errors of the two tenderers/bidders at the Client's (NSSF) offices on 6th February, 2013.

The checking revealed errors as follows:-

1. China Jiangxi International Kenya Ltd
The bidder had errors corrected on the Builders Works Page 3/3 of Kshs. +115,329,300.00. Errors were also noted on Page 3/56 but did not change the bidders section totals.

~~The net effect of the error was Kshs. (+) 115,329,300.00 over the submitted bid.~~

2. China National Aerotechnology International Engineering Corporation
This bidder had an error of Kshs. (+) 920.00, in Builders Work Page 4/20, Electrical summary of Kshs. (+) 10,441,240.00, Plumbing Kshs. (+) 9,688.00 and Fire Fighting Kshs. (+) 28,008.00.

The net effect of the error was Kshs. (+) 10,478,936.00.

Financial Evaluation:

February, 2013:

Percentage (%) Error Calculation

1. China Jiangxi International Kenya Ltd

Total Tender Sum Kshs. 6,599,888,888.00

Less: P.C and Provisional Sums Kshs. 1,390,000,000.00

Kshs. 5,209,888,888.00

Actual Error Kshs, 115,329,300.00

Percentage Error Kshs. 115,329,300.00

Kshs. 5,209,888,888.00 = Kshs. 2.21%

The error is +2.21% and below 5%. The bid is therefore responsive as per the bidding documents criteria.

2. China National Aerotechnology International Engineering Corporation

Total Tender Sum Kshs. 6,741,174,428.00

Less: P.C and Provisional Sums Kshs. 1,390,000,000.00

Kshs. 5,351,174,428.00

Actual Error Kshs. 10,478,936.00

Percentage Error Kshs. 10,478,936.00

Kshs. 5,351,174,428.00 = Kshs. 0.2%

This error is +0.2% and below 5%. The bid is responsive as per the bid documents criteria.

Financial Evaluation:February, 2013:

Error Analysis

<u>Contractor/Bidder</u>	<u>Bidder Tender Figure</u>	<u>Error Kshs.</u>	<u>Corrected Bidder Tender Figure</u>	<u>Percentage Error</u>
China Jiangxi International Kenya Ltd	6,599,888,888.00	+115,329,300.00	6,715,218,188.00	2.2%
China National Arotechnology International Engineering Corporation	6,741,74,428.00	+10,478,936.00	6,751,653,364.00	0.2%

Financial Evaluation:
February, 2013.

TANA & ASSOCIATES
QUANTITY SURVEYORS & PROJECT MANAGERS
P. O. Box 52762 - 00200
NAIROBI - KENYA.

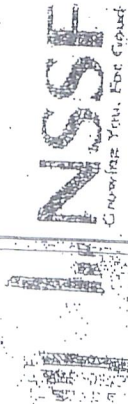
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Observation

- The two (2) Contractors have errors in their computation as reported herebefore.
 - The two Contractors are competitive and their bids are relatively close and responsive. M/s China Jiangxi International Kenya Ltd have the lowest submitted bid at Kshs. 6,599,888,888.00. Their corrected bid is Kshs. 6,715,218,188.00.
 - M/s China National Aerotechnology International Engineering Corporation have the second lowest submitted bid at Kshs. 6,741,174,428.00. Their corrected bid is Kshs. 6,751,653,364.00.
-
- The percentage errors for both Contractors are less than 5% and are therefore responsive as per the bid documents.
 - M/s China Jiangxi International Kenya Ltd after this analysis however retains the lowest bid tender at Kshs. 6,599,888,888.00 and the corrected bid tender at Kshs. 6,715,218,488.00. Both these bid/tender sums are lower than the second lowest bid tender of Kshs. 6,741,174,428.00 submitted by M/s China National Aerotechnology International Engineering Corporation.
-

Financial Evaluation:

February, 2013:



TENDER OPENING REGISTER FOR:

TENDER NO. 21/2012-2013

CLOSING & OPENING DATE: 5TH FEBRUARY 2013

BID NO.	BIDDERS' NAME	BID SUM	BID BOND	DELIVERY PERIOD	REMARKS
2	CHINA NATIONAL AERO TECHNOLOGY INTERNATIONAL ENGINEERING CORPORATION	74,174,028			
4	CHINA JIANBAO INTERNATIONAL ENGINEERING CO., LTD	53,888,888			

CHAIRMAN'S SIGNATURE: DANIEL KILLY

- MEMBERS' SIGNATURES:
1. [Signature]
 2. [Signature]
 3. [Signature]
 4. [Signature]

BIDDERS' REPRESENTATIVE

NO.	NAME OF REPRESENTATIVE	NAME OF FIRM	SIGNATURE
1	TAN YONG	CHINA ZIANGXI (HONG KONG)	[Signature]
2	Zhao Jidong	China Jianbao International Engineering Corporation	[Signature]
3	Zhao Jidong	China National Aero-Technology Corporation	[Signature]
4	Du Ping	China National Aero-Technology Corporation	[Signature]

SF/A/10/16/VOL.XXIII/

11th February, 2013

China Jiangxi International (K) Ltd
P.O. BOX 31553 - 00600
NAIROBI.

Dear Sir

RE: TENDER NO. 21/2012-2013 FOR PROPOSED COMPLETION OF OFFICE
BLOCK TOWERS AT HAZINA TRADE CENTRE - NAIROBI

Further to your response to the above referenced tender dated, 30th January, 2013 the National Social Security Fund wishes to inform you that you were successful.

This letter serves to notify you that you have been awarded: the tender for proposed Completion of Office Block Towers at Hazina Trade Centre, Nairobi at your quoted bid sum of **Kshs. 6,599,888,888.00 (Six Billion, Five Hundred Ninety Nine Million; Eight Hundred and Eighty Eight Thousand, Eight Hundred and Eighty Eight Shillings only)** inclusive of taxes and a completion period of 155 Weeks Subject to your confirmation of an error of **Kshs. 115,329,300.00 (One Hundred and Fifteen Million; Three Hundred and Twenty Nine Thousand, Three Hundred shillings only)** and whether you will absorb it or not.

~~This letter of offer does not in any way constitute a contract and you will be expected to signify your acceptance within 14 days.~~

After expiry of the 14 days notice, and upon receipt of a letter of acceptance a contract will be signed between the National Social Security Fund and yourselves.

The Fund takes this opportunity to congratulate you.

Please confirm in writing your receipt of this offer.

Yours faithfully



TOM ODONGO
CEO/MANAGING TRUSTEE

ANNEX 2
= 2019



中国江西国际 (肯尼亚) 有限公司

CHINA JIANGXI INTERNATIONAL KENYA LIMITED

P.O.Box 31553 - 00600, Nairobi

Tel: 00254-20-5201783

E-mail: kenya@cjic.cn; cjickenya@hotmail.com

Fax: 00254-20-2667177

Ref: CJIC/003/2013

Date: 12th Feb, 2013

Managing Trustee

National Social Security Fund

P.O.Box 30559-00100

NAIROBI

Dear Sir,

Re: TENDER NO.21/2012-2013 FOR PROPOSED COMPLETION OF OFFICE
BLOCK TOWERS AT HAZINA TRADE CENTRE-NAIROBI

Reference is made to your letter dated 11th February, 2013 Ref No.SF/A/10/16/VOL:XXIII/ on correction of errors for the above tender.

We wish to express our appreciation for awarding our company the above tender. However, We would like to point out the error of Kshs 115,329,300 which was made in our tender without our knowledge. We wish to adjust our bid sum to Kshs 6,715,218,188 which should be the correct one.

~~We promise to execute the work according to specification and~~
instructions issued by engineer. Completion the work within the period filled in form of tender.

We trust the above is in order.

Yours faithfully,

Tan Yong

Managing Director/China Jiangxi International (Kenya) Ltd.



7 43444

APPENDIX 5



ANNEX 8

CONTRACT NO. 21/2012-2013

AGREEMENT

THIS AGREEMENT made the 26TH day of FEBRUARY Two Thousand and Thirteen (2013) between **NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES** of P.O BOX 30599 – 00100 **NAIROBI, KENYA** (hereinafter called the “Employer” which expression shall where the context so admits refer to its successors and assignees in title) of the one part AND **CHINA JIANGXI INTERNATIONAL KENYA LIMITED** of P.O BOX 31553 – 00600 **NAIROBI, KENYA** (hereinafter called “the Contractor” which expression shall where the context so admits refer to its successors and assignees in title) of the other part and both hereinafter collectively referred to as the “the parties”.

WHEREAS the Employer invited tenders under Tender No. 21/2012-2013 For Proposed Completion of Office Block Towers At Hazina Trade Centre - Nairobi (hereinafter called “the Works”) and has accepted a tender submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein for the Contract sum which shall not exceed the scaled down tender Price of Kenya shillings Six Billion Seven Hundred and Fifteen Million Two Hundred and Eighteen Thousand One Hundred and Eighty Eight Only (Kshs. 6,715,218,188.00) all inclusive and a completion period of One Hundred and Fifty Five (155) weeks from the date of possession of site. In this Context the date of site possession shall be.

[Handwritten signature]

[Handwritten number 115]

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~~CONFIDENTIAL~~
NOW WITH THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
 - (i) Signed Form of Tender
 - ~~(ii) Letter of award/offer~~
 - (iii) Letter of Acceptance
 - (iv) Completed tender documents
 - (v) Conditions of Contract
 - (vi) Appendix to Conditions of Contract
 - (vii) Special Conditions
 - (viii) Specifications
 - (ix) Priced Bills of Quantities
 - (x) Drawings

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity with the provisions of the Contract.

VP

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4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract. The contractor shall be paid an advance payment of 10% against a bank guarantee from a reputable bank for site mobilization all at the discretion of the employer.
5. Payments to the Contractor shall be made on monthly basis upon submission of applications, giving sufficient details of works done and materials on site. However the Employer shall make the payment upon certification of the same by the Project Architect.
6. The Proportion of payments retained is 10% of certified amount under clause 5 subject to a limit of 2.5% of the contract sum. The Employer shall retain 1.25% of the contract sum for a period of six (6) months after Practical Completion.
7. The work shall be completed within the stipulated time herein, failure of which damages amounting to Kenya shillings Seven Million Five Hundred Thousand only (Kshs.7, 500, 000.00) per week, or part thereof, shall be paid by contractor to the employer.
8. This Agreement shall be terminated if the Contractor fails to proceed with the works diligently as specified in the contract.

Handwritten signature or mark.

- Tenants: Coffee shop, Shoe shine, Mpesa Kiosk (empire), Scents (Lift area) to be given for Nssf/Contractors use and for this purpose sufficient time to be given to effect the necessary arrangements. Lift area to be given to contractor 6 months before project completion
- Parking exit to Moktar Daddah to be closed affecting exit route (KAPS) Monorovia to be used for entry and exit
- One Entrance to the building from Moktar Daddah will be closed and human traffic from that road is stopped
- Nssf/Contractor to make all Elevators/Escalators functional and seal the leakage in Atrium roof
- Request for Site office for the contractor in Podium level and access through stair case. To seal wherever necessary for security reasons.
- Contractor to close Fire Exit at Podium and comply with all Safety regulations & Security.
- Liability to Nakumatt/Tenant customers, Public and Properties around the area during the period of construction by NSSF as Landlord and Contractors - copy of their insurance policies
- Copies of approval of drawings, Structural Engineer certificates for construction of 36 floors, NEMA, Health and Safety Departments.
- Disturbance caused in business due to construction/sound/materials, human movement etc., to Tenants/neighbours etc.,
- Vacant shops as of now not let out due to this and more may vacate resulting in loss of revenue
- Existing parking may not take the vehicle flow of 36 floors.
- Nssf / Contractor to apply for a separate power connection/Meter in their name, pay deposit and pay bills directly and install their own generator
- Contractor to have his own water & Sewerage connection and not to use the water used by Nakumatt now.
- To ensure safety and security of Nakumatt existing Tenants by sealing the area with MDF etc., and contractor to keep security from reputed firm like KK Security
- Contractor Employees to have Staff ID, Uniform, Kenyan ID and the list to be given to Nakumatt.
- There should not be interruption to Lift working, electricity, water, sewerage etc at any time
- Nssf confirmation certificate and Architect/Structural Engineers certificate that the foundation is sufficient to construct 36 floors (why strengthening of columns?) and the building is safe for occupation for Tenants and for human traffic when the construction basis on for 36 floors and Nssf will take the liability and responsibility.
- To receive a copy of Tender awarded
- Confirmation that Project will start on 2nd May 2013 or later and end on or before 2nd May 2016

2. In particular, we note that the intended construction shall acutely deeply and gravely discourage our Client's customers and suppliers from accessing the premises and from shopping in the safety, convenience and comfort they have continued to enjoy for the past ten years, an issue that was not agreed in the Lease.

43. The proposed activity constitutes breach of your obligation as Landlord to 'peaceably and quietly hold and enjoy the demised premises for the term granted without any interruption by the Lessor'

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18th April, 2012

5.4. The net effect of reduced customer flow is that our Client's sales shall plummet.

5.5. The Landlord has a duty to compensate our Client for these consequences shall be looking for a reduction of the applicable annual rent by 50% during the construction period.

We trust that our Client's reasonable proposal shall be accepted as it is most reasonable in the circumstances.

Yours faithfully,
WALKER KONIOS

G. KARUNGO
gkarungo@walkerkonios.com

cc. Client - By Email

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123456789

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Application Reference No. EIA/726

Registration No: 0009531

For official use



NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT ENVIRONMENTAL IMPACT ASSESSMENT LICENCE

This is to certify that the Project Report/Environmental Impact Assessment Study Report received from
 NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEE..... (Name
 of individual/firm) P.O. BOX 12986-00400, NAIROBI..... (Address)
 submitted to the National Environment Management Authority in accordance with the Environmental Impact
 Assessment & Audit Regulations regarding PROPOSED EXTENSION OF HAZINA TRADE
 CENTRE BY ADDITIONAL 34 FLOORS.....
 (title of project) whose objective is to carry on EXTENSION OF HAZINA TRADE CENTRE.....
 BY ADDITIONAL 34 FLOORS.....

..... (briefly describe purpose) located
 at L.R. NO. 209/6708 BETWEEN MOKTAR DADAH AND MONOROVIA STREETS,
 NAIROBI CENTRAL BUSINESS DISTRICT..... (locality and district)

has been reviewed and a licence is hereby issued for implementation of the project, subject to attached conditions.

Dated this 20TH day SEPT. of 2011

Signature.....

(SEAL)

Director General
The National Environment Management Authority

CONDITIONS OF LICENCE

1. This licence is valid for a period of 24 MONTHS..... (time within which the project should commence) from the date hereof.
2. The Director-General shall be notified of any transfer/variation/surrender of this licence.

1. General Conditions

- 1.1. This approval is for extension of Hazina Trade Centre.
- 1.2. The license shall be valid for 24 months from the date of issue
- 1.3. Without prejudice to the other conditions of this license, the proponent shall implement and maintain an environmental management system, organizational structure and allocate resources that are sufficient to achieve compliance with the requirements and conditions of this license.
- 1.4. The Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Co-ordination Act, 1999 and regulations thereunder.
- 1.5. This licence shall not be taken as statutory defence against charges of pollution in respect of any manner of pollution not specified herein.
- 1.6. The proponent shall ensure that records on conditions of licenses/approval and project monitoring and evaluation shall be kept on the project site for inspection by NEMA's Environmental Inspectors.
- 1.7. The proponent shall submit an Environmental Audit Report in the first year of occupation to confirm the efficacy and adequacy of the Environmental Management Plan.
- 1.8. The proponent shall comply with NEMA's improvement orders throughout the project cycle

2. Construction Conditions

- 2.1. The proponent shall submit specific measures for the protection of present tenants during construction to the Authority and Department of Occupational Health and Safety for approval before commencement of the project.
- 2.2. The proponent shall design and implement a traffic management plan which must be approved by the City Engineer and submitted to the Authority.
- 2.3. The proponent shall put up a project signboard as per the Ministry of Works Standards indicating the NEMA license number among other information
- 2.4. The proponent shall ensure that all excavated material and debris is collected, re-used and where need be disposed off as per the Environmental Management and Coordination (Waste Management) Regulations 2006.
- 2.5. The proponent shall ensure strict adherence to the provisions of Environmental Management and Coordination (Noise and Excessive Vibrations Pollution Control) Regulations 2009.
- 2.6. The proponent shall ensure strict adherence to the Occupational Safety and Health Act (OSHA), 2007.
- 2.7. The proponent shall ensure that construction workers are provided with adequate personal protection equipment (PPE), sanitary facilities as well as adequate training.
- 2.8. The proponent shall ensure that construction activities are undertaken during the day (and not at night) - between 08.00 hrs and 17.00 hrs; and that transportation of construction materials to and from site are undertaken during weekdays (and not weekends) off peak hours.

- 2.9. The proponent shall ensure strict adherence to the Environmental Management Plan developed throughout the project cycle.
- 2.10. The proponent shall ensure that the development adheres to zoning specifications issued for development of such a project within the jurisdiction of City Council of Nairobi with emphasis on approved land use for the area.

3. Operational Conditions

- 3.1. The proponent shall ensure that all waste water is disposed as per the standards set out in the Environmental Management and Coordination (Water Quality) Regulations 2006.
- 3.2. The proponent shall ensure that all solid waste is handled in accordance with the Environmental Management and Coordination (Waste Management) Regulations 2006.
- 3.3. The proponent shall ensure that all workers are well protected trained as per the OSHA, 2007
- 3.4. The proponent shall comply with the relevant principal laws, by-laws and guidelines issued for development of such a project within the jurisdiction of Ministry of Public Health and Sanitation, Directorate of Occupational Health and Safety Services, City Council of Nairobi, Ministry of Works, Ministry of Health and other relevant Authorities.
- 3.5. The proponent shall ensure that environmental protection facilities or measures to prevent pollution and ecological deterioration such as securing of the quarry sites, rehabilitation and restoration of quarry sites, waste minimization options measures are designed, constructed and employed simultaneously with the proposed project.

4. Notification Conditions

- 4.1. The proponent shall notify in writing the Authority of its intention to start construction three months in advance.
- 4.2. The proponent shall seek written approval from the Authority for any operational changes under this licence
- 4.3. The proponent shall ensure that the Authority is notified of any malfunction of any system within 12 hrs on the NEMA hotline 020 6006041 and mitigation measures put in place
- 4.4. The proponent shall keep records of all pollution incidences & notify the Authority within 24 hrs.
- 4.5. The proponent shall notify the Authority of its intent to decommission three months in advance in writing.

5. Decommissioning Conditions

- 5.1. The proponent shall ensure that a decommissioning plan is submitted to the Authority for approval at least three (3) months prior to decommissioning
- 5.2. The proponent shall ensure that all pollutants and polluted material is contained and adequate mitigation measures provided during the phase.

Application Reference No: **EIA/726**
Certificate No: **0000326**

For official use



THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT CERTIFICATE OF VARIATION OF ENVIRONMENTAL IMPACT ASSESSMENT LICENCE

This is to certify that the Environmental Impact Assessment Licence No: **0009531**
Issued on **20th September, 2011** (date) to **NATIONAL**
SECURITY FUND BOARD OF TRUSTEES (name of individual/firm)
of **P. O. Box 12986 - 00400, NAIROBI** (address) regarding
Proposed Extension of Hazina Trade Centre by Additional 34 Floors (title of project)
whose objective is to **Extension of Hazina Trade Centre by Additional 34 Floors**
..... (briefly describe purpose)
located at **Plot L.R. No.209/6708, Nairobi Central Business District** (locality and
district) has been varied to **Extension of Licence Validity for an additional**
Twenty Four (24) Months.
..... (nature
of variation) With effect from **6th June, 2013** (date of variation) in accordance
with the provisions of the Act.

Dated this **13th** day of **June**, 20 **13**
Signature

W Director General
The National Environment Management Authority

ANNEX 10

SF/A/10/155 VOL. XXVII(77)

21 January 2015

Nakumatt Holdings Ltd
P.O. Box 78355-00507
NAIROBI

Dear Sir

RE: HAZINA TRADE CENTRE – ALTERATION WORKS

The Fund intends to carry out some works in Basements 1 and 2 along 3No. columns which lie at the edge of your stores. To facilitate the work to be done and ensure the security of the stores temporary mild steel walls will be erected before the works commence.

The fund will meet the cost of all necessary works as well as reinstatement of once the intended works are finished.

Attached please find the work plan for both basements, detailing the commencement and completion dates for each activity.

Kindly avail the spaces so that the works can proceed as planned.

Should you require any clarification please contact the undersigned on Mobile 072569888.

Yours faithfully



M. NZATU

FOR: MANAGING TRUSTEE

11 ANNEX II

PROPOSED COMPLETION OF HAZINA TRADE CENTRE

WORKING PLAN FOR BASEMENT 2 AND BASEMENT 1 FOR COLUMNS
ADJOINING THE STORE.

1. TEMPORARY STEEL WALLING

We intend to create a false wall using steel tubes and steel plates around the columns in the store before commencing demolition of the masonry walling adjoining the three columns. The steel plate wall shall be one meter from the periphery of the column. This activity should start on 10th December 2014 and take seven days as the shelves and services will be relocated during this period.

2. DEMOLITION OF MASONRY WALLING

Upon completion of the erection of the steel wall, we shall commence demolition of the masonry walling which shall take four days.

3. PREPARATION WORK FOR THE COLUMNS

Upon completion of demolition of the masonry walling, we shall proceed and prepare the columns for grinding and wrapping by removing any finishes to prepare them for strengthening. This activity will take nine days.

4. GRINDING AND WRAPPING OF THE COLUMNS

Once preparation work for the columns is complete we shall start grinding and wrapping the columns. This activity will take 22 days.

5. RESTORATION OF THE MASONRY WALLING AND SERVICES

Upon completion of strengthening, we shall restore the masonry walling to its original state i.e. including plaster and paint to match existing wall. This activity is intended to take 10 days.

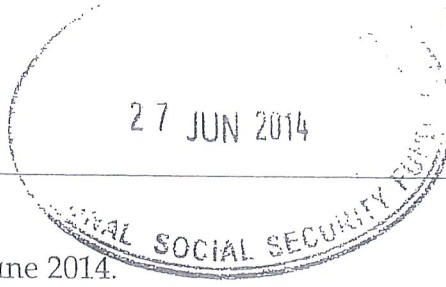
SUMMARY

Activity	Description	Commencement Date	Duration (Days)	Completion date
1	Temporary steel walling	26 th January 2015	7	2 nd Feb 2015
2	Demolition of masonry walling	3 rd February 2015	4	6 th February 2015
3	Preparation work for the columns	7 th February 2015	9	15 th February 2015
4	Grinding and wrapping the columns	16 th February 2015	22	9 th March 2015
5	Restoration of masonry walling and services	10 th March 2015	10	20 th March 2015
	TOTAL:	26 th January 2015	52	20 th March 2015



NAKUMATT HOLDINGS LIMITED

Head Office, Road C, Off Enterprise Road,
P. O. Box 78355, Post Code No. 00507 Nairobi.
Tel. +254 20 65 01 37/8/9, Fax. +254 20 65 01 50,
E-mail: nakumatt@nbnet.co.ke



Wednesday 25th June 2014.

Mr. Richard K. Langat
CEO/Managing Trustee,
National Social Security Fund,
NSSF Building,
P.O. Box 30599 - 00100,
Nairobi.



MPD
PP/CES

Dear Sir,

REF: PROPOSED DEVELOPMENT OF HAZINA TOWERS ON L.R. NO. 209/6708
ALONG MONROVIA/MOKTAR DADDAH STREETS.

We acknowledge your letter reference SF/A/10/155 VOL. XXVII/(28) dated June 6th 2014 in response to ours of 29th April 2014 and the subsequent meeting held with you in our offices. We wish to remind you that you indeed agreed to observe, control and indemnify us from any construction accident, harm or injury resulting from the construction work that you intend to undertake on the above mentioned property where we are an anchor tenant and further indemnify as outlined in our letter, items 1-5. We have also noted your assurance and other assurances that you have obtained from other government agencies.

That notwithstanding, although you have indemnified us from any accidents, harm or injury occurring in the course of the construction, ~~having received such assurances regarding the safety,~~ we now want to address you regarding the more serious issues that affect our company and those of other tenants as follows;

1. You have in a draconian manner, forcefully and with impunity commenced construction on the suit property without due regard to our agreement which is in force for a period of 20 years. Moreover we are entitled to possession and quiet enjoyment without interference of whatsoever nature. This you have violated.
2. Your acts have ruined our business per se, our manner of doing business, respectability to our customers, It has adversely affected the business and you seem not to be concerned and/keen to address the issues

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EXHIBIT 38

3. In the course of the continuing lease period, our company has acted diligently by observing all the terms or agreements and we have never had any quarrel or dispute with yourselves. It was therefore only fair for you to treat us with some respect and decorum and share some information prior to any action from your part.
4. Your action has caused us to suffer loss of goodwill, reputation, patronage and delivery of quality service due to the ongoing construction.
5. You have caused our company to suffer financial loss due to dismantling and displacement of equipment and stocks.
6. You have cost us loss of business and profit because of leaving our business with no reasonable access due to the construction.

7. You have intentionally cut off the access to the business by blocking roads and entrances to the extent that our business cannot operate normally due to the construction.
8. You have intentionally diverted the traffic both human and motor vehicles as a result of the construction.
9. Our business is encumbered with unnecessary traffic of workers unnecessarily, who have no value or income.
10. Both our workers and customers continue to suffer due to continued inhaling of dust and air polluted from the construction activity.

11. You have intentionally reduced our parking space which was the key incentive for our customers and considering that even after the completion of the construction, the building will generate office workers and visitors, this will not necessarily translate to any extra financial gain but will only cause us continuing financial loss.

From the foregoing it is clear that you are undoubtedly in violation of the terms of the lease agreement. It is also not in dispute that by your actions you have caused us and continue to cause us huge loss of business, including financial loss and damages resulting from the interruption of the business during construction. Even after the construction is over, it will definitely change our business patterns, modalities, arrangement and size resulting to a drastic reduction of customers and sales.



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Therefore, after considering your mitigation factors and our acceptance of the matter raised in our above mentioned letter, we have re-evaluated and hence recalculated the current compensate-able claim and have arrived at a reasonably reduced figure of Kshs 1,620,148,507 (One billion, six hundred twenty million, one hundred forty eight thousand, five hundred and seven only).

Lastly, we thank you and hope that you find that this revised figure is reasonable compensation as a mitigating factor for the huge loss and damages resulting from your continuing construction. We also hope that on all the matters communicated and discussed there-before, including this letter, once we both concur, we shall then enter into an agreement to be included to the existing agreement as an addendum.

Thank you.

Yours Faithfully,


JOHN NGUGI.
DIRECTOR.

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT
ENVIRONMENT & LAND DIVISION
ELC NO. 1170 OF 2014

NAKUMATT HOLDING LIMITD.....PLAINTIFF

-VERSUS-

THE BOARD OF TRUSTEES OF
NATIONAL SOCIAL SECURITY FUND.....1ST DEFENDANT
CHINA JIANG ZI INTERNATIONAL KENYA LIMITED.....2ND DEFENDANT

IN COURT ON THE 30TH DAY OF SEPTEMBER, 2014
BEFORE THE HON. LADY JUSTICE GACHERU

ORDER

UPON READING the application dated 10th September, 2014 and presented to Court on 12th September, 2014 by Counsel for the 1st Defendant/Applicant under Section 1A, 1B and 3A of the Civil Procedure Act, Order 40 Rule 7 of the Civil Procedure Rules Article 159 and 165 of the Constitution of Kenya and any other enabling provisions of the Law; AND UPON READING the Affidavit of MUTEMI NZATU sworn on 10th September, 2014 together with the annexures thereto; AND UPON READING the Replying affidavit of JOHN NGUGI sworn on 22nd September, 2014 and the annexures thereto; AND UPON HEARING Counsel for the Plaintiff/Respondent and Counsel for the 1st Defendant/Applicant and Counsel for the 2nd Defendant; AND WHEREAS this matter coming up for Ruling on 30th September, 2014 before the Hon. Lady Justice Gacheru;

IT IS HEREBY ORDERED:

1. THAT the orders issued by the Hon. Lady Justice Gacheru on 1st September, 2014 be and are hereby set aside.

FURTHER ORDERS:

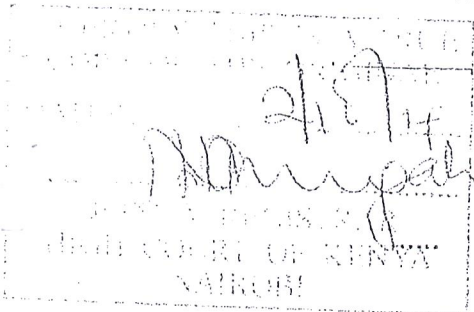
2. THAT the parties do come up with the measures to be put in place to prevent harm and health issues pending the determination of the main notice of motion by Friday.
3. THAT Mr. Kiragu do file his replying affidavit to the main Notice of Motion on Friday 3rd October, 2014.
4. THAT Mr. Mwangi do respond to Mr. Kiragu's Notice of Motion and Mr. Ngechu do file his further affidavit by 3rd October, 2014 and further direction will be given on 3rd October, 2014.

GIVEN UNDER my hand and SEAL of this Court at Nairobi this 30th day of September, 2014

ISSUED at Nairobi this day of 2014

DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

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ANNEX B

4

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT AND LAND DIVISION
ELC NO. 1170 OF 2014

NAKUMATT HOLDINGS LIMITED

VERSUS

PLAINTIFF

THE BOARD OF TRUSTEES OF
NATIONAL SOCIAL SECURITY FUND

CHINA JIANG XI INTERNATIONAL KENYA LIMITED

1ST RESPONDENT
2ND RESPONDENT

IN CHAMBERS ON 1ST SEPTEMBER 2014
BEFORE HON. LADY JUSTICE GACHERU

ORDER

UPON READING the application dated 28th August 2014 and presented to this court on 29th August 2014 by the Counsel for the Plaintiff/Applicant Under Order 40, of the Civil Procedure rules, 2010, Section 1A and 1B of the Civil Procedure Act Cap 21 and all other enabling provisions of the Law AND UPON READING Supporting Affidavit of JOHN NGUGI sworn on 28th August 2014 together with the annexures therein AND WHEREAS this matter coming *ex. parte* in chambers before the Honourable Lady Justice Gacheru (Vacation Judge);

IT IS HEREBY ORDERED:

1. THAT the Notice of Motion dated 28th August 2014 be and is hereby certified as urgent.
2. THAT there be an order of injunction for 14 days only for maintenance of *status quo ante*, as obtaining before the commencement of the interfering acts.
3. THAT an order of injunction be and is hereby granted for 14 days only restraining the 1st and 2nd defendants from dropping building materials or causing noise or dust and/or from delivering building materials, machinery or in any way interfering in the suit property being LR No. 209/6708 or putting up any scaffolding or blocking the entrances with scaffold or any other material of whatsoever nature;
4. THAT an Order of interim injunction be and is hereby granted for 14 days only restraining the 1st and 2nd defendants their agents servants or employees from in any way trespassing on the suit premises being LR No. 209/6708 or interfering with the plaintiff's enjoyment of quiet possession of the suit premises and to remove any scaffolding or blockage, blocking the shoppers from accessing the suit premises.
5. THAT the Applicant do serve the Respondents and interpartes hearing will be on 16th September 2014 before any ELC Judge.

GIVEN under my hand and the seal of this Court this 1st day of September 2014.

ISSUED at Nairobi this 1st day of September 2014.

DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

PENAL NOTICE

TAKE NOTICE that any party served with this Order and disobeys the same shall be guilty of contempt of Court and liable to imprisonment for a term not exceeding (6) months or both fine and imprisonment.

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APPENDIX I

ANNEX II

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES

SF/ADM/4/9 VOL.VII

Ag. Finance Manager

Ag. Investments Manager

Ag. Estates Manager

ACTION ON BOARD DECISIONS

At the 13th Operations and Investments Committee Meeting held on 31 August, 2010, the following decisions were made for implementation.

Fund Managers & Custodians

- (i) The above be in place within two (2) weeks.
- (ii) Final contracts for the above as well as the financial advisor be presented to Committee before final execution.

Forensic Audit

- (i) The Terms of Reference and contract awarded to PriceWaterhouseCoopers (PWC) be circulated to Trustees.
- (ii) The scope be expanded to include a wide forensic audit covering all core functions of the Fund except legal audit that would be carried out separately.

Kikambala Plots

- (i) Approval was granted for payment of Kshs.1 million to Millsons Estates Ltd whose property was demolished at the time of eviction of squatters in NSSF Kikambala plots. This be paid by 15 September, 2010 as proposed.
- (ii) The sale of LR 1088 and 1089 be expedited.

Proposed completion of Hazina Trade Tower, Monrovia Street

- (i) Confirm that utilization of former project consultants without re-sourcing for the services is in line with the Public Procurement Act.
- (ii) Explore the possibility of developing and selling the office space.
- (iii) Approval was granted for advertisement for Contractors with a view to developing the property.

Proposed Development of Mavoko, Kenyatta Avenue, State House Road, Milimani Plots.

- (i) Advertise including internationally for expression of interest to improve the Return on Investments (ROI) by 30 September, 2010 and a report be presented during the October Committee meeting.
- (ii) Include plans to develop Bishops Road Plot.

Sale of View Park and Hazina Towers

The properties be retained for now and invitations for expression of interest to improve Return on Investments (ROI) be placed by 30 September, 2010 and a report be presented at the October Committee meeting.

Proposal for Eviction of Squatters on Fund Mavoko Plots

- (i) Confirm that direct appointment of Secure Homes Ltd is within the Procurement Act.
- (ii) A comprehensive strategy on how to ensure the Fund land is not invaded by squatters including the total amount required to secure the property between now and the time it is developed be forwarded to the Trustees for decision by circulation.

Kenya Power & Lighting Company

- i. Avail the opportunity costs on the remaining shares.
- ii. Work out various scenarios that are likely to arise based on movement of shares.



- iii. Evaluate the risks of offloading 4,810,501 shares on the market and re-investment of sale proceeds in the company during or after the proposed restructuring program. This be forwarded for Trustees decision by circulation.

Evaluation of Performance of Tenant Purchase Scheme

- (i) Provide an analysis on the returns being gotten in relation to those received by banks.
- (ii) Provide bad debt data for other mortgage schemes.
- (iii) Re-submit the paper including proposals on partnership with Housing Finance and Savings & Loan.

Investments Opportunities in August 2010

Approval was granted for investment of Kshs.1.2 billion in the 9 year infrastructure bond issue No.1FB 2/2010/9 at 6.5%.

Investment Plan for Financial Year 2020/2011

The proposed investment plan was approved subject to review once Fund Managers and Custodians are brought on board.

Tassia Estate

Way forward on Tassia Estate be presented at the next Committee Meeting.


ALEX KAZONGO
MANAGING TRUSTEE

17 September, 2010

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BOARD OF TRUSTEES



NATIONAL SOCIAL SECURITY FUND

INTERNATIONAL TENDER

NSSF EOI NUMBER 05/2010 - 2011

INVITATION FOR EXPRESSION OF INTEREST (EOI)
FOR JOINT VENTURE PROPERTY DEVELOPMENT**Background**

The National Social Security Fund (NSSF) was established in 1965 by an Act of Parliament (Cap 258 of Laws of Kenya) to administer a provident scheme for all workers in Kenya. In 1987, the Act was amended and NSSF transformed into an autonomous State Corporation operating under the Board of Trustees, which is constituted by representatives of three key stakeholders i.e. the Government, Workers and Employers. Membership of the Fund has grown steadily over the years to 1.2 million currently. The Fund manages an asset portfolio of approximately US\$1.3 Billion.

Scope of Work:

In its endeavour to fulfill its mandate through enhanced utilization of its land assets, the Fund invites interested parties either as financiers, developers or realtors, in their capacities as corporate bodies or consortia, local or international, to express their interest in partnering with NSSF in the development of the following three prime properties in the capital city, Nairobi, Kenya:-

- A. 960 acres of Land in Mavoko Municipality, off Nairobi – Mombasa highway approximately 15 km from Nairobi.
- B. A 3.6 acre property at the junction of the main thoroughfare of Kenyatta Avenue and Uhuru Highway, in the Central Business District of Nairobi;
- C. A 3.5 acre property in the upscale neighbourhood of Milimani, along State House Road, approximately 1.5 km from the Central Business District of Nairobi with existing apartments / buildings.

The Board of Trustees, NSSF invites interested

companies or consortia to express their interest in designing, developing, financing and selling or operating the developments on joint venture basis.

Interested parties should provide information indicating their track record, technical qualifications and financial capability to undertake the developments. In particular, they should provide the following information:

1. Technical Profile:

- Profiles of the company or consortium members complete with all registration documents and statutory compliance information;
- Relevant experience in commercial real estate development;
- Profiles of the team to be involved in the execution of the project;
- Provide letters of consent in participating in project (for consortia).

2. Financial Profile:

- Name and address of Bankers and / or consent letter to finance developments
- Audited Financial Statements of company or consortium for the past three years;
- Certificate of Tax Compliance from domicile countries.

Proposal Submission:

The company or consortia shall submit a detailed proposal which should include but not limited to the following:

- 1) A proposal on the best use of the properties;
- 2) Project cost and projected investment;
- 3) Projected time frame/programme for

completion of the development;

- 4) Projected return on investment and proposed sharing ratios;
- 5) Proposal on the responsibilities and obligations of each party in the consortium;
- 6) Disclosure of sources of funding;
- 7) Proposed joint venture arrangement

Interested bidders are required to visit and familiarize themselves with the respective properties in order to provide proposals. All costs associated with the preparation and submission of the RFP will be borne solely by the bidder and the Fund will not be responsible or liable for the costs regardless of the conduct or outcome of the tendering process.

Request for Proposal documents should be submitted in plain sealed envelopes clearly marked "NSSF EOI NO. 05/2010-2011-JOINT VENTURE PROPERTY DEVELOPMENT FOR A, B OR C" and addressed to:

**Managing Trustee
National Social Security Fund
P.O. Box 30599-00100
NAIROBI
Email: mt@nssfkenya.co.ke**

The same should be deposited in the Tender Box on 2nd Floor at the Reception Area, Block A Western Wing, Social Security House, Nairobi so as to be received not later than 15th December 2010 at 11.00am East African Time (G.M.T. +3) The proposals shall be opened immediately thereafter at the NSSF Board Room on 3rd Floor in the presence of Bidders' Representatives who choose to attend.

The Fund reserves the right to accept or reject any proposal in part, cluster or full without giving any reasons.

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ANNEX 16



NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES

SF/ADM/4/9 VOL

General Manager (Investments)

General Manager (Corporate Affairs/Corporation Secretary)

ACTION ON BOARD DECISIONS

At the special Meeting of the Board of Trustees NSSF held on 10 May 2011 the following decisions were made for implementation.

NSSF Representation at the National Bank of Kenya

- i) National Bank of Kenya of Kenya be informed that NSSF would not seek enlargement of the Board of Directors.
- ii) Instead, Mrs. Jacqueline Mugo, Mr. Cornelius Nyang'un and Mr. Arthur Papa are nominated to replace the three (3) retiring directors.
- (iii) That the Bank be reminded that NBK Management is by Virtue of NSSF's shareholding employed by NSSF.
- (iv) The Bank's letter be responded to with copies to all Trustees, Treasury and the Central Bank Governor.

13) Bishops Road Plot – 209/297

The offer from Sarova Hotels was noted but management was authorized to source for other buyers through Estate agents for competitive purposes.

14) Kitisuru NBI/BLK 101/J22

The proposal to sell the plot to Board and staff members at Kshs.12 million on cash basis was granted.

15) Jogoo/Outering Road LR 209/11314

a. Igwe Stores be offered a letter to pay at market rates.

b. Registration of the sub-divisions be finalized and the remaining 4.59 acres be sold at a market valuation price of Kshs.34.52 million an acre.

16) Mavoko - LR 18064

The plots be sold to staff on cash basis as follows:

- i. 111 residential plots - Kshs.1.6 million each.
- ii. 9 shops - Kshs.1.5 million each
- iii. 1 petrol station - Kshs.2.5 million
- iv. 1 church - Kshs.2.5 million
- v. 1 nursery School -Kshs. 2 million

Any remaining plots be sold to members of the public on cash basis.



17) Mavoko Plots

Approval was granted for the sale of:

- (i) LR.12715/430 - Kshs.5 million
- (ii) LR 12715/431 - Kshs.5 million
- (iii) LR 12715/407 - Kshs.5.1 million
- (iv) LR 12715/432 - Kshs.4.8 million on cash basis.
- (v) Purchasers be sought from the public for LR Nos. 337/1921, 20181, 20183, 20184, 20185, 20200, 20201, 20205, 20206, 20207 and 20208 except 20305 and 26472 whose valuations are awaited.

18) Presentation by Adventis In-house Consultants on Project Concepts for Development of Mavoko, Kenyatta Avenue and Milimani Plots (EOI)

Approval was granted for the following concepts:

Mavoko Plots

- i. A mixed development for a self sufficient independent township comprising upto 30,000 housing units plus all amenities.
- ii. The cut off for the bidders to be invited for the RFP's was set at 60%.
- iii. Therefore, 4 bidders, China CAMC, HFCK, Joel E.D. Nyaseme and African Legend would be invited to participate in the RFP.

BOARD OF TRUSTEES



- (v) Clear responsibility levels on joint ventures (where necessary) be indicated.
- (vi) All bidders be informed of the outcome on the evaluation of the concepts
- (vii) The consultant was authorized to proceed with the preparation of tender documents for the invitation of the Request for Proposals (RFPs).

20) Investments opportunities for the month of March 2011

The proposed sale of 2.5 million BAT shares through either Dyer & Blair or Standard Brokers was declined until Fund Managers and Custodians are in place.

21) LAPTRUST Offer to Buy NSSF Shares in Consolidated Bank

The Board agreed that there is need for

- (i) details on who LAPTRUST is,
- (ii) its directors and ability to pay to NSSF,
- (iii) an analysis of the implications of the pending court case and its effect on NSSF shares,
- (iv) NSSF to appoint its own independent valuers at its own costs,

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BOARD OF TRUSTEES



26) Staff Mortgage Scheme

A revised Board paper be submitted to the relevant Committee for final decision.

27) Rent Arrears

- a. Provide breakdown of previous defaulting tenants and action taken.
- b. Ensure current tenants do not fall into arrears.

28) NSSF Representation at KCB

Find out whether the Fund should secure a director's seat in KCB in view of its shareholding.

29) Abolished Offices

All staff whose Offices have abolished must be engaged until exited by the Board.


ALEX KAZONGO
MANAGING TRUSTEE

27 May 2011

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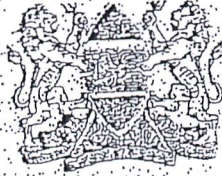
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APPENDIX IV

APPENDIX IV

ANNEX 17

REPUBLIC OF KENYA



26 AUG 2013

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES
OFFICE OF THE CABINET SECRETARY

Telegrams: "LABOUR", Nairobi
Telephone: Nairobi 2729800
Fax: 2722202
When replying please quote

NSSF Block 'A', Eastern Wing
P.O. BOX 40326
00100 GPO
NAIROBI

Ref: ML/ADM4/128 VOL.V

Date: 26th August, 2013

Mr. Adan Mohamed
Chairman
NSSF Board of Trustees
National Social Security Fund
NAIROBI

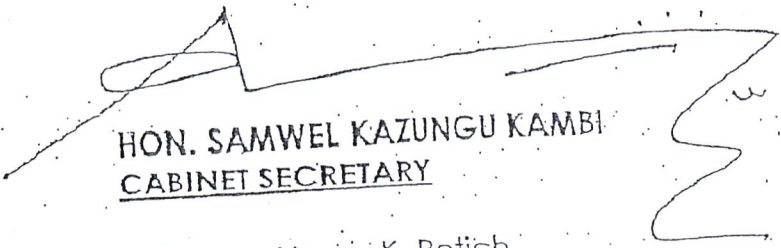


RE: CABINET APPROVAL OF KENYATTA AVENUE AND MAVOKO PROJECTS

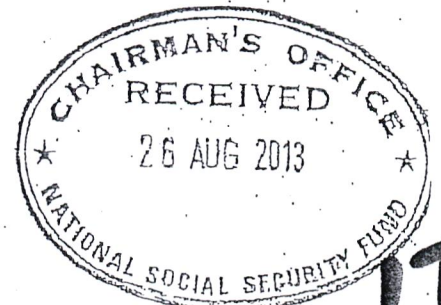
The Cabinet has approved the Kenyatta Avenue and Mayoko Projects.

Please note that the scope of the Mayoko Project has been increased from 30,000 to 60,000 housing units.

Consequently, I am now directing you to proceed with the projects in accordance with the law.


HON. SAMWEL KAZUNGU KAMBI
CABINET SECRETARY

CC: Mr. Henry K. Rotich
Cabinet Secretary
National Treasury



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NATIONAL SOCIAL SECURITY FUND

TENDER NOTICE

INTERNATIONAL REQUEST FOR PROPOSALS (IRFP) NSSF TENDER NO. 09/2013-2014 PROPOSED JOINT VENTURE PROPERTY DEVELOPMENT IN MAVOKO MUNICIPALITY (MACHAKOS COUNTY)

The National Social Security Fund (NSSF) was established in 1965 by an Act of Parliament (Cap 258 of Laws of Kenya) to administer a provident scheme for all workers in Kenya.

In 1987, the Act was amended and NSSF transformed into an autonomous State Corporation operating under the Board of Trustees, which is constituted by representatives of three key stakeholders i.e. the Government, Workers and Employers.

Membership of the Fund has grown steadily over the years to 1.2 million currently. The Fund manages an asset portfolio of approximately US\$1.3 Billion.

The National Social Security Fund invites sealed Tenders from eligible and competent firms for Joint Ventures for Property Development in Mavoko Municipality and Nairobi Central Business District.

Interested, qualified and eligible firms may obtain the Request for Proposal (RFP) documents from the Procurement Office, 9th floor, room No. 905 upon payment of Kshs. 5,000.00 non-refundable fee in cash or bankers cheque payable to the National Social Security Fund at the cash office on Podium Floor, Social Security House, Block A, Western Wing, Bishops Road Nairobi during working hours.

Submissions must be accompanied with the following Mandatory requirements for preliminary evaluation:-

- Bid Security from the Developer in the format and amount as indicated in the appendix to instructions to bidders.
- Must have Developed and commissioned at least three (3) projects of residential housing of a minimum value equivalent to Kshs. 20,000,000,000 (Twenty Billion) each or one (1) Residential Housing Project of a minimum value of Kshs. 60,000,000,000 (Sixty Billion), not earlier than 1st April 2007.
- Must provide evidence of Equipment and personnel capability for carrying out the work.
- Must have a minimum annual turnover of Kshs. 50 billion in the last five years.
- Proof of lines of Credit or bank statements to support the bidder's ability to undertake the project.
- Statement of tax Compliance from Bidding Company, and if Consortium, from each member of the consortium.
- Must incorporate local consultants in their consortia who are registered with Board of Registration of Architects and Quantity Surveyors of Kenya.

Completed Tender documents in plain sealed outer envelope enclosing separately sealed envelopes Marked "Technical" and "Financial" both having two copies each ("original" and "copy") all clearly marked NSSF Tender No. 09/2013 - 2014 - Proposed Property Development in Mavoko Municipality (Machakos County) as per instructions in the RFP documents and addressed to:-

Managing Trustee
National Social Security Fund
P.O Box 30599 - 00100,
NAIROBI.

Should be deposited in the Tender Box on 2nd Floor Block 'A', Western Wing, Social Security House Nairobi on or before 11.00 a.m. local time on 29th November, 2013. Tenders will be opened immediately thereafter in the Seminar Room on 4th floor, Social Security House, Block 'A', Western Wing, Nairobi in the presence of Tenderers representatives who choose to attend.

A pre-bid meeting for interested tenderers is scheduled to be held at 10.00a.m on 30th October, 2013 in the Conference Room on 4th Floor Social Security House, Nairobi Block A.

NSSF reserves the right to accept or reject any tender either in whole or in part without giving reasons for either rejection or acceptance.



NATIONAL SOCIAL SECURITY FUND

TENDER NOTICE

INTERNATIONAL REQUEST FOR PROPOSALS (IRFP) NSSF TENDER NO. 08/2013-2014 PROPOSED JOINT VENTURE FOR PROPERTY DEVELOPMENT IN NAIROBI CENTRAL BUSINESS DISTRICT (KENYATTA AVENUE)

The National Social Security Fund (NSSF) was established in 1965 by an Act of Parliament (Cap 258 of Laws of Kenya) to administer a provident scheme for all workers in Kenya.

In 1987, the Act was amended and NSSF transformed into an autonomous State Corporation operating under the Board of Trustees, which is constituted by representatives of three key stakeholders i.e. the Government, Workers and Employers.

Membership of the Fund has grown steadily over the years to 1.2 million currently. The Fund manages an asset portfolio of approximately US\$1.3 Billion.

The National Social Security Fund invites sealed Tenders from eligible and competent firms for Joint Ventures for Property Development in Nairobi Central Business District.

Interested, qualified and eligible firms may obtain the Request for Proposal (RFP) documents from the Procurement Office, 9th floor, room No. 905 upon payment of Kshs. 5,000.00 non-refundable fee in cash or bankers cheque payable to National Social Security Fund at the cash office on Podium Floor, Social Security House, Block A, Western Wing, Bishops Road Nairobi during working hours.

Submissions must be accompanied with the following Mandatory requirements for preliminary evaluation:-

- Bid Security from the Developer in the format and amount as indicated in the appendix to instructions to bidders.
- Must have Developed and commissioned at least three (3) projects of commercial/hospitality space of a minimum value equivalent to Kshs. 10,000,000,000 (Ten Billion) each or one (1) commercial/hospitality project of a minimum value of Kshs. 30 Billion (Thirty Billion), not earlier than 1st April 2007
- Must provide evidence of Equipment and personnel capability for carrying out the work.
- Must have a minimum annual turnover of Kshs. 50 billion within the last five years.
- Proof of lines of Credit or bank statements to support the bidder's ability to undertake the project.
- Statement of tax Compliance from Bidding Company, and if Consortium, from each member of the consortium.
- Must incorporate local consultants in their consortia who are registered with Board of Registration of Architects and Quantity Surveyors of Kenya.

Completed Tender documents in plain sealed outer envelope enclosing separately sealed envelopes Marked "Technical" and "Financial" both having two copies each ("original" and "copy") all clearly marked NSSF Tender No. 08/2013 /2014 - Proposed Property Development in Nairobi Central Business District (Kenya Avenue) as per instructions in the RFP documents and addressed to:-

Managing Trustee
National Social Security Fund
P.O. Box 30599 - 00100,
NAIROBI.

Should be deposited in the Tender Box on 2nd Floor Block 'A', Western Wing, Social Security House Nairobi on or before 11.00 a.m. local time on 4th December, 2013. Tenders will be opened immediately thereafter in the Seminar Room on 4th floor, Social Security House, Block 'A', Western Wing, Nairobi in the presence of Tenderers representatives who choose to attend.

A pre-bid meeting for interested tenderers is scheduled to be held at 10.00 am on 30th October, 2013 in the Conference Room on 4th Floor Social Security House, Nairobi Block A.

NSSF reserves the right to accept or reject any proposal either in whole or in part without giving reasons for either rejection or acceptance.

APPENDIX VI ^{APPENDIX VI}
ANNEX A

SF/10/16/VOL. XXVI

18th June, 2014

Public Private Partnerships Unit
P. O Box 30007-00100
Nairobi

Dear Dr. Tuimising

RE: NSSF PROJECTS


Forwarded herewith please find the under listed documents as agreed during the meeting held in your offices at Anniversary Towers on 17 June 2014:-

1. Cabinet Approval for Kenyatta Avenue & Mavoko Projects
2. Tender Document No. 08/2013-2014 (RFP) for Kenyatta Avenue Project
3. Tender Document No. 09/2013-2014 (RFP) for Mavoko Project
4. National Social security Fund Act 2013

We take opportunity to appreciate your efforts to create time for our team and the hospitality you accorded us during the meeting.

Your advise will be highly appreciated.

Yours Sincerely



Richard Langat
CEO/Managing Trustee

From: George Mwandembo
To: ntuimising@pppunit.go.ke
Date: 17/06/2014 09:38
Subject: Re: CONFIRMATION OF MEETING

CC: Hellen Koech; Mutemi Nzatu; Richard Langat
Dear Dr Ronoh

This is to confirm that the NSSF team is ready for the meeting to be held on Tuesday the 17 June 2014 at 2:30 PM, in your offices at Anniversary Towers, 7th Floor.

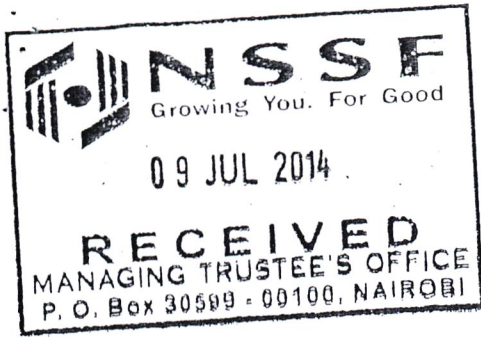
We appreciate your efforts to create time for the meeting.

George

22

12 174

ANNEX 20



REPUBLIC OF KENYA THE NATIONAL TREASURY

Telegraphic Address: 22921 Finance - Nairobi FAX NO. 310833 Telephone: 2252299

THE NATIONAL TREASURY P O BOX 30007 - 00100 NAIROBI

When Replying Please Quote

Ref: DGIPE/PPP/22

MFD

Date: 9th July, 2014

Mr Richard Langat CEO/Managing Trustee NSSF NAIROBI

Dear Mr Langat

RE: NSSF PROJECTS

Your letter Ref.SF/10/16/VOL.XXVI dated 18 June 2014 refers, together with the discussions held at the meeting of 17 June 2014, both of even subject.

Your attention is drawn to the attached detailed review of the two projects (Mavoko residential township projects and Mixed Commercial Development in Nairobi) based on the information provided vide your cited letter.

Our analysis concludes that the Mavoko projects are to be developed, constructed and sold off to buyers upon completion. The relationship intended between the NSSF and the private developer(s) does not include contractual obligations beyond sale of the units. Furthermore, it is our understanding that the partners in this project will be looking at revenue splits at the project level - meaning disbursements from each unit sale will flow to the investing partners in tandem with their investment rations, unit by unit. Capital mobilisation by each investing partner will be a risk-taking step for which each party does not, based on information provided, intend or expect to lay claim on the resources of the other: meaning each partner will absorb their losses and enjoy their profits, whichever the case may be, without any sort of indemnity from the other.



ISO 9001:2008 Certified.

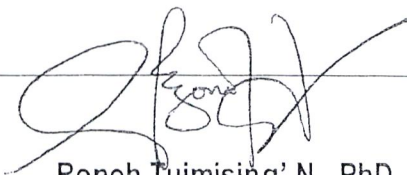
On the bases of the foregoing – and the detailed analysis in the attachment, it is our conclusion that the Mavoko Project (residential development) is structured as a joint venture investment opportunity, and not as a public private partnership. This means that the governing law for this transaction would be the Public Procurement and Disposals Act, 2005.

With respect to the Mixed Commercial Development within Nairobi, it is our conclusion that the project structure and the contractual relationships anticipated are not yet well clarified. The submitted documents relating to this project are equally inconclusive on some of the key questions we raise in the attached analysis. Consequently, we would recommend that this project be considered for development under a PPP framework, and the PPP Unit is available to provide necessary support in the project's preparation. To help you get started on this pathway, please find attached a PPP Concept Note template.

We recommend that you populate the template with all required information and submit the same to the Unit for review. This concept will need to be approved by the PPP Committee as required under the PPP Act 2013, after which this project will be listed among the priority PPP projects – again as required by the Act. You will then need to undertake a formal feasibility study on the same, along the lines stipulated in the PPP Act, 2013 – but subsequent to the approval of the concept by the Committee.

Do not hesitate to engage the PPP Unit for support and guidance in this regard.

Yours faithfully,



Ronoh Tuimising' N., PhD
FOR: DIRECTOR, PPP UNIT



DETAILED ANALYSIS OF THE TWO PROPOSED NSSF PROJECTS – (1) MAVOKO RESIDENTIAL TOWNSHIPS (2) MIXED COMMERCIAL DEVELOPMENT, NAIROBI CITY

The PPP Unit has reviewed the documents submitted and referenced in your cited letter, and notes the following –

1. The National Social Security Fund Act No.45 of 2013 at sections 4(f),(i),(h) and 5(2)(b),(c) and 10(2)(g) &(3) as well as 49(2) establish that the NSFF has the legal capacity both at the Fund and Board levels to determine necessary policies for the Fund's sustainable management, as well as the power to make prudent investments out of funds not immediately required to meet the Fund's obligations under law.
 - a. In particular that this power includes the power to hold property, in itself a power to enter into appropriate contractual arrangements.
 - b. At the heart of this statutory enablement sits a fiduciary obligation: every action, investment or otherwise, must be value-adding to the Fund and its ultimate beneficiaries. This means that the proposed investment qualifies as a legitimate venture – subject to necessary decisions by the Fund's Board.

2. **With respect to the projects proposed, we note the following –**
 - a. The first set of projects relate to the development of residential townships, with all associated amenities in accordance with the details set out in the draft tender documents provided; the second relates to a mixed commercial development within the Central Business District of Nairobi.
 - b. While both projects entail the development of infrastructure assets, we have ~~observed that there does not currently appear to be in existence an intention to conclude contractual relationship between NSSF and the private developer post-construction, apart from arrangements for revenue shares at that point.~~
 - c. The Cabinet approval on the projects is understood as a policy decision on the projects, but not necessarily an approval on procurement and project structure dynamics: these two latter elements are a function of statutory compliance on the part of the Fund. Nonetheless, it is noted that project structure and investment strategy recommended to Cabinet and approved is one of a joint venture. There is nothing in law to prevent this proposed transaction structure, provided general statutory and regulatory requirements are met and that the project attracts investor interest.
 - d. The project structure proposed for the housing development as we see it involves a design/build and sale transaction, with both the Fund and the private investor earning an immediate return through unit sales – subject to their shareholding arrangements and profit share agreements.

- e. The mixed urban development project is not entirely clear on post-development intentions: what will be immediately and directly sold off? What will be retained for management and operation by the Fund? On what is retained (not sold), how is the return on investment to be made? How much time will an investor require to recoup its investment? What will happen after the investor has recovered its return – will the facilities be transferred back to NSSF and if so, how will they be managed – under service contracts? These and several corollary questions remain unanswered.
- f. On both projects, it is not disclosed in the submitted documents whether formal structured feasibility studies were undertaken on both projects, and if done, when. It is also not clear whether the proposed contracting strategy on either project is informed by feasibility study findings or not. If formal feasibility studies were not done, serious consideration should be given to the conduct of one, more especially for the mixed urban development – as the study could come up with alternative types of development that support investment mix that would yield stronger success from a cash flow perspective for the Fund. More fundamentally, since any investment by the Fund must be a prudent investment, a feasibility study would serve as a strong piece of evidence that all caution was taken to inform the advisability of the proposed investments – as such a study would provide an empirical basis for the claim that the projects are fiscally and commercially viable. This would provide protection to the Fund and its Management should these transactions come under inquiry, for whatever reason, in the future.

3. **An important question** raised at the meeting of 17 June 2014 is whether these two projects should be seen as public private partnership projects within the meaning of the Public Private Partnerships Act No.15 of 2013. The PPP Act 2013 states at section 2 that a PPP project entails the performance of a public function” by a private sector party – in exchange for which the private party receives some payment or other fiscal benefit through user fees/charges or compensation through a public fund, and under circumstances that allow for key risks to be transferred from the public entity to the private party.

- a. The idea of a “public function” is important, and this is derived from the core mandate of a public entity. The Fund is a statutory entity with its core function (objects) being indicated at section 4 of the NSSF Act 2013. Investment, as a general activity, is not an ‘object’ of the Fund strictly speaking – but an activity that perpetuates the objects.
- b. A PPP undertaking should only be undertaken where the function is a public function.
- c. That said, however, it is possible to construe an object-linked activity as being part and parcel of the broader functions of the Fund, and it therein becomes a

question of deciding what project structure best serves the objects of the Fund – a PPP or a joint venture or wholly financing a project internally.

4. In view of the preceding summation of our understanding of the project structure and philosophy, we now draw the following broad deductions on your projects' typology –

- a. The proposed transactions do not currently intend a long-term contractual relationship between NSSF and private parties. If this is the core management and investment intention, then the contractual framework and strategy being anticipated would not fit within the broad ethic of the PPP law on the tenure of PPP contractual relationships – which, in fact, is a powerful driver of payment mechanisms built into project structures.
- b. The construction of houses and commercial property is not a core function of NSSF – as suggested above – but constitute vehicles that enhance the success of the Fund's core functions.
- c. Should the Fund progress the proposed project ideas under a joint venture approach within the spirit of a short-term profit-oriented outcome as indicated in (a), then these transactions would not be subject to the regulatory remit of the PPP Act 2013, but will be regulated, for procurement purposes, by the Public Procurement and Disposal Act 2005. It is crucial to ensure that the procedural and substantive requirements of the governing legal framework are adhered to strictly for project integrity.
- d. A PPP transaction requires development through several phases – and those phases are not optional in compliance. These include approval of the PPP concept idea, the requirement for a formal feasibility study addressing the issues stipulated at section 33 of the PPP Act 2013, and the approval of the feasibility study report before formal tender processes (qualifying bidders and request for proposals/invitation to tender) – together with compliance on all subsequent stages of a formalised PPP tender as detailed in the PPP Act 2013.

This is therefore to advise that unless the transaction structures are changed, these projects as presently conceptualised do not constitute public private partnerships; rather, they represent an opportunity for co-investing in a joint venture arrangement with a private sector party, with the motive for quick returns upon completion of civil works.

Nonetheless, we would recommend a review of the strategy proposed for the mixed commercial development in Nairobi – one that would adopt a PPP approach. Such an approach would allow NSSF to benefit from more careful thinking and strategic investment planning in a way that would secure more positive outcomes to the Fund. Should NSSF find merit in this

recommendation, the Unit is happy to extend all support to you as a contracting authority under the Act with the view to ensuring the project is carefully and efficiently developed.

Ronoh Tuimising' N., PhD

LEGAL EXPERT

PUBLIC PRIVATE PARTNERSHIPS UNIT

THE NATIONAL TREASURY
PUBLIC PRIVATE PARTNERSHIP UNIT



PPP CONCEPT NOTE GUIDELINE

Introduction – User Instructions

A Concept Note should be prepared for each project that a contracting authority wishes to undertake as a Public Private Partnership. The Concept Note will be used by the PPP Unit to make its preliminary evaluation of whether a project is suitable for structuring as a PPP. Based on that evaluation, the PPP Unit will make its recommendation whether the PPP Committee should give its conceptual approval that the project could be done as a PPP.

A contracting authority can proceed to prepare a feasibility study for a project only after it has the conceptual approval of the PPP Committee; therefore the Concept Note is an important first step in undertaking any project as a PPP.

The following describes the required content of the Concept Note. Contracting authorities are advised to follow these instructions as closely as possible, as it will speed review of the project by the PPP Unit.

General & specific description of the project – Under *general description*, describe how the project relates to the national development priorities and specific development plan of your organization. (Include any preliminary planning document that may have been prepared in connection with the project.) Describe the institutional need of your organization to be addressed by the project. Describe the evolution and any history of the project. State the legal basis for your organization's authority to undertake the project.

Under *specific description*, indicate the economic life of the project and any specific technology considerations related to it. Indicate size, capacity, etc, and the output requirements of the facility. Describe any constraints imposed by the site where the facility will be located.

Project Objectives and Preliminary Needs Analysis – Describe how the project fits into national and sector plans or priorities. Provide preliminary needs analysis motivating the project, and describe the alternative solutions to meeting the identified need that could be considered.

Technical Parameters of the Project – Describe the technical aspects of the proposed project, with broad indications on the technology anticipated to be deployed, as well as a statement of how it fits into national and sectoral strategic plans, the proposed project implementation plan and economic viability. (Technical drawings not necessary at this stage)

Social economic benefits of the project – Describe how the local community is likely to be affected by the project, including positive impacts such as employment, as well as any negative

impact of the project and how that will be managed. Note whether resettlement of any population will be required. Indicate status of ESIA and NEMA license.

Land situation – Describe the location of the land on which the project will be constructed as well as any other land (adjoining etc) that will be affected by the construction and operation of the project. Indicate current ownership and whether all land has been acquired for the project, and if not, the plan for such acquisition. If the land is currently owned by the government, describe how it is owned – PDP, letter of allotment, title deed, contested, etc. Indicate how much is budgeted for land acquisition in the project. If land will be acquired under a long-term lease, indicate the status of the lease and any related negotiations. Provide a preliminary assessment of the social conditions surrounding the proposed project site/location: human habitation, access roads, water and electricity services, etc. Include site maps where available.

Role of private sector – Describe in general what the preferred role of the private sector will be in the project – developer, contractor, owner, operator, etc. Describe any relevant experience your organization has in managing the private sector in these various roles. Describe any contacts that the private sector may have had to date with your organization related to proposals for the project. Flag and describe any formal unsolicited proposal that may have been made to you.

Form of PPP – Describe how you would propose to involve the private sector in the project and what preferred form(s) the PPP would likely take - Design-Build, Build-Operate-Transfer, Build-Own-Operate, Operation & Maintenance, Long-Term Lease, Concession, etc – see Schedule II, PPP Act for possible options.

Estimated capital cost, average annual operating cost, both in Kenya shillings or USD, and at current prices – Provide the total capital cost of the project, both for the initial construction and during the project lifecycle. Indicate estimated average annual operating costs. Also indicate the likely financing plan for the project

Project revenues – Identify the sources of any revenues that may be generated by the project – whether through fees and charges to be paid by project users or other third parties, or payments by Government or a contracting authority, or a combination of both. Where a project relies on revenue streams from user fees and charges, describe the general state of “willingness to pay” and any surveys that have been conducted to establish this status. Indicate further whether users have alternatives to using the financed facility.

Support required – Indicate whether any upfront payment or annual support (availability payment/shadow toll if a transport infrastructure project) from government budgetary allocations that the project will be required. Indicate your institution's ability to conduct a feasibility study required under the PPP Act 2013. Indicate your expectations for hiring feasibility study consultants and or transaction advisors. Indicate whether you have established a PPP Node to support the project's development and implementation.

Affordability – Assess the project's affordability parameters within the meaning given to that term under section 2 of the PPP Act 2013.

Project risks – Identify the general project risks, and indicate on a preliminary basis which of those risks could be appropriately transferred/allocated to the private sector.

Duration of the Contract and estimated construction time – Indicate the anticipated period of the proposed PPP project contract, during which the private sector will participate in the project. Give the estimated construction period for the project.

Green field or brown field – Indicate whether the project will be a green field or brown field, and if a brown field, describe the existing facilities.

Other Authorities involved in the project – List all other governmental authorities involved in the project and describe their roles.

Current project status – Indicate the current status of the project.

Studies finalized or under preparation – List any preliminary or final studies that are being or have been prepared, including for example marketing studies, willingness to pay studies, and feasibility studies.

Contact person – Provide the name and contact information for the person whom the PPP Unit can reach with any follow-up questions about the project or the Concept Note.

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APPENDIX VII ¹⁷

APPENDIX
ANNEX 21

SF/A/10/17 VOL. I/9

19 September, 2014

Mr. Maurice J.O. Juma
The Director-General
Public Procurement Oversight Authority
P O Box 58535 – 00200
NAIROBI



Dear Sir,

RE: REQUEST FOR EXTENSION OF TENDER PROCESSING TIME
IRFP No. 8/2013-2014 FOR JOINT PROPERTY DEVELOPMENT
VENTURE AT MAVOKO MUNICIPALITY

The above captioned matter refers.

The National Social Security Fund advertised for International Request For Proposals for the captioned project on 23 October, 2013. The Proposals were opened on 24 April, 2014 in accordance with provisions of the Public Procurement and Disposal Act 2005. However, due to the complexity of the project it was deemed necessary to consult the Public Private Partnership (PPP) Unit before commencement of evaluation of the proposals to ensure that the process was within the law.

The PPP unit has since advised that the project is not a Public Private Partnership but rather a Joint Venture Project that may be procured under the Public Procurement and Disposal Act, 2005. In view of this, we are desirous to proceed and conclude the tender process as provided in the PPD Act 2005.

The Proposals were valid for a period of 180 days from the date of opening. They are thus still valid. However, taking cognisance of Regulations 16 (4) (b) and 46 (1) & (2) as amended by Legal Notice No.106 of 18 June, 2013 it is noted that the maximum period of forty five days from the date of opening within which the tender should be evaluated has expired.

The purpose of this letter is therefore to request that you allow us to proceed with the tender process as starting the process again will be time consuming and costly both to the bidders and the Fund.

Your approval shall be highly appreciated.

Yours Sincerely,

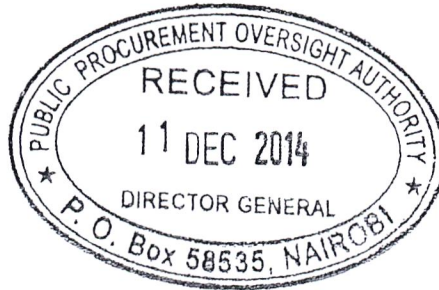


RICHARD K LANGAT
CEO / MANAGING TRUSTEE

10 December, 2014

SF/A/11/14/ VOL. 1 /23

Mr. Maurice J.O. Juma
The Director-General
Public Procurement Oversight Authority
P O Box 58535 – 00200
NAIROBI



Dear Mr. Juma,

RE: REQUEST FOR EXTENSION OF TENDER PROCESSING TIME IRFP No. 9/2013-2014 FOR JOINT PROPERTY DEVELOPMENT VENTURE AT MAVOKO MUNICIPALITY


Reference is made to our letter Ref. No. SF/A/10/17 VOL.1/9 dated 19 September 2014 and your response Ref. No. PPOA / P&R/6/15 VOL VII (64) dated 6 October 2014.

The IRFP Mavoko Project was approved by the Cabinet and is among Vision 2030 Projects. As explained in our earlier letter, the IRFP is a complex project and time lapsed while consultations were being done with the Public Private Partnership Unit. We confirm that extension of tender evaluation period was done by the Accounting Officer as necessary. Further, the vendors extended validity of their bids and bid bonds. However, as noted in both our letter and your response the evaluation period is limited to a total of forty five days which have lapsed.

The Fund is desirous to complete the procurement process within the provisions of the Law and is committed to complete the tender process by 15 January 2015. It is therefore in this regard that we request the Authority to allow extension of the evaluation time under Section 92 (4) of the Public Procurement and Disposal Act 2005.

Your approval shall be highly appreciated.

Yours Sincerely,


RICHARD K. LANGAT
CEO / MANAGING TRUSTEE

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Telephone: +254(020) 3244000, 2213106, 2213107
Fax: +254(020) 2213105, 3244377, 3244277
E-mail: info@ppoa.go.ke
Website: www.ppoa.go.ke
When replying please quote:
PPOA /P&R/6/15 VOL VII (64)

A3 M for

National Bank Building,
10th Floor Harambee Avenue,
P.O. Box 58535-00200
NAIROBI
KENYA

6th October 2014

Richard K. Langat
CEO/Managing Trustee
National Social Security Fund
P.O. Box 30599 - 00100
NAIROBI



Dear *Mr. Langat,*

RE: REQUEST FOR EXTENSION OF TENDER PROCESSING TIME IRFP
No. 8/2013-2014 FOR JOINT PROPERTY DEVELOPMENT VENTURE
AT MAVOKO MUNICIPALITY

We refer to your letter ref. SF/A/10/17 VOL. I /9 dated 19th September 2014 on the above captioned subject.

We have noted your request to proceed with the tender process which had been advertised on 23rd October 2013 and proposals opened on 24th April 2014 but whose evaluation does not seem to have been concluded. Regulations 16 and 46 of the Public Procurement and Disposal Regulations, 2006 as amended by Regulation 14(b) of the Public Procurement and Disposal (Amendment) Regulations, 2013 (Legal Notice No. 106) requires evaluation of tenders to be undertaken within fifteen days. However, Regulation 14(2) provides where a tender is complex or has attracted a high number of tenderers, the accounting officer or head of the procuring entity may extend the period for tender evaluation for a further period within the tender validity period not exceeding thirty more days from date of expiry of initial period.

Based on information contained in your letter, we note that:-

- a) The period between tender advertisement and opening was approximately six months. This is extremely too long.
- b) The Accounting Officer did not invoke his powers to extend the tender evaluation period as required by Regulation 14(2) of the Public Procurement and Disposal (Amendment) Regulations, 2013 (Legal Notice No. 106).

Taking cognizance of the foregoing observations, you are required to take corrective action(s) to ensure that the subject procurement is carried out in accordance with the Public Procurement and Disposal Act, 2005 and its attendant Regulations. Please be advised accordingly and inform us the actions you have taken to address the above issues by 14th October 2014.

Yours

Sincerely,

~~M. J. O. JUMA~~
M. J. O. JUMA, MBS
DIRECTOR GENERAL

CRYSTAL VALUERS LTD

Registered Valuers, Property Consultants, Estate and Managing Agents

ANNEX 23

Head Office:

Bruce House, 4th Floor
Standard Street
P.O. Box 10205 - 00100
Nairobi, G.P.O.

Tel: 31202374

Mobile: 0721-297100 / 0733-714297

Email: info@crystalvaluers.com

Website: www.crystalvaluers.com

Branches

Mombasa: Electricity House, 4th Floor, Nkurumah Road, P.O.Box 87907-80100 Mombasa Tel: 041-2315550 Email: mombasa@crystalvaluers.com
Kisumu: Kenya Re Plaza, 7th Floor, Oginga Odinga Street, P.O. Box 662-40100, Kisumu Tel: 057-2025013 Email: kisumu@crystalvaluers.com
Thika: Thika Arcade, 5th Floor, Kenyatta Highway, P.O. Box 2972-01000 Thika, Tel: 067-21759 Email: thika@crystalvaluers.com

CERTIFICATE OF VALUE

In accordance with our terms of reference, we return the following figures as at today's date:-

	LR NO.	LOCATION	KSHS.
1.	209/12287	Kenyatta Avenue, Nairobi	2,000,000,000
2.	209/12220	Kenyatta Avenue, Nairobi	165,000,000
3.	209/12219	Kenyatta Avenue, Nairobi	145,000,000
4.	209/11331	Kenyatta Avenue, Nairobi	220,000,000
5.	209/11412	Kenyatta Avenue, Nairobi	745,000,000
6.	20694 (Original 19187)	Mavoko - Sabaki	45,000,000
7.	24575 (Original 19188)	Mavoko Municipality	86,000,000
8.	26472	Mavoko Municipality	135,000,000
9.	24574	Mavoko Municipality	140,000,000
10.	24577	Mavoko Municipality	105,000,000
11.	24578	Mavoko Municipality	1,400,000,000
12.	Kisumu/Mun/Block 8/258	Milimani Estate, Kisumu	160,000,000
13.	24579	Mavoko Municipality	410,000,000
14.	20355	Mavoko Municipality	400,000,000
15.	20305	Mavoko Municipality	420,000,000
16.	20589	Makutano Junction	300,000,000
		Total	6,876,000,000

WORDS: (KENYA SHILLINGS SIX BILLION EIGHT HUNDRED SEVENTY SIX MILLION ONLY)

For: CRYSTAL VALUERS LTD

M.E. MUKIRA B.A. (LAND ECONOMICS) M.I.S.K.
REGISTERED & PRACTISING VALUER

26TH AUGUST, 2014

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APPENDIX ANNEX 24

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES

SF/ADM/4/9 VOL.VII

Ag. Finance Manager

Ag. Investments Manager

Ag. Estates Manager

ACTION ON BOARD DECISIONS

At the 13th Operations and Investments Committee Meeting held on 31 August, 2010, the following decisions were made for implementation.

Fund Managers & Custodians

- (i) The above be in place within two (2) weeks.
- (ii) Final contracts for the above as well as the financial advisor be presented to Committee before final execution.

Forensic Audit

- (i) The Terms of Reference and contract awarded to PriceWaterhouseCoopers (PWC) be circulated to Trustees.
- (ii) The scope be expanded to include a wide forensic audit covering all core functions of the Fund except legal audit that would be carried out separately.

Kikambala Plots

- (i) Approval was granted for payment of Kshs.1 million to Millsons Estates Ltd whose property was demolished at the time of eviction of squatters in NSSF Kikambala plots. This be paid by 15 September, 2010 as proposed.
- (ii) The sale of LR 1088 and 1089 be expedited.

Proposed completion of Hazina Trade Tower, Monrovia Street

- (i) Confirm that utilization of former project consultants without re-sourcing for the services is in line with the Public Procurement Act.
- (ii) Explore the possibility of developing and selling the office space.
- (iii) Approval was granted for advertisement for Contractors with a view to developing the property.

Proposed Development of Mavoko, Kenyatta Avenue, State House Road, Millimani Plots.

- (i) Advertise including internationally for expression of interest to improve the Return on Investments (ROI) by 30 September, 2010 and a report be presented during the October Committee meeting.
- (ii) Include plans to develop Bishops Road Plot.

Sale of View Park and Hazina Towers

The properties be retained for now and invitations for expression of interest to improve Return on Investments (ROI) be placed by 30 September, 2010 and a report be presented at the October Committee meeting.

Proposal for Eviction of Squatters on Fund Mavoko Plots

- (i) Confirm that direct appointment of Secure Homes Ltd is within the Procurement Act.
- (ii) A comprehensive strategy on how to ensure the Fund land is not invaded by squatters including the total amount required to secure the property between now and the time it is developed be forwarded to the Trustees for decision by circulation.

Kenya Power & Lighting Company

- i. Avail the opportunity costs on the remaining shares.
- ii. Work out various scenarios that are likely to arise based on movement of shares.



- iii. Evaluate the risks of offloading 4,810,501 shares on the market and re-investment of sale proceeds in the company during or after the proposed restructuring program. This be forwarded for Trustees decision by circulation.

Evaluation of Performance of Tenant Purchase Scheme

- (i) Provide an analysis on the returns being gotten in relation to those received by banks.
 - (ii) Provide bad debt data for other mortgage schemes.
-
- (iii) Re-submit the paper including proposals on partnership with Housing Finance and Savings & Loan.

Investments Opportunities in August 2010

Approval was granted for investment of Kshs.1.2 billion in the 9 year infrastructure bond issue No.1FB 2/2010/9 at 6.5%.

Investment Plan for Financial Year 2020/2011

The proposed investment plan was approved subject to review once Fund Managers and Custodians are brought on board.

Tassia Estate

Way forward on Tassia Estate be presented at the next Committee Meeting.


ALEX KAZONGO
MANAGING TRUSTEE

17 September, 2010

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BOARD OF TRUSTEES



NATIONAL SOCIAL SECURITY FUND

INTERNATIONAL TENDER

NSSF EOI NUMBER 05/2010 - 2011

INVITATION FOR EXPRESSION OF INTEREST (EOI)
FOR JOINT VENTURE PROPERTY DEVELOPMENT**Background**

The National Social Security Fund (NSSF) was established in 1965 by an Act of Parliament (Cap 258 of Laws of Kenya) to administer a provident scheme for all workers in Kenya. In 1987, the Act was amended and NSSF transformed into an autonomous State Corporation, operating under the Board of Trustees, which is constituted by representatives of three key stakeholders i.e. the Government, Workers and Employers. Membership of the Fund has grown steadily over the years to 1.2 million currently. The Fund manages an asset portfolio of approximately US\$1.3 Billion.

Scope of Work:

In its endeavour to fulfill its mandate through enhanced utilization of its land assets, the Fund invites interested parties either as financiers, developers or realtors, in their capacities as corporate bodies or consortia, local or international, to express their interest in partnering with NSSF in the development of the following three prime properties in the capital city, Nairobi, Kenya:-

- 960 acres of Land in Mavoko Municipality, off Nairobi - Mombasa highway approximately 15 km from Nairobi.
- A 3.6 acre property at the junction of the main thoroughfare of Kenyatta Avenue and Uhuru Highway, in the Central Business District of Nairobi;
- A 3.5 acre property in the upscale neighbourhood of Millimani, along State House Road, approximately 1.5 km from the Central Business District of Nairobi with existing apartments / buildings.

The Board of Trustees, NSSF invites interested

companies or consortia to express their interest in designing, developing, financing and selling or operating the developments on joint venture basis.

Interested parties should provide information indicating their track record, technical qualifications and financial capability to undertake the developments. In particular, they should provide the following information:

1. Technical Profile:

- Profiles of the company or consortium members complete with all registration documents and statutory compliance information;
- Relevant experience in commercial real estate development;
- Profiles of the team to be involved in the execution of the project;
- Provide letters of consent in participating in project (for consortia).

2. Financial Profile:

- Name and address of Bankers and / or consent letter to finance developments
- Audited Financial Statements of company or consortium for the past three years;
- Certificate of Tax Compliance from domicile countries.

Proposal Submission:

The company or consortia shall submit a detailed proposal which should include but not limited to the following:

- A proposal on the best use of the properties;
- Project cost and projected investment;
- Projected time frame/programme for

- completion of the development;
- Projected return on investment and proposed sharing ratios;
- Proposal on the responsibilities and obligations of each party in the consortium;
- Disclosure of sources of funding;
- Proposed joint venture arrangement

Interested bidders are required to visit and familiarize themselves with the respective properties in order to provide proposals. All costs associated with the preparation and submission of the RFP will be borne solely by the bidder and the Fund will not be responsible or liable for the costs regardless of the conduct or outcome of the tendering process.

Request for Proposal documents should be submitted in plain sealed envelopes clearly marked "NSSF EOI NO. 05/2010-2011 JOINT VENTURE PROPERTY DEVELOPMENT FOR A, B OR C" and addressed to:

**Managing Trustee
National Social Security Fund
P.O. Box 30599-00100
NAIROBI
Email: mt@nssfkenya.co.ke**

The same should be deposited in the Tender Box on 2nd Floor at the Reception Area, Block A Western Wing, Social Security House, Nairobi so as to be received not later than 15th December 2010 at 11.00am East African Time (G.M.T. +3) The proposals shall be opened immediately thereafter at the NSSF Board Room on 3rd Floor in the presence of Bidders' Representatives who choose to attend.

The Fund reserves the right to accept or reject any proposal in part, cluster or full without giving any reasons.

EXHIBIT 10