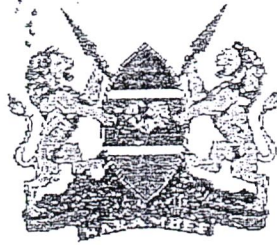


REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FIRST SESSION

THE PUBLIC INVESTMENTS COMMITTEE

SPECIAL REPORT ON THE CONTRACT BETWEEN
NATIONAL CEREALS AND PRODUCE BOARD AND
M/S ERAD SUPPLIES AND GENERAL CONTRACTS
LIMITED FOR THE SUPPLY OF WHITE MAIZE

*Clerk's Chambers,
National Assembly,
Nairobi*

October, 2013

TABLE OF CONTENTS

ABBREVIATIONS AND ACCRONYMS

1. PREFACE	1
2. BACKGROUND	22
3. KEY INSTRUMENTS	26
4. REPORTS FROM GOVERNMENT INSTITUTIONS	28
Auditor General	28
Inspectorate of State Corporations	32
Attorney General	33
Central Bank of Kenya	36
Ministry of Agriculture, Livestock and Fisheries	38
5. EVIDENCE FROM WITNESSES	40
Management of National Cereals and Produce Board	41
Lawyers for National Cereals and Produce Board	43
Former Management of the National Cereals and Produce Board	44
Former Trustees of the National Cereals and Produce Board	50
Mr. Brian Yongo	54
M/s Erad Supplies and General Contracts Limited	56
Investments & Mortgage Bank Limited	61
Dubai Bank Limited	64
Ethics and Anti Corruption Commission	67
Criminal Investigations Department	70
Mr. Ahmed Nasir Abdulahi	71
Hon. Kipruto arap Kirwa	73
Kenya Commercial Bank Limited	74
Management of KAPU Kenya Limited	77
6. INSPECTION VISIT	79
7. OBSERVATIONS, CONCLUSION AND RECOMENDATIONS	81
Observations	81
Conclusion	92
Recommendations	95
Proposed legislative amendments	102

ANNEXURES

- Minutes
- Annexes

LIST OF ANNEXES

- Annex 1** – Letter approving importation of maize
- Annex 2** - List of firms that returned/submitted bids
- Annex 3** – Letter authorising use of restricted tendering
- Annex 4** - Report of the Technical Evaluation Committee
- Annex 5** – Contract between NCPB and M/s Erad Supplies and General Contracts Ltd for the supply of maize
- Annex 6** - Letter directing NCPB to stop issuance of LC and purchase maize locally
- Annex 7** – Instruction to bidders on importation of maize
- Annex 8** - List of firms that purchased bids for the importation of maize.
- Annex 9** – Special Gazette notice waiving duty on imported maize dated August 5, 2004
- Annex 10** - Minutes of the Main Tender Committee on award of tender
- Annex 11** – Letter by Treasury against opening Letters of Credit
- Annex 12** - Letter requesting for funds by the Ministry of Agriculture
- Annex 13** - Letter by M/s Erad Supplies and General Contracts Ltd over LC
- Annex 14** – Letter by NCPB to Ministry - settling issue of LC
- Annex 15** – Receipt purchasing tender documents by Ahmednassir Abdulahi and Company Advocates
- Annex 16** - Press release by Minister for Agriculture
- Annex 17** - Sworn affidavit by Brian Yongo on sharing of proceeds
- Annex 18** - Invoices by M/s Erad Supplies and General Contracts Limited bearing same number different suppliers
- Annex 19** – Joint Venture Agreement
- Annex 20** - Bid Bond
- Annex 21** – ROPACK Fax
- Annex 22** - Performance Bonds
- Annex 23** - Letter by M/s Erad Supplies and General Contracts Limited to KCB on payments to be made to Dubai Bank
- Annex 24** – Confirmation of the validity of performance bonds
- Annex 25** – Agency notice by KRA
- Annex 26** – Guarantee for the Joint Venture Agreement

ACRONYMS AND ABBREVIATIONS

Board	National Cereals and Produce Board
M/s Erad	Erad Supplies and General Contracts Ltd
I&M Bank Ltd	Investment and Mortgages Bank Ltd
KCB	Kenya Commercial Bank Ltd
LC	Letter of Credit
MD	Managing Director
MT	Metric Tons
NCPB	National Cereals and Produce Board
SBL	Standby Letter of Credit
SGR	Strategic Grain Reserve
SGS	Societe Generale de Surveillance
TEC	Technical Evaluation Committee
EACC	Ethics and Anti-Corruption Commission
WRS	Warehouse Receipting System

1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Members of the Public Investments Committee, I beg to move the adoption of the Special Report of the Committee on the contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contract Limited for the supply of maize.

The Public Investments Committee is a Select Committee established under Standing Order No. 206 and is responsible for the examination of the working of public investments. The Committee was constituted in May, 2013 pursuant to Standing Order 206.

Committee Mandate

The Committee is mandated to do the following:-

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

The Committee shall however not examine:-

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

The procedure of a Select Committee and other related matters thereto is covered under Standing Order No. 173 – 205. The Committee has power, under the provisions of article 125 of the Constitution, section 14 of the National Assembly (Powers and Privileges) Act (Cap. 6), the State Corporations Act (Cap. 446) and the Public Audit Act (Cap. 412), to summon witnesses, examine them on oath and receive evidence.

Committee Membership

The Committee consisted of the following Members:-

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

*Special Report on the Contract between National Cereals and Produce Board and M/s
Erad Supplies and General Contracts Ltd for Supply of Maize*

Background to maize importation in 2004

In 2004 there was a serious drought in Kenya that led to a shortage of maize in the country. The Government declared the drought a national disaster following a Cabinet Paper on the drought situation and food security in the country. The Government through the Ministry of Agriculture directed and authorised the National Cereals and Produce Board (NCPB) to import 2 million bags of maize for famine relief and Strategic Grain Reserves (SGR) programmes. The Ministry further directed that an additional two million bags be imported in addition to the one million bags to be imported by the private sector.

The National Cereals and Produce Board floated tenders for the importation of white maize. A total of eighty one firms participated in the bids but only thirty six firms responded. Five firms among them M/s Erad Supplies and General Contracts Limited were awarded the tender to supply 180,000 metric tons of maize. However only two firms supplied the maize while the rest defaulted. The National Cereals and Produce Board opened letters of credit for four of the firms except M/s Erad Supplies and General Contracts Limited which submitted its documents late.

The Cabinet resolved to waive duty so as to allow the importation of maize and in spite the waiver and opening of letters of credit only 70,000 metric tons of maize was imported. This was attributed to the high international prices of maize.

M/s Erad Supplies and General Contracts Limited threatened to sue the Board for breach of contract. In response the Board sought an amicable solution through mediation meetings which failed to bear fruit. M/s Erad Supplies and General Contracts Limited took NCPB for arbitration for alleged breach of contract allegedly occasioned by the failure by NCPB to provide an irrevocable/confirmed/sight Letter of Credit.

During the arbitration NCPB through its lawyers Nyawara and Company Advocates maintained that the contract was explicit as to the obligations of each party and that the payment was independent from the delivery of the consignment which M/s Erad Supplies and General Contracts failed to deliver.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The arbitration process was allegedly marred by allegations of corruption and gross interference. The sole arbitrator Mr. Evans T. Gaturu awarded M/s Erad Supplies and General Contracts Limited a sum of US \$ 3,106,000 being cost of lost profit and storage charges. In addition there was an interest at 12% per annum.

The NCPB appealed to set aside the award at the High Court but the Court did not allow ventilation of the issues and the case was dismissed on technicalities. The Board moved to the Court of Appeal where the matter is yet to be decided. Meanwhile M/s Erad Supplies and General Contracts Ltd applied for the adoption of the arbitral award and its execution thereafter. Garnishee and attachment orders were sought and granted.

As a result of the garnishee orders NCPB's Kshs. 297 million held in KCB account was taken by M/s Erad Supplies and General Contracts Limited. Vehicles belonging to NCPB have also been attached and bank accounts at Co-operative Bank and National Bank have also been garnisheed and frozen.

The NCPB through the Attorney General sought and obtained stay of execution and orders preserving the strategic grain reserve.

The matter has put the National Cereals and Produce Board at a precarious position and poses a serious threat to the national food security since the strategic grain reserves stocks, famine relief food and non food items together with disaster equipments and machinery and other GOK assets are at risk of being auctioned.

Committee Proceedings

Due to the high public interest and Members concern on the matter the Committee in its sitting of 4th June, 2013 resolved to undertake an inquiry into the contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited for the supply of white maize and the alleged indebtedness arising from the contract. The Committee requested the office of the auditor general to undertake a special audit on the matter and the Inspectorate of State Corporations was also asked to investigate and submit a report to the Committee.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The Committee held thirty two (32) sittings in which it closely examined and heard evidence from twenty eight (28) witnesses and also reviewed various documents. The Committee also considered the special audit report of the Auditor General and the inspection report by the Inspectorate of State Corporations on the matter. The Minutes of the Committee are annexed hereto and copies of the Hansard Report may be obtained from the Parliament Library. In its inquiry into whether or not the food security situation and the maize importation was managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from the Managing Director National Cereals and Produce Board, Former top Management of National Cereals and Produce Board, Former Trustees of the Strategic Grain Reserve (SGR) and Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries, the Directors of M/s Erad Supplies and General Contracts Limited, the Governor of Central Bank of Kenya, Management of Dubai Bank, Management of I & M Bank, director of KAPU Kenya Limited among other witnesses.

The Committee also undertook an inspection visit of the National Cereals and Produce Board offices in Nairobi and its silos in Embakasi to familiarize itself with the situation and assess the impact of the case on the operations of the Board. The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations and recommendations as outlined in the report. All documents tabled and provided to the Committee are available in the library.

Committee Observations and Recommendations

From the evidence adduced both orally and written the Committee made the following observations and recommendations.

The observations centre around the tender invitation, tender evaluation and award of contract, procurement, execution of contract, funding, arbitration and litigation processes relating to the contract for the purchase and supply of 40,000 metric tons of white maize by M/s Erad Supplies and General Contracts Limited (herein after referred to as M/s Erad) to the National Cereals and Produce Board (NCPB).

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The Tender invitation, Evaluation and Award of Contract

The National Cereals and Produce Board on 29th July, 2004 invited tenders for the importation of 180,000 metric tons (2 million bags) of white maize. The tender invite attracted a total number of eighty one (81) firms, who purchased the tender documents by the closure of the tendering period on 5th August, 2004. The Main Tender Committee on 5th August, 2004 appointed the Technical Evaluation Committee comprising of twelve members namely; Mr. J.C. Boit (Chairman) - NCPB, Mr. B. O. Umba - NCPB, Mr. R.K. Langat - NCPB, Mr. P.N. Mutua - NCPB, Mr. C.K. Ngelechey - NCPB, Mr. H. K. Kipyego - NCPB, Mr. P.M. Karanja - NCPB, Mr. J.M. Gichuru, Mr. J. O. Oduor – Ministry of Agriculture, Mr. P.T.O. K'Opiyo – Ministry of Finance, Mr. K.J. Ochwando – Ministry of Special Programmes, Mr. W. K. Korir - NCPB). A total of 36 firms submitted their bids on time. Immediately after opening the tender on Thursday 5th August, 2004, an inter-ministerial Technical Evaluation Committee (TEC) was constituted to evaluate the bids and submit their report by the 9th August, 2004 to the Main tender committee for adjudication and final award of the tender.

TEC recommended the following seven (7) firms to be awarded the tender to supply 180,000 metric tons (2 million bags) of white maize to NCPB and apportioned quantities with corresponding prices per metric ton as follows:-

Bidders	Bid Quantity (MT)	Price(US \$)/ton
Hala General Trading LLC	40,000	229.00
Euroworld Commodities Ltd	40,000	229.00
Erad Supplies and General Contracts Limited	40,000	233.00
Purma Holdings Ltd	20,000	189.00
Freba Investments	20,000	190.00
Mano Styles Ltd	20,000	192.00
Wanizime Trading (PTY) Ltd.	20,000	225.75

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The Main Tender Committee sitting on 10th August, 2004 however adjudicated and awarded the tender to five companies for the supply of 180,000 metric tons of white maize as follows:-

Bidders	Bid Quantity (MT)	Price(US\$/ton)	Value US \$	Source
Hala General Trading LLC	40,000	229.00	9,160,000	S/Africa
Euroworld Commodities Ltd	40,000	229.00	9,160,000	S/Africa
Erad Supplies and General Contracts Limited	40,000	233.00	9,160,000	Ethiopia
Purma Holdings Ltd	30,000	189.00	6,870,000	S/Africa
Freba Investments	30,000	190.00	6,870,000	S/Africa

The Committee made the following observations on the tender invite, evaluation and award process:-

- (i) M/s Erad Supplies and General Contracts Limited had quoted the highest price at US\$ 233 per Metric Ton and did not submit a phytosanitary certificate-one of the requirements for the tender
- (ii) The company lacked financial capacity to supply the maize as evidenced by the Joint Venture Agreement between M/s Erad Supplies and General Contracts Limited and KAPU Limited dated 18th August 2004 in which KAPU was to finance the contract for the supply of maize. M/s Erad Supplies and General Contracts Limited audited statements of accounts submitted with the Bid for the year ending 2004 confirmed that the company had a negative net worth of Kenya shillings Six hundred and sixty five thousand four hundred and thirty five shillings (Kshs. 665,435/-). The company could not secure a bid bond on its own and therefore sought the help of KAPU Limited through a purported Joint Venture to secure a conditional Bid Bond worth USD 984,000 with no security from the I&M Bank in which it had no account with.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (iii) M/s Erad Supplies and General Contracts Limited submitted a conditional Bid Bond with their bid. The conditions in the Bid Bond were not met therefore invalidating the bid bond as per the conditions of the issuing Bank.
- (iv) M/s Erad Supplies and General Contracts Limited lacked technical capacity to supply the 40,000 metric tons of the white maize. There were no records of Technical staffs in their submission. The company did not meet the three years previous experience requirement in the tender documents.
- (v) The inter-ministerial Technical and Evaluation Committee failed to undertake due diligence in scrutinizing the documents submitted by M/s Erad Supplies and General Contracts Limited during bidding and evaluation of bids leading to the award of tender.
- (vi) The TEC and the Main Tender Committee awarded M/s Erad Supplies and General Contracts Limited, a company that did not meet the requirements of the tender issued by the Board and contravened the Audit (Public Procurement) Regulations, 2001

The Committee recommends that:-

- (a) The Government should not pay M/s Erad Supplies and General Contracts Limited any money from the public coffers since the contract was won on falsified and invalid documents. The company had not qualified for the award of the tender.
- (b) The Ethic and Anti-Corruption Commission investigates the accounts of M/s Erad Supplies and General Contracts Limited and its three directors at the time of award of contract, namely Mrs. Grace Sarapay Wakhungu, Mr. Jacob Juma and Major (Rtd) John Waluke and further investigates the conduct of the said directors before and during the tender award, the arbitration and litigation process.
- (c) The then Managing Director of the NCPB, Mr. Tirop Kosgey, should be held accountable for failure to adhere to the provisions of the Public Procurement and Disposal Act, 2005 and attendant regulations during award of tender.
- (d) The Technical Evaluation Committee (referred to as TEC) should be held responsible for their failure to undertake due diligence and ignoring obvious

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

glaring discrepancies on the documents presented during tender evaluation by M/s Erad Supplies and General Contracts Limited.

- (e) The then Management of NCPB be held responsible for negligence in the management of the contract with M/s Erad Supplies and General Contracts Ltd.
- (f) The then NCPB management should be investigated for complicity and facilitating the winning of the tender by M/s Erad Supplies and General Contracts Limited which had clearly demonstrated lack of Technical and Financial capacity.

The Contract

The Committee made the following observations on the Contract awarded to M/s Erad Supplies and General Contracts Limited;

- (i) The contract dated 26th August 2004 between NCPB and M/s Erad Supplies and General Contract Limited did not have the seal of company affixed to it. The contract was witnessed on behalf of Mrs. Grace Sarapay Wakhungu of M/s Erad Supplies and General Contracts Limited by one Baisama Duma, who is a Ugandan national and a nephew to Mrs. Grace Wakhungu.
- (ii) M/s Erad Supplies and General Contract Limited delayed in executing the contract and showed clear difficulties to secure a performance Bond in order to enter into the contract. This clearly manifested in the numerous parties they approached for facilitation i.e. I&M bank, Ropack CC, and finally Dubai Bank.
- (iii) The Performance Bond submitted by M/s Erad Supplies and General Contract Limited before signing the contract was issued by Dubai Bank Kenya Ltd without any security except personal guarantees of the Directors of M/s Erad Supplies and General Contract Limited.
- (iv) M/s Erad Supplies and General Contract Limited submitted an invoice as required by the NCPB with the same number, issued on the same date from different companies.
- (v) The Company (ROPACK CC International) which was purportedly based in South Africa and from which M/s Erad Supplies and General Contract Limited claimed to be buying the maize from did not exist or trade in grains as was purported.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(vi) The contract provided for payment to the sellers by means of an irrevocable Letter of Credit (LC) under clause 6.1, there was however neither a provision for its transferability nor was payment under the LC a condition precedent for supply and delivery of maize. Nothing under the contract prevented M/s Erad Supplies and General Contract Limited from supplying the maize to NCPB. The said Clause read as follows:-

(a) 6.1 *"payments shall be made by an irrevocable/confirmed/ sight letter(s) of credit to be established by the buyers bankers namely, Trade Finance Centre Kenya Commercial Bank Limited, Kencom House"*

(vii) M/s Erad Supplies and General Contract Limited had the draft contract prior to signing of the actual contract and used it to obtain a Performance Bond from Dubai Bank Limited.

(viii) The consignment of the 40,000 metric tons of white maize was, as per the contract, to be shipped so as to arrive at the port of Mombasa within four (4) weeks from the date of signing of the contract. The seller was mandated to endeavor to ship the maize earlier (clause 4.1).

The Committee recommends that:-

- a) M/s Erad Supplies and General Contracts Limited should not be paid any money since the company had no capacity to import the 40,000 metric tons of white maize as per their contractual obligation.
- b) The allegation that NCPB breached the contract by not opening a Letter of Credit in favour of M/s Erad Supplies and General Contracts Limited was a well orchestrated and facilitated act of fraud by M/s Erad Supplies and General Contract Limited. The Letter of Credit was only an instrument/mode of payment. M/s Erad Supplies and General Contracts Limited was to make its own arrangements to open an LC to its alleged third party suppliers. M/s Erad Supplies and General Contracts Limited was in such a financial limbo that even if they got the LC, they were not in any position to meet their contractual obligation. EACC should investigate M/s Erad Supplies and General Contracts Limited for

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

the offence of fraud and attempt to defraud under the penal code and the Anti-Corruption and Economic Crimes Act.

- c) M/s Erad Supplies and General Contracts Limited should pay NCPB for breach of contract since by the expiry of the four weeks after signing the contract no maize had been imported by M/s Erad Supplies and General Contracts Limited as provided in the contract. M/s Erad Supplies and General Contracts Limited had therefore breached the contract by not supplying the maize within the contract period. By this period M/s Erad Supplies and General Contract Limited had barely met the minimum requirements to merit an LC.

Issuance of Letters of Credit

The Committee observed that:-

In the contract between NCPB and M/s Erad Supplies and General Contracts Limited, payment was to be made through an Irrevocable/Confirmed/Sight Letter of Credit. A Letter of Credit is an instrument of payment in international trade. Four companies, Hala General Trading LLC, Freba Investments, Euroworld Commodities Ltd and Purma Holdings, were issued with the Letters of Credit as follows:-

Supplier	Amount (USD)
Hala General Trading LLC	9,160,000
Freba investments	6,870,000
Euroworld Commodities	9,160,000
Purma Holdings	6,870,000
Total	32,060,000

The Committee made the following observation, that:-

- (i) From the four companies that were issued with Letters of Credit only Hala General Trading LLC and Euroworld Commodities Ltd utilized them though Hala General Trading LLC partially utilized it. The company utilized US \$ 5,902,704 out of the total amount of US \$ 9,160,000. The Letters of Credit issued in favour of Freba Investments and Purma Holdings expired unutilized.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (ii) The Ministry of Finance released a total of Kshs. 3.2 billion of the Kshs. 4.9 billion budgeted for the importation of the 180,000 metric tons of white maize by the NCPB. These monies were released in tranches and utilized for opening of Letters of Credit for the four Firms as indicated above. The Strategic Grain Reserves (SGR) suspended the issuance of Letter of Credit to M/s Erad Supplies and General Contracts Limited when it was apparent that maize from local farmers was about to be harvested. The SGR directed the NCPB to utilize all remaining funds meant for the importation of white maize to purchase maize from local farmers. The SGR also directed the Managing Director of NCPB to find an amicable solution to the issue of M/s Erad Supplies and General Contracts Limited. The intended solution did not materialize.
- (iii) The non-issuance of the LC by NCPB and the SGR by extension under the agency relationship existing at the time between the SGR and NCPB was the basis of M/s Erad Supplies and General Contracts Limited alleged claim for breach of contract and failure to supply the 40,000 metric tons of white maize.
- (iv) M/s Erad Supplies and General Contracts Limited had entered into a Joint Venture Agreement (JVA) with KAPU Kenya Limited in which the latter was to finance the tender for the supply of 40,000 metric tons of white maize to the National Cereals and Produce Board including the purchase of the maize, opening of Letters of Credit and freight costs.

The Committee recommends that:-

- a) The Managing Director NCPB at the time, Mr. Tirop Kosgey and the Senior Legal officer in charge, i.e. the acting corporation secretary Mr. Patrick Karanja be held liable for reckless use of public resources by entrenching clause 6.1 in the contract signed by the suppliers to facilitate the issuance of Letters of Credit for local suppliers without any justifiable reason to do so hence risking the food security basket in the country.
- b) The SGR Trustees individual and collective inabilities to take a decisive action to instruct the Managing Director to terminate or execute the contract fully should also be investigated. The Trustees Messrs. Joseph Kinyua, Mahboub Mohammed and James Ongwae should be held accountable for negligence of duty in the

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

management of the contract between NCPB and M/s Erad Supplies and General Contracts Limited.

- c) Mr. Patrick Karanja, as Corporation Secretary, failed to advise the Board on the drafting, management of the contract and the payment. He should therefore be held responsible for negligence of duty and failure to protect public property.

Role of the Trustees

Following the declaration of the drought situation in the country as a national disaster by the President on 14th July 2004, the Cabinet made a decision to import 6 million bags of maize to alleviate the situation. The Government authorized the National Cereals and Produce Board (NCPB) to import 3 million bags of white maize while the other 3 million bags were to be handled by the private sector.

Because of the urgency in which the maize was needed NCPB was authorized to use direct procurement or restricted tendering procurement procedure and the Government further zero-rated duties and taxes on imported maize between 1st July, 2004 and 30th September, 2004.

The Committee made the following observations:-

- (i) The Permanent Secretary, Ministry of Finance in a letter addressed to his counter-part in the Ministry of Special Programmes advised against issuance of LCs to the firms that were importing maize.
- (ii) The Permanent Secretary, Ministry of Special Programmes, directed that funds earmarked for maize importation be used in purchasing local maize.
- (iii) After the expiry of the delivery period of four weeks there seemed to have been an increase in effort on the part of the Trustee Ministries and NCPB to open an LC in favour of M/s Erad Supplies and General Contracts Limited with no advice on the termination of the contract on grounds of frustration or non-delivery.
- (iv) There was no evidence of coordination mechanism put in place and supervised by the Trustees on the importation of the 180,000 metric tons of white maize that was to cost the tax-payers an estimated Kshs.4.9 billion

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (v) The Trustees communicated in a disjointed and in antagonistic manner to each other creating confusion and opened the whole process to abuse and mismanagement.

The Committee therefore recommends that:-

- a) The Trustees of SGR, Messrs. Mahboub Mohammed and James Ongwae, be held accountable for failure to perform their collective responsibility under the Agency agreement.
- b) The Trustees should be held accountable for failure to plan for the resources to execute the project contrary to public procurement regulations.
- c) The Trustees in their individual and collective capacity should be held accountable for their inaction to render advise on the termination of the contract or settlement of the matter when it was apparent that the M/s Erad Supplies and General Contracts Limited lacked the capacity to deliver, after expiry of contract delivery period and further, when it was also apparent that there would be no further available funds for maize importation.

Role of the Former management of NCPB

The Committee observed that:-

- (i) The evidence by Mr. Tirop Kosgey that proper evaluation of M/s Erad Supplies and General Contracts Limited was not done and that they based their evaluation on the perceived credibility of the Directors was simplistic and a circumvention of the prevailing procurement laws and regulations, hence illegal
- (ii) The then Managing Director of NCPB failed to invoke Provision 8.0 and 13.0 of the contract to terminate the contract when M/s Erad Supplies and General Contracts Limited did not meet its contractual obligation to supply the maize as per the agreed schedule
- (iii) Mr. Karanja as the Boards legal advisor drafted a contract entrenching payment through the use of irrevocable/sight letters of credit thus putting the Board at an awkward position of opening Letters of Credit to local supplies contrary to international business practices where letters of credit are only opened for international suppliers. He

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

also failed to advise the Board on the input of the letter by the Permanent Secretary, ministry of finance advising against opening letters of credit.

The Committee recommends that:-

- a) The EACC should investigate the former Managing Director, NCPB Mr. Tirop Kosgey for abuse of office contrary to section 46 of the Anti - Corruption and Economic Crimes Act and for want of due diligence and/or negligence contrary to section 128 of the penal code as well as the offence of disobedience of statutory duty (section 130 Penal code) as read with section 46 of the Exchequer and Audit (Public Procurement) regulations 2001 as it was then, but as the operative law at the time.
- b) The EACC should investigate the then Senior Legal Counsel, NCPB Mr. Patrick Karanja for negligence and abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act. Mr. Karanja was the officer in charge during the time of tendering for maize following the declaration of drought in 2004 both as senior legal counsel and the Ag. Secretary of the NCPB Board.
- c) The NCPB should re-evaluate the services and usefulness of Mr. Karanja at the Board taking into account his role in the Board during the maize importation programme.

Mediation

The Committee made the following Observations:-

- (i) Several mediation meetings were held between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited following threats by the company to sue NCPB for breach of contract.
- (ii) On October 18th 2007 the Board held a meeting with M/s Erad Supplies and General Contracts Limited and requested the intervention of the Permanent Secretary Ministry of Agriculture in pursuing the settlement of the matter to avoid litigation. The mediation process however did not resolve the issue between M/s Erad Supplies and General Contracts Limited and the NCPB.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Arbitration

The Committee observed that:-

(i) The arbitration process commenced on 24th February, 2009 and was marred by accusations of bribery, bias and allegations of gross interference in the process. These included the following contentions:-

- (a) that the arbitrator was offered a bribe,
- (b) arbitrator was approached by Major (Rtd) Waluke,
- (c) attempts to bribe NCPB arbitration witnesses,
- (d) allegations that an NCPB advocate Mr. Nyawara was bribed.

In the arbitration proceedings page 3 it is stated that *“Mr. Arbitrator raised the issue of Captain Waluke and another gentleman approaching him directly. The arbitrator expressed his displeasure about that being done and strongly Mr. Saende to stop them from talking to him directly about the matter. The person who did this was Captain Waluke and another gentleman”*.

Some of these allegations were reported to the Criminal Investigations Department

(ii) It was apparent from the record of proceedings availed to the Committee that the arbitrator awarded M/s Erad Supplies and General Contracts Limited a profit that was never prayed for. In his award for loss of profits, Mr. Evans Gaturu, the sole arbitrator awarded M/s Erad Supplies and General Contracts Limited a profit of US\$ 49 per metric ton of white maize while M/s Erad Supplies and General Contracts Limited in its testimony had given evidence that they were to buy the maize at US\$ 221 per metric ton and then sell at US\$ 229 as per clause 3 of the contract with the NCPB bringing the profit margin to \$8 per metric ton.

(iii) M/s Erad Supplies and General Contracts Limited also claimed and was awarded storage costs allegedly from a storage yard in South Africa namely Chelsea Freight, for the maize secured by its supplier in South Africa. The total storage costs awarded amounted to US\$ 1,838,000. It was the evidence of M/s Erad Supplies and General Contracts Limited that maize was to be imported from Ethiopia, while KAPU Limited gave evidence that the Maize was to be imported from Egypt. These conflicting reports all point to the fact that the whole issue of storage costs was questionable.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(iv) Further, from the arbitration proceedings, M/s Erad Supplies and General Contracts Limited did not prove that they purchased or shipped the required 40,000 Metric Tons of white maize and therefore their claim of storage should not have been entertained by the arbitrator.

(v) Mr. Evans Gaturu the sole arbitrator published the arbitral award on 7th July 2009. He awarded M/s Erad Supplies and General Contracts Limited a sum of US \$ 3,106,000 plus interest at 12% p.a from 27th October 2004 until full payment. He stated in his ruling...

"The upshot of my award is that the claimant is awarded \$ 3,106,000 US plus interest at 12% p.a. from 27th October 2004, until payment in full, plus costs of the arbitration and interest thereof at 12%"

(vi) The ruling and the award by the arbitrator did not consider public interest and public policy in the matter since the issue touched on the strategic grain reserve which touches on the food security of the country.

The Committee recommends as follows:-

1. The EACC should investigate the arbitration process with a view to establishing allegations of corruption and irregularities and further investigate the Commission of the offence of unjust enrichment.
2. The Chartered Institute of Arbitrators, Kenya Chapter, should investigate and take appropriate action on Mr. Evans Gaturu, the sole arbitrator in the M/s Erad Supplies and General Contracts Limited vs. National Cereals and Produce Board case, for allegations of bribery and want of due diligence on a matter of public interest during his handling of the matter of M/s Erad Supplies and General Contracts Limited and NCPB during the arbitration process.

Hiring of Lawyers and Litigation

The Committee made the following observations:-

- (i) NCPB had a record seven (7) lawyers on the case with little progress in both the arbitration and litigation. The Board on advice of the company Secretary hired the services of Nyawara and company advocates to represent it during the arbitration

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

process and have since retained him during the litigation process. Further the Board on advice of Nyawara and Company Advocates hired the services of Katwa Kigen, Mr. Mohammed Nyaoga and Juma Kiplenge, Patrick Lutta and other lawyers to boost the defense team. Most of the lawyers were hired without following procurement laws.

- (ii) The Board never involved the office of the Attorney General during the arbitration and litigation process.
- (iii) NCPB has so far incurred a total of Kshs. 29,109,502 in legal fees in Court cases against M/s Erad Supplies and General Contracts Limited.
- (iv) The arbitration award was confirmed and execution orders granted to M/s Erad Supplies and General Contracts Limited against NCPB by the Courts. NCPB filed an appeal to the High Court and Court of Appeal. The appeal is pending determination.

The Committee recommends as follows:-

- a) The management of NCPB, led by the relevant Managing Director and Head of Legal Services (corporation secretary) be held accountable for failure to comply with the provisions of the Public Procurement and Disposal Act, 2005 and attendant regulations during the procurement of legal services.
- b) The Government should review the legal team of the National Cereals and Produce Board with the aim of offering legal advice and support to NCPB in litigation against M/s Erad Supplies and General Contracts Limited.

Garnishee and attachment of NCPB Properties

The Committee observed that:-

M/s Erad Supplies and General Contracts Limited applied to the Court to have the accounts of NCPB garnisheed and its properties attached in February, 2013. The Garnishee Orders were made in March 15, 2013 and as a result all NCPB's accounts were frozen and Kshs. 297,386,505 million taken by M/s Erad Supplies and General Contracts Limited and the accounts are to remain frozen for the next twelve months or until the balance of the decretal amount of Kshs. 255 million is paid. The money was remitted into the accounts of the advocates of Erad Supplies and General Contracts Limited, Soita Saende advocates held at Barclays Bank.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The hearing of the Court of Appeal to set aside the arbitral award came up for hearing on 2nd July, 2013. The Court ordered stay of execution and maintenance of status quo pending determination of the case.

The Committee recommends that the Attorney General should offer greater legal advice and support to the NCPB legal team in the pending appeal against the arbitral award.

Impact of the case on the operations of the National Cereals and Produce Board

The Committee observed that the case between the National Cereals and Produce Board and M/s Erad Supplies and General Contract Limited has had adverse effects on the operations of the Board. These include; Attachment of assets leading to loss of vehicles & equipment, Suspension of banking facilities – accounts have been frozen, Boards inability to import fertilizer, Suspension of purchase of commercial maize, Low volumes of trading activities from gross sales of Kshs 5.2 billion in 2011/2012 to Kshs. 0.5 billion in 2012/2013, Delayed payments to suppliers and staff, Quality of stock may be compromised due inability to manage stocks and Loss of close to Kshs. one billion in business.

The Committee recommends that:-

- a) The Government ought to settle NCPB's outstanding debt due and owing from its Ministries to improve and maintain operations.
- b) The Government should set aside funds equivalent to the alleged debt owed to M/s Erad Supplies and General Contracts Limited to allow NCPB to operate optimally while pursuing legal action on the case.
- c) The Government ought to take over liabilities of NCPB with respect to the M/s Erad matter as the same stems from a contract under the agency agreement hence the debt belongs to the Government.
- d) Requisite legislative changes to be made to give greater security to NCPB/SGR properties against execution.
- e) The Attorney General's office gives greater support to NCPB in the pending appeal to set aside the arbitral award.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Restructuring process

The Ministry of Agriculture, Livestock and Fisheries has engaged a consulting firm, Ernst & Young, to assist in the restructuring of NCPB to enhance service delivery. In the TOR the consultant is expected to assess the economic and financial viability and sustainability of the NCPB, identify and assess potential additional functions that could be performed on commercial terms and contribute to NCPB's current mandate especially through Warehouse Receipting System (WRS) and Commodity Exchange and assess the expectations of the stakeholders given the new constitutional dispensation and advice on the viability and appropriateness of the establishment of the NCPB facilities in the devolved counties.

The Committee recommends that:-

- a) The Ministry of Agriculture, Livestock and Fisheries should introduce appropriate legislation that would facilitate and enhance the restructuring of the NCPB in Parliament, so as to enhance service delivery and also protect NCPB's properties.
- b) The restructuring of NCPB should streamline agency and business relationships between Government of Kenya and NCPB.
- c) The Ministry of Agriculture should review the NCPB legal framework to make it relevant in a liberalized trading environment and protect strategic public assets.

The above observations and recommendations form part and parcel of the observations and recommendations contained elsewhere in the body of the report.

The report was adopted by a majority of the Members of the Committee as per the attached adoption list of signatures.

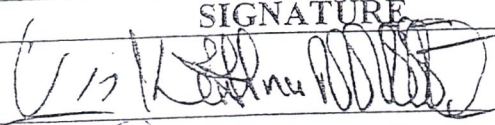

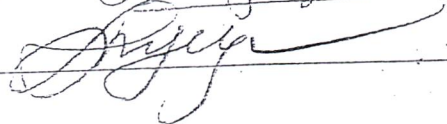
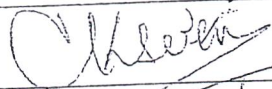
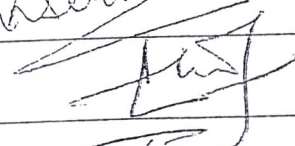
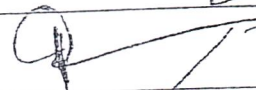
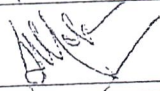

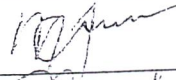
PUBLIC INVESTMENTS COMMITTEE

REPORT WRITING RETREAT

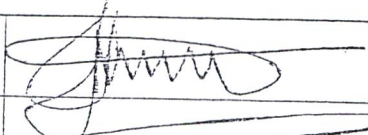

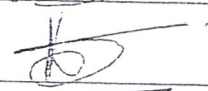


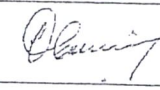
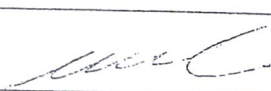
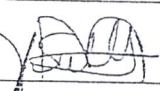
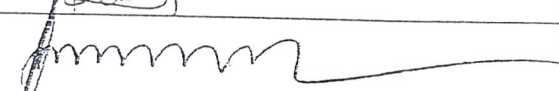
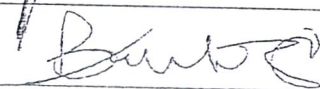
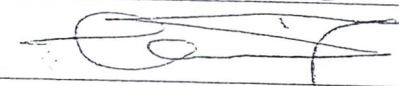
Adoption of the Special Report of the Public Investments Committee on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited for the Supply of Maize pursuant to Standing Order 199.

DATE: AUGUST 7, 2013

TIME: 2.30 PM

	NAME	SIGNATURE
1.	Hon. Adan Keynan, M.P.	
2.	Hon. Kimani Ichung'wah, M.P.	
3.	Hon. Francis Nyenze Mwanzia, M.P.	
4.	Hon. Sammy Mwaita, M.P.	
5.	Hon. Cornelly Serem, M.P.	
6.	Hon. Bare Shill, M.P.	
7.	Hon. Korei Ole Lemein, M.P.	
8.	Hon. Adan M. Nooru, M.P.	
9.	Hon. Mithika Linturi, M.P.	
10.	Hon. Beatrice Nyaga, M.P.	
11.	Hon. John M. Nyaga, M.P.	
12.	Hon. Njogu Barua, M.P.	
13.	Hon. Irungu Kang'ata, M.P.	
14.	Hon. Onesmus Njuki, M.P.	
15.	Hon. Eng. John Kiragu, M.P.	

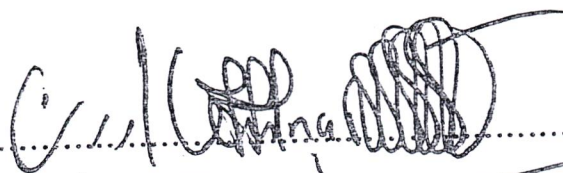
Special Report of the Public Investments Committee on the contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited.

16.	Hon. Johana Ngeno, M.P.	
17.	Hon. Mwangi Thomas, M.P.	
18.	Hon. Abdullswamad Sheriff, M.P.	
19.	Hon. Paul Otuoma, M.P.	
20.	Hon. John Olago Aluoch, M.P.	
21.	Hon. Dr. Oburu Oginga, M.P.	
22.	Hon. Major (Rtd) John Waluke, M.P.	
23.	Hon. Ogutu John Omondi, M.P.	
24.	Hon. Mary K. Sally, M.P.	
25.	Hon. Wafula Wamunyinyi, M.P.	
26.	Hon. Bernard Munyoki Kitung'yi, M.P.	
27.	Hon. Dr. Chrisanthus Wamalwa, M.P.	

ACKNOWLEDGEMENT

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

Sign:



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

Date:

16/10/2013

*Special Report on the Contract between National Cereals and Produce Board and M/s
Eradi Supplies and General Contracts Ltd for Supply of Maize*

2.0 BACKGROUND

In 2004 the country faced a severe and life threatening drought. This led to the then President H.E. Mwai Kibaki declaring the drought a national disaster on 14th July 2004. The President appealed to both local and international community to complement the government's efforts in combating the negative effects of the severe drought. In his address the President told the nation that the Kenya Food Security Steering Group had advised that drought and crop failure that had left more than 3.3 million Kenyans severely short of food and an estimated 156,000 metric tons of food was required in order to contain the situation at an estimated cost of 76 million US Dollars for the following six months.

The country's national cereals requirement was estimated at 32 million bags (90kg bag). In that year 2004, it was estimated that a total of 23.6 million bags would be harvested in that season leaving a shortfall of 8.4 million bags. This shortfall was to be met by importation of 6 million bags and cross border trading of 2 million bags. Following the President's appeal the Cabinet made a decision to import 6 million bags of white maize to alleviate the situation. Of the 6 million bags that were to be imported the Government authorized through the Ministry of Agriculture, the National Cereals and Produce Board (NCPB) to import 3 million bags of white maize while the other 3 million bags were to be imported by the private sector. The NCPB invited tenders for the importation of 2 million X 90kg bags of (180,000 Metric tons) white maize and was to allocate the remaining 1 million bags on pro-rata basis to the identified firms.

Because of the urgency in which the maize was needed to be imported, NCPB was granted authority to either use direct procurement or restricted tendering procedure so as to reduce the number of days in procuring from 42 to 7 days. On 29th July 2004 NCPB invited tenders for the importation of 180,000 metric tons (2 million bags) of white maize. On the other hand the Minister for Finance under a special issue, Kenya Gazette Supplement No. 50, dated 5th August 2004, zero-rated duties and taxes on imported maize for the period 1st July, 2004 to 30th September, 2004 to facilitate the importation process. The duty was to be reinstated on 1st October, 2004 in order to safeguard the local farmers, who were expected to offload their maize into the market by November, 2004. A total of eighty one (81) firms responded to the

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

NCPB tender by purchasing the tender documents but only 36 firms submitted their bids on time.

Immediately after tender opening on Thursday 5th August 2004, a Technical Evaluation Committee (TEC) was constituted to diligently evaluate the bids and submit their report to the Main Tender Committee of NCPB for adjudication and final award of the tender. Of the 36 firms that submitted their bids the TEC found 27 firms non-responsive and only 9 firms were subjected to financial and Technical evaluation. The firms to be awarded the tender were to deliver within 4 weeks of award of the tender.

After conclusion of the evaluation process the TEC submitted its report on 9th August, 2004 to the Main Tender Committee recommending seven (7) firms to be awarded the tender to supply 180,000 metric tons (2 million bags) of white maize to NCPB and apportioned quantities for each firm as follows:-

1. M/s Hala General Trading LLC – 40, 000 metric tons at US \$ 229
2. M/s Versatrade International CC Euroworld Commodities Ltd – 40,000 MT at US \$ 229 per MT
3. M/s Erad Supplies and General Contracts Limited – 20,000 MT at US\$ 233 per MT
4. M/s Purma Holdings Ltd – 20,000 MT at US \$ 189 per MT
5. M/s Freba Investments – 20,000 MT at US \$ 190 per MT
6. M/s Mano Styles Ltd – 20,000 MT at US \$ 192 at MT
7. M/s Wanizame Trading(PTY) Ltd – 20,000 MT at US\$ 225.75 per MT

The Main Tender Committee of NCPB sat on 10th August, 2004 to receive and deliberate on Technical Evaluation Committee (TEC) Report. After the meeting the Main Tender Committee awarded the tender to five (5) firms down from the seven (7) firms recommended by the TEC as follows:-

1. M/s Hala General Trading LLC – 40, 000 Metric Tons at US \$ 229
2. M/s Versatrade International CC/ Euroworld Commodities Ltd - 40,000 MT at US \$ 229 per MT
3. M/s Erad Supplies and General Contracts Ltd - 40,000 MT at US\$ 229 per MT

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

4. M/s Purma Holdings Ltd – 30,000 MT at US \$ 189 per metric ton

5. M/s Freba Investments - 30,000 MT at US \$ 190 per metric ton

The maize was to be delivered to the Board by the different firms as per the schedule below;

No	Firm	1 st week(23/08 2004 to 12/9/2004	2 2 nd week(13/9/2004 to 19/9/2004	2 3 rd weeks(20/9/2004 to 03/10/2004	2 4 th Weeks(04/10/2004 to 17/10/2004
1	Hala General Trading	Nil	40,000	Nil	Nil
2	Versatrade International CC/Euroworld	Nil	25,000	15,000	Nil
3	Erad Supplies and General Contracts Ltd	40,000	Nil	Nil	Nil
4	Purma Holdings	Nil	Nil	Nil	30,000
5	Freba Investments	30,000	Nil	Nil	Nil
Total		70,000	65,000	15,000	30,000

The Board issued Letters of Award based on their bid prices to the successful 5 firms on 12th August, 2004. Upon receipt and acceptance of the award two firms M/s Freba and M/s Purma launched an appeal for price review, complaining that their bid price was based on their larger bid quantities and they had negotiated for the prices they quoted based on economy of scale. The Board sought clarification and concurrence of the Director of Public Procurement who advised that the Board considers the request of the two firms as they were valid. The Board subsequently agreed to the requests.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

NCPB opened Letters of Credit for four of the five firms that were awarded the tender however no letter of credit was opened for M/s Erad Supplies and General Contracts Limited which submitted the requisite documents late including the import declaration form, invoices for its suppliers and the performance bond.

Only two firms out of the five firms eventually delivered the white maize while the rest defaulted. By the completion of the project and way past the emergency period the Board had received only 70,476 metric tons of the expected 180,000 metric tons.

M/s Erad Supplies and General Contracts Limited threatened to sue the Board for breach of contract. In response the Board sought an amicable solution through mediation process which failed to bear fruit due to unreasonable demands by the firm. M/s Erad Supplies and General Contracts Limited thereafter invoked the arbitration clause and filed a claim for alleged breach of contract and demanded damages for breach of contract, storage costs and loss of profits. The breach of contract was allegedly occasioned by the failure by NCPB to provide an irrevocable/confirmed/sight Letter of Credit.

During the arbitration NCPB through its lawyers Nyawara and Company Advocates maintained that the contract was explicit as to the obligations of each party and that the payment was independent from the delivery of the consignment which M/s Erad Supplies and General Contracts Limited failed to deliver.

The arbitration process was marred by allegations of corruption and gross interference. The sole arbitrator Mr. Evans T. Gaturu awarded M/s Erad Supplies and General Contracts Limited sums that were not prayed for by the claimant. The arbitration was delivered and an award was given in favour of M/s Erad Supplies and General Contracts Limited of a sum of US \$ 3,106,000 being cost of lost profit and storage charges. In addition there was an interest at 12% per annum.

The NCPB appealed to set aside the award at the High Court but the Court did not allow ventilation of the issues and the case was dismissed on technicalities. The Board moved to the Court of Appeal. Meanwhile M/s Erad Supplies and General Contracts Limited applied

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

for the adoption of the arbitral award and its execution thereafter. Garnishee and attachment orders were sought by Erad Supplies and General Contracts Limited and granted.

As a result of the garnishee orders, NCPB's Kshs. 297 million held in an account at KCB was taken by M/s Erad Supplies and General Contracts Limited. Vehicles belonging to NCPB have also been attached and bank accounts at Co-operative Bank and National Bank have also been garnisheed and frozen. The total contingent liability consisting of garnishee and legal fees was Kshs. 337, 169848.00

The NCPB through the Attorney General sought and obtained stay of execution and orders preserving the strategic grain reserve.

The matter has put the National Cereals and Produce Board at a precarious position and continues to pose a serious threat to the national food security since the strategic grain reserve stocks, famine relief, food and non-food items together with disaster equipment and machinery and other government assets remain at a risk of being auctioned.

3.0 KEY INSTRUMENTS USED IN THE TRANSACTION BETWEEN ERAD SUPPLIES AND GENERAL CONTRACTS LIMITED AND NATIONAL CEREALS AND PRODUCE BOARD

3.1 Letters of Credit

A letter of credit is an instrument issued by a financial institution, (the issuer) where at a customer's request, the issuer agrees to honour a draft or other demand for payment made by a third party, the beneficiary, as long as the draft or demand complies with specified conditions, and regardless of whether any underlying agreement between the customer and the beneficiary is satisfied¹.

An irrevocable letter of credit is one in which the issuing Bank undertakes to pay and not to withdraw the credit or cancel the letter before the stated expiration date subject to the consent of the customer. In this way, the risk that the buyer will fail to pay is transferred from the

¹ Garner, Blacks Law, 7th edition, Group

seller to the letter of credit's issuer. The letter of credit can also be used to ensure that all the agreed upon standards and quality of goods are met by the supplier, provided that these requirements are reflected in the documents described in the letter of credit.

Letters of Credit are used primarily in international trade for transactions between a supplier in one country and a customer in another. Most letters of credit are governed by rules promulgated by the International Chamber of Commerce

A letter of credit guarantees payment of a specified sum in a specified currency, provided the seller meets precisely-defined conditions and submits the prescribed documents² within a fixed timeframe. In effect, a letter of credit substitutes the creditworthiness of a bank for the creditworthiness of the buyer. Thus, the international banking system acts as an intermediary between far flung exporters and importers.

A **Transferable Letter of Credit** is the one under which the exporter has the right to make the credit available to one or more subsequent beneficiaries. Credits are made transferable when the original beneficiary is a middleman and does not supply the merchandise himself but procures goods from the suppliers and arrange them to be sent to the buyer and does not want the buyer and supplier to know each other. The middleman is entitled to substitute its own invoice for the one of the supplier and acquire the difference as his profit in transferable letter of credit mechanism.

3.2 Bid Bond

A written guarantee from a third party guarantor (usually a bank or an insurance company) submitted to a principal (client or customer or project owner) by a contractor (bidder) with a bid. Hence it is part of the bidding process.

A bid bond ensures that on acceptance of a bid by the customer the contractor will proceed with the contract and will replace the bid bond with a performance bond. Bid bonds generally

² These documents almost always include a clean bill of lading or air waybill, commercial invoice, and certificate of origin. To establish a letter of credit in favor of the seller or exporter (called the beneficiary) the buyer (called the applicant or account party) either pays the specified sum (plus service charges) up front to the issuing bank, or negotiates credit.

are written with a penalty equal to a percentage of the contract price; usually 5%, 10%, or 20%.

3.3 Performance Bond

A performance bond is written guarantee from a third party guarantor (usually a bank or an insurance company) submitted to a principal (client or customer) by a contractor on winning the bid.

A performance bond ensures payment of a sum (not exceeding a stated maximum) of money in case the supplier fails in the full performance of the contract as per plans and specifications. Performance bonds usually cover a certain percent of the contract price and replace the bid bonds on award of the contract.

4.0 REPORTS/SUBMISSIONS BY GOVERNMENT INSTITUTIONS

4.1 REPORT OF THE AUDITOR GENERAL

The Committee on 3rd July 2013 requested the Auditor General to undertake a Special Audit on the contract between NCPB and M/s Erad Supplies and General Contracts Limited for the supply of 40, 000 metric tons of maize. In response to this request the Auditor General prepared a Special Audit Report. The full report of the Auditor General can be found at the Library of the National Assembly. The key highlight of the report include:-

- (i) During the Financial Year 2004/2005, the Country experienced a serious drought which led to a shortfall in maize production of about 6.0 million bags which was below the national consumption requirement. To mitigate widespread famine, the Government decided to import maize from other parts of the world.
- (ii) The Cabinet, at the end of July 2004, authorized the importation of 2 million bags of 90 kg of maize through the National Cereals and Produce Board. (Annex I)
- (iii) As time was of essence, special dispensation was sought from the Ministry of Finance for the National Cereals and Produce Board to apply restricted tendering procedures in the maize procurement exercise. The request was approved vide letter Reference

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

PPD.2/20/10/(103) dated 23rd July 2004 (*Annex 2*). Tenders were invited on 29th July 2004.

- (iv) The National Cereals and Produce Board thereafter submitted a funding budget requirement of Kshs.4.8 Billion for the maize importation programme.
- (v) NCPB invited firms for the tender and a total of eighty one (81) firms purchased tender documents out of which, thirty six (36) firms submitted their bids at the time of tender opening on Thursday 5th July 2004. M/s Erad Supplies and General Contracts Limited was one of the thirty six (36) firms that submitted bids. (*Annex 3*)
- (vi) On 26th August 2004, a contract was signed between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for the sale of 40,000 metric tons of maize at a price of US\$ 229 per metric ton. On the same date that the contract was signed, M/s Erad Supplies and General Contracts Limited submitted two invoices bearing the same invoice number indicating supply of maize from two different suppliers.
- (vii) I & M Bank issued M/s Erad Supplies and General Contracts Ltd a Bid Bond on condition that it was to become effective/valid and in force on receipt of a Stand by Letter (LC) of Credit in favour of the Bank issued by an International Bank of repute, on terms and conditions acceptable to the Bank.
- (viii) Notwithstanding Treasury advice and the risks associated with LCs, National Cereals and Produce Board went ahead and opened LCs for all the firms except M/s Erad Supplies and General Contracts Ltd.
- (ix) Out of the five (5) firms who were awarded tenders to supply 180,000 metric tons of the imported maize, only two firms namely; Euroworld Commodities Ltd and Hala General Trading Company delivered 44,000 MT and 25,776 MT respectively, totaling 69,776 MT. It is however worth noting that the above firms were the only ones which met the tender conditions according to the technical committee minutes. The other two firms i.e. Freba Investment and M/s Purma Holding Ltd, issued with the letters of credit did not deliver.
- (x) NCPB has been using legal services of Nyawara & Co. Advocates since 2004 in handling the case of M/s Erad Supplies and General Contracts Ltd, among other legal

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

matters. After the arbitration ruling made in favour of M/s Erad Supplies and General Contracts Ltd, NCPB decided to reinforce its legal team and procured legal services of two other legal firms i.e. Katwa Kigen and Juma Kiplenge Co. & Advocates. However, a review of NCPB's prequalified list of legal firms showed that the two (2) law firms had not been pre-qualified to offer legal services and therefore, it is not clear how they were identified.

- (xi) M/s Erad Supplies and General Contracts Ltd invoked the arbitration clause and took the case for arbitration for breach of Clause 6.1 of the Contract. The arbitration commenced on 24th February, 2009 and the ruling delivered on 7th July, 2009. The sole Arbitrator awarded Erad Supplies and General Contracts Ltd as follows:-
- (a) Loss of profit US \$49 per MT US\$ 1,960,000
 - (b) Storage costs due to the Supplier US\$ 1,146,000
 - (c) Interest in commercial rate from 27th October 2004 until payment in full.
- (xii) The Board has not yet acknowledged any liability arising from the award of tender to M/s Erad Supplies and General Contracts Limited for the supply of 40,000 MT of white maize. However, the High Court through its ruling of 11th February, 2013 adopted the award for M/s Erad Supplies and General Contracts Ltd of US Dollars 6,140,859.8 equivalent to Kshs.552, 677,382. On 19th March, 2013 the Board's Bankers i.e. Kenya Commercial Bank Limited transferred Kshs. 297,386,505, being decretal sum payable to the claimant and the Board's bank accounts were frozen until the balance of Kshs. 255,290,877 is paid.
- (xiii) The Office of the Attorney General was not consulted for legal advice, when drafting this particular contract as is usually the case with contracts of this magnitude.

The Committee made the following observations:-

- (i) The National Cereals and Produce Board did not comply with the Exchequer and Audit (Public Procurement) Regulations, 2001 and Government Policies and Guidelines.
- (ii) The handling of the procurement process for maize did not ensure efficiency and effectiveness and therefore no value for money was realized by NCPB despite incurring expenditure totaling to Kshs.337,169,845.00 which comprise of Legal costs relating to the case with M/s Erad Supplies and General Contracts Ltd amounting to Kshs.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

30,355,172; garnishee amounting to Kshs. 297,386,505 and other costs and charges totaling Kshs. 9,428,168.

- (iii) NCPB did not carry out due diligence on the documents provided by the suppliers to determine their authenticity.
- (iv) The decision to include firms that did not meet the conditions set out in the tender documents exposed the Board to financial and non-performance risks, and thereby compromised the Country's food security.
- (v) The procurement of the maize was initiated and carried out without establishing availability of funds to finance the huge budget in contravention of Part IV Section 17 (6) of the Exchequer and Audit (Public Procurement) Regulations, 2001 which provides that before initiating a procurement process, the procuring entity shall assure itself that sufficient funds have been set aside in the entity's budget to pay for any amounts due under the resulting contract.
- (vi) The Bid Bond submitted by M/s Erad Supplies and General Contracts Ltd was not valid as the bank cancelled it because of the failure by the firm to meet the condition upon which the bond was to become effective. The M/s Erad Supplies and General Contracts Ltd was therefore not responsive and did not meet the mandatory requirements of the contract.
- (vii) The whole procurement process appears to have been carried out hurriedly without allowing the NCPB sufficient time to confirm information provided by the bidders to ensure authenticity. This is evident from the fact that the tenders were opened on Thursday 5th August 2004 and letters of award issued on Tuesday 12th August, 2004.
- (viii) While NCPB opened Letters of Credit to four of the firms that were awarded tender to supply maize, M/s Erad Supplies and General Contracts Limited was not issued with a Letter of Credit due to the delay by the company to fulfil the necessary documentation and requirements.
- (ix) Neither NCPB nor the parent Ministry consulted the Office of the Attorney General during the drafting of the contract as is normally the case with Government contracts of this magnitude.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

5.2 REPORT OF THE INSPECTORATE OF STATE CORPORATIONS

Mr. Edward M. Ngigi, Acting Inspector General of State Corporations appeared before the Committee on 18th June, 2013. During his appearance, the Committee directed that his office conducts an investigation into the importation of 180,000 metric tons by NCPB in 2004. The Inspector-General submitted his report which contained his findings and recommendations to the Committee. The full report of the Inspector General State Corporations can be found at the Library of the National Assembly.

The following are the key highlights of the report:-

- (i) The tender to supply 180,000 metric tons of white maize was awarded to five firms, but only two firms namely Euroworld Commodities Ltd and Hala General Trading Company Ltd delivered a total of 69,776 metric tons of imported white maize. Euroworld Commodities Ltd delivered a total of 44,000 metric tons against an award of 40,000 metric tons while Hala General Trading Ltd delivered a total of 25,776 metric tons against an award of 40,000 metric tons.
- (ii) Whereas the Technical Evaluation Committee recommended that M/s Erad Supplies and General Contracts Limited be awarded a tender to supply 20,000 metric tons, the tender committee awarded it a tender to supply 40,000 MT.
- (iii) The performance bond of Freba Investments of US Dollars 687,000 (one of the firms which failed to deliver) was presented to Dubai Bank (Kenya) Ltd but the bank declined to honour it, as a result of which NCPB instituted a legal suit which is still in court. Failure by Dubai Bank (Kenya) Ltd to honour the performance bond issued to M/s Freba Investments even after the firm failed to perform casted doubts on the authenticity of the bonds.
- (iv) NCPB did not take any action on M/s Purma Holdings Performance Bond of US dollars 120,000. NCPB did not institute a legal process to realize this bond even after the firm failed to perform the tender.
- (v) M/s Erad Supplies and General Contracts Limited and M/s Freba Investments provided an almost identical performance bond (except for one signatory, the date, and the bond number) from Dubai Bank (Kenya) Ltd.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (vi) NCPB incurred a total of Kshs. 4.95 million as banking charges for handling the Letters of Credit that were issued to the four firms.
- (vii) NCPB has so far incurred a total of Kshs. 29,109,502 in legal fees in court cases against M/s Erad Supplies and General Contracts Limited.
- (viii) The former Ministry of Special Programmes (currently a department in the Ministry of Devolution and Planning) owed NCPB a total of Kshs. 1.39 billion as at 31st May 2013. These were expenses incurred for various services offered under Famine Relief Programme and Strategic Grain Reserve.
- (ix) NCPB faces numerous challenges ranging from financial inadequacies, fixing of prices, limited line of commodities, expensive and commercially unviable infrastructures, and lack of value-addition.

The Committee made the following observations:-

- (i) None of the firms awarded the tender to supply the maize managed to import the required quantity of Maize. Only two firms managed to deliver a limited quantity of maize. The two firms delivered 69,776 metric tons of maize between them with Euro World importing 44,000 metric tons and Hala importing 25,776 metric tons of maize. The maize importation programme did not achieve its desired goal.
- (ii) NCPB has so far incurred a total of Kshs. 29,109,502 in legal fees in court cases against M/s Erad Supplies and General Contracts Limited.
- (iii) The authenticity of the performance bonds issued by Dubai Bank was questionable due to the conditions attached to their validity. The bank failed to honour the Performance Bond issued to M/s Freba Investments even after the firm failed to perform, thus casting doubts on the authenticity of the bonds.

4.3 ATTORNEY GENERAL

Ms. Muthoni Kimani from the office of the Attorney General appeared before the Committee on July 18, 2013 to brief the Committee on the role of the Attorney General on the transaction between M/s Erad Supplies and General Contracts Limited and NCPB on the importation of maize in 2004. She informed the Committee that:-

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (i) The Government through the Ministry of Finance granted a waiver for import duty on white maize for the period August to September 2004 on account of drought. Bidders were invited and M/s Erad Supplies and General Contracts Limited was among firms that tendered and awarded the tender to import and supply the maize. The company did not however supply the maize as contracted in spite the extension of the contract period into 2005.
- (ii) M/s Erad Supplies and General Contracts Limited took NCPB for arbitration for breach of contract claiming that the company's failure to supply the maize was as a result of the failure by the Government through NCPB to open a Letter of Credit in its favour. The arbitral award was in favour of M/s Erad Supplies and General Contracts Limited. The court adopted the award for enforcement and a decree issued.
- (iii) The office of the Attorney General was never involved in the transaction between NCPB and M/s Erad Supplies and General Contracts Limited. The office was never consulted or involved in the drafting, scrutiny of the contract or even during the arbitration and litigation process. No legal advice or assistance was rendered by the office of the Attorney General in the transaction between M/s Erad Supplies and General Contracts Limited and the National Cereals and Produce Board.
- (iv) The intervention of the Attorney General was only after a request by the Permanent Secretary, Ministry of Special programs when NCPB was threatened to be auctioned in April 2012. The Attorney General instituted objection proceedings in court that led to temporary stay of execution. Through the objector application the court ruled that the strategic grain reserves and food stocks for famine relief belonged to the Government and therefore not subject to be attached to settle the debt of the Board.
- (v) The NCPB is a corporate body and therefore not immune to prosecution and its properties therefore cannot be secured in the same way as the Government. Unlike Government, NCPB is not protected in law.
- (vi) In attempts to save NCPB the Attorney General organized and held joint consultative meetings with NCPB and the trustee ministries in charge of the SGR. The meeting explored risks and the options available which include conclusion of the main appeal.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

mitigation of loss on the principle of restitution integrum and criminal investigation of alleged illegalities and irregularities. The meeting resolved that the Ethics and Anti Corruption Commission be involved to investigate the matter and more so allegations of corruption and also to investigate and establish if the arbitral award was consistent with the law on contracts and if the arbitrator followed due process.

- (vii) Ideally in contracts of huge magnitude, the State Corporations are obligated through the parent Ministry to seek the Attorney General's legal advice on the contract. The Attorney General should have been involved in the drafting and scrutiny of the contract agreement.
- (viii) The issuances of Letters of Credit are for international suppliers and not when local suppliers are involved.
- (ix) The Ministry of Agriculture from the correspondence seemed to be keen on extending the contract and the duty free period even when the contract itself had expired.
- (x) The arbitral award should have placed the parties in the position they were before the contract and not the huge award. Public interest should also prevail in any case that the public good is involved.

The Committee made the following observations:-

- (i) The National Cereals and Produce Board drafted and signed contracts for maize importation totalling approximately Kshs. 4.9 billion without consulting or engaging the office of the Attorney General which is the official Government legal adviser.
- (ii) The expertise of the office of the Attorney General could have assisted the NCPB had the Ministry of Special Programmes, Ministry of Agriculture, Treasury and the Board consulted the Attorney General prior to and during the arbitral and litigation process.
- (iii) The involvement of the Attorney General by the NCPB came a little too late when the arbitral process was over and litigation process was almost concluded and only when NCPB was threatened with auctioning.
- (iv) The involvement of the Attorney General though at a late stage has led to saving of the strategic grain reserve and availed the NCPB with an opportunity to prosecute its appeal. The Ministry of Agriculture seemed to have been complacent in the handling

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

and did not give the required administrative guidance to the agency in handling the importation of the white maize.

- (v) The issuances of Letters of Credit are for international suppliers and not when local suppliers are involved. The issuance of LC was not applicable in the case of NCPB and M/s Erad Supplies and General Contracts limited since both are local firms. M/s Erad Supplies and General Contracts Limited should have opened an LC for their international supplier.

The Committee recommends that:-

- (a) The Attorney General should be more involved in the appeal by the National Cereals and Produce Board so as to protect public interest and NCPB which is a lifeline to Kenyans.
- (b) In contracts involving huge sums of money, the NCPB should seek the advice of the Attorney General.

4.4 CENTRAL BANK OF KENYA

The Governor, Central Bank of Kenya, Prof. Njuguna Ndungu appeared before the Committee on July 24th, 2013 to brief the Committee on the Prudential Guidelines to banks with regard to the borrowing, issuance of Bid Bond and Performance Bond as well as Letters of Credit and Central Bank's supervisory role on Commercial Banks.

Prof. Ndungu informed the Committee that:-

- (i) In 2004 M/s Erad Supplies and General Contracts Limited was awarded a tender to supply maize to the National Cereals and Produce Board.
- (ii) The Directors of M/s Erad Supplies and General Contracts Limited are Mr. Jacob Juma, Mrs. Grace S. Waihungu and Mr. John Waiuke. M/s Erad Supplies and General Contracts Limited subsequently sued NCPB for breach of contract and got a judgement in its favour. It has in the past been trying to execute the judgement through attachment of the assets of NCPB.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (iii) ~~M/s Erad Supplies and General Contracts Limited and KAPU Kenya Limited~~ had entered into a Joint Venture Agreement, in which KAPU was to finance the tender to supply maize to NCPB on 18th August, 2004.
- (iv) I & M Bank in 2004 received a request from KAPU Kenya Limited to issue a Bid Bond for the benefit of M/s Erad Supplies and General Contracts Limited. The Bid Bond was to support a tender for the supply of maize to NCPB. KAPU had indicated that it was in a joint venture with M/s Erad Supplies and General Contracts Limited to supply the maize. The Bank approved the conditional bid bond which was contingent on the provision of a Stand By Letter of Credit in favour of I & M Bank as security.
- (v) A conditional bid bond becomes effective on fulfilment of specified conditions stipulated by the issuing bank. In this case the bid bond could only be effective on the issuance of a Stand by Letter of Credit in favour of I & M Bank. The security was not provided and the bid bond was cancelled by the bank.
- (vi) Dubai Bank issued a performance bond to M/s Erad Supplies and General Contracts Limited in August 2004 for US \$ 932,000. The performance bond was valid for 90 days and was to expire by November 17, 2004.
- (vii) The request by M/s Erad Supplies and General Contracts Limited was supported by a letter of award and an acceptance of the award by M/s Erad Supplies and General Contracts Limited and a draft contract agreement between M/s Erad Supplies and General Contracts Limited and NCPB. The primary security was to be the Letter of Credit opened by NCPB in favour of M/s Erad Supplies and General Contracts Limited. This was to be supported by the personal guarantees of the Directors of Erad Supplies and General Contracts Limited. The guarantee expired on 17th November 2004 and no demand or claim was made against Dubai Bank by NCPB.
- (viii) The agreement between M/s Erad Supplies and General Contracts Limited and the bank was that a Letter of Credit was to be opened by NCPB in favour of M/s Erad Supplies and General Contracts Limited at an account held at KCB and the sum of US\$1,960,000 was to be transferred by KCB to M/s Erad Supplies and General Contracts Limited account with the bank. This sum was sufficient to cover the value of the performance bond issued to NCPB.

(ix) Banks are prohibited under section 11 (1) (n) of the Banking Act from lending in a reckless way. Reckless lending is defined in the Prudential Guidelines as transacting business beyond the limits set out in the Banking Act or CBK Act, offering facilities contrary to any guidelines or regulations issued by the Central Bank, failing to observe the institutions policies' as approved by the Board of Director's or misuse of position or facilities of the institution for personal gain.

The Committee made the following observations:-

- (i) The bid bond issued by I & M bank was conditional. The bid bond having been conditional was defective and void following failure by M/s Erad Supplies and General Contracts Limited to meet the conditions.
- (ii) The bid bond was issued long before the Joint Venture Agreement between M/s Erad Supplies and General Contracts Limited and KAPU Kenya Limited was executed.
- (iii) The performance bond was requisition of the Performance Bond supported by among others a draft agreement and the primary security for Dubai bank was the Letter of Credit which was then alluded to in the draft contract agreement which had not been executed. The bank therefore relied on non existent documents.
- (iv) The contract was based on invalid documents containing non-existent facts. A bank could not therefore rely on a contract that had not been executed.

The Committee recommended that the Central Bank of Kenya should under take its supervisory role more vigilantly over banks to safeguard public interest.

4.5 CABINET SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

The Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries Mr. Felix Koskei appeared before the Committee on July 17, 2013 to brief the Committee on the Government efforts to save the National Cereals and Produce Board from collapse due to the huge debt arising from a contract with M/s Erad Supplies and General Contracts Limited in 2004.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Mr. Koskei informed the Committee that:-

- (i) The National Cereals and Produce Board is critical in the handling of grain reserve. The Board currently has 2.3 million bags against a recommended 8 million bags. The Government intends to increase the strategic grain reserve from 20% to 50% of consumption and also widen the strategic food basket to include other non grain food items.
- (ii) The Ministry has consulted its lawyers who have advised that money equivalent to what M/s Erad Supplies and General Contracts Limited is claiming be set aside as a guarantee so that the operations of the NCPB are not affected. In this regard the Ministry of Agriculture has requested the National Treasury to set aside Kshs. 600 million for the claims of M/s Erad Supplies and General Contracts Limited so as to safeguard the assets of NCPB.
- (iii) The Government is planning to restructure NCPB so as to separate the commercial aspect from the social aspect (SGR). The Ministry has engaged a consulting firm (Ernst & Young) to assist in the restructuring of NCPB to enhance service delivery. Some of the key TOR's for the consultants are as follows: -
 - (a) Assess the economic and financial viability and sustainability of the NCPB.
 - (b) Identify and assess potential additional functions that could be performed on commercial terms and contribute to NCPB's current mandate especially through Warehouse Receipting System (WRS) and Commodity Exchange.
 - (c) Assess the expectations of the stakeholders given the new constitutional dispensation and advice on the viability and appropriateness of the establishment of the NCPB facilities in the devolved counties.
- (iv) Maize importation was a Strategic Grain Reserve (SGR) affair and the NCPB only acted as an agent in the process.
- (v) The case involving NCPB and M/s Erad Supplies and General Contracts Limited will be pursued to its conclusion while the Government takes measures to cushion NCPB. The Government is not in a hurry to pay but will continue pursuing the legal process.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(vi) Trusteeship of the SGR is now on the Cabinet Secretaries since the then Permanent Secretaries are no longer in office until new trustees are appointed.

The Committee made the following observations:-

- (i) The importation of maize in 2004 was a Government decision and programme. NCPB was an agent implementing the Cabinet decision through the Trustees of the strategic grain reserves.
- (ii) The Government is in the process of restructuring NCPB with a view to streamlining its activities and bring about efficiency and effectiveness in service delivery.
- (iii) The Government is committed to saving NCPB and in pursuing legal action as regards the case between NCPB and M/s Erad Supplies and General Contracts Limited.
- (iv) The Government intends to increase the strategic grain reserve to 50% of consumption and diversify it to include non grain food crops.
- (v) There is need for the government to set aside money equivalent to the claim to cushion NCPB and allow it operate normally as legal issues are being pursued.

The Committee recommends that:-

- (a) The Government should restructure NCPB with a view to bring about efficiency in service delivery.
- (b) The Government to set aside money equivalent to the claim to cushion NCPB and allow it operate normally as legal issues are being pursued.

5.0 EVIDENCE BY WITNESSES

The Committee in the course of its inquiry invited witnesses to adduce evidence on the matter of NCPB indebtedness to M/s Erad Supplies and General Contracts Limited arising from a contract entered into on August 26, 2004 to supply maize. The Committee held twenty six sittings in which twenty eight witnesses appeared before the Committee to adduce oral evidence and presented written submissions. The evidence received by the Committee is as contained in the following paragraphs of the report:-

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

5.1 EVIDENCE BY THE MANAGEMENT OF THE NATIONAL CEREALS AND PRODUCE BOARD

Professor Gideon Misoi, the Managing Director, National Cereals and Produce Board appeared before the Committee on 16th July 2013 and briefed the Committee on the maize importation process in 2004 and NCPB alleged indebtedness to M/s Erad Supplies and General Contracts Limited as follows:-

- (i) The importation of maize was a Government of Kenya project and the National Cereals and Produce Board was an agent.
- (ii) The National Cereals and Produce Board was advised to use restricted tendering due to the urgency in importing maize for mitigating the famine situation (*Annex 3*).
- (iii) Invitation for Tenders was sent on 29 July 2004 and tender opening was done on August 5, 2004. A total of eighty one (81) firms including that of Ahmednassir Abdikadir Advocates participated and only 36 submitted their bids.
- (iv) The Technical and Evaluation Committee (TEC) was established and comprised of NCPB officials, representatives from the Ministry of Agriculture, Ministry of Finance and Office of the President. The TEC upon establishment embarked on evaluation of bids on August 6, 2004 and submitted their report on August 9, 2004. (*Annex 4*)
- (v) The contract between M/s Erad Supplies and General Contracts Limited was entered into on August 26, 2004. M/s Erad Supplies and General Contracts Limited was to import the maize within four weeks of signing of the contract (*Annex 5*).
- (vi) M/s Erad Supplies and General Contracts Limited were the last to submit the requisite documents and were the last in the priority list of being issued with Letter of Credit.
- (vii) The opening of Letters of Credit was not conditional to the supply of maize but instead it was a means of payment as contained in the contract.
- (viii) The supplier, M/s Erad Supplies and General Contracts Limited did not have capacity to deliver as evidenced in their change of their alleged source of maize. First it was Ethiopia, then South Africa and later Brazil. Their financial capacity was also wanting.
- (ix) M/s Erad Supplies and General Contracts Limited should not be paid as they did not supply the maize as contracted. They failed to supply the maize within four weeks after signing the contract as agreed.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (x) The Ministry of Special Programmes had requested for the importation of maize and also advised NCPB to terminate issuance of LC and divert resources meant for importation to purchase maize from local farmers. (*Annex 6*)
- (xi) Mr. Brian Yongo applied for attachment at the legal department in the Board and worked as a legal assistant for one year before he was dismissed in September 1992 when he was found not to have the right papers upon verification of his documents.
- (xii) The Trustee Ministries should take responsibility as they failed to provide funds for the opening of LC and also directed the diversion of funds to purchase local maize.
- (xiii) If NCPB loses the case it will have lost Kshs. 638 million. Already the Board has lost Kshs. 245 million through garnishee and payment of legal fees. The fee for lawyers is assessed by in house company lawyers' so that they conform to set legal /advocates fees.
- (xiv) The Board had sought the help of EACC to investigate the matter.

The Committee made the following observations:-

- (i) M/s Erad Supplies and General Contracts Limited was supposed to supply maize in 4 weeks after signing the contract.
- (ii) M/s Erad Supplies and General Contracts Limited delayed in supplying the necessary documents required for issuance of LC.
- (iii) The Ministry of Special Programmes directed that funds initially meant for maize importation be used to purchase maize from local farmers.
- (iv) M/s Erad Supplies and General Contracts Limited lacked capacity to deliver. The company changed its source of maize, lacked financial capacity and issued two invoices with the same number on the same day but with different addresses.

The Committee recommends that:-

- (a) M/s Erad Supplies and General Contracts Limited should not be paid any money from the consolidated fund arising from the alleged breached of contract since they did not supply the maize as provided for in the contract.
- (b) The EACC should investigate the M/s Erad Supplies and General Contracts Limited for uttering false documents during the tendering process.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

5.2 EVIDENCE BY THE LAWYERS OF NATIONAL CEREALS AND PRODUCE BOARD

Mr. Nyawara of Nyawara and Company Advocates and Mr. Katwa Kigen appeared before the Committee on July 16, 2013 to adduce evidence before the Committee on the litigation process on the NCPB vs. M/s Erad Supplies and General Contracts Limited case arising out of a contract to import maize in 2004.

Mr. Nyawara informed the Committee that:-

- (i) He advised his client to bring in a legal counsel to assist in the case. The services of Katwa Kigen, Juma Kiplenge and Mohamed Nyaoga were hired.
- (ii) During the arbitration and court processes serious issues of corruption and threats against his life were reported and brought before the courts.
- (iii) The appeal challenged the arbitral award on the basis of corruption and public policy interests.

Mr. Katwa Kigen informed the Committee that:-

- (i) The legal team consciously and deliberately did not appeal against the court decision to adopt the arbitral award because the adoption of the arbitral award by Judge Odunga was an administrative and ex parte matter.
- (ii) The Board challenged the manner in which the arbitration award was made. Judge Njagi declined the appeal citing that he could not revisit issues of fact in the arbitration process and therefore failed to set aside the arbitral award. The Board appealed against the ruling by Justice Njagi at the Court of Appeal.
- (iii) The Board managed to get reprieve when it obtained a stay of execution meaning that the garnishee that was not collected and property not auctioned remains where it is and no recovery of money or assets by either party.
- (iv) The request for LC by M/s Erad Supplies and General Contracts Limited came late. Maize was to be delivered after four weeks of signing the contract. The request for LC was in October, 2004 long after the contract had expired and long broken.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The Committee made the following observations:-

- (i) There is need to protect NCPB from litigation by amending the law to protect it like other government agencies.
- (ii) The Lawyers of NCPB had failed to persuade the courts to set aside the arbitral award in spite the legal team having prominent lawyers.
- (iii) M/s Erad Supplies and General Contracts Limited failed to supply the maize within the contract period.

The Committee recommends that:-

- (a) The Attorney General should be involved in the litigation against M/s Erad Supplies and General Contracts Limited.
- (b) The EACC should investigate the alleged corruption and abuse of office during the arbitration process.

5.3 EVIDENCE BY THE FORMER TOP MANAGEMENT OF THE NATIONAL CEREALS AND PRODUCE BOARD

Mr. Tirop Koskey, Former Managing Director, National Cereals and Produce Board (NCPB); Mr. Naftali Mogere, former Managing Director, NCPB; Ms. Anne Kamau former Board Secretary, NCPB; Mr. Kipyego Korir, former Secretary to the Technical Tender Evaluation Committee, NCPB and Mr. Patrick Karanja, Ag. Board Secretary, NCPB appeared before the Committee on 1st, 8th and 16th July 2013 to give evidence on NCPB's indebtedness to M/s Erad Supplies and General Contracts Limited arising from a contract to supply maize in 2004.

5.3.1 Evidence by Mr. Tirop Koskey, Former Managing Director, National Cereals and Produce Board (NCPB)

Mr. Tirop Koskey, former Managing Director NCPB, appeared before the Committee on 1st, 8th and 16th July, 2013 to give evidence on NCPB's indebtedness to M/s Erad Supplies and

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

General Contracts Limited arising from a contract to supply maize in 2004. Mr. Kosgey adduced evidence as follows, that:-

- (i) There was severe drought in 2004 that led to early depletion of the grain reserve and the President of the Republic declared the famine situation a National Disaster. The Cabinet made a decision to import 6 million bags of Maize. The NCPB was directed to import 3 million bags and the private sector was requested to import 3 million bags.
- (ii) The NCPB advertised, requesting bidders to tender for the importation of 2 million bags equivalent to 180,000 metric tons on 29th July, 2004. (*Annex 7*). A total of eighty one (81) companies among them Ahmednassir Abdulahi advocates company bought the tender documents but only thirty six (36) companies returned their bid documents and only nine (9) companies were found responsive. Due to the emergency, the Ministry of Finance advised NCPB to use restricted tendering thus shortening the tendering period to only seven (7) days. (*Annex 8*)
- (iii) The Government through the Ministry of Finance gazetted a Waiver of duty for the period of maize importation to allow the suppliers to import duty free. (*Annex 9*)
- (iv) Tenders were opened and an inter-ministerial Technical Evaluation Committee (TEC) comprising of experts from the Ministry of Agriculture, Ministry of Finance, Ministry of Special Programmes and NCPB was established to evaluate the bids and report to the Main Tender Committee within four (4) days. The TEC submitted their report to the Main tender Committee recommending seven firms for award of tender.
- (v) The Main Tender Committee met on 10th August, 2004 and considered the report of the TEC, adjudicated and awarded the tender to five (5) of the top companies that had been recommended by TEC to ameliorate the risks of non-delivery (*Annex 10*). M/s Erad Supplies and General Contracts Limited was one of the companies qualified by the TEC. The award of the tender carried certain requirements such as 10% Performance Bond and Invoices.
- (vi) Looking back at the issue, no proper verification of documents was done then on the companies that were awarded the tender due to time constraints and the severity of the matter at hand. After the tender award it was apparent that the company (Erad Supplies

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

and General Contracts Limited) lacked the capacity as evidenced by their delay in meeting the requirements and changing their source of maize. M/s Erad Supplies and General Contracts Limited presented themselves then, as having capacity to deliver. The directors of the Company (M/s Erad Supplies and General Contracts Limited) looked credible on the face value. The award of tender to M/s Erad Supplies and General Contracts Limited was also based on the short delivery time (2 weeks) of maize that the company had promised in its documentation.

- (vii) The importation of the maize was to be funded through allocation from Treasury. The total amount required for the programme was Kshs. 4.9 Billion of which only Kshs. 3.2 Billion was availed. This was promised when the instruction was given. The mode of payment as per the contract agreement was through irrevocable sight letters of credit that was to be issued upon fulfillment of the conditions.
- (viii) Funding was released in tranches and took a bit of time to be released. The opening of the LCs was based on first-come first served. M/s Erad Supplies and General Contracts Limited delayed in fulfilling the requirements and in submitting their documents. By the time they complied the funds sent were exhausted and therefore the Board could not open an LC in favour of the company.
- (ix) In the whole transaction NCPB acted on the directions and instructions from the Principal Trustees; Ministries of Agriculture, Special programmes and Finance. The NCPB had an agency agreement with the SGR Trust Fund that has responsibility over the SGR and also famine Relief reserves. The Board received and acted on the instruction of the principals.
- (x) On 28 August, 2004 Treasury wrote advising against the opening of Letters of Credit but subsequent meetings of Strategic Grain Reserve (SGR) Trustees reviewed this position and sought financial support to NCPB for the importation of maize (*Annex II*).
- (xi) The Board could not execute this contract with M/s Erad Supplies and General Contracts Limited because the SGR Trustees specifically Ministry of Finance did not give the Board enough funds to open an LC for M/s Erad Supplies and General Contracts Limited as had been done for other firms. (*Annex 12*) The Board was also

directed to use the funds earlier allocated for the maize importation for the purchase of maize locally.

The Committee made the following observations:-

- (i) The inter-ministerial Technical Evaluation Committee and the Main Tender Committee did not undertake due diligence to determine the technical and financial capacity and suitability of the firms that were awarded the tender to import the maize.
- (ii) M/s Erad Supplies and General Contracts Limited lacked the capacity to supply and deliver the maize to NCPB.
- (iii) The NCPB acting as an agency of the SGR trustees, acted on the instructions of the Trustees in the maize importation following the declaration of an emergency in 2004.
- (iv) The Ministry of Finance did not avail adequate funds to enable NCPB to open letters of credit to all the five suppliers.
- (v) The Ministry of Special Programmes advised the Board to divert funds initially earmarked for maize importation for the purchase of maize locally.

The Committee recommends that:-

- (a) The EACC should investigate the conduct of the technical evaluation committee and the main tender committee during the tendering process and award of tender.
- (b) The EACC should further investigate the technical evaluation committee and the main tender committee for failure to adhere to provisions of the procurement regulations.
- (c) The EACC should investigate the former managing director, Mr. Tirop Kosgey, for failure to ensure prudent management of the tendering process and the contract for the importation of maize.

5.3.2 Evidence by Mr. Naftali Mogere, Former Managing Director, National Cereals and Produce Board (NCPB)

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Mr. Naftali Mongere, former Managing Director NCPB, appeared before the Committee on 8th July, 2013 to give evidence on NCPB's indebtedness to M/s Erad Supplies and General Contracts Limited arising from a contract to supply maize in 2004. Mr. Mogere adduced evidence as follows, that:-

- (i) He joined the National Cereals and Produce Board as a Managing Director (MD) in February 2006 and left the Board in July, 2007. During this period the contract had been entered into and terminated.
- (ii) While serving as the MD, M/s Erad Supplies and General Contracts Limited wrote to the Board threatening court action for breach of the contract. (*Annex I3*) In reaction to this letter he wrote to the PS Special Programmes advising the Ministry of the precarious position that NCPB was in and the urgent need to mitigate any ensuing court action through an amicable way, but by the time he left NCPB there was no response from the Ministry and the matter was in abeyance. (*Annex I4*)
- (iii) Funds were not availed by Treasury to enable the National Cereals and Produce Board to open the Letters of Credit (LC).
- (iv) During Board meetings they had discussed the issue of M/s Erad Supplies and General Contracts Limited and it was agreed that it was the responsibility of the Government to resolve the issue since NCPB was acting for the Government.

The Committee made the following observations:-

- (i) The Board wrote to the Ministry of Special Programmes on the threat by M/s Erad Supplies and General Contracts Limited but no action was taken by the Ministry.
- (ii) Letters of Credit were not opened by the Board due to lack of funds.

5.3.4 Evidence by Mrs. Anne Kamau, Former Board Secretary, National Cereals and Produce Board (NCPB)

Mrs. Anne Kamau, former Board Secretary, NCPB, appeared before the Committee on 8th July, 2013 to give evidence on NCPB's indebtedness to M/s Erad Supplies and General

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Contracts Limited arising from a contract to supply maize in 2004. Mrs. Anne Kamau adduced evidence as follows, that:-

- (i) Mr. Brian Yongo applied for attachment at the legal department in the Board and worked as a legal assistant for one year before he was dismissed in September 1992 when he was found not to have the right papers upon verification of his documents. Mr. Brian Yongo worked at the Board as a clerk and not as a lawyer.
- (ii) During the drafting and signing of the contracts with the various firms that had won the tender she was on leave and upon resuming in September, 2004 the matter of M/s Erad Supplies and General Contracts Limited and NCPB had degenerated into a legal tussle.
- (iii) She interrogated the tender documents and the contract and found them to be in order. Addendums were done on the tender awards and more so on the price and quantity of maize to be supplied. The Technical and Evaluation Committee and the Main Tender Committee were involved in this process.
- (iv) She appointed Nyawara and Company Advocates to represent the NCPB during the arbitration process.
- (v) After the arbitral award the Board made an appeal at the High Court to set aside the award and by then a decree had not been issued.

5.3.5 Evidence by Mr. Patrick Karanja

Mr. Patrick Karanja, Board Secretary, NCPB, appeared before the Committee on 8th July, 2013 to give evidence on NCPB's indebtedness to M/s Erad Supplies and General Contracts Limited arising from a contract to supply maize in 2004. Mr. Karanja adduced evidence as follows, that:-

- (i) He joined NCPB in August 2002 as a senior legal counsel and rose through the ranks to the position of Board Secretary.
- (ii) He participated in drafting and witnessing the signing of the contract agreement for the supply of maize between NCPB and M/s Erad Supplies and General Contracts Limited. The then Board Secretary, Mrs. Anne Kamau was on leave.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (iii) Under normal circumstances payment is made upon delivery of goods but this was not the case in this matter, as Letters of Credit (LC) were issued to other suppliers.
- (iv) The Letter of Credit was not a condition for the supply of maize. The contracted firms were to supply and deliver the maize and be paid.
- (v) The Board appealed against the arbitral award. For one year there was no court of appeal and therefore the appeal could not be heard.
- (vi) Mr. Ahmednasir's Company applied and purchased tender documents for maize importation and supply under receipt number 348782 dated August 04, 2004 (*Annex 15*).
- (vii) The arbitral process was marred with allegations of corruption.

The Committee made the following observations:-

- (i) Mr. Ahmednassir Abdulahi and Advocates Company purchased tender documents from NCPB but did not respond by returning the documents.
- (ii) Letters of Credit are instruments of international trade and are opened by importers and not the buyers/purchasers. They serve as an assurance for payment.
- (iii) The Ministry of Special Programmes failed to take action when M/s Erad Supplies and General Contracts Limited threatened legal action on NCPB for breach of contract.

The Committee recommends that EACC should investigate Mr. Patrick Karanja for negligence of duty and abuse of office.

5.4 EVIDENCE BY THE FORMER TRUSTEES OF THE STRATEGIC GRAIN RESERVES (SGR)

Mr. Andrew Mondo, former Permanent Secretary Ministry of Special Programmes, Dr. Romano Kiome, former Permanent Secretary Ministry of Agriculture and Mr. Joseph Kinyua, Former Permanent Secretary Ministry of Finance appeared before the Committee on 9th July, 2013 to adduce evidence as former trustees of the Strategic Grain Reserve (SGR) on the indebtedness of the National Cereals and Produce Board to M/s Erad Supplies and General Contracts Limited.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

5.4.1 Mr. Andrew Mondo, former Permanent Secretary Ministry of Special programmes adduced the following evidence before the Committee, that:-

- (i) The Strategic Grain Reserve Trustees had agreed not to pay M/s Erad Supplies and General Contracts Limited since they had not supplied any maize.
- (ii) Arising from the arbitral award judgement, the trustees had written to the Attorney General on how the judgement was made and the fact that NCPB was losing all cases in court and further the matter was discussed during the Security Advisory Committee as a matter of food security.
- (iii) The Trustees had also briefed the new administration on the issue of NCPB.

5.4.2 Mr. Joseph Kinyua, former Permanent Secretary Ministry of Finance appeared before the Committee and adduced evidence as follows, that:-

- (i) Treasury was to release Kshs. 4.9 billion for the importation of maize but due to budgetary constraints, Kshs. 3.2 billion was released in 3 tranches.
- (ii) Treasury had gazetted a legal notice waiving 25% duty in imported maize by private millers and NCPB lasting between 5th August and 30th September, 2004.
- (iii) The Ministry of Finance had written advising the Ministry of Agriculture and NCPB against issuing Letters of Credit (LC) before supply of maize. The letter advised that opening LC was tantamount to advance payment which is contrary to government financial regulations. The suppliers among them M/s Erad Supplies and General Contracts Limited should have approached their bankers to issue Letters of Credit as opposed to asking the NCPB to provide them with LC's. (Annex II)
- (iv) The legal issues between NCPB and M/s Erad Supplies and General Contracts Limited were not brought to the attention of the Trustees early enough and that the Trustees learnt about the litigation when the Board had been garnisheed.
- (v) Treasury had written a circular appealing to all the arms of Government to ensure that public money was used in a prudent and responsible way.

5.4.3 Dr. Romano Kiome, Former Permanent Secretary Ministry of Agriculture appeared before the Committee and adduced evidence as follows, that:-

- (i) The press release of 19th October, 2004, by the then Minister for Agriculture should

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

never have been placed in the media since the Ministry of Agriculture should not have been involved in issues of the procuring agency (NCPB). (*Annex 16*)

- (ii) The Public Procurement and Disposal Act of 2005 was not in place in 2004 when the importation of maize was being processed. The Government was relying on Exchequer and Public Audit Regulations (2001).

5.4.4 Amb. (Eng) Mahboub Maalim, former Trustee of the Strategic Grain Reserves appeared before the Committee on 23rd July, 2013 to give evidence on the indebtedness of the National Cereals and Produce Board as follows, that:-

- (i) He served as the Permanent Secretary in the Office of the President between 30th June 2004 and 25th August 2005 after which he was transferred to the Ministry of Water and Irrigation in the same capacity.
- (ii) The portfolio mandate included disaster management issues and relief and rehabilitation issues which involved 4 key issues; the role of information dissemination in respect to disaster preparedness and response, co-ordination on disaster management, response and preparedness to disaster, and framework research.
- (iii) The information that the Permanent Secretary's office gave on drought situation in the country informed the Cabinet Paper that forecasted food shortage eventually leading to a Cabinet decision to declare a disaster.
- (iv) A process to respond to the food crisis was initiated and three Ministries of Agriculture, Finance and Special Programmes were involved in it, where six (6) million bags were to be imported into the country to mitigate the situation.
- (v) The Office of the President did not have a role in developing the contract but it was done by the National Cereals and Produce Board together with the Office of the Attorney General.
- (vi) The Office of the President had an Agency Agreement with National Cereals and Produce Board.
- (vii) The letter from the Permanent Secretary, Ministry of Finance warning about opening a Letter of Credit was not helpful as there was food crisis. A meeting for the Board of Trustees for the SGR was convened to discuss the Letter and reached at an agreement to help Kenyans with food.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (viii) From the briefs that he got from NCPB, he noted that M/s Erad Supplies and General Contracts was limping and had difficulties meeting the requirements. The Company did not have the capacity to deliver the maize. They delayed submission of the requirements close to the deadline. By the time the Company was ready with all the requirements, the country was having its first bumper harvest.
- (ix) The NCPB had indicated that the Letter of Credit was needed to cushion the Government and the suppliers and that it was a standard practice to issue the LC when dealing with large sums of money.

The Committee made the following observations:-

- (i) The NCPB acted as an agent of the Government in the maize importation.
- (ii) M/s Erad Supplies and General Contracts did not have the capacity to deliver and that there might have been collusion from the onset of the process with the Company.
- (iii) Opening an irrevocable Letter of Contract would have committed the Government to pay and thereby lose large sums of money if the suppliers failed to supply.
- (iv) The Ministry of Finance had written advising the Ministries of Agriculture, Special Programs and NCPB against issuing Letters of Credit (LC) before supply of maize.
- (i) The Trustees failed in their mandate to supervise the procurement and importation of maize and to seek the legal advice of the Attorney General on the maize importation.
- (ii) M/s Erad Supplies and General Contracts Limited should not be paid since they had not supplied the maize.
- (iii) The Trustees failed to advise the procuring entity to terminate the contract even when it was apparent that Erad Supplies and General Contracts Limited did not have the capacity to import the maize. The trustees also failed to advise the procuring entity to terminate the contract even after the contract lapsed, instead the Ministry of Agriculture continued to seek funds to open LC for M/s Erad Supplies and General Contracts Limited.
- (iv) The trustees also failed to terminate the contract even after the Ministry of Special Programmes advised NCPB to divert funds meant for maize importation to purchasing maize locally.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (v) The Trustees failed in their mandate to avail adequate resources for the maize importation as provided in the Agency Agreement.

The Committee recommends that:-

- (a) The EACC investigates the then Trustees of SGR for contravention of section 45 (2) (c) of the Ethics and Anti-Corruption Act as read with section 48 of the same Act.
- (b) The Kenya Anti-Corruption Commission should investigate the circumstances leading to the declaration of drought as a National disaster at the instigation of Ministry of Agriculture and Ministry of Special Programmes.
- (c) The Trustee should be held accountable for failure to plan and ensure that adequate resources are availed to NCPB to facilitate maize importation contrary to the provisions of section 17 (6) of the procurement regulations which are replicated in section 45 (3) of the Anti-Corruption and Economic Crimes act 2003

5.5 EVIDENCE BY MR. SAMWEL BRIAN YONGO OTUMBA

Mr. Samuel Brian Yongo Otumba appeared before the Committee July 1st, 2013 to adduce evidence on NCPB's indebtedness to M/s Erad Supplies and General Contracts Limited arising from a contract to supply maize in 2004. The written Submission by Brian Yongo can be found at the National Assembly Library. Mr. Yongo adduced evidence as follows, that:-

- (i) He was requested by Mr. Jacob Juma, Director of M/s Erad Supplies and General Contracts Limited Supplies to introduce him to Ahmednasir Abdullahi who now acts for the Company as lead counsel in *Misc. Civil case no 639 of 2009, Erad Supplies and General Contracts Limited - vs. National Cereal and Produce Board*. The role of Ahmednassir was to be the lead counsel and fastrack the case in favour of Erad Supplies and General Contracts Limited. Mr. Jacob Juma and Major Waluke had requested him to collect the arbitral award from NCPB from which he was to be paid a consideration to be agreed upon amongst himself, Ahmednassir Abdullahi and Jacob Juma. The total consideration for the legal exercise was Kshs. 50 million to be shared equally between him (Brian) and Ahmednasir Abdullahi. (*Annex 17*)

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (ii) The hefty fee of Kshs. 50 million was negotiated by Ahmednassir Abdullahi and himself at the residence of Mr. Jacob Juma on the promise to Jacob Juma that Mr. Ahmednassir enjoyed patronage with the judge who was handling the matter, whose appointment he participated in as a member of the Judicial Service Commission and therefore he would ensure 100 percent delivery within the shortest time possible. The speed of the progression of the claim and all interlocutory applications filed by the National Cereals and Produce Board before the Judges is a testimony of Ahmednassir Abdullahi's claim to patronage and promise of speedy delivery.
- (iii) M/s Erad Supplies and General Contracts Limited has so far paid him Kshs. 7.5 million for the said services through Mrs. Grace Wakhungu, one of the directors of the company.
- (iv) Mr. Jacob Juma has several civil court cases in various courts on matters of forgery and fraud ranging from forgery of land title deeds to car log books and breaches of contracts. Mr. Jacob Juma had been involved in a case where it is alleged that he (Juma) tried to defraud an Indian family of their 18 acres of land in Lower Kabete.
- (v) Mr. Juma used the judiciary to defraud the Government in various road contracts in Western Province that he did not perform but went ahead to sue the Government for breach of contract.
- (vi) Mr. Jacob Juma was loaned Kshs. 1 Million by Mr. Hassan Zubeidi of Dubai Bank. Mr. Zubeidi later fell out with Mr. Juma for frequently taking money from Mr. Zubeidi.
- (vii) M/s Erad Supplies and General Contracts Limited was paid Kshs. 140 million that was shared out among the interested parties and that KRA withheld Kshs. 156 million as tax defaulted by M/s Erad Supplies and General Contracts Limited. By the time of tender application, Erad Supplies and General Contracts Limited did not have the requisite documents such as PIN and VAT certificates and that the performance bond issued by the Dubai Bank was fake.
- (viii) He (Mr. Yongo) had written to EACC on 28th June, 2013 about a ruling by Hon. Mabeya on 15th March, 2013 demonstrating that the said judge could have been compromised to make the ruling in favour of M/s Erad Supplies and General Contracts Limited.

(ix) He (Mr. Yongo) had dealt with Mr. Jacob Juma on many occasions including an instance where Mr. Jacob Juma had instructed Neptune Credit Management to repossess a motor vehicle belonging to Mrs. Grace Wakhungu, who is a Co-Director at M/s Erad Supplies and General Contracts Limited.

The Committee made the following observations:-

- (i) Mr. Brian Yongo had been paid Kshs. 7.5 million by Mrs. Grace S. Wakhungu one of the Directors of Erad Supplies and General Contracts Limited for his services of introducing Ahmednassir to act as the lead counsel in the case against NCPB.
- (ii) Mr. Jacob Juma was portrayed as a dishonest person capitalising on the judiciary to defraud Government and private citizens using forged documents.
- (iii) The new form of corruption in state corporations and entities is through colluding with contractors to sue the Government for breach of contract and award damages and claims.

The Committee recommends that:-

- (a) The Judicial Service Commission (JSC) investigates its former and present members and staff who were involved in handling the NCPB matters for allegations of corruption bench fixing (or influencing the bench), corruption, bias and abuse of office with respect to rulings on the M/s Erad Supplies and General Contracts Limited vs. National Cereals and Produce Board case.

5.6 EVIDENCE BY THE DIRECTORS OF M/S ERAD SUPPLIES AND GENERAL CONTRACTS LIMITED

5.6.1 Evidence by Mrs. Grace S. Wakhungu, Director, M/s Erad Supplies and General Contracts Limited

Mrs. Grace Serapay Wakhungu, a Director of M/s Erad Supplies and General Contracts Limited appeared before the Committee on 8th July, 2013 to adduce evidence on NCPB's

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

indebtedness to M/s Erad Supplies and General Contracts Limited arising from contract to supply maize in 2004. Mrs. Grace S. Wakhungu adduced evidence as follows, that:-

- (i) M/s Erad Supplies and General Contracts Limited is owned by three Directors, Jacob Juma 20% shareholding, Major (Rtd) John Waluke 20% shareholding and herself (Grace S. Wakhungu) having the majority shareholding of 60%. She is the Managing Director of M/s Erad Supplies and General Contracts Limited.
- (ii) M/s Erad Supplies and General Contracts Limited had associate companies that they do business with outside the country.
- (iii) M/s Erad Supplies and General Contracts Limited had applied to supply 85,000 Metric Tons of maize but was however awarded to supply 40,000 MT and that the Company had met all the bidding requirements as set by NCPB.
- (iv) They had provided a bid bond of US\$ 1 million from I & M Bank and a Performance Bond of US\$ 932,000 from Dubai Bank as required by NCPB. The three directors of M/s Erad Supplies and General Contracts Limited signed personal guarantees with the Banks to secure both the Bid bond and the Performance Bond. They secured the bond from a different bank due to the urgency in getting the Performance Bond.
- (v) The Maize supplier for M/s Erad Supplies and General Contracts Limited was ROPACK International in South Africa but ROPACK International would have sourced the maize with the required standard from Ethiopia and was to be shipped to Kenya via Djibouti.
- (vi) M/s Erad Supplies and General Contracts Limited gave the NCPB two invoices bearing the same number to generate a Letter of Credit from and that the NCPB did not have a problem with that arrangement. (Annex I8)
- (vii) M/s Erad Supplies and General Contracts Limited brought in Mr. Ahmednassir Abdullahi on board to reinforce M/s Saende & Co Advocates who are the company's advocates when they realized that NCPB had a team of seven (7) lawyers.
- (viii) The money that M/s Erad Supplies and General Contracts Limited got from garnisheeing NCPB was still with the company lawyers. She paid Mr. Brian Yongo his fee of Kshs. 7.5 million for services rendered after Mr. Yongo became a nuisance.

(ix) M/s Erad Supplies and General Contracts Limited did not execute the Contract since the NCPB breached their contractual obligation by not opening the Letter of Credit in favour of M/s Erad Supplies and General Contracts Limited which they had opened for all the other four firms that were awarded the contracts to supply the white maize to the NCPB.

The Committee made the following observations:-

- (i) M/s Erad Supplies and General Contracts Limited gave NCPB two invoices bearing the same number but different suppliers to generate a Letter of Credit.
- (ii) Mrs. Grace Wakhungu claimed to be the bonafide Managing Director of M/s Erad Supplies and General Contracts Limited.
- (iii) M/s Erad Supplies and General Contracts Limited was and still is a small company. The small company lacked capacity to deliver a tender worth US \$ 1 million.
- (iv) M/s Erad Supplies and General Contracts Limited through Mrs. Grace Wakhungu paid Mr. Brian Yongo Kshs. 7.5 million for unspecified role in relation to the contract with NCPB.
- (v) M/s Erad Supplies and General Contracts Limited acquired a bid bond from I & M Bank Limited and secured a performance bond from Dubai Bank Limited. Both the bid bond and performance bonds were conditional upon certain requirements being met.

5.6.2 Evidence by Mr. Jacob Juma, director Erad Supplies and General Contracts Limited

Mr. Jacob Juma, Director, M/s Erad Supplies and General Contracts Limited appeared before the Committee on July 2nd, 2013 to adduce evidence on the National Cereals and Produce Board alleged indebtedness to M/s Erad Supplies and General Contracts Limited arising from a contract to supply maize in 2004. Mr. Jacob Juma adduced evidence as follows, that:-

- (i) He is a businessman, a shareholder and the Managing Director of M/s Erad Supplies and General Contracts Limited a position he has held since 2008.
- (ii) The contract for the supply of maize to NCPB was signed on 26th August, 2004.
- (iii) The process of the award of the tender and payment had politically vested interests as

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

the other 4 bidders got Letters of Credit and M/s Erad Supplies and General Contracts Limited was never given a Letter of Credit.

- (iv) M/s Erad Supplies and General Contracts Limited went for arbitration on the basis of breach of contract and were claiming for consequential damages totaling Kshs. 3.1 million and interest charged at 12%. The arbitrator awarded M/s Erad Supplies and General Contracts Limited US \$3,106,000 plus interest at 12% from October 2004 until payment in full.
- (v) Following the arbitral award NCPB appealed against the arbitral award in the High Court and later in Court of Appeal but lost in all those attempts.
- (vi) He applied to garnishee the Kenya Commercial Bank Account belonging to the NCPB, where Kshs. 297 million was attached to his lawyer's Account (Soita & Saende Advocates). However, Kenya Revenue Authority put an injunction claiming Kshs. 156 million as tax. He has also attached the Board's fixed assets until he gets the remaining Kshs. 255 million from NCPB.
- (vii) The money recovered from NCPB accounts was used for the Company's expenses and emolument for the Directors.
- (viii) Mr. Hassan Zubeidi of Dubai Bank one of the signatories on the Performance Bond sent to NCPB, was his business partner but they later disagreed.
- (ix) He had known the then Minister for Agriculture, Hon. Kipruto Kirwa since 1991 when he was a member of Youth for KANU while he knew Mr. Ahmednassir Abdullahi during his studies at the University of Nairobi.

The Committee made the following observations:-

- (i) M/s Erad Supplies and General Contracts Limited gave NCPB two invoices bearing the same number but different suppliers to generate a Letter of Credit.
- (ii) Mr. Jacob Juma claimed to be the bonafide Managing Director of M/s Erad Supplies and General Contracts Limited.
- (iii) M/s Erad Supplies and General Contracts Limited acquired a bid bond from I & M Bank Limited and secured a performance bond from Dubai Bank Limited. Both the bid bond and performance bonds were conditional upon certain requirements being met.
- (iv) M/s Erad Supplies and General Contracts Limited used false documents and

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

information to obtain the award of tender for the supply of maize in 2004.

- (v) The process of award of tender for the supply and delivery of maize had political interests.
- (x) Contrary to evidence adduced by Mrs. Grace Wakhungu, that money recovered from NCPB accounts was with the company lawyers, Mr. Jacob Juma stated that the money was used for the Company's expenses and emolument for the Directors.

5.6.3 Evidence by Hon. Maj (Rtd) John Koyi Waluke, MP, Director M/s Erad Supplies and General Contracts Limited

Appeared before the Committee on August 01, 2013 and chose not to be put on oath and could not give any additional evidence as he agreed with the prior evidence given by his Co-directors.

The Committee recommended that:-

- (a) The Ethics and Anti-Corruption Commission investigates, M/s Erad Supplies and General Contracts Limited and its directors namely Major (Rtd) John Waluke, Mrs. Grace S. Wakhungu and Mr. Jacob Juma for alleged fraudulent acquisition of public property or a public service benefit contrary to section 45 (1) of the Anti-Corruption and Economic Crimes Act as read with section 48-53 of the same Act.
- (b) The Ethics and Anti-Corruption Commission investigates the existence of M/s Erad Supplies and General Contracts Limited alleged international suppliers and partners from South Africa and Ethiopia, including ROPACK CC International, Ethiopia Grain Trade Enterprise and Chelsea Freight Limited in the Maize importation tender and establish if indeed maize was purchased and stored as alleged.
- (c) The Ethics and Anti-Corruption Commission investigates the directors of M/s Erad Supplies and General Contracts Limited, Mr. Jacob Juma, Major (Rtd) John Waluke, M.P. and Grace Sarapay Wakhungu, for the offence of uttering false documents which were used to tender for the Maize at the NCPB and which were

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

relied upon to award the tender for the supply of the maize contrary to section 353 of the penal code.

- (d) The Ethics and Anti-Corruption Commission investigates M/s Erad Supplies and General Contracts Limited and its stated Directors, Mr. Jacob Juma, Mrs. Grace Sarapay Wakhungu and Major (Rtd) John Waluke for the offences of fraud and attempt to defraud under the penal code and the Anti-Corruption and Economic Crimes Act with respect to acquiring and presenting to NCPB of a bid bond No. NG 464 from I & M Bank during the tendering process and performance bond No. CREDIT /rak/38/2004 from Dubai Bank knowing the same to be void due to non compliance with the conditions of issuance.
- (e) M/s Erad Supplies and General Contracts Limited and the individual directors namely Mr. Jacob Juma, Major (Rtd) John Waluke and Grace Sarapay Wakhungu should fully compensate the Government of Kenya through the NCPB an amount of Kshs. 313 million and any other monies received following the execution of the arbitral award and *litigation* in line with section 51 and 54 of the Anti-Corruption and Economic Crimes Act, 2003 and any other relevant laws and principles of law including that of equity.

5.7 EVIDENCE BY THE INVESTMENTS & MORTGAGE (I & M) BANK

The Executive Director of I & M Bank, Mr. Sarit S. Raja-Shah accompanied by Mr. Arun. S Mathur, Chief Executive Officer and Ms. Ninah Madanunga, Head of Legal Services appeared before the Committee on 17th July 2013 to adduce evidence on the bid bond issued by the Bank to M/s Erad Supplies and General Contracts Limited with regard to the contract to supply maize to NCPB. Mr. Sarit adduced evidence as follows:-

- (i) I & M Bank received a request for issuance of a bid bond for the tender to supply maize to NCPB from KAPU Kenya Limited on 4th August 2004. As per the request, the Bid Bond was for the benefit of M/s Erad Supplies and General Contracts Limited who intended to submit a bid to NCPB for the supply of imported white maize.

- (ii) KAPU Kenya Limited according to a purported Joint Venture Agreement between themselves and M/s Erad Supplies and General Contracts Limited, was only involved in sourcing finance for the tender. (*Annex 19*)
- (iii) The facility (Bid Bond) was recommended and approved by the Bank in light of the previous relationship that the bank had with KAPU Kenya Ltd, whereby the Bank had issued a similar conditional bond to another beneficiary. The Bond was conditional and valid upon receipt of Stand By Letter of Credit (SBLC) for not less than US \$ 1 Million in favour of the bank from a reputable South African or European International Bank and payment of a commission of 0.5% per quarter which was to be collected upfront.
- (iv) The Bank received all the documentation necessary for assessing the transaction especially since this was a non-fund based one-off transaction. The customer, KAPU Kenya Ltd, did not have a running account with the bank but had opened a Customer Information File (CIF).
- (v) The Bid Bond in question NG 464 dated 4th August, 2004 was issued as a valid two (2) page document and clearly stated that it was conditional to and effective upon the bank's receipt of SBLC for an amount of US \$ 1 million from a first class international bank acceptable to I & M Bank Ltd and was valid until 2nd November, 2004. (*Annex 20*)
- (vi) The Commission charged by the bank for issuance of the bid bond was duly received. The Bank however did not receive any SBLC which was a condition for the validity of the Bid Bond.
- (vii) The Bank sought to know when and which bank was to open the SBLC and ROPACK International, a company alleged to be the source of maize confirmed through a fax that an SBLC was to be issued by an international bank. (*Annex 21*)
- (viii) The Bid Bond lapsed when M/s Erad Supplies and General Contracts Limited was awarded the tender and furnished a performance security to NCPB. NCPB awarded the tender to M/s Erad Supplies and General Contracts Limited through a letter 12th August 2004, without confirming with the bank whether the conditions on the bid bond were met.

- (ix) When Erad Supplies and General Contracts Limited approached the bank after the award of the tender for issuance of a Performance Bond, the SBLC had not been received and in light of this the bank declined to issue a performance bond. The bid bond earlier issued by the bank was invalidated by the failure of the supplier (M/s Erad Supplies and General Contracts Limited) to honour its obligation.
- (x) The bank was not obligated to inform NCPB that SBLC had not been received. It was NCPB's obligation to evaluate the bid bonds presented in support of the various tenders and either accept or reject them on the basis of technical and financial evaluation criteria.

The Committee made the following observations:-

- (i) The Inter-Ministerial Tender and Evaluation Committee failed to conduct due diligence on the authenticity and validity of the bid bond before awarding the tender to M/s Erad Supplies and General Contracts Limited.
- (ii) The Bid Bond used by M/s Erad Supplies and General Contracts Limited to secure the tender for importation of white maize was invalid as its validity was conditional to the issuance of a Stand By Letter of Credit, which was never supplied to the bank.
- (iii) The bank failed in its duty as a responsible corporate citizen to notify NCPB, a public institution, as a matter of courtesy that the Bid Bond that had been issued to Erad Supplies and General Contracts Limited was invalid since conditions in the bid bond were not met, SBLC had not been received to secure the bid bond issued.
- (iv) The Bank failed to observe Prudential Guidelines relating to Know Your Customer (KYC) since they did not know M/s Erad Supplies and General Contracts Limited as a customer but proceeded to issue a bid bond.
- (v) The Bid bond was issued before the Joint Venture Agreement which was the basis on which KAPU Kenya sought a bid bond on behalf of M/s Erad Supplies and General Contracts Limited.
- (vi) The bank colluded with the bidder to mislead NCPB to awarding the tender. The bank was aware that the bid bond was one of the requirements to qualify the bidder.

(vii) It was as a result of the bank issuing a bid bond that NCPB qualified M/s Erad Supplies and General Contracts Limited and this resulted in loss of earnings by NCPB to the tune of Kshs. 5.2 Billion.

The Committee recommends that:-

- (a) EACC should investigate I & M Bank for the offence of conspiracy with M/s Erad Supplies and General Contracts Limited and KAPU Kenya Limited to defraud the Government through the tender to supply maize.
- (b) I & M Bank should refund NCPB for the loss incurred as a result of the contract with M/s Erad Supplies and General Contracts Limited.

5.8 EVIDENCE BY DUBAI BANK LTD

The Committee held two meetings on 18th July, 2013 and 30th July, 2013 with the management of Dubai Bank to adduce evidence on the performance bond issued by the Bank with regard to a tender to supply maize by M/s Erad Supplies and General Contracts Limited to NCPB in 2004.

In the meeting held on 18th July, 2013 the bank was represented by the acting Managing Director, Mr. Friday Mwafuga accompanied by Mr. Nick Kikolya (Chief Finance Officer), Mr. Kiplangat Charles (Legal Adviser), and Mr. Rajab Karume (Marketing Manager) who could not respond to issues raised by the Committee prompting the Committee to issue summons for Mr. Hassan Zubeidi, the Chairman of the bank who was then the Managing Director in 2004.

Mr. Hassan Zubeidi, Chairman Dubai Bank Kenya Ltd accompanied by Binay Dutta, Managing Director and Mr. Rajab Karume appeared before the Committee on 30th July, 2013 and adduced evidence as follows:-

- (i) Dubai Bank duly issued a Performance Bond reference No. Credit/rak/38/2004 dated 16th August 2004 in favour of National Cereals and Produce Board on behalf of M/s Erad Supplies and General Contracts Limited. The bond had a value of US \$ 932,000 (10% of the contract price) and signed on behalf of the bank by Mr. Hassan Zubeidi

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(former MD) and Mr. Rajab Karume (former Credit Manager) who were the duly authorized bank signatories. The bank had also issued a performance bond to Freba, one of the 5 suppliers for NCPB (*Annex 22*).

- (ii) The Bond was valid for ninety (90) days from the date of issue and was to expire on or before 17th November 2004. It was conditioned on opening of LC by NCPB. No claim or demand was ever made against it relating to the performance bond by NCPB and therefore there was no liability on the part of the bank.
- (iii) M/s Erad Supplies and General Contracts Limited in support of its request for the Performance Bond had submitted a letter of tender award dated 12th August 2004, Acceptance letter dated 13th August 2004 and a draft maize import contract between itself and NCPB.
- (iv) The agreement and arrangement between the Bank and M/s Erad Supplies and General Contracts Limited was that the Letter of Credit was to be opened by NCPB in favour of M/s Erad Supplies and General Contracts Limited at an account held at Kenya Commercial Bank Ltd and at the sum of US \$ 1,960,000 and that the sum was to be transferred by KCB Ltd to M/s Erad Supplies and General Contracts Limited account held with the bank. This sum was sufficient to cover the value of the Performance Bond and that M/s Erad Supplies and General Contracts Limited issued a formal instruction to Kenya Commercial Bank Ltd vide a letter dated 14th September 2004. (*Annex 23*)
- (v) Clause 6.1 of the draft contract provided that payment to M/s Erad Supplies and General Contracts Limited was to be made by NCPB by an irrevocable confirmed Letter of Credit to be established by its bankers, namely Kenya Commercial Bank (KCB) Ltd and that pursuant to clause 6.3 of the draft contract, the Letter of Credit was a *condition precedent* to the importation of the maize by Erad Supplies and General Contracts Limited.
- (vi) The bank granted the performance bond on an evaluation of the terms of the maize contract and the financial credibility of NCPB and its bankers. The credit profile of Erad Supplies and General Contracts Limited was not a material consideration. The primary security for the performance bond was a confirmed Letter of Credit and the

receivables there under. In addition M/s Erad Supplies and General Contracts Limited furnished the bank with personal guarantees of all directors as secondary security.

- (vii) M/s Erad Supplies and General Contracts Limited opened an account with the bank, the account being A/C No. 81041668 on 10th August 2004 at the Bank's Kenyatta Avenue branch. The initial deposit into the account was Kshs. 24,000 which was made on 25th August, 2004 while the performance bond was issued on 16th August, 2004 and maize importation contract was signed on 26th August, 2004.
- (viii) The bank followed the laws and regulations governing the issuance of performance bonds as set out in the Banking Act, Cap 488 Laws of Kenya (Section 10) and the Central Bank of Kenya prudential guidelines issued or amended from time to time.

The Committee made the following observations:-

- (i) The Performance Bond issued by the Dubai Bank was subject to certain conditions which were to be met by M/s Erad Supplies and General Contracts Limited. These conditions were however not out rightly stated on the face of the Bond.
- (ii) M/s Erad Supplies and General Contracts Limited used a non-existence contract draft (maize importation contract from NCPB) to secure the Performance Bond from the Bank.
- (iii) Dubai Bank did not undertake due diligence to ascertain the financial strength of M/s Erad Supplies and General Contracts Limited and its ability to perform before issuing the Performance Bond. The bank failed to apply the principle of Know Your Customer as espoused in the prudential guidelines.
- (iv) The opening of Letter of Credit was not a conditional precedent in the contract agreement. Letter of Credit was only a means of payment.
- (v) Dubai Bank failed to invalidate the Performance Bond it had issued which was conditional to the opening of letter of credit even after NCPB failed to open LC in favour of M/s Erad Supplies and General Contracts Limited. The bank also failed to inform NCPB of the conditions in the Performance Bond as required by prudence.
- (vi) Mr. Hassan Zubeidi was reluctant to appear before the Committee on invitation and only appeared before the Committee when summoned.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(vii) M/s Erad Supplies and General Contracts Limited wanted to use the LC issued by NCPB to open LC for their international suppliers. They lacked financial capacity to open an LC.

(viii) It was as a result of the bank issuing a performance bond that NCPB entered into a contract for the supply of maize with M/s Erad Supplies and General Contracts Limited and this resulted in a legal suit leading to loss of earnings by NCPB to the tune of Kshs. 5.2 Billion.

The Committee recommends that:-

- (a) EACC should investigate Dubai Bank for the offence of conspiracy with M/s Erad Supplies and General Contracts Limited to defraud the Government through the tender to supply maize.
- (b) Dubai Bank should refund NCPB for the loss incurred as a result of the contract with M/s Erad Supplies and General Contracts Limited.

5.9 EVIDENCE BY ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

Mr. Halake D. Waqo the Chief Executive Officer, Ethics and Anti Corruption Commission (EACC) appeared before the Committee on Thursday, 4th July, 2013 to adduce evidence on the nature of investigations undertaken by the Commission on the contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited. The preliminary report of EACC is available at the National Assembly Library. Mr. Halake adduced evidence as follows, that:-

- (i) The National Cereals and Produce Board officers in January 2013 made verbal complaint to the Commission about the process of arbitration relating to maize importation contract between NCPB and M/s Erad Supplies and General Contracts Limited.
- (ii) The verbal complaint was followed up by a letter dated 31st January, 2013 by the Board expressing its disagreement in the process of Arbitration between itself and M/s Erad Supplies and General Contracts Limited. In the letter NCPB indicated that there were issues of corruption, fraud and misrepresentation of facts that compromised the arbitration process and arbitral award. The Board requested EACC to investigate;

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

whether or not the bid bonds were genuine, whether or not the companies said to be able to supply the maize could actually supply the maize and the genuineness and the authenticity of the documents relied upon by M/s Erad Supplies and General Contracts Limited to make claims.

- (iii) Prior to the above complaints in January, 2013 the National Cereals and Produce Board had written to the defunct KACC raising issues on the process of the arbitration. The Commission then was of the view that investigating an ongoing legal process could have been interpreted to mean interference with the judicial process. Further the matter may have been put in abeyance because of the transitional challenges from the defunct KACC to EACC that saw the former directors and members of the advisory board as well as some investigating officers exit KACC.
- (iv) The Commission upon receipt of the NCPB complaint letter dated 31st January 2013 embarked on investigations into the matter. According to the EACC, investigation into the matter has local and international aspects. The first phase of investigation by the EACC has majored into local aspect while the second phase is intended to widen the scope to include the international matters. Investigations are still ongoing. The following are the preliminary findings of the on-going investigations:-
- (a) M/s Erad Supplies and General Contracts Limited was awarded a tender by the National Cereals and Produce Board (NCPB) and an agreement subsequently entered into vide a contract dated and signed on 26th August 2004 for the supply of 40,000 metric tons at a price of US \$229 per metric tonne.
 - (b) M/s Erad Supplies and General Contracts Limited alleged breach of contract and initiated the appointment of a sole arbitrator in accordance with the contract agreement.
 - (c) The arbitrator awarded the claimant an arbitral award of US \$ 3,106,000.00 together with interest rate of 12% from 7th July 2009 when the award was made.
 - (d) NCPB made an application to the High Court to set aside the award but the application was dismissed vide a ruling made on 28th June, 2011.
 - (e) The NCPB preferred an appeal against the ruling of the High Court dismissing the application to set aside the award. The matter is pending in the Court of Appeal. An

application for stay of the proceedings pending hearing and determination of the appeal was also dismissed on 8th February, 2012.

(v) The following are some of the emerging issues that the Commission found out from the preliminary investigations:-

- (a) The indication from the Interpol was that the South African firm ROPACK International which was to supply M/s Erad Supplies and General Contracts Limited with maize is not a registered firm in that Country's registration systems and that the telephone and fax numbers were for a different firm MNS Plastics and Tiles. A response from South Africa was still being awaited in regard to the other two companies. A response from Ethiopia and Brazil was also being awaited.
- (b) The Bid Bond used by the claimant in the tender process may not have been valid. This bond that was issued by I & M Bank Ltd had an overriding conditions that it could only be valid if the bank was furnished with a Stand By Letter of Credit from an International Bank of repute. I & M bank Ltd confirmed that it never received the letter of credit.
- (c) The Commission received a correspondence from NCPB on 8th April 2013 forwarding a letter by one Mr. Brian Yongo raising other new corruption allegations relating to arbitration and award which include allegation of money having changed hands.
- (d) EACC has also received complaints from the advocates of M/s Erad Supplies and General Contracts Limited alleging interference with the court process and execution of the decree.

(vi) Investigations by the Commission will look into the whole procurement process of the maize for Strategic Grain Reserve (SGR) by NCPB and any other leads that will arise in the course of investigation. Depending on the time and nature of responses received from the foreign jurisdictions of South Africa, Ethiopia and Brazil, the investigations will likely take four (4) weeks to complete.

The Committee made the following observations

- (i) M/s Erad Supplies and General Contracts Limited used an invalid bid bond to secure the contract. The Bid Bond that was issued by I & M Bank Ltd had an overriding

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

condition that it could only be valid if the bank was furnished with a Stand By Letter of Credit from an International Bank of repute

- (ii) The existence and/or credibility of ROPACK International as a company is highly doubtful. The company is not registered in South Africa's registration system.
- (iii) There were allegations of corruption and illegality that were noted in the arbitration process leading to the arbitral award.
- (iv) The investigations by EACC revealed that ROPACK International is not a registered firm in that Country's registration systems and that the telephone and fax numbers were for a different firm MNS Plastics and Tiles.

The Committee recommends that:-

- (a) EACC investigates the allegations of corruption and illegality during the arbitration process.
- (b) EACC should investigate the existence of M/s Erad Supplies and General Contracts alleged international suppliers, storage facilities and purchase of maize.
- (c) EACC should investigate the whole maize importation programme undertaken by NCPB following the drought in 2004.

5.10 EVIDENCE BY THE DIRECTOR OF CRIMINAL INVESTIGATIONS DEPARTMENT (CID)

Mr. Ndegwa Muhoro, the Director of Criminal Investigation appeared before the Committee on 4th July 2013 to adduce evidence on the investigations undertaken by the CID on the complaint by NCPB against M/s Erad Supplies and General Contracts Limited. He adduced evidence through oral examination and written submission as follows, that:-

- (i) The National Cereals and Produce Board never made any complaint against M/s Erad Supplies and General Contracts Limited to the Directorate of Criminal Investigation.
- (ii) Mr. Joshua Nyawara who was representing NCPB in the arbitration dispute reported to the police a complaint against Ms. Nancy Baraza who was representing Ms. Erad Supplies and General Contracts Limited which was the subject of Nairobi County Police Inquiry file No. 6/2010.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (iii.) Police examination of the alleged SMS communication between the two parties confirmed that the two parties were exchanging unfriendly words. However, according to the police, the exchanges did not amount to improper use of telecommunications system as per section 29 of the Kenya Information and Communication Act Cap 411A Laws of Kenya.
- (iv.) The CID, Director took up the matter with the County Criminal Investigation Officer, Nairobi County after receiving a letter of complaint from Mr. Nyawara. The inconclusive file was retrieved and remaining issues addressed. The police recommended that the parties be referred for civil remedy.
- (v.) The file is being perused by the legal and crimes affairs officer at CID before submission to the Office of Directorate of Public Prosecution.
- (vi.) The police are handling the security concerns raised by Mr. Brian Yongo over his life.

The Committee made the following observations:-

- (i) Mr. Joshua Nyawara recorded a complaint with the police against Ms. Nancy Barasa accusing him of being a stumbling block to the settlement of the case and further that he Nyawara had received one million shillings from M/s Erad Supplies and General Contracts Limited as a bribe so that he fails to file an appeal in the arbitration dispute he was handling on behalf of The National Cereals and Produce Board.
- (ii) The Police did not follow up the conclusion of investigations upon the death of the investigating officer PC Albert Kimathi in May, 2012.
- (iii) The Police failed to download messages from the telephones in question that should have become part of the evidence.

The Committee recommends that the Director Criminal Investigations investigate the allegations of corruption and illegality in the arbitration process.

5.11 EVIDENCE BY MR. AHMEDNASSIR M. ABDULLAHI

Mr. Ahmednassir Abdulahi appeared before the Committee on 11th July, 2013 to adduce evidence on the arbitration and litigation process between NCPB and Erad Supplies and

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

General Contracts Limited arising from an alleged breach of contract following a contract to supply maize in 2004. Mr. Ahmednassir adduced evidence as follows:-

- (i) He is a partner in the law firm of Ahmednassir Abdulahi and Company Advocates. The firm of Ahmednassir Abdulahi and Company Advocates did not apply for the tender for the importation of maize, in the year 2004. The firm is a legal partnership which deals only in issues of legal nature and does not trade in maize, sugar or fertilizer.
- (ii) As an advocate he got involved in the case after his services were sought by Soita and Saende Company Advocates as a lead counsel in the case of M/s Erad Supplies and General Contracts Limited.
- (iii) As a member of the Judicial Service Commission, neither did he use his position in the JSC to fast-track or influence the determination of the appeal against the arbitral awards in favour of his clients.
- (iv) He raised a fee note totalling Kshs. 14.5 million to the law firm of Soita and Saende Advocates who in essence were his instructing advocates in the matter.
- (v) NCPB's legal issues were arising from the reluctance by the NCPB to contest the decree.

The Committee made the following observations:-

- (i) Ahmednassir Abdulahi and Advocates denied having purchased tender documents from NCPB but documents available indicated that the company of Ahmednassir purchased the tender documents.
- (ii) Ahmednassir was brought into the case as a lead counsel to lead Soita and Saende advocates in representing M/s Erad Supplies and General Contracts Limited.
- (iii) Though there were allegations of bench fixing, bribery and influence peddling against Ahmednassir Abdulahi, the Committee could not rule out the possibility that Mr. Ahmednassir used his position at the Judicial Service Commission to fast-track or influence the determination of the cases in question.
- (iv) Mr. Ahmednassir took exception with the invitation by the Committee to him to adduce evidence citing that he is a private lawyer.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

5.12 EVIDENCE BY HON. KIPRUTO ARAP KIRWA, FORMER MINISTER FOR AGRICULTURE

The Hon. Kipruto arap Kirwa, former Minister for Agriculture, appeared before the Committee on 17th July, 2013 to adduce evidence on the indebtedness of NCPB to M/s Erad Supplies and General Contracts Limited arising from a contract to supply maize in 2004. Hon Kirwa adduced evidence as follows, that:-

- (i) In June 2004 the Government decided to import maize to fill in the gap occasioned by the failed crop due to prolonged drought. Due to shortage of maize there was a deficit of 2 million bags. The Ministry of Agriculture, Ministry of Special Programmes and Ministry of Finance presented a Cabinet paper on the food security situation in the country and the need to import maize.
- (ii) Bidders were subsequently invited to tender and eighty one (81) firms bought the bid documents, thirty six (36) bidders responded but only five met the threshold for importation of maize.
- (iii) The Government also decided to use restricted tendering so as to meet the maize shortfall and within ninety days before the next harvest. Treasury was tasked to release funds but the funds were released in tranches after the duty free importation period.
- (iv) By the time the Euroworld, Hala, Purma and Freba were issued with Letters of Credit, M/s Erad Supplies and General Contracts Limited was still struggling to get the necessary documentation. The company finally managed to get the documents required.
- (v) The maize importation process started in August 2004 but by October, 2004 no maize had been imported into the country. The firms were experiencing challenges in importing the maize due to the high international maize prices.
- (vi) He was aware of a letter by Treasury indicating that Letters of Credit (LC) were not required for importation of the maize but the strategic grain reserve trustees decided that LC's were essential in the process, to facilitate the importation of maize and mitigate drought. Funds were not to be paid in advance but to be released upon the importation of the required standard and quantity of maize.
- (vii) Considering that LC's were issued to the other four companies, there was no point of denying M/s Erad Supplies and General Contracts Limited the LC. The Government

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

failed to issue M/s Erad Supplies and General Contracts Limited with instruments to facilitate importation.

(viii) He issued a paid advert in the local dailies to counter accusations and misconceptions from the press on the maize importation exercise and the then looming hunger in the country.

(ix) The maize imported during the period was only 700 metric tons out of the required 180,000 metric tonnes. He was never compromised on the matter and never recorded a statement with the EACC.

The Committee made the following observations:-

- (i) In spite of the advice from Treasury against issuance of Letters of Credit, Letters of Credit were opened by NCPB in contravention of financial regulations.
- (ii) The Ministry of Agriculture never sought the advice of the Attorney General during the drafting and reviewing of the contract.
- (iii) Four firms; Euroworld, Hala, Purma and Freba were issued with Letters of Credit.
- (iv) M/s Erad Supplies and General Contracts Limited delayed in the submission of documents to facilitate issuance of LC.
- (v) The Funds allocated for maize importation were not to be paid in advance but to be released upon the importation of the required standard and quantity of maize.

5.13 EVIDENCE BY KENYA COMMERCIAL BANK

The Chief Executive Officer, Kenya Commercial Bank Limited, Mr. Joshua Oigara, appeared before the Committee on 30th July 2013 to adduce evidence on the transaction between NCPB AND M/s Erad Supplies and General Contracts Limited for the supply of maize in 2004. Mr. Joshua Oigara adduced evidence as follows, that:-

- (i) The National Cereals and Produce Board requested KCB to verify the validity and genuineness of various Performance Bonds issued in favour of suppliers by different banks. KCB confirmed the authenticity of the Performance Bonds for five of the firms that were awarded the contract to supply maize in 2004. (Annex 24)

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(ii) Upon application by NCPB and upon receipt of 100% cash covers the bank issued letters of credit on behalf of NCPB in favour of three (3) suppliers as follows:-

Supplier	Amount (USD)	Utilization
Hala General Trading LLC	9,160,000	5,902,704
Freba Investments	6,870,000	Nil
Purma Holdings	6,870,000	Nil
Total	22,900,000	5,902,704

The Letter of Credit opened for Hala General Trading was partially utilized, while the Letters of Credit issued in favour of Freba Investments and Purma Holdings expired unutilized.

(iii) In February 12, 2013 NCPB's aggregate credit balance was Kshs. 1,649,237,518.15 whereas its liability to the bank stood at Kshs. 1,343,092,913.35. The bank set of the credit balance against the loans accounts in settlement pursuant to the credit agreement.

(iv) The bank was served with a Garnishee order on 12th February, 2013 requiring the bank to appear in court to show cause why it should not pay the decree holder the decretal amount of US \$ 6,140,859.80. Subsequent orders were issued to the bank directing that NCPB's fixed deposit account be attached and utilized to satisfy the decretal amount.

(v) On February 21, 2013 the bank was served with two agency notices from Kenya Revenue Authority (KRA) requiring the bank to debit Kshs. 307,070,882 to KRA being tax due from NCPB. The Bank wrote to KRA advising that it was not possible to comply with the request due to competing interest between KRA and M/s Erad Supplies and General Contracts Limited with respect to the funds held in NCPB accounts and advised KRA to seek the courts intervention on the matter.

(vi) On 27 February, 2013 the bank received a garnishee order absolute requiring KCB to pay the sum of Kshs. 297,386,505 to M/s Erad Supplies and General Contracts Limited less legal costs and the decree nisi to be extended for the balance of the decree in the sum of Kshs. 255,290,877 for any future deposits that may be deposited by NCPB.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

(vii) On February 28, 2013 KCB was served with another agency notice requiring the bank to pay KRA the sum of Kshs. 156,600,000 being tax due from M/s Erad Supplies and General Contracts Limited. (Annex 25) M/s Erad Supplies and General Contracts Limited served the bank with a Miscellaneous Application Order No. 87 of 2013 being a judicial review application by M/s Erad Supplies and General Contracts Limited which sought to quash the decision by KRA to attach the monies held in the NCPB's account. KRA threatened to debit the bank's accounts at CBK for failure to comply forcing the bank to seek a determination by the court as to whom the bank should pay the monies held and or order that the bank deposits the money with the courts. The court ruled that the bank pay to Erad Supplies and General Contracts Limited the amount held in compliance with the order of 17 February, 2013 and that the bank was absolved and discharged from any liability under the agency notices whose effect would be determined by the court in separate judicial review proceedings.

(viii) The bank on 19 March 2013 complied with the Court order and remitted Kshs. 297,386,505 into M/s Erad Supplies and General Contracts Limited's advocate's accounts, Soita & Saende Advocates, held at Barclays Bank.

(ix) NCPB appealed the ruling of the High Court delivered on 28 June 2011 and on July 02, 2013 the Court of Appeal made a ruling that the status quo be maintained.

The Committee made the following observations:-

(i) The Letter of Credit opened in favour of Freba Investments and Purma Holdings expired unutilized while the LC for Hala General Trading was partially utilized.

(ii) Even though NCPB opened Letters of Credit, the firms were unable to supply the maize as required.

(iii) Following Garnishee and Court Orders KCB remitted Kshs. 297,386,505 into Erad Supplies and General Contracts Limited's advocate's accounts, Soita & Saende Advocates, held at Barclays Bank.

(iv) The Court of Appeal, following an appeal by NCPB on the High Court ruling of June 28, 2011, made a ruling that the status quo be maintained and that no further steps are

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

taken by M/s Erad Supplies and General Contracts Limited in executing garnishee and or Court Orders against NCPB.

5.14 EVIDENCE BY KAPU KENYA LIMITED

Mr. Sundip Jagdish Patel, Managing Director, KAPU Kenya Limited accompanied by Mr. Kimwaro Kuria appeared before the Committee on 30th July, 2013 and 1st August, 2013 to adduce evidence on the Joint Venture Agreement between Erad Supplies and General Contracts Limited and KAPU Kenya Limited.

Mr. Sundip adduced evidence as follows, that:-

- (i) KAPU Kenya Limited entered into a Joint Venture Agreement (JVA) with M/s Erad Supplies and General Contracts Limited to supply 40,000 metric tons of maize in 2004. (*Annex 19*)
- (ii) As per the terms of the JVA, KAPU Kenya obtained a bid bond dated 4th August, 2004 from I & M bank. In accessing the bid bond KAPU and Erad Supplies and General Contracts Limited executed counter indemnities as required by the bank.
- (iii) KAPU Kenya Limited was not involved in the issuance of a performance bond. ROPACK International gave a partial performance bond and the rest was given by Dubai bank. KAPU Kenya Limited did not however deal with ROPACK International. ROPACK only dealt with M/s Erad Supplies and General Contract Limited.
- (iv) KAPU Kenya did not operate an account with I & M bank limited in 2004. It was not the first time that the company had obtained a performance bond from the bank.
- (v) The role of KAPU in the JVA was limited to providing funds to M/s Erad Supplies and General Contracts Limited to finance the maize importation and other needs of the company. In consideration for KAPU Kenya providing the funds, KAPU Kenya was to get a 1/3 of the share the profits and to this effect M/s Erad Supplies and General Contracts Limited gave a written undertaking to pay as agreed.
- (vi) All the directors of M/s Erad Supplies and General Contracts Limited jointly and severally guaranteed to KAPU Kenya to ensure total performance of the terms of the agreement (*Annex 26*).

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- (vii) Through the financing agreement KAPU Kenya gave M/s Erad Supplies and General Contracts Limited through Grace Wakhungu Kshs. 30 million. M/s Erad Supplies and General Contracts Limited was to purchase the maize from Egypt and South Africa. Mrs Wakhungu acknowledged receipt of the money. She later issued post dated cheques as security.
- (viii) M/s Erad Supplies and General Contracts Limited started changing when they got the contract and stopped involving KAPU Kenya in the tender. KAPU exited when they were advised by M/s Erad Supplies and General Contracts Limited that the Government was to issue Letter of Credit.
- (ix) After M/s Erad Supplies and General Contracts Limited received the part payment they dishonoured their obligation necessitating the filing of HCC No. 31 of 2013 against M/s Erad Supplies and General Contracts Limited claiming money under the said agreement. The case is pending before the court.

The Committee made the following observations:-

- (i) The Joint Venture Agreement was entered into long after the bid bond had been obtained. The bid bond is dated 4th August, 2004 and the JVA is dated 18th August, 2004.
- (ii) As per the JVA KAPU Kenya was to provide capital finance in form of bank deposits, Letters of Credit and other forms of financing suitable to the venture alluded to.
- (iii) M/s Erad Supplies and General Contracts Limited was to use the financial capital availed to purchase, procure the specified grains, pay for the cost of freight for the grains and pay for cost consequent upon or arising from the tender requirements such as storage, insurance, transport and related government levies and taxes.
- (iv) The profits and losses, as per the Joint Venture Agreement, was to be shared between M/s Erad Supplies and General Contracts Limited and KAPU Kenya on a ratio of 50:50 of the net proceeds of the tender and not the 1/3 claimed by Mr. Sundip.
- (v) All the Directors of M/s Erad Supplies and General Contracts Limited jointly and severally guaranteed to KAPU Kenya to ensure total performance of the terms of the agreement by executing a guarantee. Only two of the Directors Mr. John Wakuke and Ms. Grace Wakhungu signed the guarantee.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

The Committee recommends that EACC investigates KAPU Kenya Limited for the offence of conspiracy to defraud the Government of Kenya through the tender to supply maize.

6.0 VISIT TO THE NATIONAL CEREALS AND PRODUCE BOARD

The Committee on Wednesday July 31, 2013 visited the Headquarters of NCPB to familiarise itself with the current operations of the Board, inspect the strategic grain reserves and assess the impact of the case on the operation of the Board.

From the visit the Committee observed that:-

- (i) The organization was established in 1939, as Maize and Produce Marketing Board. In 1985, the NCPB Act, Cap 338 was enacted to ensure proper regulation and control of grains and scheduled produce. The Government together with the European Union World Bank and IMF commenced the Grains Sector reform programme to liberalize the sector in 1988. The government further attempted unsuccessfully to commercialize the organization in 1996-1997.
- (ii) The Board operates a network of 110 depots / storage facilities consisting of silos, conventional stores / warehouses, supporting infrastructure such as dryers, cleaners, offices, and houses. NCPB has a countrywide network in all the counties except in Tharaka Nithi where they have just a buying centre.
- (iii) NCPB is mandated to undertake commercial commodity, provide grain related services, procure and manage grains on behalf of government on agency basis and provide logistic support services on food security issues.
- (iv) NCPB has achieved in market outlet for grain produce, price stabilization, distribution of famine relief, maintenance of SGR and intervention during time of shortages, storage for produce through the WRS system and distribution of farm inputs especially fertilizer.
- (v) The case has adversely affected the operations of NCPB. Some of the effects include; Attachment of assets leading to loss of vehicles & equipment, suspension of banking facilities, Boards inability to import fertilizer, suspension of purchase of

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

commercial maize, Low volumes of trading activities from gross sales of Kshs 5.2 billion in 2011/2012 to Kshs. 0.5 billion in 2012/2013, delayed payments to suppliers and staff, Quality of stock may be compromised due to inability to manage stocks and loss of close to one billion

- (vi) The Government through the Ministry of Agriculture, Livestock & Fisheries had hired Ernst & Young, a consulting firm to assist in the restructuring of NCPB to enhance service delivery.
- (vii) The Government owes NCPB outstanding debts amounting to Kshs. 3.2 billion (i.e. subvention Kshs. 2.2 billion and agency Kshs. 1 billion)
- (viii) There is need to streamline agency and business relationships between government and NCPB through restructuring programme
- (ix) The Government should review the NCPB legal framework to make it relevant in a liberalized trading environment and protect strategic public Assets.

The Committee recommends that:-

- (a) The Government should pay all outstanding debts to the tune of Kshs. 3.2 billion owed to NCPB (i.e. subvention Kshs. 2.2 billion & agency fee Kshs. 1 billion).
- (b) The Government should also be in a position to take up, as the principal of NCPB the entire debt owed by NCPB within lawful execution of SGR assignments.
- (c) The Government should review the NCPB legal framework to make it relevant in a liberalized trading environment and protect strategic public Assets.

7.0 OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS

This section highlights the key observations, conclusions and recommendations of the Committee arising from the evidence it received. This evidence was both oral and written submissions as well as review of documentation relating to the issue under investigation.

These observations and recommendations, if taken into account and implemented, will enhance accountability, efficiency, effectiveness, transparency, accountability, prudent management and profitability in State Corporations and the public investments sector as a whole. Further the observations and recommendations contained herein will help the National Cereals and Produce Board to function optimally.

7.1 COMMITTEE OBSERVATIONS

The Committee made the following observations from the oral evidence and written submissions during the inquiry:-

I. Declaration of Drought as National Disaster/Authority to import maize

1. The forecasting and assessment of the actual food security situation in the country that led His Excellency the President to declare drought as national disaster and appeal for efforts to mitigate the effects of the disaster was misleading and therefore did not warrant the kind of response that was agreed by the Government.
2. The Process of the importation of the 180,000 metric tons (2 million bags) of white maize by the NCPB lacked proper planning and coordination by all the parties concerned i.e. the line ministries, SGR and NCPB.
3. NCPB was granted authority to directly procure three (3) million bags of white maize by the Government but instead chose to use restricted tendering procedure introducing letters of credits to local suppliers while in the actual sense these instruments should have been used by NCPB to guarantee them direct procurement of the white maize from the foreign suppliers and sources.
4. The Minister for Finance under a special issue of the Kenya Gazette Supplement No. 50, dated 5th August 2004, zero rated duties and taxes on imported maize between 1st July, 2004 and 30th September, 2004 to facilitate the importation process. The duty was

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- to be reinstated on 1st October, 2004 in order to safeguard the local farmers, who were expected to offload their maize into the market by November, 2004.
5. Writing on 6th October, 2004 to Treasury PS, a few days after the expected contractual completion date of delivery of maize by contracted firms (end of September) the Permanent Secretary for Special Programmes informs NCPB Managing Director to suspend opening of LC's to companies where LC's had not been opened i.e. to M/s Erad Supplies and General Contracts Limited and funds be directed to purchase of local maize as opening LC's in October would mean receipt of maize in November to early December 2004. The cost of opening the LC was estimated at Kshs. 731 million, the expected delivery time was also expected to coincide with the period of harvest of grains by local farmers (November/ December) hence importation at the time would be counter-productive and against public policy with respect to support to local farmers.
 6. Since only approximately 70,000 metric tons of maize were received from an expected 180,000 metric tons and bumper harvests projected for approximately 3 months after a somber declaration of drought as a national disaster all point to the fact that there was an apparent gap in forecasting, assessment of the actual situation, proper planning and/or management of the maize importation in 2004.
 7. The Board executed contracts with the successful firms and this was followed by issuance of import documents and opening of Letters of Credit (LC). The Treasury released Kshs. 3.2 Billion of the expected 4.8 Billion on diverse dates which was used to open L.Cs for four (4) firms with the exception of M/s Erad. There was communication gap on the releasing of the remaining amount. This showed laxity and lack of proper planning in an apparently "crucial" and urgent Government project that was intended to save human life

II. Tendering Process and Award of the Tender

8. During the tendering process, M/s Erad Supplies and General Contracts Limited submitted its audited accounts for the year 2003/2004 and the accounts indicated that it closed the year 2004 with a deficit of Kshs. 3,265,435 and an asset base of approximately Kshs. 7 million and had a bank overdraft of Kshs. 3 million meaning it had a deficit of Kshs. 665,435. This financial position raises serious capacity questions

on the financial capability and suitability of M/s Erad Supplies and General Contracts Limited to deliver 40,000 Metric tons of Maize at a cost of US\$ 9, 160,000. This financial position, as presented by M/s Erad Supplies and General Contracts Limited itself illustrated that the firm lacked the financial capacity to be considered for award of the tender.

9. M/s Erad Supplies and General Contracts Limited showed no previous experience in dealing with export business or experience in trading in cereals and grains at all while the tender document required a 3 year previous experience. There was also no evidence of either competent staff or any staff at all to support the company's maize importation process.
10. M/s Erad Supplies and General Contracts Limited had quoted the highest price at US\$ 233 per metric ton amongst the firms evaluated yet they were awarded the tender contrary to the provisions of section 30 (8) of the Exchequer and Audit (Public Procurement) Regulations 2001 which stipulated that the successful tender shall be the lowest evaluated tender price or in the alternative, a company which according to stipulated specifications of the procuring entity, can be evaluated on other factors affecting the economic value of the tender, that have been specified, are quantifiable and objective, factors that cannot be objectively discerned to have existed given available documentary evidence.
11. The Technical Evaluation Committee (TEC) awarded M/s Erad Supplies and General Contracts Limited a tender to supply 20,000 metric tons and yet the Main Tender Committee varied the price and quantity of maize to be imported from 20,000 metric tons at US \$ 233 per metric ton to 40,000 metric tons at US \$ 229 per metric ton without apparent justification and in the face of glaring indicators of lack of both technical and financial capacity on the part of M/s Erad Supplies and General Contracts Limited.
12. The firm of Ahmednasir Abdikadir Co. Advocates was among the eighty one (81) companies that bought tenders for the supply of white maize to NCPB, with a receipt number 348782 dated August 04, 2004 and the contact person indicated as Mr. Ahmednasir. It is worth noting that Mr. Ahmednasir Abdulahi, a partner at the firm of

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Ahmednasir Abdikadir Co. Advocates subsequently acted for M/s Erad Supplies and General Contracts Limited on this matter against NCPB and has been on record as denying that his firm never bought the tender documents for the supply of the white maize.

13. M/s Erad Supplies and General Contracts Limited lacked the technical capacity to supply the maize as witnessed by its late submission of requisite documents including the performance bond, the invoices from its alleged foreign suppliers, submitted on 26th August, 2004 and the import declaration form which was submitted on 2nd September, 2004, resulting in an agreement originally meant to be signed on 16th August, 2004 being signed ten days late on 26th August 2004.
14. NCPB failed to undertake due diligence in scrutinizing submitted documents from alleged foreign suppliers i.e. ROPACK cc International, Ethiopian Grain Trade Enterprise and Chelsea Freight. According to the evidence of the Chief Executive Officer (CEO) of the EACC, ROPACK International's documents as submitted were non-existent and the existence of the two other companies is questionable.
15. The Inter-Ministerial Technical and Evaluation Committee failed to undertake due diligence in scrutinizing the documents submitted by M/s Erad Supplies and General Contracts Limited during bidding and evaluation of bids leading to the award of tender.
16. The TEC failed to scrutinize and authenticate the bid bond from I & M Bank. M/s Erad Supplies and General Contracts Limited submitted a bid bond from I & M Bank whose validity was conditioned to the issuance of a Stand By Letter of Credit by an international reputable bank which by the admission of the Directors of I&M Bank in their evidence was never issued thus invalidating the very same bid bond upon which M/s Erad Supplies and General Contracts Limited qualified itself to be awarded the tender to supply the 40,000 metric tons of white maize

III. The Bid Bond

17. I & M Bank issued a bid bond to M/s Erad Supplies and General Contracts at the request of KAPU Kenya Limited.

18. KAPU Kenya Limited and M/s Erad Supplies and General Contracts Limited entered into a purported financing Joint Venture Agreement for the supply of white maize to NCPB. This point to the fact that M/s Erad Supplies and General Contracts Limited lacked financial capacity to supply the maize.
19. M/s Erad Supplies and General Contracts Limited submitted a bid bond from I & M Bank whose validity was conditional to the issuance of a Stand By Letter of Credit by an international reputable bank which by the admission of the Directors of I&M Bank in their evidence was never issued thus invalidating the very same bid bond upon which M/s Erad qualified itself to be awarded the tender to supply the 40,000 metric tons of white maize.

IV. Performance Bonds

20. Dubai Bank Kenya Ltd issued a performance bond dated 16 August, 2004 to M/s Erad Supplies and General Contracts Limited worth US\$ 932,000 with a validity period of 90 days. The request for the performance bond was supported by *a letter of award dated 12th August 2004, an acceptance letter dated 13th August 2004 and a draft maize importation contract between M/s Erad Supplies and General Contracts Limited and NCPB.* The validity of the performance bond was conditional to the issuance of an irrevocable confirmed letter of credit.
21. The performance bond issued by Dubai Bank Kenya Ltd had serious irregularities on the face of it. The Bond resembled the one submitted by another firm, Freba limited from the same Bank for the same tender which purported to have been issued on 19th August, 2004 while M/s Erad Supplies and General Contracts Limited was issued on 16th August, 2004 and yet the serial number of Freba Limited (CREDIT/rak/38/2004) was lower in rank to that of M/s Erad Supplies and General Contracts Limited (CREDIT/rak/37/2004) This is a fundamental inconsistency.
22. The opening and operation of a Bank account by M/s Erad Supplies and General Contracts Limited at Dubai Bank Kenya Ltd coincided with the potential award of the tender to supply maize to the NCPB.

V. The Contract

23. The Contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited became effective upon execution on 26th August, 2004. The letter of award of contract dated 12th August, 2004 indicated that the contract was meant to have been signed on 16th August, 2004. The contract period was stipulated as four weeks after the execution of the contract hence expiry date ought to have been or about the 26th September, 2004.
24. M/s Erad Supplies and General Contracts Limited had the draft agreement prior to the award of tender and submitted it to Dubai Bank Kenya Limited in its quest to obtain a Performance Bond which was one of the prerequisite to the signing of the contract.
25. The consignment of the 40,000 metric tons of maize was, as per the contract, to be shipped so as to arrive at the Port of Mombasa within four (4) weeks from the date of signing of the contract. The seller was mandated to endeavor to ship the maize earlier (clause 4.1). M/s Erad Supplies and General Contracts Limited never supplied the maize within the contract period or even after the expiry of the contract period.
26. The Contract provided avenues for termination by either party in case of non performance by the seller under clause 8, and on force majeure. The NCPB failed to use these provisions to terminate this contract while M/s Erad Supplies and General Contracts Limited used clause 12 of the same contract which provided for arbitration mechanism for settlement of any breach or dispute arising out of the contract. There was poor contract management by NCPB ultimately leading to the loss and attachment of NCPB's monies and properties. Contract management includes negotiating the best possible terms and conditions and ensuring compliance thereto, agreeing and documenting changes, or amendments that may arise during its subsistence, all for the purpose of optimizing financial and operational performance and minimizing risk for the organization.

VI. Letter of credit

27. The terms of payment under the contract was to be by means of an irrevocable/sight letter of credit. The issuance of Letter of Credit was not a condition precedent to the suppliers importing and supplying the maize to the National Cereals and Produce

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Board. The Letter of Credit was only an instrument to give comfort to the companies who had to use their own resources to import the maize and be paid upon delivery.

28. Letters of Credit were opened for four out of the five companies that signed contract with the NCPB for the importation of the white maize. Only two out of the five delivered the maize while the rest defaulted on their contractual obligations. No Letter of Credit was however opened for M/s Erad Supplies and General Contracts Limited.

VII. Mediation process

29. The NCPB and the Ministry of Agriculture endeavoured to settle the matter amicably after M/s Erad Supplies and General Contract Limited threatened to sue NCPB. The mediation process was meant to achieve a mutually agreeable settlement and termination of the contract.
30. Mediation failed after M/s Erad Supplies and General Contracts Limited through its directors insisted that due to the costs they had incurred with respect to the maize importation contract, they would only be satisfied with the opening of an LC by the NCPB in their favour to allow them to import the maize.

VIII. The Arbitration Process and the Arbitral Award

31. The arbitration commenced on 24th February, 2009 and ended with the delivery of the arbitral award on 7th July, 2009. The arbitration process was marred by accusations of bribery, bias and gross interference levelled against the sole arbitrator Mr. Evans Gaturu who was accused of having been compromised by M/s Erad Supplies and General Contracts Limited, accusations on alleged attempts to compromise witnesses among others.
32. M/s Erad Supplies and General Contracts Limited sought the following prayers from the arbitrator; Loss of Profits at US\$ 8 per ton, Storage Charges, General damages at US\$ 1,000,000 and Interest at of the total amount at the rate of 12% p.a. The Arbitrator awarded loss of profit at US \$49 per MT (US\$ 1,960,000), Storage costs due to the Storage for Chelsea Freight SA at US\$ 1,146,000 and interest at 12% per annum from 2^{7th} October 2004 until payment in full.
33. The arbitrator awarded sums not pleaded for in his award for loss of profit. From the record of pleadings, M/s Erad Supplies and General Contracts Limited pleaded for loss

of profit at US\$ 8 per ton. The maize was to be purchased at US\$221 and sold at US\$ 229 bringing the profit to US\$ 8 per metric tons and not the US\$ that was awarded. The arbitrator also awarded storage charges without proof of storage and without apparent verification of documents.

34. The arbitral award should have placed the parties in the position they were before the contract and not the huge award. Public interest should also prevail in any case that the public good is involved.
35. Strategic Grain Reserve Trustees should have been enjoined in the arbitration proceedings as the principal of NCPB under the agency agreement.

IX. Hiring of lawyers and Litigation

36. NCPB has been using legal services of Nyawara & Co. Advocates since 2004 in handling the case of M/s Erad Supplies and General Contracts Ltd, among other legal matters. Subsequently other lawyers were hired to boost NCPB's legal team at the High Court and Court of Appeal. The Advocates acting on behalf of NCPB include Mr. Nyawara, Mr. Katwa Kigen, Mr. Patrick Lutta, Mr. Mohammed Nyaoga, Mr. Mwangi, and Mr. Juma Kiplenge. In spite this strong legal team and spending a total of Kshs. 29,109,502 in legal fees, the Board has not been able to move the Courts to set aside the arbitral award.
37. A review of the prequalified legal firms at NCPB reveals that the some of the law firms had not been pre-qualified to offer legal services and therefore, it is not clear how they were identified for this case and the reason for their involvement.
38. The Committee could not rule out the possibility of interference in the judicial process in the determination of the case taking into account that some of the lawyers for M/s Erad Supplies and General Contracts during the case were and have links to the Judicial Service Commission (JSC).

X. Garnishee and Attachment of NCPB Properties

39. M/s Erad Supplies and General Contracts Limited applied to court to have the accounts of NCPB garnisheed and its properties attached in February 2013 to realise the arbitral award. The Garnishee Orders were made on 15th March, 2013 and as a result all NCPB's accounts were frozen and a total of Kshs. 313 million (Kshs. 14 million from

National Bank of Kenya, Kshs. 2 million from Co-operative Bank of Kenya and Kshs. 297, 386, 505 from Kenya Commercial Bank Limited) taken by M/s Erad Supplies and General Contracts Limited and the accounts were to remain frozen for the next twelve months or until the balance of the decretal amount of Kshs. 255 million is paid fully.

XI. Status of pending court matters

40. A substantive Appeal by the Board at the Court of Appeal, No. 9/2012 challenging the arbitral award, was heard on 2nd July 2013 where the Court granted stay of execution and stopped further attachment of NCPB's properties. The hearing of the appeal is scheduled for 11th November 2013.

XII. Role of the National Cereals and Produce Board (NCPB)

41. NCPB is a crucial State Corporation tasked under the NCPB Act (Cap 338) with the key roles of advising on proper production of grains and cereals in relation to the needs of Kenyans, to regulate or control collection, sale, importation, disposal or movement of maize, buy and store, acquire and dispose grains and cereals.

42. Under an Agency Agreement NCPB is an Agent for the trustees in the Ministry of Special programmes, Ministry of Finance and Ministry of Agriculture under the agency agreement between NCPB and Strategic Grain Reserves.

43. The contract between NCPB and M/s Erad Supplies and General Contracts Limited falls within the ambit of that agency relationship and since SGR were undisclosed as principals, any liability will be joint and several and both agent and principal will be liable in case of a breach of contract.

XIII. Role of the Former management of NCPB

44. The evidence by Mr. Tirop Kosgey that proper evaluation of M/s Erad Supplies and General Contracts Limited was not done and that they based their evaluation on the perceived credibility of the Directors was simplistic and a circumvention of the prevailing procurement laws and regulations, hence illegal

45. The then Managing Director of NCPB failed to invoke Provision 8.0 and 13.0 of the contract to terminate the contract when M/s Erad Supplies and General Contracts Limited did not meet its contractual obligation to supply the maize as per the agreed schedule

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

46. Mr. Karanja as the Board's legal advisor drafted a contract entrenching payment through the use of irrevocable/sight letters of credit thus putting the Board at an awkward position of opening Letters of Credit to local suppliers contrary to international business practices where letters of credit are only opened for international suppliers. He also failed to advise the Board on the input of the letter by the Permanent Secretary, ministry of finance advising against opening letters of credit.

XIV. Role of SGR Trustees/line Ministries

47. The SGR Trustees, (Permanent secretaries), Ministries of Finance, Special programme, and Agriculture are trustees with respect to management of the Government's strategic grain reserve stocks, famine relief and implementation of Grain market stabilization policy.
48. The SGR Trustees have an SGR fund whose accounting officer was the Permanent Secretary Ministry of State for Special Programmes whose responsibility was to ensure that programmes are implemented efficiently and funds are available and utilised as budgeted.
49. The maize importation programme did not meet its objective. Less than the required quantity of maize was imported and outside the emergency period.
50. The SGR trustees entered into an agreement with NCPB as agents with respect to management of SGR reserves including importation of grains. Under the agency agreement, the agent works under the supervision and direction of the principal, the role of the principal would also include among others to avail funds for projects and open LC's as necessary. The SGR trustees failed to plan effectively in terms of weather forecasting, maize importation project and availing funds necessary to import the maize and management of the litigation process.
51. As the principals in this contract, SGR trustees are vicariously liable for negligent or actions of NCPB officials.
52. There appeared to be interference on the running of the SGR affairs by the line Ministers particularly the Minister for Agriculture and Minister for Special Programmes. The trustees made a decision to apply funds initially earmarked for maize importation for purchase of maize from local farmers.

53. After the expiry of the delivery period of four weeks there was indecisiveness on the part of the SGR Trustees and NCPB management on the appropriate action to be taken on whether to open an LC or terminate the contract.

54. There also appears to have been lack of effective management of the maize importation programme by the SGR and communication with respect to appropriate action to be taken at critical moments. There also appears to have been a missing link in the manner in which the Trustees viewed the M/s Erad Supplies and General Contracts Limited matter and the way they wanted it handled.

XV. Impact of the case of M/s Erad verses NCPB on NCPB

55. The case has had adverse effects on the cash flow and operations of the NCPB. It has cost the Board billions of shillings in lost business and almost crippled its operations following the garnishee of its accounts, auctioning of assets and freezing of accounts.

XVI. Restructuring of the National Cereals and Produce Board

56. The Ministry has engaged a consulting firm, Ernst & Young, to assist in the restructuring of NCPB to enhance service delivery. The restructuring programme should streamline agency and business relationships between Government of Kenya and NCPB.

57. The process is also assessing the staff establishment with the aim of modernizing it and making it lean and cost effective.

7.2 CONCLUSIONS

From the oral evidence adduced and written submissions, the Committee made observations upon which the following conclusions are derived, that:-

1. The declaration of famine as a National Disaster by the President of the Republic of Kenya under the advice of the Kenya food security steering group Ministries in charge of SGR, that is the Ministry of Agriculture, Ministry of special programmes and Ministry of Finance on 14th July, 2004 may have been instigated by reasons among them inadequate rainfall during the long-rains and drought but indications are that lack of proper forecasting, inadequate assessment of the situation on the ground and vested interests played politics with prevailing hunger situation to escalate the magnitude of the situation benefit – politics of famine.
2. The response mounted to mitigate the negative effects of drought was sensational to the prevailing situation. The Cabinet approved importation of 180,000 metric tons of white maize for immediate relief to help 3.3 million Kenyans who were in need of immediate assistance but only an estimated 70,476 metric tons were imported some of it way past the declared emergency period.
3. The procurement of the maize was initiated and carried out without establishing availability of adequate funds to finance the huge budget. Part IV Section 17 (6) of the Exchequer and Audit (Public Procurement) Regulations, 2001 states that *before initiating a procurement process, the procuring entity shall assure itself that sufficient funds have been set aside in the entity's budget to pay for any amounts due under the resulting contract.* This was not considered by the relevant SGR ministries during the process of procuring the maize since available information shows that the printed estimates for Strategic Grain Reserves had a provision of Kshs.2.5 Billion as opposed to maize contract sum of Kshs.4.8 Billion.
4. The procurement process for maize was not done in a professional manner that could ensure efficiency and effectiveness of the process and as a result no value for money was realized. The Board has already incurred Kshs. 337,169,848 million in respect to

the contract with M/s Erad Supplies and General Contracts Limited while no maize was ever supplied by this entity.

5. M/s Erad Supplies and General Contracts Limited lacked the technical and financial capacity to purchase and supply maize to NCPB. M/s Erad Supplies and General Contracts Limited and its three Directors Mrs. Grace Sarapay Wakhungu, Mr. Jacob Juma and Major (Rtd) John Waluke are in breach of procurement law by giving false information and for knowingly misleading the Board about the firm's financial and technical position and for relying on invalid bid and performance bond knowing them to be void in order to qualify for the award of tender.
6. I&M Bank issued a bid bond that was predicated on a condition that was not met, that Erad Supplies and General Contracts Limited used to qualify for tender award for importation of maize. The bid bond was void by virtue of the condition for its validation, issuance of stand by letter of credit, having not been met.
7. Dubai bank issued a performance bond on the basis of a draft contract agreement with a provision that payment by NCPB to M/s Erad Supplies and General Contracts Limited shall be by an irrevocable sight letter of credit, the same performance bond was void since the condition upon which it was predicated was not met.
8. The technical evaluation committee and the main tender committee were in breach the provisions of the Exchequer and Audit (public procurement) Regulations, 2001 relating to the tendering process and award of tender. The two procurement committees failed to undertake due diligence on the firms that bided for the importation of maize.
9. The then SGR Trustees, PS Special Programmes, Mr. Mahboub Maalim and PS Agriculture Mr. James Ongwae at the time displayed a lack of decisiveness, a lack of resolve, and negligence with respect to the manner in which they handled the matter of maize importation programme and more so the contract between M/s Erad Supplies and General Contracts Limited and the National Cereals and Produce Board.
10. The role of legal department and Ag. Board Secretary, Mr. Patrick Karanja, in allowing or enabling the matter of M/s Erad Supplies and General Contracts Limited to degenerate to a position of great loss to the company ought to be evaluated.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

11. The arbitration process may have overlooked the public policy and interest component in the case between M/s Erad Supplies and General Contracts Limited and NCPB. It is also desirable to further domesticate the arbitration process in Kenya allowing for disciplinary committee to inquire into and recommend or discipline errant arbitrators and to allow for review of the evidence in an award on appeal.
12. A reading of the various rulings at the High Court and Court of Appeal many of which seemed to deny grant of stay of execution of decree for attachment of NCPB properties until the merits of the appeal for setting aside the arbitral award is heard and determined despite the overwhelming public interest in the matter seem to point to the possibility of conflict of interest, bench fixing and or influence peddling in the determination of the cases and therefore the need for the Judicial Service Commission to investigate its officers for the aforementioned.
13. In spite of denials by Mr. Ahmednasir Abdulahi that the firm of Ahmednasir Abdikadir did not purchase bid documents, evidence submitted by NCPB's indicate that the firm purchased tender documents for maize importation under tender number 80, receipt number 348782 dated August 04, 2004.
14. The Board never consulted the Office of the Attorney General in drafting of contracts and the subsequent litigation process.
15. The National Cereals and Produce Board should be restructured and its legal framework reviewed with the aim of streamlining the agency's social and commercial (business) components in order to make it relevant in a liberalized trading environment and protect strategic public assets.
16. The National Cereals and Produce Board lost business opportunities worth Kshs. 5.2 billion as a result of the agreement with and cases with M/s Erad Supplies and General Contracts Limited.
17. The Government should not pay M/s Erad Supplies and General Contracts Limited or any of its directors, namely Mr. Jacob Juma, Hon. Major (Rtd) John Waluke and Grace Sarapay Wakhungu, any money arising from the alleged breach of contract by the National Cereals and Produce Board.

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

7.3 RECOMMENDATIONS

From the evidence adduced and the observations and conclusion made, the Committee recommends that:-

M/s Erad Supplies and General Contracts Ltd

1. The Director General of the Public Procurement and Oversight Authority debars M/s Erad Supplies and General Contracts Limited and its individual directors namely Mr. Hon. Major (Rtd) John Waluke, MP, Jacob Juma, and Mrs. Grace Sarapay Wakhungu, and any company(s) associated with them from participating in any Government's public procurement proceedings, both at the regional (the East African Community), the National and County levels contrary to section 13 of the Exchequer and Audit (public procurement) regulations, 2001 and section 115 (1) (d) of the Public procurement and Disposal Act (2005) as read with section 14 of the 3rd schedule of the Public Procurement and Disposal Act, Chapter 412 C Laws of Kenya by submitting documents containing false and misleading information for purposes of seeking qualification for the award of tender
2. The Ethics and Anti-Corruption Commission investigates, M/s Erad Supplies and General Contracts Limited and its directors namely Hon. Major (Rtd) John Waluke, Mrs. Grace S. Wakhungu and Mr. Jacob Juma for alleged fraudulent acquisition of public property or a public service benefit contrary to section 45 (1) of the Anti-Corruption and Economic Crimes Act as read with section 48-53 of the same Act.
3. The Ethics and Anti-Corruption Commission investigates the existence of M/s Erad Supplies and General Contracts Limited alleged international suppliers and partners from South Africa and Ethiopia, including ROPACK CC International, Ethiopia Grain Trade Enterprise and Chelsea Freight Limited in the Maize importation tender and establish if indeed maize was purchased and stored as alleged.
4. The Ethics and Anti-Corruption Commission investigates the directors of M/s Erad Supplies and General Contracts Limited, Mr. Jacob Juma, Hon. Major (Rtd) John Waluke, M.P. and Grace Sarapay Wakhungu, for the offence of uttering false

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

documents which were used to tender for the Maize at the NCPB and which were relied upon to award the tender for the supply of the maize contrary to section 353 of the penal code.

5. The Ethics and Anti-Corruption Commission investigates M/s Erad Supplies and General Contracts Limited and its stated Directors, Mr. Jacob Juma, Mrs. Grace Sarapay Wakhungu and Hon. Major (Rtd) John Waluke for the offences of fraud and attempt to defraud under the penal code and the Anti-Corruption and Economic Crimes Act with respect to acquiring and presenting to NCPB of a bid bond No. NG 464 from I &M Bank during the tendering process and performance bond No. CREDIT /rak/38/2004 from Dubai Bank knowing the same to be void due to non compliance with the conditions of issuance.
6. M/s Erad Supplies and General Contracts Limited and the individual directors namely Mr. Jacob Juma, Hon. Major (Rtd) John Waluke and Grace Sarapay Wakhungu should fully compensate the Government of Kenya through the NCPB an amount of Kshs. 313 million and any other monies received following the execution of the arbitral award and *litigation* in line with section 51 and 54 of the Anti-Corruption and Economic Crimes Act, 2003 and any other relevant laws and principles of law including that of equity.
7. The Government should not pay M/s Erad Supplies and General Contracts Limited or any of its directors, namely Mr. Jacob Juma, Hon. Major (Rtd) John Waluke and Grace Sarapay Wakhungu, any money arising from the alleged breach of contract by the National Cereals and Produce Board.

National Cereals and Produce Board

(i) The Technical Evaluation Committee

8. The EACC investigates the then members of the Technical Evaluation Committee (Mr. J.C. Boit - NCPB, Mr. B. O. Umba - NCPB, Mr. R.K. Langat - NCPB, Mr. P.N. Mutua - NCPB, Mr. C.K. Ngelechey - NCPB, Mr. H. K. Kipyego-NCPB, Mr. P.M. Karanja - NCPB, Mr. J.M. Gichuru, Mr. J. O. Oduor – Ministry of Agriculture, Mr. P.T.O. K'Opiyo – Ministry of Finance, Mr. K.J. Ochwando – Ministry of Special Programmes,

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Mr. W. K. Korir - NCPB) and the Main Tender Committee (Mr. Hugo Wood, Mr. Abdunasser M. Balala, Mr. S.K. Maina, Mr. Tirop Kosgey, Mr. C.S. Khaemba, Mr. R.K.A Langat, Mr. B.O Uмба, Lt. Col. (Rtd) W.K. Rono, Mr. P.N. Karanja and Mr. H.K Kipyego) who participated in the adjudication and award of tender for the supply and delivery of 180,000 metric tons of maize for failure to adhere to provisions of the Procurement regulations as specified, contrary to section 46 of the Exchequer and Audit (Public procurement) regulations 2001 and for failure to undertake due diligence during the tender process contrary to section 128 of the penal code and section 45 of the Anti-Corruption and Economic Crimes Act.

(ii) Former Managing Director, NCPB

9. The EACC should investigate the former Managing Director, NCPB Mr. Tirop Kosgey for abuse of office contrary to section 46 of the Anti -Corruption and Economic Crimes Act and for want of due diligence and/or negligence contrary to section 128 of the penal code as well as the offence of disobedience of statutory duty (section 130 Penal code) as read with section 46 of the Exchequer and Audit (Public Procurement) regulations 2001 as it was then, but as the operative law at the time

(iii) Legal Counsel/ Corporation Secretary

10. The EACC should investigate the then Senior Legal Counsel, NCPB Mr. Patrick Karanja for negligence and abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act. Mr. Karanja was the officer in charge during the time of tendering for maize following the declaration of drought in 2004 both as senior legal counsel and the Ag secretary of the NCPB Board.
11. The NCPB should re-evaluate the services and usefulness of Mr. Karanja at the Board taking into account his role in the Board during the maize importation programme.

Strategic Grain Reserves Trustees

12. The EACC investigates the then Trustees of Strategic Grain Reserves, Eng. Mahboub Mohamed and Mr. James Ongwae for breach of the sacrosanct duty of care owing to

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

- their positions as trustees of the strategic grain reserve, contravention of section 45 (2)(c) of the Ethics and Anti-Corruption Act as read with section 48 of the same Act.
13. The Kenya Anti-Corruption Commission should investigate the circumstances leading to the declaration of drought as a National disaster at the instigation of Ministry of Agriculture and ministry of Special Programmes. Further the KACC should investigate the possibility of the commission of the offence of conspiracy to defraud on the part of the SGR Trustees for issuing allegedly misleading early warning and disaster management information paving way for the Cabinet approval for importation of maize, duty free, and use of alternative tendering procedures.
 14. The Trustee should be held accountable for failure to plan and ensure that adequate resources are availed to NCPB to facilitate maize importation contrary to the provisions of section 17 (6) of the procurement regulations which are replicated in section 45 (3) of the Anti-Corruption and Economic Crimes act 2003 that states that;
“Before starting up procurement procedure, the procurement entity shall assure itself that sufficient funds have been set aside in the entity’s budget to pay for any amounts due under the resulting contract”.
 15. The Ethics and Anti-Corruption Commission should investigate into the vicarious liability of the SGR Trustees as for the undisclosed principal for the actions of NCPB relating to the contract with M/s Erad Supplies and General Contracts Limited and in particular, the poor manner in which the contract was managed both by the management of NCPB and the SGR Trustees.

Judicial Service Commission

16. The Judicial Service Commission (JSC) investigates its former and present members and staff who were involved in handling of the NCPB matters for allegations of corruption bench fixing (or influencing the bench), corruption, bias and abuse of office with respect to rulings on the M/s Erad Supplies and General Contracts Limited vs. National Cereals and Produce Board case.
17. The Law Society of Kenya under its complaints and disciplinary mechanisms should investigate the alleged misconduct of Ms. Nancy Barasa for the claimant (M/s Erad

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

Supplies and General Contracts Limited) and Mr. Joshua Nyawara (for NCPB respondent) during the arbitration process.

Arbitrator

18. The EACC should investigate the arbitration process with a view to establishing allegations of corruption and irregularities and further investigate the Commission of the offence of unjust enrichment.
19. The Chartered Institute of Arbitrators, Kenya Chapter, should investigate and take appropriate action on Mr. Evans Gaturu, the sole arbitrator in the M/s Erad Supplies and General Contracts Limited vs. National Cereals and Produce Board case, for allegations of bribery and want of due diligence on a matter of public interest during his handling matter of M/s Erad Supplies and General Contracts Limited and NCPB during the arbitration process.

Banks

(i) The Investments and Mortgage Bank Kenya Limited (I & M Bank)

20. The EACC should investigate I & M Bank, KAPU Kenya Limited and M/s Erad Supplies and General Contracts Limited for the offence of conspiracy to defraud the Government of Kenya through the tender to supply maize to NCPB under section 317 of the penal code.
21. The EACC should investigate I & M Bank for felony, the possibility of commission of a felony under section 316 (B) (1) (a) of the penal code.
22. Should I & M Bank be found culpable of commission of the stated offences, the bank should compensate NCPB for all losses incurred as a result of the award of tender to M/s Erad Supplies and General Contracts Limited including the loss of garnisheed money amounting to Kshs. 314 Million, legal fees of approximately 29 million, costs of any auctioned property and loss of any profits as a result of grounding of NCPB's operations following the case with M/s Erad Supplies and General Contracts Limited. It is worth noting that due to the saga with M/s Erad Supplies and General Contracts Limited NCPB experienced low volumes of trading activities from gross sales of Kshs 5.2 billion in 2011/2012 to Kshs. 0.5 billion in 2012/2013.

(ii) Dubai Bank

23. Dubai Bank should be investigated by the EACC for its role in apparent collusion with M/s Erad Supplies and General Contracts Limited to defraud the Government by issuing a performance bond No. Credit/rak/38/2004 while knowing that its validity was predicated on certain conditions.
24. The EACC should investigate Dubai Bank for felony, the possibility of commission of a felony under section 316 (B) (1) (a) of the penal code.
25. Should Dubai Bank be found culpable of commission of the stated offences, the bank should compensate NCPB for all losses incurred as a result of the award of tender to M/s Erad Supplies and General Contracts Limited including the loss of garnisheed money amounting to Kshs. 314 Million, legal fees of approximately 29 million, costs of any auctioned property and loss of any profits as a result of grounding of NCPB's operations following the case with M/s Erad Supplies and General Contracts Limited. It is worth noting that due to the saga with M/s Erad Supplies and General Contracts Limited NCPB experienced low volumes of trading activities from gross sales of Kshs 5.2 billion in 2011/2012 to Kshs. 0.5 billion in 2012/2013.

Way forward

26. The EACC should investigate the circumstances around M/s Erad Supplies and General Contracts Limited having an advance unsigned copy of the draft contract between NCPB and M/s Erad Supplies and General Contracts Limited nearly two weeks before signing the Agreement.
27. The Government should pay all outstanding debts to the tune of Kshs. 3.2 billion owed to NCPB (i.e. subvention Kshs. 2.2 billion & agency fee Kshs. 1 billion). The Government should also be in a position to take up, as the principal of NCPB the entire debt owed by NCPB within lawful execution of SGR assignments.
28. The EACC to report back to Parliament on the results of its findings and the status of its investigations within four (4) months of the date of receipt of this report pursuant to Article 254 of the Constitution.

29. Amendments be made to the National Cereals and Produce Board Act, Chapter 338 Laws of Kenya, The Judicial Service Commission Act, and The Arbitration Act, 1995, Laws of Kenya. The proposed amendments are annexed to this report.

PROPOSED LEGISLATIVE AMENDMENTS

The Committee observed that several laws need to be amended to enable the Country move forward in a bid to spur investments and curb siphoning of public funds. The following legislation are hereby proposed for amendment.

(a) The National Cereals and Produce Board Act Chapter 338 Laws of Kenya

1. The Ministry of Agriculture should review the NCPB legal framework to make it relevant in a liberalized trading environment and protect strategic public assets.
2. The current consultant ought to as part of his deliverables, facilitate the restructuring of NCPB to ensure improved service delivery, stability and sustenance of this important state owned corporation. The restructuring programme should streamline agency and business relationships between Government of Kenya & NCPB.
3. A review and amendment of The National Cereals and Produce Board Act ought to be undertaken to safeguard NCPB/ SGR assets from outright execution. To this end, it is recommended that a new section be introduced in the Act as PART VII A

Proposed new section in the Legislation for amendment

29A. notwithstanding anything to the contrary in any law, where judgment or an order has been given against the National Cereals and Produce Board (the NCPB) for payment of money by way of damages or otherwise-

- (a) No execution or attachment in the nature thereof shall be issued against the Commission or against the assets, debts or bank deposits of the Commission;
- (b) The Director shall except if there is an appeal or application Certificates to show value of property, pending against the Judgment or order, cause to be paid out of the funds of the NCPB provided expressly for such purposes in the annual estimates, such amounts as may be payable under the decree to the person entitled thereto;
- (c) No property of the NCPB shall be seized or taken by any person having, by law, power to attach or distain property without the previous written permission of the Managing Director.

**Special Report on the Contract between National Cereals and Produce Board and M/s
Erad Supplies and General Contracts Ltd for Supply of Maize**

(b) The Judicial Service Commission Act

1. The Judicial Service Commission Act should be amended to bar Law Society of Kenya nominees to the JSC from practising. To this end it is proposed that section 18 of the Judicial Service Commission Act be amended by inserting a new sub-section referred to as 18 subsection (d) as follows:

Section 18 JSC Act;

s. 18. Commissioners to relinquish certain offices

a person holding any of the following offices shall relinquish that office on appointment as a member of the commission-

...18 (d) an Advocate nominated by the Law Society of Kenya shall not practice Law or otherwise appear before the bench on appointment as a member of the JSC.

2. Efforts will be made to amend article 171 of the constitution to rationalise the number of members of JSC and to make LSK nominees to the JSC permanent members of the Commission.

(c) The Arbitration Act 1995, Laws of Kenya

1. The Arbitration Act 1995 be amended to further domesticating the Act by establishing and complaints and disciplinary mechanisms and to ensure increased channelling of arbitration matters by parties especially with respect to appointment and discipline of arbitrators and arbitral tribunals, through the Chartered Institute of Arbitrators Kenya Branch.
2. It is further recommended that the Chartered Institute of Arbitrators Kenya branch will forthwith take appropriate measures to establish a code of professional conduct and ethics for its Members accompanied by appropriate sanctions for non-compliance.
3. It is therefore suggested that a new Part be introduced in the arbitration Act as PART VIII establishing the complaints and disciplinary committee as follows;

PART VIII COMPLAINTS AND DISCIPLINARY COMMITTEE

- S. 38. (1) There is established hereby a complaints and disciplinary committee (in this part referred to as committee) which shall consist of the following persons;
- a) A representative from the Office of the Attorney General
 - b) The Chairperson of the Commission on Administrative Justice (the Ombudsman)
 - c) The Chairperson of the Chartered Institute of Arbitrators (Kenya)
 - d) The Chairperson of the Law Society of Kenya (LSK)
 - e) A member of the public with relevant education and experience in both private and/or public service as may be determined by the chartered institute of arbitrators
- (2) The tribunal will hear complaints and determine complaints from members of the public and any aggrieved institution against any arbitrator, whether appointed by the institute or not, provided that parties will as much as possible put in place measures to ensure that they appoint their arbitrators and/or arbitral tribunals through the chartered institute of arbitrators Kenya branch.
- s. 39 A complaint by any member of the public against an arbitrator of arbitral tribunal for professional misconduct to include disgraceful or dishonorable conduct, may be made to the complaints committee.
- s. 40. The committee may make hold hearings as quasi-judicial bodies and make such orders as are appropriate including suspension of arbitrators or arbitral tribunals found guilty of professional misconduct and through assistance of the registrar, ensure that individual culprits, where appropriate are barred or suspended from practicing their skill by their professional bodies as appropriate.
- s. 41 The committee will ensure that there are adequate provisions relating to due process to ensure fair hearing and equal treatment of parties
- s. 42. The committee will have powers to make orders as to costs
- s. 43 The Committee shall have immunity from prosecution with respect to acts committed by them in good faith and in the course of duty
- s. 44 Measures for failure to comply with the committee's orders and/or directions will be put in place
- s. 45 There will be a right to appeal against orders of the committee to the Court

Special Report on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize

MINUTES

MINUTES OF THE SECOND SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON TUESDAY 4th JUNE, 2013 IN COMMITTEE ROOM NO. 7,
PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. – Chairperson
2. Hon. Kimani Inching'wah, M.P. – Vice Chairperson
3. Hon. Sammy Mwaita, M.P.
4. Hon. Cornelily Serem, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Korei Ole Lemein, M.P.
7. Hon. Adan M. Noor, M.P.
8. Hon. Mithika Linturi, M.P.
9. Hon. Beatrice Nyaga, M.P.
10. Hon. Njogu Barua, M.P.
11. Hon. Irungu Kang'ata, M.P.
12. Hon. Johana Ngeno, M.P.
13. Hon. Mwadeghu Thomas, M.P.
14. Hon. Francis Nyenze Mwanzia, M.P.
15. Hon. Dr. Oburu Oginga, M.P.
16. Hon. Ogutu John Omondi, M.P.
17. Hon. Mary Keraa Sally, M.P.
18. Hon. Wafula Wamunyinyi, M.P.
19. Hon. Bernard Munyoki Kitungi, M.P.
20. Hon. Chris Wamakwa, M.P.

ABSENT WITHOUT APOLOGY

Hon. John M. Nyaga, M.P.
Hon. Onesmus Njuki, M.P.
Hon. Paul Otuoma, M.P.
Hon. Shadrack Manga, M.P.
Hon. Abdullswamad Sheriff, M.P.
Hon. John Aluoch Olago, M.P.
Hon. Major (Rtd) John Waluke, M.P.

IN – ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Escher Nginyo - Third Clerk Assistant

MIN. NO.06/2013

CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Minutes of the 1st sitting were confirmed as true record of proceedings and signed by the Chair.

Members reiterated the need to establish sub committees so as to deal with the issue of backlog of audit reports dating back to the 90's that had not been considered by the Committee.

MIN. NO.08/2013 INDUCTION WORKSHOP

Members were informed that an induction workshop for watchdog committee had been organized to start Thursday, June 6, 2013 to Saturday, June 8, 2013 in Continental Hotel, Mombasa. The Chairman called upon Members to attend the workshop as it would help in preparing them for the oversight function and in achieving the Committee mandate.

The Members preferred to have the workshop at white sands, Serena Beach, Continental or Pangoni Hotels and not Traveler's Hotel.

MIN. NO. 09/2013 ANY OTHER BUSINESS

Members resolved to consider urgent and emerging issues such as Telkom, NCPB, De La Rue among others. The Committee directed that meetings for the aforementioned organizations be called in the week commencing 10th June, 2013.

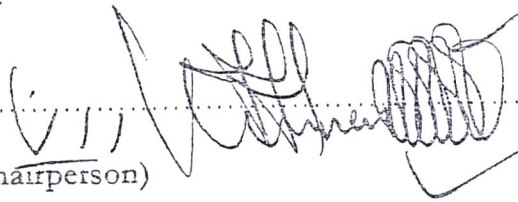
Members also noted that there was need to have meetings with key stakeholders in the public investments sector to brief the Committee on their role and chart the way forward on their interactions with the Committee.

MIN. NO.10/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Twenty five Minutes past twelve O'clock.

Signed:

(Chairperson)



Date:

21/6/2013

MINUTES OF THE THIRD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS, ON TUESDAY, 11 JUNE 2011 AT 9.30 A.M.

PRESENT

1. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Francis Nyenze, M.P.
4. Hon. Sammy Mwaita, M.P.
5. Hon. Cornelly Serem, M.P.
6. Hon. Bare Shill, M.P.
7. Hon. Korei Ole Lemein, M.P.
8. Hon. Adan M. Noor, M.P.
9. Hon. Mithika Linturi, M.P.
10. Hon. Beatrice Nyaga, M.P.
11. Hon. Njogu Barua, M.P.
12. Hon. Irungu Kang'ata, M.P.
13. Hon. Onesmus Njuki, M.P.
14. Hon. Johana Ngeno, M.P.
15. Hon. Mwadeghu Thomas, M.P.
16. Hon. Paul Otuoma, M.P.
17. Hon. John Olago aluoch, M.P.
18. Hon. Ogutu John Omondi, M.P.
19. Hon. Wafula Wamunyinyi, M.P.
20. Hon. Bernard Munyoki Kitungi, M.P.
21. Hon. Dr. Chris Wamalwa, M.P.
22. Hon. Major (Rtd) John Waluke, M.P.

ABSENT WITH APOLOGY

1. Hon. Mary Keraa Sally, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John Nyaga, M.P.
2. Hon. Shadrack Manga, M.P.
3. Hon. Abdullswamad Sheriff, M.P.
4. Hon. Dr. Oburu Oginga, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|---------------------|---|---------------------------|
| Ms. Phyllis Mirungu | - | Principal Clerk Assistant |
| Ms. Esther Nginyo- | | Third Clerk Assistant |
| Mr. Edward Libendi | - | Legal Counsel |

KENYA NATIONAL AUDIT OFFICE

Mr. B.K. Mulli - Deputy Director of Audit
Mr. G. Irungu - Auditor
Mr. P.D. Lugerah - Auditor

INSPECTORATE OF STATE CORPORATIONS

Mr. Patrick Wandaka - Assistant Inspector General

MINUTE NO. 11/2013

EVIDENCE

Mr. Gideon Misoi, Managing Director, National Cereals and Produce Board (NCPB) accompanied by Mr. Patrick M. Karanja, Ag. Board Secretary; Mr. Ernest Ogowora, Operations Manager; Mr. Frank Muchina, Human Resource Manager; and Mr. Cornel K. Ngelechey, Finance Manager appeared before the Committee and briefed the Committee on the debt crisis of the Board.

MINUTE NO. 12/2013:

INDEBTEDNESS OF THE NATIONAL CEREALS AND PRODUCE BOARD

The Managing Director informed the Committee that the Corporation was indebted to M/s. Erad Suppliers and General Contractors for a total amount of Kshs.550 million. Out of that amount, a total of Kshs. 297 million had been attached through a Garnishee order of 15th March 2013 from the Corporation's account with the Kenya Commercial Bank.

The Committee was further informed that the debt had arisen out of a dispute with the company allegedly for breach of contract in a tender which was awarded to the company among others for supply of maize in 2004.

The Committee also informed that the company took the Board for arbitration, a process which was marred by irregularities as sums awarded were exorbitant, leading to an injunction by the Board which was stood over. The Board moved to the Court of Appeal, however M/s Erad raised a preliminary technical objection with the court subsequently declining to grant a stay or maintain a status quo.

The Committee noted the Directors of M/s Erad Suppliers and General Contractors are Ms. Grace Sarapay Wakhungu, Hon. Major (Rtd) John Waluke and Mr. Jacob Juma and that the company had not traded at the time of award of tender for supply of maize.

MINUTE NO. 13/2013:

PROCEDURE - DECLARATION OF INTEREST

Hon. Major (Rtd) John Waluke vide Standing Order No. 90 declared his interest on the matter under consideration, being a Director of M/s Erad Suppliers and General Contractors. Thereafter, pursuant to Standing Order No.184, the Chairperson directed the Member to withdraw from the sitting.

MINUTE NO. 14/2013:

ADDITIONAL INFORMATION

The Committee directed the Board to provide the following documents on Thursday, 13th June 2013;-

- Chronology of events clearly indicating the dates of tender award, amounts of the award and dates of all court cases leading to the current situation to date.
- The dates when the tender was advertised including the tender evaluation notes.
- Clarification of the Name of the company which was awarded the tender
- Details of the meetings held in the Former Vice-President's office (Hon. Moody Awori) and minutes, if any.
- Position of Criminal Investment Department, Ethics and Anti-corruption Commission, Former Chief Justice on the allegations of corruption.
- Quantify how much was used in terms of legal fee itemizing the details of the same.

MINUTE. NO. 15/2013

DATE OF THE NEXT MEETING

It was agreed that the next Sitting be held Monday, 17 June, 2013 at 9.30 a.m.

MINUTE. NO. 16/2013

ADJOURNMENT

There being no other business, the Chairperson adjourned the Sitting at Fifty Minutes past Eleven O'clock.

Signed.....

Chairperson

Date 21/6/2013

MINUTES OF THE FIFTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD IN COMMITTEE ROOM NO. 7, PARLIAMENT
BUILDINGS, ON MONDAY, 17TH JUNE, 2013 AT 2.30 P.M.

PRESENT

1. Hon. Adan Keynan, MP - Chairperson
2. Hon. Kimani Ichung'wah, MP - Vice-Chairperson
3. Hon. Francis Nyenze, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Cornelily Serem, MP
6. Hon. Bare Shill, MP
7. Hon. Adan M. Nooru, MP
8. Hon. Mithika Linturi, MP
9. Hon. Beatrice Nyaga, MP
10. Hon. Njogu Barua, MP
11. Hon. Eng. John Kiragu, MP
12. Hon. Major (Rtd). John Waluke, MP
13. Hon. Ogutu John Omondi, MP
14. Hon. Mary Keraa Sally, MP
15. Hon. Wafula Wamunyinyi, MP
16. Hon. Bernard Munyoki Kitungi, MP
17. Hon. Chris Wamalwa, MP

ABSENT WITHOUT APOLOGY

1. Hon. John Nyaga, MP
2. Hon. Abdullswamad Sheriff, MP
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Olago Aluoch, MP
5. Hon. Johana Ngeno, MP
6. Hon. Korei Ole Lemein, MP
7. Hon. Onesmus Njuki, MP
8. Hon. Paul Otuoma, MP
9. Hon. Mwadeghu Thomas, MP
10. Hon. Irungu Kangata, MP

IN ATTENDANCE

Ms . Phyllis Mirungu

NATIONAL ASSEMBLY

- Principal Clerk Assistant

Ms. Esther Nginyo - Third Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst
Simon Muinde - Hansard

KENYA NATIONAL AUDIT

Mr. L. B. Achika - Senior Manager, Audit
Mr. G.M. Irungu - Assistant Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito O. Omukanga - Chief Inspector

MINUTE NO. 20 / 2013

EVIDENCE

Dr. Romano Kiome, Permanent Secretary Ministry of Agriculture, accompanied by Prof. Gideon Misoi, the Managing Director National Cereals and Produce Board; Mr. Patrick M. Karanja, Acting Board Secretary; Mr. David C. Mundia, Procurement Manager; Mr. Frank Muchina, Human Resource Manager; Mr. Cornel K. Ngelechey, Finance Manager; Mr. Ernest Ogwora, Operations Manager and Mr. John Ngetich, Chief Legal Officer together with a Legal Team comprising of Mr. Katwa Kigen of Katwa & Kemboy Advocates, Mr. Mohamed Nyaoga of Mohamed Muigai Advocates and Mr. Joshua Nyawara of Nyawara & Co. Advocate appeared before the Committee and briefed the Committee on the pending issues arising from the previous meeting on the Indebtedness of the National Cereals and Produce Board.

MINUTE NO. 21 / 2013

SUBMISSION FROM THE PERMANENT SECRETARY

The Permanent Secretary (PS), Ministry of Agriculture, Dr. Romano Kiome representing the Cabinet Secretary who was away on official duties briefed the Committee on the history of the NCPB case. He informed the Committee that he was concerned that a company would want to be paid having not supplied anything. He stated that no payment should be paid since no deliveries were made. He noted that there were parties in the public service who had interests in M/s ERAD as the process from the award of the tender was flawed and unprocedural. He further informed the Committee that the Ministry had written severally to Ethics and Anti-Corruption Commission to investigate on

the matter but the Ethics and Anti-Corruption Commission (EACC) did not respond. The PS also informed the Committee that he would provide it with the chronology of events attaching all the correspondences on the matter in question.

The PS took the Committee through a letter sent to EACC by a Mr. Bryan Yongo who claimed that Mr. Evans Gaturu, the Arbiter, was paid Kshs. 3 million by Mr. Jacob Juma (a Director M/s ERAD) to deliver the ruling for the award. The letter further alleged that the Company was to seek for influence of Mr. Ahmednassir Abdullahi a Senior Counsel and a Member of Judicial Service Commission. The following people had been mentioned in the letter:

- Mr. Francis Kimemia
- Mr. Joseph Kinyua
- Inspector General of Police
- Mr. Ahmednassir Abdullahi
- Evanson Gaturu

However, the Committee questioned the credibility of Mr. Brian Yongo.

In his response on how he intended to get the NCPB out of the crisis, the PS said that he had informed the EACC, Criminal Investigation Department and was also going to pursue judicial avenues. He however indicated that no budgetary allocation had been given to the Board as the budgetary period had lapsed in April when the Board's accounts were garnisheed and that previously the Board has always sustained itself.

The PS indicated that the NCPB trustees include Permanent Secretary, Special Program; Permanent Secretary, Treasury and Permanent Secretary, Agriculture.

The Committee resolved to invite the NCPB trustees to shed light on why the Board was under heavy financial crisis.

MINUTE NO. 22 /2013 SUBMISSION FROM PROF. GEDION MISOL,
MANAGING DIRECTOR, NCPB

In his presentation, the Managing Director affirmed that M/s ERAD did not have the capacity to deliver. He highlighted the challenges facing him to follow

up the case as he was not in the organization then and has been relying heavily on the records. He gave the list of management then as follows:

- Mr. Tirop Kosgey - MD
- Mr. Kipyegon (Late) - Procurement
- Mrs. Kamau - Board Secretary

The Managing Director informed the Committee that to date NCPB has used Kshs. 29 Million in the case which the Committee noted was alot much money considering the financial position of the NCPB. However, he clarified that the amount paid to the lawyers was justifiable since they are trying to save Kshs. 500 million. He further noted that Ms. Nancy Baraza was the Advocate for M/s ERAD and was later appointed as the Deputy Chief Justice and that one of Directors of M/s ERAD was a sister to the Former Vice President, Hon. Moody Awori.

The Committee noted that M/s ERAD had no capacity to deliver as its net worth was Kshs. 6 million, and they owed creditors Kshs. 3 million, while their fixed asset was Kshs. 500 million and thereby disqualifying the company from winning the tender. From the notes of tender evaluation process, it was highlighted that M/s ERAD had not supplied the phytosanitary certificate and had quoted the highest and yet they were awarded the tender.

MINUTE NO. 23/2013

SUBMISSION FROM THE NCPB LEGAL TEAM

(i) Presentation by Mr. Nyawara

In his brief, Mr. Nyawara stated that he got involved in the case in 2009. He informed the Committee that M/s ERAD did not have the capacity to deliver and that the profit margin of USD 49 per metric ton was tantamount to overcharging since they should have earned a profit margin of USD 8. He further informed the Members that the case was instituted on the strength of public policy and that it dragged on for 2 years and later on thrown out by Justice Njagi on technicalities. The Board went to the Court of Appeal where the stay orders for the company were rejected prompting the legal team to advise the Board to get assistance from the Trustees.

On the issue of placing a counter claim for the Board, Mr. Nyawara informed the Committee that the counter claim was dismissed on account of breach of contract and on technicality that arbitration awards are not challengeable in Court.

The Committee heard that the former Deputy Chief Justice, Ms. Nancy Baraza tried to influence Mr. Nyawara but he reported the matter to the Criminal Investigation Department and in the office of the former Attorney General Mr. Amos Wako who advised that Mr. Nyawara amicably resolves the issue with Ms. Nancy Baraza. However, it was noted that Mr. Nyawara should have reported the matter to the Judicial Service Commission at the time of Deputy Chief Justice's appointment and that he also failed to complain against Justice Njagi (who has since been declared unfit to hold office) for malpractice on his ruling.

Mr. Nyawara further informed the Committee that Ms. Baraza told him to advise his client to pay and threatened to take him to the Complaint Board on a claim that Mr. Nyawara had received Kshs. 1 million from Dubai Bank a claim that Ms. Baraza later apologized for after being summoned by the CID.

(ii) Presentation by Mr. Katwa Kigen

Mr. Katwa Kigen in his presentation told the Committee stated that he joined the case when the arbitration award was being given. He clarified that Mr. Nyawara made an application in the High Court to complain about the threats by Ms. Baraza. He informed the Committee that the arbitrator had acknowledged to have been approached with bribes and further a witness for NCPB was also compromised during the arbitration process. He also noted that the contract was signed on 26/08/2004 and the delivery was to be done in 4 weeks and the first demand was made after 4 weeks and at that time the contract had already aborted. He further noted that M/s ERAD had based their claim on having not been given a Letter of Credit which was not part of the contract.

Mr. Kigen further informed the Committee that the Arbitrator awarded M/s ERAD Kshs. 900 million. However, M/s ERAD indicated that they were willing to write off Kshs. 400 million and receive Kshs. 500 million which raises question as to why M/s ERAD was eager to write off a significant amount of money of the award.

(iii) Presentation by Mr. Mohamed Nyaoga

Mr. Mohamed Nyaoga made his presentation to the Committee and stated that the NCPB was facing problems from within and without. He further reiterated that the Ethics and Anti-Corruption Commission had failed to exercise its power in the NCPB case. He also requested the Committee for another sitting

Mr. Joash Kosiba - Fiscal Analyst

OFFICE OF THE AUDITOR GENERAL

Mr. Humphrey Wanyama - Deputy Auditor General
Mr. David Njoka - Director of Audit
Mr. Charles N. Nyanyuki - Ag. Director of Audit

MIN. NO. 28/2013 PRELIMINARIES

The Chairperson called the meeting to order and welcomed the team from the Office of the Auditor General. He informed the meeting that the session was meant to make the Committee understand the Office of the Auditor General as it relates with the State Corporations and Parliament.

MIN. NO. 29/2013 PRESENTATION BY THE OFFICE OF THE AUDITOR GENERAL

Mr. Humphrey Wanyama, Deputy Auditor General representing the Auditor General made the presentation to the Committee. He told the Committee that the Audit of State Corporations is provided in the Constitution of Kenya under Article 229(4). He indicated that the office is further provided for the Public Audit Act, 2003 which is under review to align it with the New Constitution.

He stated that the Office of the Auditor General consisted of 6 departments each headed by Deputy Auditor General. The office has a 3 year strategic plan anchored on 3 pillars namely; Certification audit, continuous audit and delivery to Kenyans which the Office of the Auditor General has won an award. He informed the meeting that the office has an Annual Operational plan based on the strategic plan.

He informed the meeting that the number of the State Corporations has been growing over the last 3 years to 294 state corporations and 69 donor funded projects. The committee heard that despite the increase in the number of State Corporation, the number of staff has remained the same hence creating shortage which has been mitigated by outsourcing.

MIN. NO.30/2013 CHALLENGES FACING THE OFFICE OF THE AUDITOR GENERAL

Members were informed that the office was facing challenges in funding as it was inadequate, while clients were failing to pay audit fees. Delays in submission of Financial Statements by clients and responding to queries, submission of incomplete financial statements and frequent changes in management were cited as major challenges facing the Office.

The Committee emphasized on the need to support the Office of the Auditor General in terms of increasing the budgetary allocation in the way of supplementary budget for the Office in a bid to ensure efficiency and strengthen the office in its service delivery especially with its expanded mandate in the Counties.

On the clients who were reluctant to submit their accounts to the Office of the Auditor General, the Committee reiterated the need to include in the amendment that are underway of the Public Audit Act penalties to such errant clients as well as measures to address conflict of interest in the outsourcing process.

MIN. NO. 31/2013

ANY OTHER BUSINESS

Members were informed that outsourcing was process which required compliance with the Public Audit Act with the Auditor General having the final decision based on the recommendations in the tendering process thereby no issue of high cost implication as the clients are the ones who bear the costs of audit.

Members were also informed that plans were underway to amalgamate some organizations especially in the water and agricultural sectors as most of them overlap.

The meeting agreed that there was need to work very hard with Office of the Auditor General to clear the backlog of reports in 6 months despite the challenges the office was facing.

MIN. NO.32/2013

ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Ten Minutes past Eleven O'clock.

Signed:
(Chairperson)

Date: 21/6/2013

1

2

3

4

5

6

7

8

9

MINUTES OF THE TWELFTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON MONDAY 1ST JULY, 2018 IN COMMITTEE ROOM NO.
7, PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT:

1. Hon. Adan Keyman, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Corneily Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Dr. Oburu Oginga, M.P.
9. Hon. Mary Keraa Sally, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Bernard Munyoki Kitungi, M.P.
12. Hon. Chrisanthus Wamalwa, M.P.
13. Hon. Onesmus Njuki, M.P.
14. Hon. Eng. John Kiragu, M.P.
15. Hon. Paul Otuoma, M.P.
16. Hon. Bare Shill, M.P.
17. Hon. John Aluoch Olago, M.P.
18. Hon. Ogutu John Omondi, M.P.

ABSENT WITH APOLOGY

1. Hon. Beatrice Nyaga, M.P.
2. Hon. Mwadeghu Thomas, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. John M. Nyaga, M.P.
5. Hon. Abdullswamad Sheriff, M.P.
6. Hon. Sammy Mwaita, M.P.
7. Hon. Adan M. Nooru, M.P.
8. Hon. Irungu Kang'ata, M.P.
9. Hon. Francis Nyenze Mwanzia, M.P.

- ATTENDANCE - NATIONAL ASSEMBLY

- | | | |
|-----------------|---|-----------------------------|
| Nicholas Emejen | - | Principal Clerk Assistant I |
| Esther Nginyo | - | Third Clerk Assistant |
| Joash Kosiba | - | Fiscal Analyst |
| Hassan Odhwa | - | Research Officer |

Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

MINUTE NO. 65/2013 - EVIDENCE: MR. BRIAN YONGO

Mr. Brian Yongo, Managing Director, Neptune Credit Management Ltd accompanied by Mr. Abdul Malik, his Personal Assistant appeared before the Committee to give evidence on the contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited on the supply of white maize in 2004.

MINUTE NO. 66/2013 - EVIDENCE BY MR. BRIAN YONGO

Mr. Bryan Yongo informed the Committee that:-

- (i) He was given a letter by Soita and Saende Advocates acting for M/s Erad Supplies and General Contracts asking him to collect money/debt from National Cereals and Produce Board arising from the arbitration award for USD 5,844,000 for M/s Erad. It was on the basis of the collection, that he would be paid Kshs. 25 million. The letter followed a meeting between Mr. Juma, Major Waluke and Mr. Yongo, where he (Mr. Yongo) was requested to introduce Mr. Juma and Major Waluke to Mr. Ahmednassir Abdullahi.
- (ii) The Committee was informed that Mr. Juma was loaned Kshs. 1 Million by Mr. Hassan Zubeidi of Dubai Bank. Mr. Zubeidi later fell out with Mr. Juma for frequently taking money from Mr. Zubeidi.
- (iii) Mr. Juma had been involved in a case where it is alleged that he tried to defraud an Indian family of their 18 acres of land in Lower Kabete. Mr. Juma used the judiciary to defraud the Government.
- (iv) M/s Erad Supplies and General Contracts was paid Kshs. 140 million that was allegedly shared out among the interested parties and that Kenya Revenue Authority (KRA) withheld Kshs. 156 million as tax defaulted by M/s Erad Supplies and General Contracts Ltd.
- (v) At the time of tender application, M/s Erad Supplies and General

Contracts Ltd did not have requisite documents such as PIN and VAT certificates and that the Performance Bond from Dubai Bank was fake.

(vi) He (Mr. Yongo) had written to EACC on 28th June, 2013 about a ruling by Hon. Mabeya on 15th March, 2013 demonstrating that the said judge could have been compromised to make the ruling in favour of M/s Erad Supplies and General Contracts Ltd.

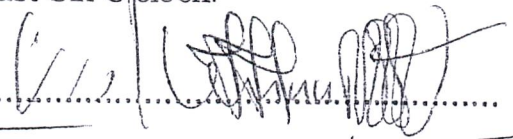
(vii) He (Mr. Yongo) had dealt with Mr. Juma on many occasions including an instance where Mr. Jacob Juma had instructed Neprune Credit Management to repossess a motor vehicle belonging to Mrs. Grace Wakhungu, who is a Co-Director at M/s Erad Supplies and General Contracts Ltd.

MINUTE NO. 67/2013 ANY OTHER BUSINESS

Mr. Yongo informed the Committee that he feared for his life in view of the information that he had divulged to the Committee. The Committee considered the matter and resolved that the Police should ensure the security of the witness.

MINUTE NO. 68/2013 ADJOURNMENT

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

Signed:  Date: 6/8/2013
(Chairperson)

MINUTES OF THE THIRTEENTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON MONDAY 1ST JULY, 2013 IN COMMITTEE ROOM
NO. 7, PARLIAMENT BUILDINGS AT 4.30 PM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Dr. Oburu Oginga, M.P.
9. Hon. Mary Keraa Sally, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Bernard Munyoki Kitungi, M.P.
12. Hon. Chrisanthus Wamalwa, M.P.
13. Hon. Onesmus Njuki, M.P.
14. Hon. Eng. John Kiragu, M.P.
15. Hon. Paul Otuoma, M.P.
16. Hon. Bare Shill, M.P.
17. Hon. John Aluoch Olago, M.P.
18. Hon. Ogutu John Omondi, M.P.

ABSENT WITH APOLOGY

1. Hon. Beatrice Nyaga, M.P.
2. Hon. Mwadeghu Thomas, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. John M. Nyaga, M.P.
5. Hon. Abdullswamad Sheriff, M.P.
6. Hon. Sammy Mwaita, M.P.
7. Hon. Adan M. Nooru, M.P.
8. Hon. Irungu Kang'ata, M.P.
9. Hon. Francis Nyenze Mwanzia, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejien	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhwa	-	Research Officer

Mr. Rogers Muryoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Elzito Omukaga - Chief Inspector

MINUTE NO. 89/2013 EVIDENCE: FORMER MANAGEMENT OF THE
NATIONAL CEREALS AND PRODUCE BOARD (NCPB)

Mr. Tirop Kosgey, Former Managing Director, National Cereals and Produce Board, Ms. Anne Kamau, Former Company Secretary accompanied by Prof. Gideon Misoi, Managing Director, National Cereals and Produce Board; Mr. Cornel K. Ngeleche, Finance Manager, Mr. John Ngetich, Chief Legal Officer, and Mr. Patrick M. Karanja, Ag. Board Secretary appeared before the Committee to give evidence on National Cereals and Produce Board indebtedness to M/s Erad Supplies and General Contracts Ltd.

MINUTE NO. 70/2013 SUBMISSION BY FORMER MANAGEMENT OF
NCPB

Mr. Tirop Kosgey informed the Committee that:-

- (i) Due to the prevailing drought situation in 2004 the Government had to declared the drought a national disaster and decided to import 3 million bags of maize to avert the situation.
- (ii) The maize that was to be imported was to meet the local standards.
- (iii) M/s Erad Supplies and General Contracts Ltd was among the companies that submitted their tender documents, however M/s Erad Supplies and General Contracts Ltd submitted its performance bond last and hence resources for them were not prioritized.

After a brief interrogation of the witnesses the Committee established that the witnesses were not prepared to appear before the Committee. The witnesses cited short notice in the invitation as reason for their ill preparedness. The Committee considered the matter and resolved to reschedule the meeting to Monday July 8, 2013

MINUTE NO. 71/2013

ADDITIONAL INFORMATION

The Committee informed the former management of the NCPB to provide the additional information with regard to the role of the Former Minister for Agriculture, Former Vice-President, Hon. Moody Awori, former Permanent Secretaries in the Ministry of Agriculture and Treasury in the maize importation, during their next appearance

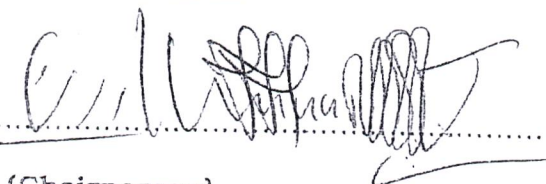
The Current Management of NCPB was advised to facilitate the witnesses and give the necessary assistance in the acquisition of the relevant information.

MINUTE NO. 72/2013

ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at seven Minutes past Six O'clock.

Signed:.....



Date:.....

6/8/2013

(Chairperson)



Vertical text or markings along the right edge, possibly bleed-through or scanning artifacts.

MINUTES OF THE FORTYFIFTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON TUESDAY 2ND JULY, 2013 IN COMMITTEE ROOM
NO. 7, PARLIAMENT BUILDINGS AT 9.00 AM

PRESENT:

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

ABSENT WITH APOLOGY

1. Hon. Beatrice Nyaga, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. Sammy Mwaita, M.P.
3. Hon. Adan M. Nooru, M.P.

IV - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhwa	-	Research Officer
Mr. Rogers Munyoki	-	Audio Officer
Mr. Michael Njenga	-	Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika	-	Ag. Director
Mr. P.D. Lugerah	-	Ag. Manager
Mr. H.M. Manegene	-	Senior Supervisor

MINUTE NO. 73/2013 - EVIDENCE: MR. JACOB JUMA, DIRECTOR, M/S ERAD SUPPLIES AND GENERAL CONTRACTS LTD

Mr. Jacob Juma, Director, M/s Erad Supplies & General Contracts Ltd appeared before the Committee to give evidence on the transaction between the National Cereals and Produce Board and M/s Erad Supplies & General Contracts Ltd.

MINUTE NO. 74/2013 - PROCEDURAL MATTER UNDER S.O. 184

Hon. Major (Rtd) John Waluke, who is a Co-Director at M/s Erad Supplies & General Contracts Ltd was asked if he wanted to adduce evidence as a director of the company together with his co-director. The Hon. Waluke informed the Committee that he did not wish to adduce evidence and therefore requested that he withdraws from the proceedings as provided under Standing Order 184.

MINUTE NO. 75/2013 MR. JACOB JUMA SUBMISSION

Mr. Jacob Juma informed the Committee that:-

- (i) He is a businessman, a shareholder and the Managing Director of M/s Erad Supplies and General Contracts Ltd a position he has held since 2008.
- (ii) The contract for the supply of maize to NCPB was signed on 26th August, 2004.
- (iii) The process of the award of the tender and payment had politically vested interests as the other 4 bidders got Letters of Credit and M/s Erad Supplies & General Contracts Ltd was never given a Letter of Credit.
- (iv) His company (M/s Erad Supplies & General Contracts Ltd) went for arbitration on the basis of breach of contract and were claiming for

consequential damages totaling Kshs. 3.1 million and interest charged at 12%.

- (v) Following the arbitral award, NCPB appealed against the arbitral award in the High Court and later in Court of Appeal but lost in all those attempts.
- (vi) He applied to garnishee the Kenya Commercial Bank Account belonging to the NCPB, where Kshs. 297 million was attached to his lawyer's Account (Soka & Saende Advocates). However, Kenya Revenue Authority put an injunction claiming Kshs. 156 million as tax out of the Kshs. 297 million as tax.
- (vii) He has also attached the Board's fixed asset until he gets the remaining Kshs. 255 million from NCPB.
- (viii) The money recovered from NCPB accounts was used for the Company's expenses and emolument for the Directors.
- (ix) Mr. Hassan Zubeidi of Dubai Bank one of the signatories on the Performance Bond sent to NCPB, was his business partner and later they disagreed.
- (x) He had known the then Minister for Agriculture, Hon. Kipruto Kirwa since 1991 when he was a member of Youth for KANU while he knew Mr. Ahmednassir Abdullahi during his studies at the University of Nairobi.
- (xi) He would provide the Committee with a CCTV footage captured at Serena Hotel showing Prof. Gideon Misoi bribing Mr. Brian Yongo.

MINUTE NO. 76/2013 ADDITIONAL INFORMATION

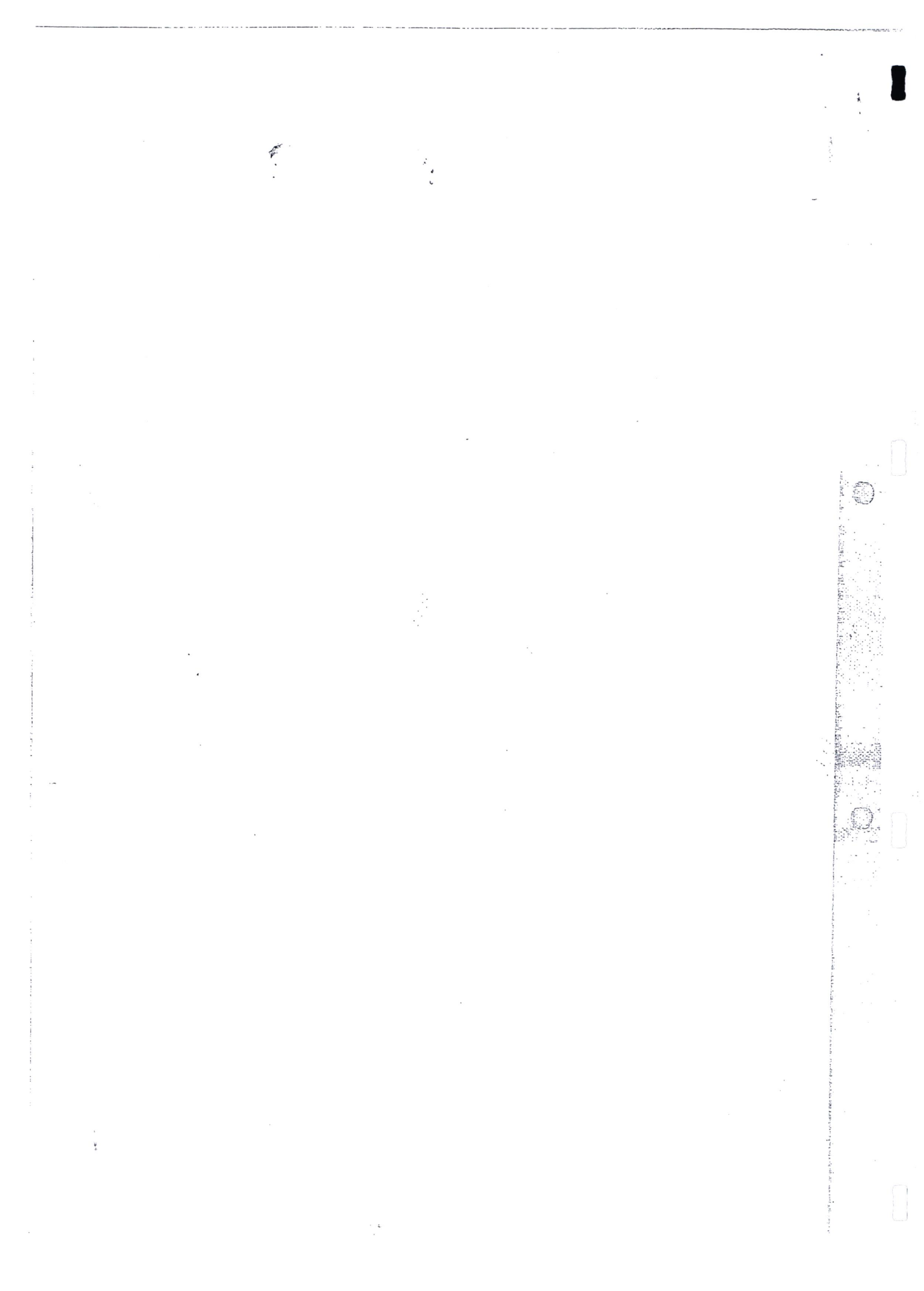
Mr. Juma was requested to provide the following information/documents to the Committee by Friday, 5th July, 2013:

- A written submission of his presentation and company history
- A certified PIN Certificate
- A Certified VAT Certificate
- A breakdown of how Kshs. 140 million was shared out
- Academic and professional certificates
- And to table any other relevant document

MINUTE NO. 77/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at thirty eight Minutes past twelve O'clock.

Signed: [Signature] Date: 6/8/2013
(Chairperson)



MINUTES OF THE FIFTEENTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON WEDNESDAY 3RD JULY, 2013 IN COMMITTEE
ROOM NO. 7, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Dr. Oburu Oginga, M.P.
9. Hon. Mary Keraa Sally, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Bernard Munyoki Kitungi, M.P.
12. Hon. Chrisanthus Wamalwa, M.P.
13. Hon. Onesmus Njuki, M.P.
14. Hon. Eng. John Kiragu, M.P.
15. Hon. Bare Shill, M.P.
16. Hon. John Aluoch Olago, M.P.
17. Hon. Ogutu John Omondi, M.P.
18. Hon. Francis Nyenze Mwanzia, M.P.
19. Hon. Abdullswamad Sheriff, M.P.
20. Hon. Mwadeghu Thomas, M.P.
21. Hon. Beatrice Nyaga, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. Sammy Mwaita, M.P.
3. Hon. Adan M. Nooru, M.P.
4. Hon. Irungu Kang'ata, M.P.
5. Hon. Paul Otuoma, M.P.
6. Hon. Major (Rtd) John Waluke, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Ernejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhwa	-	Research Officer
Mr. Rogers Munyoki	-	Audio Officer
Ms. Eunice Lumallas	-	Legal Counsel
Mr. Michael Njenga	-	Parliamentary Intern

Mr. Hassan Odhwa - Research Officer
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Fizio Omukaga

THE NATIONAL TREASURY

Mr. John Munge - Accountant 1

MINUTE NO. 82/2013 EVIDENCE: ETHICS AND ANTI-CORRUPTION COMMISSION

Mr. Halakhe Waqo, Chief Executive Officer, Ethics and Anti-Corruption Commission, accompanied by Mr. Abdi Mohamud, Head of Legal Services and Mr. David Too, Head of Investigations appeared before the Committee to give evidence on National Cereals and Produce Board indebtedness to M/s Erad Supplies & General Contracts Ltd.

MINUTE NO. 83/2013 - EXCLUSION OF THE PUBLIC

Mr. Halakhe Waqo requested the Committee that a section of the sitting be held in camera due to the sensitivity of the matter and the fact that publicity might prejudice the investigations.

The Committee considered the request in line with Article 118 of the Constitution and Standing Order No. 198 and resolved that a section of the session be held in camera.

MINUTE NO. 84/2013 INVESTIGATIONS ON THE NCPB INDEBTEDNESS TO M/S ERAD SUPPLIES AND GENERAL CONTRACTS LTD

The Chief Executive Officer, EACC, Mr. Halakhe Waqo informed the Committee that:-

- (i) The Commission was still conducting investigations on the matter as it had a local and international dimension.
- (ii) NCPB had written to EACC alleging corruption, fraud and misrepresentation of facts in the arbitration process. The letter by NCPB had requested EACC to investigate and establish whether the Bid Bond and performance bond used by M/s Erad Supplies and General

Contracts Ltd were genuine. Whether the Companies indicated by M/s Erad Supplies & General Contracts Ltd as suppliers of the maize existed and their capacity to supply the maize and whether the documents used by M/s Erad Supplies & General Contracts Ltd to make claims were genuine.

- (iii) Ropack International (A Partner Company from South Africa that was to supply maize for M/s Erad Supplies & General Contracts Ltd) was not a registered company in South Africa and that the telephone and fax numbers indicated for POPAC belonged to another company dealing with plastics and tiles according to information by the Interpol.
- (iv) The Commission is still conducting investigations through Interpol for other partner companies in Ethiopia and Brazil. The Commission was in the process of finalizing its investigation within a period of four (4) weeks.
- (v) A scrutiny of the Tender process by EACC established that the process was not above board and that the Commission was investigating the NCPB and the relevant Ministries in regards to the matter.

The Committee was assured by the Ethics and Anti-Corruption Commission CEO that the Commission would fast track the investigations to conclude the matter and safeguard public interest.

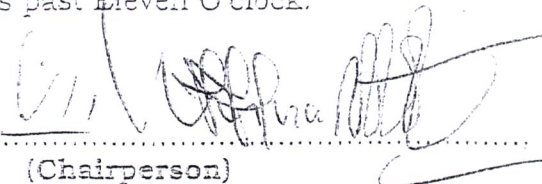
MINUTE NO. 85/2013 CONCERNS BY MEMBERS

The Committee noted that there was need to freeze the Accounts of M/s Erad Supplies & General Contracts Ltd to safeguard the public interest as well as to recover the public resources secured by the same company through arbitration award and court rulings.

The Committee was concerned over how M/s Erad Supplies & General Contracts Ltd was able to service a US\$ 1 million Bid Bond while the Company's networth in 2004 was only Kshs. 6 million. The Committee resolved to invite the officials of the banks (Dubai and I&M banks) that issued the Bid and Performance bonds so as to authenticate the Bonds.

MINUTE NO. 86/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Forty Minutes past Eleven O'clock.

Signed:  Date: 6/8/2013
(Chairperson)



0

0

MINUTES OF THE SEVENTEENTH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 4TH JULY, 2013 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT:

1. Hon. Adan Keynan, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Dr. Oburu Oginga, M.P.
9. Hon. Mary Keraa Sally, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Bernard Munyoki Kitungi, M.P.
12. Hon. Chrisanthus Wamalwa, M.P.
13. Hon. Onesmus Njuki, M.P.
14. Hon. Bare Shill, M.P.
15. Hon. Ogutu John Omondi, M.P.
16. Hon. Francis Nyenze Mwanzia, M.P.
17. Hon. Abdullswamad Sheriff, M.P.
18. Hon. Mwadeghu Thomas, M.P.
19. Hon. Sammy Mwaita, M.P.
20. Hon. Beatrice Nyaga, M.P.
21. Hon. Adan M. Nooru, M.P.

ABSENT WITH APOLOGY

Hon. Paul Otuoma, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. Eng. John Kiragu, M.P.
3. Hon. Irungu Kang'ata, M.P.
4. Hon. John Aitoch Olago, M.P.
5. Hon. Major (Rtd) John Waluke, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst

Mr. Hassan Odhwa - Research Officer
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga

THE NATIONAL TREASURY

Mr. John Munge - Accountant 1

MINUTE NO. 87/2013 EVIDENCE: CRIMINAL INVESTIGATION DEPARTMENT

Mr. Ndegwa Muhoro, Director, Criminal Investigation Department appeared before the Committee to give evidence on the transaction between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd.

MINUTE NO. 88/2013 EVIDENCE BY MR. NDEGWA MUHORO, DIRECTOR, CRIMINAL INVESTIGATION DEPARTMENT

The Committee heard that CID had not investigated the matter since the Ethics and Anti-Corruption Commission was investigating it.

On the matter of claims by Mr. Joshua Nyawara, an advocate representing the NCPB, Mr. Muhoro informed the Committee that the lawyer had reported that he had been sent threatening text messages by Ms. Nancy Baraza. Mr. Muhoro undertook to furnish the Committee in writing with details on the matter by Monday, 8th July, 2013.

MINUTE NO. 89/2013 ANY OTHER BUSINESS

The Committee tasked the CID Director to interact with Mr. Brian Yongo to get information about the NCPB scandal and ensure that adequate security is provided to the witness (Brian Yongo) who claimed before the Committee that his life was in danger.

MINUTE NO. 90/2013 ADJOURNMENT

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

Signed:  Date: 6/8/2013
(Chairperson)

MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON MONDAY 8TH JULY, 2013 IN COMMITTEE ROOM
NO. 7, PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Dr. Oburu Oginga, M.P.
8. Hon. Bernard Munyoki Kitungi, M.P.
9. Hon. Chrisanthus Wamalwa, M.P.
10. Hon. Onesmus Njuki, M.P.
11. Hon. Bare Shill, M.P.
12. Hon. Ogutu John Omondi, M.P.
13. Hon. Francis Nyenze Mwanzia, M.P.
14. Hon. Mwadeghu Thomas, M.P.
15. Hon. Sammy Mwaita, M.P.
16. Hon. Beatrice Nyaga, M.P.
17. Hon. Adan M. Nooru, M.P.
18. Hon. Eng. John Kiragu, M.P.
19. Hon. Irungu Kang'ata, M.P.
20. Hon. Paul Otuoma, MP

ABSENT WITH APOLOGY

1. Hon. Mary Keraa Sally, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. John Aluoch Olago, M.P.
4. Hon. Major (Rtd) John Waluke, M.P.
5. Hon. Johana Ngeno, M.P.
6. Hon. Wafula Wamunyinyi, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhowa	-	Research Officer
Ms. Eunice Lumallas	-	Legal counsel

Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegere - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 91/2013 EVIDENCE : FORMER NCPB MANAGEMENT

Mr. Tirop Kosgey, Former Managing Director, National Cereals and Produce Board (NCPB), Mr. Naftali Mogere, former Managing Director, NCPB and Ms. Anne Kamau former Board Secretary, NCPB accompanied by Mr. Patrick Karanja, Ag. Board Secretary, NCPB appeared before the Committee to give evidence on issues affecting the National Cereals and Produce Board.

MINUTE NO. 92/2013 SUBMISSION BY THE FORMER NCPB MANAGEMENT

Mr. Tirop Kosgey informed the Committee that:-

- (i) Eighty one (81) companies bought tender documents among them, Ahmednassir Abdullahi Advocates. Thirty six (36) companies submitted their bid to supply maize and only nine (9) met the required qualifications and eventually, only five (5) companies were selected to supply the maize.
- (ii) The Tender Evaluation Committee included experts deployed by the Strategic Grain Reserve Committee from the Ministries of Agriculture, Finance and Special Programs and therefore, the tender committee was an inter-ministerial committee.
- (iii) There was no verification of documents from the bidders due to time constraints. The bidders were supposed to provide Performance Bonds and invoices from suppliers.
- (iv) The award of the tender to M/s Erad Supplies and General Contracts Ltd was weighted higher during evaluation on the basis of the schedule of delivery of the maize (four weeks from signing contract) and source of maize.
- (v) The main tender committee distributed the total maize to be imported on the five firms that were qualified to import the maize.
- (vi) M/s Erad Supplies and General Contracts Ltd was the last company to provide its documents and missed out on the issuance of the Letter of Credit.
- (vii) The Tender Evaluation Committee had information that two (2) of the bidders were to supply maize from the same source and therefore

- phytosanitary certificate was issued for the two firms by one institution.
- (vii) The matter came before the attention of the Public Investments Committee in 2004 and that Ethics and Anti-Corruption Commission had investigated the matter as well.
 - (ix) The Board consulted the Ministry of Special Programmes in handling the maize importation program. The Trustees were involved in all the process of maize importation. The Board could not take decision on stopping the importation without the Ministry's consent.
 - (x) The Government directed the Board to tender for the importation of maize. This was an indication that funds were available at Treasury and therefore the board proceeded to tender and award tenders and sign contracts.
 - (xi) The board stopped with the Government as the provider of resources whose failure to provide resources had led to the claim by M/s Erad Supplies and General Contracts Ltd of breach of contract.

Mrs. Anne Kamau informed the Committee that:-

- (i) During the tendering of the maize importation she had proceeded on leave and did not therefore participate in the drafting of the contract.
- (ii) Freba was issued with a performance bond from Dubai Bank
- (iii) The board wrote to the bank requesting for cashing of the bond. The bank tried to frustrate the cashing of the bond on technicalities that the time had lapsed.
- (iv) Freba took NCPB to court alleging that NCPB had frustrated the contract.
- (v) The court awarded NCPB and a decree was issued

Mr. Patrick Karanja informed the Committee that:-

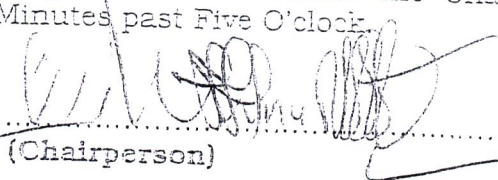
- (i) He witnessed the signing of the contract.
- (ii) The lack of a company seal for M/s Erad Supplies and General Contracts Ltd in the contract did not render the contract illegal or invalid.
- (iii) The Board sued and got a decree for payment against M/s Freba.
- (iv) It has been difficult to locate the owner of the company, Mr. Fredrick Mulumba.
- (v) The Board is still pursuing the company with the aim of executing the award and the decree.

MINUTE NO. 93/2013 ANY OTHER BUSINESS

The Committee gave the former management of NCPB a questionnaire to fill and return on Wednesday, 10th July, 2013 by 5.00 pm.

MINUTE NO. 94/2013 ADJOURNMENT

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

Signed:.......... Date: 6/8/2013
(Chairperson)



MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON MONDAY 8TH JULY, 2013 IN COMMITTEE ROOM
NO. 7, PARLIAMENT BUILDINGS AT 4.30 PM

PRESENT:

1. Hon. Adan Keyman, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Dr. Oburu Oginga, M.P.
8. Hon. Bernard Munyoki Kitungi, M.P.
9. Hon. Chrisanthus Wamalwa, M.P.
10. Hon. Onesmus Njuki, M.P.
11. Hon. Bare Shill, M.P.
12. Hon. Ogutu John Omondi, M.P.
13. Hon. Francis Nyenze Mwanzia, M.P.
14. Hon. Mwadeghu Thomas, M.P.
15. Hon. Sammy Mwaita, M.P.
16. Hon. Beatrice Nyaga, M.P.
17. Hon. Adan M. Nooru, M.P.
18. Hon. Eng. John Kiragu, M.P.
19. Hon. Irungu Kang'ata, M.P.

ABSENT WITH APOLOGY

1. Hon. Mary Keraa Sally, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Paul Otuoma, MP

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. John Aluoch Olago, M.P.
4. Hon. Johana Ngeno, M.P.
5. Hon. Wafula Wamunyinyi, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejien - Principal Clerk Assistant I

Ms. Esther Nginyo - Third Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal counsel
Mr. Rogers Muniyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mt. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 95/2013 EVIDENCE: MANAGING DIRECTOR M/S ERAD
SUPPLIES AND GENERAL CONTRACTS LIMITED

Ms. Grace Sarapay Wakhungu, the Managing Director, Erad Supplies and General Contracts Ltd appeared before the Committee to give evidence on issues affecting the National Cereals and Produce Board.

MINUTE NO. 96/2013 EVIDENCE BY THE GRACE S. WAKHUNGU,
DIRECTOR ERAD SUPPLIES AND GENERAL
CONTRACTS LIMITED.

Ms. Grace Wakhungu informed the Committee that:-

- (i) The company M/s Erad Supplies and General Contracts Limited Supplies and General Contracts Ltd was owned by three directors, Jacob Juma 20% shareholding, major Waiuke 20% shareholding and herself having the majority shareholding of 60%. She is the Managing Director of the Company.
- (ii) She is the sister to Mr. Moody Awori, the then Vice-President.
- (iii) M/s Erad Supplies and General Contracts Limited had associate companies that they do business with outside the country.
- (iv) M/s Erad Supplies and General Contracts Limited had applied to supply 85,000 Metric Tonnes of maize but was however awarded to supply 40,000 MT and that the Company had met all the bidding requirements.
- (v) They had provided a bid bond of USD 1 million from I&M Bank and a Performance bond of USD 932,000 from Dubai Bank as required by NOPB. They secured the bond from a different bank due to the urgency in getting

the bond. They secured the performance bond through personal guarantees. The bid bond was secured through a friend who had an account with I & M Bank.

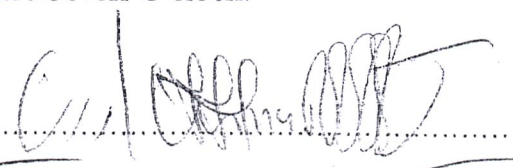
- (vi) The Maize supplier for M/s Erad Supplies and General Contracts Limited was ROFACK International in South Africa but Ropack would source maize with the required standard from Ethiopia and was to be shipped to Kenya via Djibouti.
- (vii) M/s Erad Supplies and General Contracts Limited gave the NCPB two invoices bearing the same number to generate a Letter of Credit from and that the NCPB did not have a problem with that arrangement.
- (viii) Mr. Ahmednassir Abdullahi was brought on board to reinforce M/s Saende & Co Advocates for Erad against the 7 lawyers that the NCPB had hired in the litigation process.
- (ix) The money that M/s Erad Supplies and General Contracts Limited got from garnisheeing NCPB was still with the company lawyers. The directors had not met to decide on the distribution of the money.
- (x) She paid Mr. Brian Yongo Kshs. 7.5 million for services rendered. Mr. Brian Yongo had been appointed as an auctioneer. She paid Mr. Yongo because he was becoming a nuisance and an extortionist.

MINUTE NO. 97/2013 ANY OTHER BUSINESS

The Committee requested Mrs. Grace S. Wakhungu to furnish it with the Minutes of the Board resolution to authorize borrowing on behalf of the company.

MINUTE NO. 98/2013 ADJOURNMENT

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

Signed:.....  Date: 6/8/2013.....
(Chairperson)



1

2

3



MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON TUESDAY 9TH JULY, 2013 IN COMMITTEE ROOM
NO. 7, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Dr. Oburu Oginga, M.P.
7. Hon. Bernard Munyoki Kitungi, M.P.
8. Hon. Chrisanthus Wamalwa, M.P.
9. Hon. Onesmus Njuki, M.P.
10. Hon. Bare Shill, M.P.
11. Hon. Ogutu John Omondi, M.P.
12. Hon. Francis Nyenze Mwanzia, M.P.
13. Hon. Mwadeghu Thomas, M.P.
14. Hon. Adan M. Nooru, M.P.
15. Hon. Wafula Wamunyinyi, M.P.
16. Hon. Mary Keraa Sally, M.P.
17. Hon. John Aluoch Olago, M.P.
18. Hon. Irungu Kang'ata, M.P.

ABSENT WITH APOLOGY

1. Hon. Major (Rtd) John Waluke, M.P.
2. Hon. Beatrice Nyaga, M.P.
3. Hon. Paul Otuoma, MP

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. Johana Ngeno, M.P.
4. Hon. Njogu Barua, M.P.
5. Hon. Eng. John Kiragu, M.P.
6. Hon. Sammy Mwaita, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Esther Nginyo - Third Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhawa - Research Officer
Ms. Eunice Lumalias - Legal counsel
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mt. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 99/2013 EVIDENCE: TRUSTEES OF STRATEGIC GRAIN RESERVES

Mr. Andrew Mondo, former Permanent Secretary Ministry of Special Programmes, Dr. Romano Kiome, former Permanent Secretary Ministry of Agriculture and Mr. Joseph Kinyua, Former Permanent Secretary Ministry of Finance accompanied by Ms. Esther Koimett, Investments Secretary, Mr. Samuel Kiiru, Principal Economist and Ms. Beatrice Gathirwa, Deputy Director, Investment of the National Treasury and Mr. Philip Tarus, Deputy Secretary, Ministry of Devolution and Planning and Mr. Patrick Karanja, Ag. Board Secretary, National Cereals and Produce Board appeared before the Committee to give evidence on issues affecting the National Cereals and Produce Board.

MINUTE NO. 100/2013 EVIDENCE BY THE FORMER TRUSTEES OF THE STRATEGIC GRAIN RESERVE.

Mr. Andrew Mondo informed the Committee that:-

- (i) The Strategic Grain Reserve Trustees had agreed never to pay M/s M/s Erad Supplies and General Contracts Limited since they had not supplied any maize.

- (ii) Arising from the award judgement, the trustees had written to the Attorney General on how the judgement was made and the fact that NCPB was losing all cases in court and further the matter was discussed during the Security Advisory Committee as a matter of food security.
- (iii) The trustees had also briefed the new administration on the issue of NCPB.

Mr. Joseph Kinyua informed the Committee that:-

- (i) Treasury was to release Kshs. 4.9 billion for the importation of maize but due to budgetary constraints, Kshs. 3.2 billion was released in 3 tranches.
- (ii) Treasury had gazette a legal notice waiving 25% duty in imported maize by millers and NCPB lasting between 5th August to 30th September, 2004.
- (iii) On the matter of the Letter of Credit, the Treasury had written advising the Ministry of Agriculture and NCPB not to issue LC before supply of maize. M/s Erad Supplies and General Contracts should have approached their bankers to issue a Letter of Credit as opposed to asking the NCPB to provide them with an LC.
- (iv) The legal issues between NCPB and M/s Erad Supplies and General Contracts Limited were not brought to the Trustees early enough and that the trustees learnt about the litigation when the Board had been garnisheed.
- (v) Treasury had written appealing to all the arms of government to ensure that public money was used in a prudent and responsible way.

Dr. Romano Kiome informed the Committee that:-

- (i) The press release of 19th October, 2004, by the then Minister for Agriculture should never have been placed in the media since the Ministry of Agriculture should not have been involved in issues of the procuring agency (NCPB).
- (ii) The Public Procurement and Disposal Act of 2005 was not in place in 2004 when the importation of maize was being processed. The Government was relying on procurement regulations in the Exchequer and Procurement Regulations, 2001.

MINUTE NO. 101/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Twelve O'clock.

Signed:.......... Date: 6/8/2013.....
(Chairperson)



F

2



2

2



MINUTES OF THE TWENTY FIRST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 10TH JULY, 2013 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelio Serem, M.P.
4. Hon. Bernard Munyoki Kitungi, M.P.
5. Hon. Chrisanthus Wamalwa, M.P.
6. Hon. Onesmus Njuki, M.P.
7. Hon. Bare Shill, M.P.
8. Hon. Ogutu John Omondi, M.P.
9. Hon. Francis Nyenze Mwanzia, M.P.
10. Hon. Adan M. Nooru, M.P.
11. Hon. Wafula Wamunyinyi, M.P.
12. Hon. Mary Keraa Sally, M.P.

ABSENT WITH APOLOGY

Hon. Beatrice Nyaga, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. Johana Ngeno, M.P.
5. Hon. Njogu Barua, M.P.
6. Hon. Eng. John Kiragu, M.P.
7. Hon. Sammy Mwaita, M.P.
8. Hon. Korei Ole Lemein, M.P.
9. Hon. Mithika Linturi, M.P.
10. Hon. Irungu Kang'ata, M.P.
11. Hon. Mwadeghu Thomas, M.P.
12. Hon. John Aluoch Olago, M.P.
13. Hon. Dr. Oburu Oginga, M.P.
14. Hon. Paul Otuoma, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst

Mr. Hassan Odhwa - Research Officer
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 102/2013 EVIDENCE: DUBAI BANK

Mr. Rajab Karume, Marketing Officer of Dubai Bank appeared before the Committee to give evidence on issues affecting the National Cereals and Produce Board.

MINUTE NO. 103/2013 EVIDENCE BY THE MR. RAJAB KARUME, REPRESENTATIVE OF DUBAI BANK

Mr. Rajab Karume presented a letter from the Management of Dubai Bank indicating that Mr. Binay Dutta, Managing Director and Mr. Hassan Zubeidi, Chairman Dubai Bank could not appear before the Committee and that Mr. Karume would represent them as he was conversant with the subject matter.

The Committee heard that M/s Erad Supplies and General Contracts Ltd had an account with Dubai Bank, information which contradicted an earlier presentation by the Directors of M/s Erad Supplies and General Contracts.

MINUTE NO. 104/2013 CONCERNS BY COMMITTED MEMBERS

The Committee noted that Mr. Karume could not competently respond to issues in the subject matter. The Committee also noted with concern that Mr. Zubeidi had not responded to the Committee's invitation.

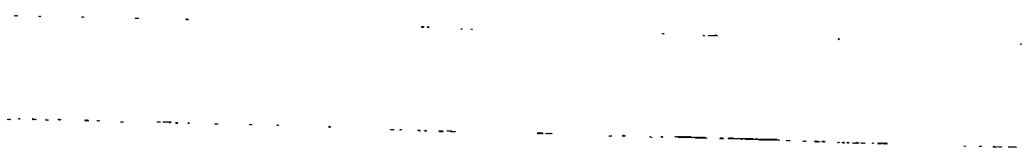
The Committee deliberated on the matter and resolved to adjourn the meeting and invite Mr. Hassan Zubeidi who was a signatory to the Performance Bond in question.

MINUTE NO. 105/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Forty Five Minutes past Ten O'clock.

Signed:.......... Date: 6/8/2013.....

(Chairperson)



Vertical text or markings along the right edge of the page, including a small circular mark.

MINUTES OF THE TWENTY SECOND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 10TH JULY, 2013 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 11.30 AM

PRESENT

1. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
2. Hon. Cornelly Serem, M.P.
3. Hon. Bernard Munyoki Kitungi, M.P.
4. Hon. Chrisanthus Wamaiwa, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Francis Nyenze Mwanzia, M.P.
7. Hon. Adan M. Nooru, M.P.
8. Hon. Mary Keraa Sally, M.P.
9. Hon. Njogu Barua, M.P.

ABSENT WITH APOLOGY

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Beatrice Nyaga, M.P.
3. Hon. Ogutu John Omondi, M.P.
4. Hon. Wafula Wamunyinyi, M.P.
5. Hon. Onesmus Njuki, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. Abdullswamad Sheriff, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. Johana Ngeno, M.P.
5. Hon. Eng. John Kiragu, M.P.
6. Hon. Sammy Mwaita, M.P.
7. Hon. Korei Ole Lemein, M.P.
8. Hon. Mithika Linturi, M.P.
9. Hon. Lungu Kang'ata, M.P.
10. Hon. Mwadeghu Thomas, M.P.
11. Hon. John Aluoch Olago, M.P.
12. Hon. Dr. Oburu Oginga, M.P.
13. Hon. Paul Otuoma, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Esther Nginyo - Third Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst

Mr. Hassan Odhwa - Research Officer
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mt. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 106/2013 I & M BANK

The Committee noted with concern that the management of I & M Bank had failed to attend the Committee meeting in spite receiving an invitation.

The Committee resolved to issue a Summon to the Management of I & M Bank to appear before the Committee on 16th July, 2013 to give evidence on the Issuance of Bid Bond to M/s Erad Supplies and General Contracts Ltd.

MINUTE NO. 107/2013 ADJOURNMENT

There being no other business the Vice Chairperson adjourned the meeting at Fifty Minutes past Eleven O'clock.

Signed:  Date: 4/8/2013

(Chairperson)

MINUTES OF THE TWENTY THIRD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 11TH JULY, 2013 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Bernard Munyoki Kitungi, M.P.
5. Hon. Chrisanthus Wamalwa, M.P.
6. Hon. Bare Shill, M.P.
7. Hon. Francis Nyenze Mwanzia, M.P.
8. Hon. Adan M. Nooru, M.P.
9. Hon. Mary Keraa Sally, M.P.
10. Hon. Njogu Barua, M.P.
11. Hon. Korei Ole Lemein, M.P.
12. Hon. Mithika Linturi, M.P.
13. Hon. Johana Ngeno, M.P.
14. Hon. Mwadeghu Thomas, M.P.
15. Hon. John Aluoch Olago, M.P.
16. Hon. Dr. Oburu Oginga, M.P.
17. Hon. Paul Otuoma, M.P.
18. Hon. John M. Nyaga, M.P.
19. Hon. Beatrice Nyaga, M.P.
20. Hon. Ogutu John Omondi, M.P.
21. Hon. Wafula Wamunyinyi, M.P.
22. Hon. Onesmus Njuki, M.P.

ABSENT WITH APOLOGY

Hon. Sammy Mwaita, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Eng. John Kiragu, M.P.
4. Hon. Irungu Kang'ata, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Eunice Lumalas - Legal Counsel

Mr. Hassan Odhwa - Research Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 108/2013 EVIDENCE : MR. AHMEDNASSIR ABDULLAHI

Mr. Ahmednassir Abdullahi appeared before the Committee to brief the Committee on the case between NCPB and M/s Erad Supplies and General Contracts Limited on the breach of contract for the purchase of white maize in 2004.

MINUTE NO. 109/2013 EVIDENCE BY AHMEDNASSIR ABDULLAHI -
LEAD COUNSEL FOR M/S ERAD SUPPLIES
AND GENERAL CONTRACTS

Mr. Ahmednassir informed the Committee that:-

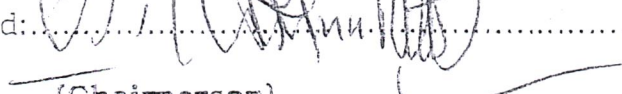
- (i) The bar is independent and lawyers can act for any person and operate on client lawyer confidentiality.
- (ii) The case started in arbitration under Mr. Evans Gaturu as the sole arbitrator. The arbitrator made the award in 2009 in favour of M/s Erad Supplies and General Contracts Ltd.
- (iii) In the case of NCPB and M/s Erad Supplies and General Contracts Limited he acted as the lead counsel for Soita and Saende Advocates who were the lawyers of M/s Erad Supplies and General Contracts. He was requested by Soita and Saende Advocates to lead in the case in March 2012. He has appeared seven times before eleven judges on the matter. During his appearances he only dealt with procedural matters and not the substance of the case.
- (iv) The Attorney General appealed to the court for the maize and fertilizer in the Strategic Grain Reserves not to be attached since it is not the property of NCPB.
- (v) The Permanent Secretary Ministry of Agriculture, Mr. Romano Kiome,

- wrote to the President of the Court of Appeal appealing for stay of execution citing that NCPB was in a critical and precarious situation. The stay of execution was allowed.
- (vi) Application for stay of proceedings was never filed by NCPB and neither have they appealed against the decree adopting the arbitral award.
 - (vii) He runs a law firm Ahmednassir Abdikadir and Co. Advocates Limited which is a partnership and only deals with law. He has never tendered for maize or sugar and neither has the firm bought tender documents from NCPB.
 - (viii) He advised his clients to reduce the decretal amount by 40% after a request by the Attorney General but Mr. Romano Klome told the Attorney General not to get involved in the matter and since then the AG withdrew from the case.
 - (ix) As far as he is aware M/s Erad Supplies and General Contracts Limited never paid any judicial officer to determine the case in their favour.
 - (x) He was attracted to the case due to the fees and the simplicity of the case.
 - (xi) He has known Jacob Juma for many years and they also live in the same neighborhood and are family friends. Mr. Jacob Juma went to school at Kenya Polytechnic and alleges that he studied at the University of Nairobi.

Mr. Ahmednassir undertook to provide a written submission and attach his fee note to M/s Erad Supplies and General Contracts Ltd.

MINUTE NO. 110/2013 ADJOURNMENT

There being no other business the Vice Chairperson adjourned the meeting at thirty Six Minutes past Eleven O'clock.

Signed:  Date: 6/8/2013
(Chairperson)

1

2

3

4

5

6

7

MINUTES OF THE TWENTY FIFTH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 16TH JULY, 2018 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 11.35 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Johung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Njogu Barua, M.P.
6. Hon. Dr. Oburu Oginga, M.P.
7. Hon. Bernard Munyoki Kitungi, M.P.
8. Hon. Chrisanthus Wamalwa, M.P.
9. Hon. Onesmus Njuki, M.P.
10. Hon. Bare Shill, M.P.
11. Hon. Ogutu John Omondi, M.P.
12. Hon. Francis Nyenze Mwanzia, M.P.
13. Hon. Mwadeghu Thomas, M.P.
14. Hon. Sammy Mwaita, M.P.
15. Hon. Beatrice Nyaga, M.P.
16. Hon. Adan M. Nooru, M.P.
17. Hon. Wafula Wamunyinyi, M.P.
18. Hon. Irungu Kang'ata, M.P.
19. Hon. Abdullswamad Sheriff, M.P.
20. Hon. Johana Ngeno, M.P.

ABSENT WITH APOLOGY

1. Hon. Mary Keraa Sally, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. John Aluoch Olago, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. Mithika Linturi, M.P.
5. Hon. Eng. John Kiragu, M.P.
6. Hon. Dr. Oburu Oginga, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Esther Nginyo - Third Clerk Assistant

Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal counsel
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 125/2013 EVIDENCE: FORMER NCPB OFFICIALS

Mr. Tirop Kosgey, Former Managing Director, National Cereals and Produce Board (NCPB), Mr. Naftali Mogere, former Managing Director, NCPB and Ms. Anne Kamau former Board Secretary, NCPB, Mr. Kipyego Korir former secretary to the technical tender evaluation committee accompanied by Mr. Patrick Karanja, Ag. Board Secretary, NCPB appeared before the Committee to give evidence on issues affecting the National Cereals and Produce Board.

MINUTE NO. 126/2013 EVIDENCE BY MR. KIPYEGO KORIR

Mr. Kipyego Korir informed the Committee that:-

- (i) In 2004 there was a severe famine and as a result the Government issued a directive for the importation of maize within ninety (90) days to mitigate against the drought.
- (ii) A Technical Evaluation Committee was constituted comprising of representatives from the Office of the President, Ministry of Finance and Ministry of Agriculture as well as the National Cereals and Produce Board to carry out a technical and financial evaluation of bids and report findings to the Main Tender Committee.
- (iii) A total of eighty one (81) firms purchased the tender documents among them Ahmednassir Abdikadir & Company Advocates.
- (iv) The Technical Evaluation Committee produced its report in four days and presented it to the Main Tender Committee. The Technical Evaluation Committee had qualified seven (7) firms, based on technical and financial

evaluations, with the tender to supply 180,000 metric tons of maize as follows:-

- (1) M/s Hala General Trading LLC - 40,000 metric tons at a cost of US \$ 229 per metric ton.
 - (2) M/s Versatrade International CC Euroworld Commodities Ltd - 40,000 metric tons at a cost of US \$ 229 per metric ton.
 - (3) M/s Erad Supplies and General Contracts Limited - 20,000 metric tons at a cost of US \$ 233 per metric ton.
 - (4) M/s Purma Holdings Ltd - 20,000 metric tons at a cost of US \$ 189 per metric ton.
 - (5) M/s Freba Investments - 20,000 metric tons at a cost of US \$ 190 per metric ton.
 - (6) M/s Mano Styles Limited - 20,000 metric tons at a cost of US \$ 192 per metric ton.
 - (7) M/s Wanizame Trading (PTY) Ltd - 20,000 metric tons at a cost of US \$ 225.75 per metric ton.
- (v) The Main Tender Committee upon receiving the report of the Technical Evaluation Committee awarded the tender to only five (5) firms as follows:-
- (1) Hala General Trading - 40 000 metric tons ,
 - (2) Euroworld commodities ltd - 40,000 metric tons
 - (3) Erad Supplies and General Contracts Limited - 40,000 metric tons
 - (4) Purma Holdings Limited - 30,000 metric tons
 - (5) Freba Investments - 30,000 metric tons

MINUTE NO. 127/2013

**EVIDENCE BY MR. TIROP KOSGEY, FORMER
MANAGING DIRECTOR, (NCPB)**

He informed the Committee that:-

- (i) The Government authorized the importation of maize with the undertaking to provide funds to NCPB for the exercise.
- (ii) The National Cereals and Produce Board relied on the information supplied by the bidders at the time. M/s Erad Supplies and General Contracts Limited presented themselves then as having capacity to deliver. The directors of the Company (M/s Erad Supplies and General Contracts Limited) looked credible on the face value. The award of tender to M/s Erad Supplies and General Contracts was also based on the short delivery time of maize that the company had promised in its documentation.
- (iii) The Board did not have sufficient time to undertake adequate background check on M/s Erad Supplies and General Contracts Limited and the other bidders. After the tender award it was apparent that the company lacked the capacity as evidenced by their delay in meeting the requirements and changing their source of maize.
- (iv) On 28 August, 2004 Treasury wrote advising against the opening of Letters of Credit but subsequent meetings of Strategic Grain Reserve

(SCR) Trustees reviewed this position and sought financial support to NCPB for the importation of maize.

(v) M/s Erad Supplies and General Contracts Ltd was the last company to provide its documents and missed out on the issuance of the Letter of Credit (LC) since the LC were issued on a first come first served basis and also depending on the release of funds by Treasury. LC is an instrument in international trade and not for domestic trade.

(vi) The Government in September 2004 advised that funds that had not been utilized and initially earmarked for maize importation be used to purchase maize from local farmers.

(vii) The contract was signed on 26th August, 2004 and was witnessed by Patrick Karanja for NCPB and Baisuma Duma witnessed the signing by Grace Serapay Wakhungu for M/s Erad Supplies and General Contracts Limited.

The Committee observed that:-

1. NCPB did not undertake due diligence to determine the technical and financial capacity and suitability of the firms that were awarded the tender to import the maize.
2. Letters of Credit are instruments of international trade and are opened by importers and not the buyers/purchasers. They serve as an assurance for payment.
3. M/s Erad Supplies and General Contracts Limited lacked the capacity to supply and deliver the maize.

MINUTE NO. 128/2013

EVIDENCE BY MRS ANNE KAMAU FORMER
BOARD SECRETARY, (NCPB)

Mrs. Anne Kamau informed the Committee that:-

- (i) Mr. Brian Yongo worked at the Board as a clerk and not as a lawyer.
- (ii) During the drafting and signing of the contracts with the various firms that had won the tender she was on leave and upon resuming in September, 2004 the matter of M/s Erad Supplies and General Contracts and NCPB had degenerated into a legal tussle.
- (iii) She interrogated the tender documents and the contract and found them to be alright. Addendums were done on the tender awards and more so on the price and quantity of maize to be supplied. The Technical and Evaluation Committee and the Main Tender Committee were involved in this process.
- (iv) She appointed Nyawara and Company Advocates to represent the NCPB during the arbitration process.
- (v) After the arbitral award the Board made an appeal at the High Court to set aside the award and by then a decree had not been issued.

MINUTE NO. 129/2013

EVIDENCE BY MR. PATRICK KARANJA

Mr. Karanja informed the Committee that:-


- (i) He joined NCPB in August, 2002 as a senior legal counsel and rose through the ranks to the position of Board Secretary.
- (ii) He participated in drafting and witnessing the signing of the contract agreement for the supply of maize between NCPB and M/s Erad Supplies and General Contracts Limited. The then Board Secretary, Mrs. Anne Kamau was on leave.
- (iii) Under normal circumstance payment is made upon delivery of goods but this was not the case in this matter, as Letters of Credit (LC) were issued to other suppliers.
- (iv) The Letters of Credit were not a condition for the supply of maize.
- (v) The Board appealed against the arbitral award. For one year there was no court of appeal and therefore the appeal could not be heard.

The Committee directed that Mr. Karanja prepares a written submission on the matter.

MINUTE NO. 130/2013

ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Two O'clock.

Signed:  Date: 6/8/2013

(Chairperson)



MINUTES OF THE TWENTY SIXTH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON JULY 16, 2013 IN COMMITTEE ROOM 7, MAIN PARLAMENT BUILDINGS AT 3.30 PM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Chrisanthus Wamalwa, M.P.
7. Hon. Onesmus Njuki, M.P.
8. Hon. Bare Shill, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. Francis Nyenze Mwanzia, M.P.
11. Hon. Sammy Mwaita, M.P.
12. Hon. Beatrice Nyaga, M.P.
13. Hon. Adan M. Nooru, M.P.
14. Hon. Wafula Wamunyinyi, M.P.
15. Hon. Irungu Kang'ata, M.P.
16. Hon. Abdullswamad Sheriff, M.P.
17. Hon. Mary Keraa Sally, M.P.
18. Hon. Eng. John Kiragu, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. John M. Nyaga, M.P.
2. Hon. John Aluoch Olago, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. Mithika Linturi, M.P.
5. Hon. Dr. Oburu Oginga, M.P.
6. Hon. Johana Ngeno, M.P.
7. Hon. Mwadeghu Thomas, M.P.
8. Hon. Njogu Barua, M.P.
9. Hon. Paul Otuoma, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhowa	-	Research Officer
Ms. Eunice Lumallas	-	Legal counsel

Mr. Rogers Muryoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 131/2013

EVIDENCE : NCPB OFFICIALS AND LAWYERS

Prof Gideon Misoi accompanied by Ms Anne Kamau , Legal Officer, Mr. Frank Muchina, Human Resource Manager, Mr. Ernest Ogwora, Operations Manager, Mr. Cornel K. Ngeleche, Finance Manager, Mr. John K. Ngetich, Chief Legal Officer together with a Legal team comprising of Mr. Daniel Maberu of Kosgey & Masese Advocates, Mr. Katwa Kigen of Katwa Kemboi & Co Advocates and Mr. Joshua Nyawara of Nyawara & Co. Advocates appeared before the committee to adduce evidence on the NCPB indebtedness to M/s Erad Supplies and General Contracts Limited.

Prof. Misoi informed the Committee that:-

- (i) The importation of maize was a Government of Kenya project and the National Cereals and Produce Board was an agent.
- (ii) The National Cereals and Produce Board was advised to use restricted tendering due to the urgency in importing maize for mitigating the famine situation.
- (iii) Invitation for Tenders was sent on 29th July 2004 and tender opening was done on 5th August, 2004. A total of 81 firms including that of Ahmednassir Abdikadir Advocates participated and only 36 submitted their bids.
- (iv) The Technical Evaluation Committee (TEC) was established and comprised of NCPB officials, representatives from the Ministry of Agriculture, Ministry of Finance and Office of the President. The TEC upon establishment embarked on evaluation of bids on 6th August, 2004 and submitted their report on 9th August, 2004.

- (v) The contract between M/s Erad Supplies and General Contracts Limited was entered into on 26th August, 2004.
- (vi) M/s Erad Supplies and General Contracts Limited were the last to submit the requisite documents and were the last in the priority list of being issued with Letter of Credit (LC). The opening of Letter of Credit was not conditional to the supply of maize but instead it was a means of payment as contained in the contract.
- (vii) The supplier M/s Erad Supplies and General Contracts Limited did not have capacity as evidenced in their change of their alleged source of maize. First it was Ethiopia, then South African and later Brazil. Their financial capacity was also wanting.
- (viii) The fee for lawyers is assessed by in house company lawyers' so that they conform to set legal /advocates fees.
- (ix) In his opinion M/s Erad Supplies and General Contracts Ltd should not be paid as they did not supply the maize as contracted. They failed to supply the maize within four weeks after signing the contract.
- (x) The Ministry of Special Programmes had requested for the importation of maize and also advised NCPB to terminate issuance of LC and divert resources meant for importation to purchase maize from local farmers.
- (xi) Mr. Brian Yongo applied for attachment at the legal department in the Board and worked as a legal assistant for one year before he was dismissed in September 1992. when he was found not to have the right papers upon verification of his documents.
- (xii) The Trustee Ministries should take responsibility as they failed to provide funds for the opening of LC and also directed the diversion of funds to purchase local maize. If NCPB loses the case it will have lost Kshs. 638 million. Already Kshs. 245 million had been garnisheed and used for payment of legal fees.
- (xiii) The Board had sought the help of EACC to investigate the matter.

Prof. Misoi appealed to the Committee to protect public resources.

MINUTE NO. 132/2013

EVIDENCE: MR. JOSHUA NYAWARA

Mr. Nyawara informed the Committee that:-

- (i) He advised his client to bring in a legal counsel to assist in the case. The services of Katwa Kigen, Juma Kiplenge and Mohamed Nyaoga were therefore hired.
- (ii) During the arbitration and court processes serious issues of corruption and threats against his life were reported and brought before the courts.
- (iii) The appeal challenged the arbitral award on the basis of corruption and public policy interests.

MINUTE NO. 133/2013

EVIDENCE: MR. KATWA KIGEN

Mr. Katwa Kigen informed the Committee that:-

- (i) The legal team consciously and deliberately did not appeal against the court decision to adopt the arbitral award because the adoption of the arbitral award by Judge Odunga was an administrative and exparte matter.
- (ii) The Board challenged the manner in which the arbitration award was made. Judge Njagi declined the appeal citing that he will not revisit issues of fact in the arbitration process and therefore failed to set aside the arbitral award. The Board appealed against the ruling by Justice Njagi at the Court of Appeal.
- (iii) The Board managed to get reprieve when it obtained a stay of execution meaning that the garnishee that was not collected and property not auctioned remains where it is and no recovery of money or assets by either party.
- (iv) The request for LC by M/s Erad Supplies and General Contracts came late. Maize was to be delivered after four weeks of signing the contract. The request for LC was in October long after the contract had expired and long broken.

MINUTE NO. 134/2013

COMMITTEE OBSERVATIONS

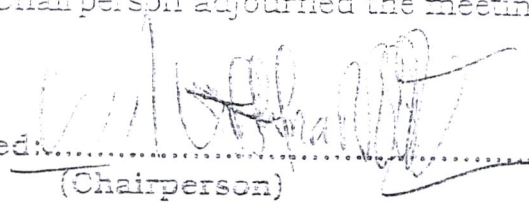
The Committee observed that M/s Erad Supplies and General Contracts lacked capacity to deliver. The company changed its source of maize, lacked financial capacity and issued two invoices with the same number on the same day but with different addresses.

There was need to protect NCPB from litigation by amending the law to protect it like other government agencies.

MINUTE NO. 135/2013

ADJOURNMENT

The Chairperson adjourned the meeting at twenty minutes past five o'clock.

Signed: 
(Chairperson)

Date: 6/18/2013

MINUTES OF THE TWENTY SEVENTH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON JULY 17, 2013 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Njogu Barua, M.P.
6. Hon. Dr. Oburu Oginga, M.P.
7. Hon. Bernard Munyoki Kitungi, M.P.
8. Hon. Chrisanthus Wamalwa, M.P.
9. Hon. Onesmus Njuki, M.P.
10. Hon. Bare Shill, M.P.
11. Hon. Ogutu John Omondi, M.P.
12. Hon. Francis Nyenze Mwanzia, M.P.
13. Hon. Mwadeghu Thomas, M.P.
14. Hon. Beatrice Nyaga, M.P.
15. Hon. Adan M. Nooru, M.P.
16. Hon. Wafula Wamunyinyi, M.P.
17. Hon. Abdullswamad Sheriff, M.P.
18. Hon. Johana Ngeno, M.P.
19. Hon. Mary Keraa Sally, M.P.
20. Hon. Eng. John Kiragu, M.P.
21. Hon. John Aluoch Olago, M.P.
22. Hon. John M. Nyaga, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Major (Rtd) John Waluke, M.P.
2. Hon. Mithika Linturi, M.P.
3. Hon. Sammy Mwaita, M.P.
4. Hon. Irungu Kang'ata, M.P.
5. Hon. Paul Otuoma, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhwa	-	Research Officer
Ms. Eunice Lumallas	-	Legal counsel
Mr. Rogers Munyoki	-	Audio Officer
Mr. Michael Njenga	-	Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 136/2013 EVIDENCE

Representatives of Dubai Bank Limited, I & M Bank Limited and Hon. Kipruto arap Kirwa appeared before the Committee to adduce evidence on the matter of NCPB indebtedness to M/s Erad Supplies and General Contracts Limited.

MINUTE NO. 137/2013 - EVIDENCE: DUBAI BANK LIMITED

Representatives of Dubai Bank appeared before the Committee and informed the Committee that the Managing Director was on leave in the USA and that the Chairman, Mr. Hassan Zubeidi was sick. The Committee raised concern that the MD and Chairman of Dubai Bank had failed to appear before the Committee in spite of formal invitations.

The representative of Dubai Bank sought the Committee's indulgence to have the acting Managing Director appear before the Committee in half an hour's time.

The Committee deliberated on the matter and resolved that the Chairman of Dubai Bank, Mr. Hassan Zubeidi and the Managing Director be invited again. The Committee further resolved that the acting Managing Director appears before the Committee at eleven O'clock on the same day.

MINUTE NO. 138/2013 EVIDENCE: INVESTMENTS AND MORTGAGE BANK (I & M)

Mr. Sarit Rajah-Shah informed the Committee that:-

- (i) I & M Bank issued a bid bond of one million dollars after a request was made by KAPU Kenya Limited and not M/s Erad Supplies and General Contracts Limited. KAPU Kenya Limited claimed to have a Joint Venture Agreement with M/s Erad to supply white maize to the National Cereals and Produce Board.

- (ii) The condition for the bid bond as agreed with KAPU Kenya Limited was that a company from South Africa or an international European Bank would issue a Stand By Letter of Credit (SBLC). The bid bond was therefore conditional to supply of an SBLC which would act as collateral.
- (iii) Neither M/s Erad Supplies and General Contracts Limited nor KAPU Kenya limited have accounts at I & M Bank Limited. KAPU Kenya Limited had a safe deposit box at the bank and had transacted before with I & M Bank.
- (iv) The bank acted within the provisions of the Banking Act and did not issue guarantees in excess of 25% of its capital and was satisfied that the risks were covered.
- (v) Bonds are secured by tangible or intangible guarantees such as debentures or SBLC. In this case KAPU Kenya had intimated that the bank will get an SBLC. KAPU Kenya confirmed that a company called Ropack International was to provide an SBLC. The bid bond issued by the bank became invalid since there was no SBLC.
- (vi) M/s Erad Supplies and General Contracts Limited later sought a Performance Bond but the bank declined since Ropack International had not sent an SBLC as earlier agreed.
- (vii) The bank charged 0.5% tariff for the ninety days (90) of the bid bond.

The Committee made the following observations:-

- (i) The Bid Bond issued by I & M bank was null and void and therefore M/s Erad Supplies and General Contracts Limited obtained the contract on false documents since they did not have a valid bid bond.
- (ii) M/s Erad Supplies and General Contracts Limited and KAPU Kenya Limited were not customers of I & M bank and their net worth did not qualify them to execute a tender of 1 million US dollars.
- (iii) M/s Erad Supplies and General Contracts Limited were working through proxy and therefore did not merit to be issued with a bid bond worth one million US dollars.
- (iv) The bank did not undertake due diligence to ascertain the financial capacity of M/s Erad Supplies and General Contracts Limited and the existence of Ropack International, a company that was to issue an SBLC.
- (v) There was no confirmation/correspondence between I & M Bank Limited and Ropack International on the issuance of SBLC. What is purported to be a fax from Ropack International cannot be authenticated in terms of what constitutes a fax and therefore questionable.
- (vi) NCPB failed to confirm the conditions in the bid bond and should have rejected the bid bond on the basis of the conditions.

MINUTE NO. 139/2013 EVIDENCE BY HON. KIPRUTO ARAP KIRWA

The Hon. Kipruto arap Kirwa appeared before the Committee at Twelve O'clock. He informed the Committee that:-

- (i) In June 2004 the Government decided to import maize to fill in the gap occasioned by the failed crop due to prolonged drought.
- (ii) Due to shortage of maize there was a deficit of 2 million bags. The Ministries of Agriculture, Special Programmes and Finance presented a Cabinet Paper on the food situation in the country and the need to import maize.
- (iii) Bidders were invited to tender and thirty six bidders responded but only five met the threshold for importation of maize.
- (iv) The Government also decided to use restricted tendering so as to meet the shortfall and within ninety days before the next harvest.
- (v) Treasury was tasked to release funds but the funds were released in tranches. Funds were released after the duty free importation period.
- (vi) Four firms, Euroworld, Hala, Purma and Freba were issued with Letters of Credit. The fifth company M/s Erad Supplies and General Contracts Limited was still struggling to get the necessary documentation and finally managed to get the documents.
- (vii) The process started in August 2004 but by October, 2004 no maize had been imported.
- (viii) He was aware of a letter by Treasury indicating that Letter of Credit was not required for importation of the maize but the strategic grain reserve trustees decided that LC were essential in the process to facilitate the importation of maize and mitigate drought. Funds were not to be paid in advance but to be released upon the importation of the required standard and quantity of maize.
- (ix) Considering that LC's were issued to the other four companies there was no point of denying M/s Erad Supplies and General Supplies Limited the LC. The Government failed to issue M/s Erad Supplies and General Contracts Limited with instruments to facilitate importation.
- (x) He issued a paid advert in the local dailies to counter accusations and misconceptions from the press on the maize importation exercise and the then looming hunger in the country.
- (xi) The maize imported during the period was only 700 metric tons.
- (xii) He was never compromised on the matter and never recorded a statement with the EACC.

MINUTE NO. 140/2013

EVIDENCE: DUBAI BANK LIMITED

The management of Dubai Bank Limited re-appeared before the Committee at fifty five minutes past twelve O'clock.

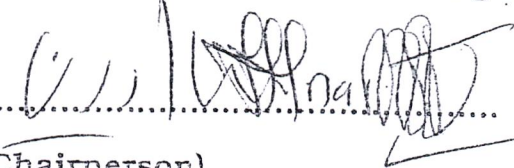
The Acting Managing Director, Dubai Bank informed the Committee that:-

- (i) The bank issued a Performance Bond of one million US dollars to M/s Erad Supplies and General Contracts Limited. The Performance Bond was duly signed by Messrs Hassan Zubeidi and Rajab Karume. The bond was issued on August 12, 2004.

- (ii) Kenya Commercial Bank wrote to Dubai Bank requesting confirmation on the performance bond.
- (iii) The security for the performance bond was the personal guarantees by the Directors of M/s Erad Supplies and General Contracts Limited.
- (iv) M/s Erad Supplies and General Contracts Limited opened an account at Dubai Bank on 10th August, 2004. The account was only activated on August 25, 2004 and three days later a bank overdraft of Kenya shillings One million was extended to M/s Erad Supplies and General Contracts Limited. The account operated by M/s Erad Supplies and General Contracts Limited at Dubai Bank had only four transactions.
- (v) The issuance of the performance bond was conditional to the issuance of a letter of credit.

MINUTE NO. 141/2013 ADJOURNMENT

The Vice Chairman adjourned the meeting at Twelve Minutes past Two O'clock.

Signed:.....  Date:..... 6/8/2013

(Chairperson)

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal counsel
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 142/2013 MEETING WITH THE CABINET SECRETARY,
MINISTRY OF AGRICULTURE, LIVESTOCK AND
FISHERIES

Mr. Felix Koskei, the Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries appeared before the Committee and briefed it as follows, that:-

- (i) The National Cereals and Produce Board is critical in the handling of strategic grain reserve. The Board currently has 2.3 million bags against a recommended 3 million bags. The Government intends to increase the Strategic Grain Reserve from 20% to 50% of consumption and also widen the strategic food basket to include other non grain food items.
- (ii) The lawyers have advised that money equivalent to what M/s Erad Supplies and General Contracts Ltd is claiming be set aside as a guarantee so that the operations of the NCPB are not affected. In this regard the Ministry of Agriculture has requested Treasury to set aside Kshs. 600 million for the claims of M/s Erad Supplies and General Contracts Ltd so as to safeguard the assets of NCPB.

(iii) The Government is planning to restructure NCPB so as to separate the commercial from the social aspect (SGR). The Ministry has engaged consultants to undertake a study in this regard.

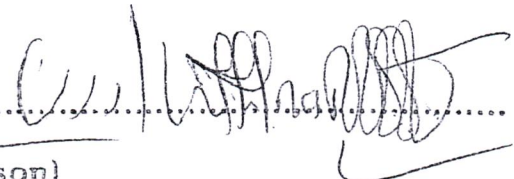
(iv) Maize importation was an SGR affair and the NCPB only acted as an agent in the process.

(v) The case involving NCPB and M/s Erad Supplies and General Contracts Ltd will be pursued to its conclusion while the Government takes measures to protect NCPB. The Government is not in a hurry to pay off the alleged debt and will continue pursuing the legal process.

(vi) Trusteeship of the SGR is now on the Cabinet Secretaries since the then Permanent Secretaries are no longer in office until new trustees are appointed.

MINUTE NO. 143 /2013 ADJOURNMENT

The Chairman adjourned the meeting at thirty five minutes past four o'clock.

Signed:..........
(Chairperson)

Date:.....6/8/2013.....



MINUTES OF THE THIRTIETH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON JULY 18, 2018 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 3.30 PM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemeta, M.P.
5. Hon. Dr. Oburu Oginga, M.P.
6. Hon. Bernard Munyoki Kitungi, M.P.
7. Hon. Chrisanthus Wamalwa, M.P.
8. Hon. Onesmus Njuki, M.P.
9. Hon. Bare Shill, M.P.
10. Hon. Ogutu John Omondi, M.P.
11. Hon. Francis Nyenze Mwanzia, M.P.
12. Hon. Sammy Mwaita, M.P.
13. Hon. Beatrice Nyaga, M.P.
14. Hon. Adan M. Nooru, M.P.
15. Hon. Wafula Wamunyinyi, M.P.
16. Hon. Irungu Kang'ata, M.P.
17. Hon. Abdullswamad Sheriff, M.P.
18. Hon. Johana Ngeno, M.P.
19. Hon. John M. Nyaga, M.P.
20. Hon. John Aluoch Olago, M.P.
21. Hon. Mithika Linturi, M.P.
22. Hon. Eng. John Kiragu, M.P.
23. Hon. Paul Otuoma, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Major (Rtd) John Waluke, M.P.
2. Hon. Njogu Barua, M.P.
3. Hon. Mwadeghu Thomas, M.P.
4. Hon. Mary Keraa Sally, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhowa	-	Research Officer

Ms. Eunice Lumallas - Legal counsel
Mr. Rogers Munyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 151/2013 MEETING WITH THE ATTORNEY GENERAL

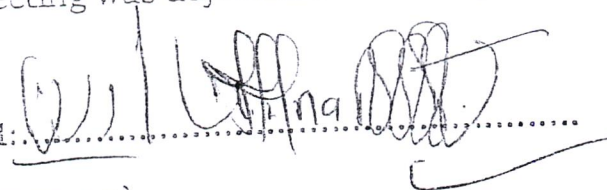
Ms. Muthoni Kimani from the office of the Attorney General appeared before the Committee and informed it that:-

- (i) The office of the Attorney General was never involved in the transaction between NCPB and M/s Erad Supplies and General Contracts Limited. The office was never requested for advice in drafting or scrutiny of the contract agreement.
- (ii) During the arbitration process, the National Cereals and Produce Board never consulted or involved the Attorney General.
- (iii) The intervention of the Attorney General was only after a request by the Permanent Secretary, Ministry of Special Programmes when NCPB was threatened to be auctioned. The Attorney General instituted objection proceedings in court that led to stay of execution with respect to grains and cereals under the Strategic Grain Reserves.
- (iv) The NCPB is a corporate body and therefore not immune to prosecution. Unlike Government, NCPB is not protected in law.
- (v) In attempts to save NCPB the Attorney General organized and held meetings with the Agency and relevant Ministries. The meeting resolved that the Ethics and Anti Corruption Commission be involved to investigate the matter and more so allegations of corruption and also to

- investigate and establish if the arbitral award was consistent with the law on contracts and if the arbitrator followed due process.
- (vi) The NCPB came in too late to seek legal advice from the Attorney General when they had already gone to court on the matter.
 - (vii) Ideally in contracts of huge magnitude, the State Corporations are obligated through the parent Ministry to seek the Attorney General's legal advice on the contract. The Attorney General should have been involved in the drafting and scrutiny of the contract agreement.
 - (viii) The issuance of Letters of Credit are for international suppliers and not when local suppliers are involved.
 - (ix) The Ministry of Agriculture from the correspondence seemed to be keen on extending the contract and the duty free period even when the contract itself had expired.
 - (x) The arbitral award should have placed the parties in the position they were before the contract and not the huge award. Public interest should also prevail in any case that the public good is involved.

MINUTE NO 152/2013 ADJOURNMENT

The meeting was adjourned at Twenty minutes past Four O'clock.

Signed:  Date: 6/8/2013

(Chairperson)

MINUTES OF THE THIRTY SECOND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 23RD JULY, 2013 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 11.30 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Bernard Munyoki Kitungi, M.P.
5. Hon. Chrisanthus Wamalwa, M.P.
6. Hon. Onesmus Njuki, M.P.
7. Hon. Bare Shill, M.P.
8. Hon. Ogutu John Omondi, M.P.
9. Hon. Francis Nyenze Mwanzia, M.P.
10. Hon. Adan M. Nooru, M.P.
11. Hon. Wafula Wamunyinyi, M.P.
12. Hon. Beatrice Nyaga, M.P.
13. Hon. Johana Ngeno, M.P.
14. Hon. Mwadeghu Thomas, M.P.
15. Hon. Dr. Oburu Oginga, M.P.
16. Hon. John M. Nyaga, M.P.
17. Hon. Mithika Linturi, M.P.
18. Hon. Korei Ole Lemein, M.P.

ABSENT WITH APOLOGY

1. Hon. John Aluoch Olago, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.
3. Hon. Njogu Barua, M.P.
4. Hon. Eng. John Kiragu, M.P.
5. Hon. Sammy Mwaita, M.P.
6. Hon. Irungu Kang'ata, M.P.
7. Hon. Paul Otuoma, M.P.
8. Hon. Mary Keraa Sally, M.P.



MINUTES OF THE THIRTY THIRD SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON WEDNESDAY 24TH JULY, 2018 IN COMMITTEE
ROOM NO. 7, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. – Chairperson
2. Hon. Cornelly Serem, M.P.
3. Hon. Bernard Munyoki Kitungi, M.P.
4. Hon. Chrisanthus Wamalwa, M.P.
5. Hon. Francis Nyenze Mwanzia, M.P.
6. Hon. Adan M. Nooru, M.P.
7. Hon. Mary Keraa Sally, M.P.
8. Hon. Njogu Barua, M.P.
9. Hon. Korei Ole Lemein, M.P.
10. Hon. Beatrice Nyaga, M.P.
11. Hon. John M. Nyaga, M.P.
12. Hon. Johana Ngeno, M.P.
13. Hon. Mwadeghu Thomas, M.P.
14. Hon. Major (Rtd) John Waluke, M.P.
15. Hon. Ogutu John Omondi, M.P.
16. Hon. Wafula Wamunyinyi, M.P.

ABSENT WITH APOLOGY

1. Hon. Kimani Ichung'wah, M.P.
2. Hon. Sammy Mwaita, M.P.
3. Hon. John Aluoch Olago, M.P.
4. Hon. Dr. Oburu Oginga, M.P.
5. Hon. Bare Shill, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Eng. John Kiragu, M.P.
3. Hon. Mithika Linturi, M.P.
4. Hon. Irungu Kang'ata, M.P.
5. Hon. Paul Otuoma, M.P.
6. Hon. Onesmus Njuki, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Esther Nginyo - Third Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhwa - Research Officer
Mr. Rogers Muniyoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director of Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Representative of Investments Secretary

MINUTE NO. 166/2013

MR. HASSAN ZUBEIDI, CHAIRMAN, DUBAI
BANK

The Committee noted that Mr. Hassan Zubeidi, Chairman, Dubai Bank had been invited to appear before it but had not complied. Members agreed that summons be issued to Mr. Zubeidi pursuant to Article 125 of the Constitution and Section 14 and 15 of The National Assembly (Powers and Privileges) Act on the powers of Parliament and its Committees to invite and also issue summons to witnesses to give evidence on a matter before it.

The Committee resolved that summons be issued to Mr. Zubeidi to appear before the Committee on Tuesday, 30th July, 2013 at 9.30 a.m. at Parliament Buildings, Committee Room No. 7.

MINUTE NO. 167/2013

M/S KAPU KENYA LIMITED

Members also agreed that the Managing Director, KAPU (K) Ltd be issued with summons to appear before the Committee on Tuesday, 30th July, 2013 at 3.00 p.m. at Parliament Buildings, Committee Room No. 7.

MINUTE NO. 168/2013

KENYA COMMERCIAL BANK

Members were informed that Kenya Commercial Bank had requested to appear before the Committee in two weeks, however, the Committee agreed that the Bank to be invited to appear before the Committee on Tuesday, 30th July, 2013

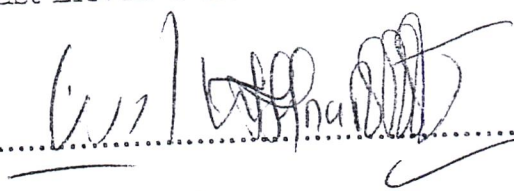
at 10.00 a.m.

MINUTE NO. 169/2013 VISIT TO THE NCPB PREMISES

Members agreed to visit the National Cereals and Produce Board premises to inspect and assess the impact of the case on the facility. The visit was scheduled for Wednesday, 31st July, 2013 at 11.00 a.m.

MINUTE NO. 170/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Ten Minutes past Eleven O'clock.

Signed:.......... Date: 6/8/2013

(Chairperson)

11

12

13

14

15

16

17

18

MINUTES OF THE THIRTY FOURTH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 26TH JULY, 2018 IN COMMITTEE ROOM NO. 7, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Cornelly Serem, M.P.
3. Hon. Bernard Munyoki Kitungi, M.P.
4. Hon. Chrisanthus Wamalwa, M.P.
5. Hon. Korei Ole Lemain, M.P.
6. Hon. Francis Nyenze Mwanzia, M.P.
7. Hon. Adan M. Nooru, M.P.
8. Hon. Mary Keraa Sally, M.P.
9. Hon. Ogutu John Omondi, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Onesmus Njuki, M.P.
12. Hon. John M. Nyaga, M.P.
13. Hon. Eng. John Kiragu, M.P.
14. Hon. Mwadeghu Thomas, M.P.
15. Hon. John Aluoch Olago, M.P.

ABSENT WITH APOLOGY

1. Hon. Kimani Ichung'wah, M.P - Vice Chairperson
2. Hon. Beatrice Nyaga, M.P.
3. Hon. Bare Shill, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Johana Ngeno, M.P.
3. Hon. Sammy Mwaita, M.P.
4. Hon. Mithika Linturi, M.P.
5. Hon. Irungu Kang'ata, M.P.
6. Hon. Dr. Oburu Oginga, M.P.
7. Hon. Paul Otuoma, M.P.
8. Hon. Njogu Barua, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejien - Principal Clerk Assistant I
Ms. Esther Nginyo - Third Clerk Assistant

Mr. Rogers Muryoki - Audio Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L. B. Achika - Ag. Director of Audit
Mr. P. D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Kizito Omukaga - Chief Inspector

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MINUTE NO. 171/2013 PROCEDURAL MATTER

The Chairman brought to the attention of the Members, the provisions of Article 125 of the Constitution on the powers of Parliament and any Committee to summon any person before it to give evidence and also the provisions of the Standing Order No. 184 which gives guidance on a Member who is adversely mentioned in a matter under deliberation by a Committee. The Standing Orders provide that such a Member shall not be present at any meeting deliberating on the matter except as a witness to adduce evidence.

MINUTE NO. 172/2013 EVIDENCE: HON. MAJ. (RTD) JOHN WALUKE

Hon. Major (Rtd) John Waluke, M.P. appeared before the Committee to give evidence on the indebtedness of the National Cereals and Produce Board. The witness chose not to take oath and indicated that he agreed with the earlier statements given by his co-directors and that he could not give any further information.

MINUTE NO. 173/2013 ANY OTHER BUSINESS

Members agreed that there was need to urgently investigate further on the National Hospital Insurance Fund, National Social Security Fund and Telkom Kenya on the issues affecting the institutions.

MINUTE NO. 174/2013 ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at Fifty Minutes past Ten O'clock.

Signed: Date: 6/3/2013
(Chairperson)

MINUTES OF THE THIRTY FIFTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON TUESDAY 30TH JULY, 2018 IN COMMITTEE ROOM
NO. 7, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT:

1. Hon. Adan Keyman, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemain, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Njogu Barua, M.P.
7. Hon. Johana Ngeno, M.P.
8. Hon. Dr. Oburu Oginga, M.P.
9. Hon. Mary Keraa Sally, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Bernard Munyoki Kitungi, M.P.
12. Hon. Chrisanthus Wamalwa, M.P.
13. Hon. Ogutu John Omondi, M.P.
14. Hon. Francis Nyenze Mwanzia, M.P.
15. Hon. Mwadeghu Thomas, M.P.
16. Hon. Adan M. Nooru, M.P.
17. Hon. John Aluoch Olago, M.P.
18. Hon. John M. Nyaga, M.P.
19. Hon. Paul Otuoma, M.P.
20. Hon. Onesmus Njuki, M.P.
21. Hon. Irungu Kang'ata, M.P.
22. Hon. Eng. John Kiragu, M.P.

ABSENT WITH APOLOGY

1. Hon. Bare Shill, M.P.
2. Hon. Beatrice Nyaga, M.P.
3. Hon. Major (Rtd) John Waiuke, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Abdullswamad Sheriff, M.P.
2. Hon. Sammy Mwaita, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Ernejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Third Clerk Assistant
Mr. Hassan Odhwa	-	Research Officer
Mr. Rogers Munyoki	-	Audio Officer

Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Ms. Theodora Gichana - Senior Assistant Inspector General
Mr. Kizito Omukaga - Chief Inspector

MINUTE NO. 175/2013 EVIDENCE BY MR. HASSAN ZUBEIDI, DUBAI BANK

Mr. Hassan Zubeidi, Chairman, Dubai Bank accompanied by Mr. Binay Dutta, Managing Director and Mr. Rajab Karume, Marketing Manager appeared before the Committee to give evidence on the alleged indebtedness of the National Cereals and Produce Board. He informed the Committee that:-

- (i) The Bank issued the Performance Bond to M/s Erad Supplies and General Contracts in compliance with Central Bank of Kenya Guidelines, International Chamber of Commerce Law and in line with the Prudential Guidelines which required the bank to be prudent while lending and that the decision making authority had considered all the risks involved before issuing it.
- (ii) The bank issued a workable instrument to M/s Erad Supplies and General Contracts and that no claims from the regulator, Central Bank of Kenya, were received indicating malpractice on issuance of the performance bond.
- (iii) The Performance Bond was issued against Personal Guarantees of the three Directors of M/s Erad Supplies and General Contracts.
- (iv) A draft copy of Contract was used to issue the Performance Bond which the bank felt it was enough proof on the part of M/s Erad Supplies and General Contracts.
- (v) The relationship between the bank and the directors of M/s Erad Supplies and General Contracts was that of bank-customer relationship.
- (vi) As the bank was issuing the Performance Bond, it took comfort in the fact that the National Cereals and Produce Board was a reputable institution, the nature of contract and that a Letter of Credit would soon follow.
- (vii) M/s Erad Supplies and General Contracts took an overdraft but failed to pay for the overdraft pursuant to which Dubai Bank filed a case against M/s Erad Supplies and General Contracts.

MINUTE NO. 176/2013 EVIDENCE BY THE CHIEF EXECUTIVE OFFICER,
KENYA COMMERCIAL BANK

The Chief Executive Officer, Kenya Commercial Bank Limited. Mr. Joshua Oigara, appeared before the Committee on 30th July 2013 to adduce evidence on the transaction between NCPB and M/s Erad Supplies and General Contracts Limited for the supply of maize in 2004.

He informed the Committee that:-

- (i) The National Cereals and Produce Board requested KCB to verify the validity and genuineness of various Performance Bonds issued in favour of suppliers by different banks. KCB confirmed the authenticity of the Performance Bonds for five of the firms that were awarded the contract to supply maize in 2004.
- (ii) Upon application by NCPB and receipt of 100% cash covers the bank issued letters of credit on behalf of NCPB in favour of three (3) suppliers. The Letter of Credit opened for Hala General Trading was partially utilized, while the Letters of Credit issued in favour of Freba Investments and Purma Holdings expired unutilized.
- (iii) In February 12, 2013 NCPB aggregate credit balance was Kshs. 1,649,237,518.15 whereas its liability to the bank stood at Kshs. 1,343,092,913.35. The bank set off the credit balance against the loans accounts in settlement.
- (iv) The bank was served with a Garnishee order on 12th February, 2013 requiring the bank to appear in court to show cause why it should not pay the decree holder the decretal amount of US \$ 6,140,859.80. Subsequent orders were issued to the bank directing that NCPB's fixed deposit account be attached and utilized to satisfy the decretal amount.
- (v) On February 21, 2013 the bank was served with two agency notices from Kenya Revenue Authority (KRA) requiring the bank to debit Kshs. 307,070,882 to KRA being tax due from NCPB. The Bank wrote to KRA advising that it was not possible to comply with the request due to competing interest between KRA and M/s Erad Supplies and General Contracts Limited with respect to the funds held in NCPB accounts and advised KRA to seek the courts intervention on the matter.
- (vi) On 27 February 2013 the bank received a garnishee order absolute requiring KCB to pay the sum of Kshs. 297,386,505 to M/s Erad Supplies and General Contracts Limited less legal costs and the decree nisi to be extended for the balance of the decree in the sum of Kshs. 255,290,877 for any future deposits that may be deposited by NCPB.

- (vii) On February 23, 2013 KCB was served with another agency notice requiring the bank to pay KRA the sum of Kshs. 156,600,000 being tax due from M/s Erad Supplies and General Contracts Limited. M/s Erad Supplies and General Contracts Limited served the bank with a Miscellaneous Application Order No. 87 of 2013 being a judicial review application by M/s Erad Supplies and General Contracts Limited which sought to quash the decision by KRA to attach the monies held in NCPB's account.
- (viii) KRA threatened to debit the bank's accounts at CBK for failure to comply, forcing the bank to seek a determination by the court as to whom the bank should pay the monies held and or order that the bank deposits the money with the courts. The bank ruled that the bank pay to M/s Erad Supplies and General Contracts Limited the amount held in compliance with the order of 17 February, 2013 and that the bank was absolved and discharged from any liability under the agency notices whose effect would be determined by the court in separate judicial review proceedings.
- (ix) The bank on 19 March 2013 complied with the court order and remitted Kshs. 297,386,505 into M/s Erad Supplies and General Contracts Limited's Advocate's accounts, Soita & Saende Advocates, held at Barclays Bank.
- (x) NCPB appealed the ruling of the High Court delivered on 28 June 2011 and on July 02, 2013 the Court of Appeal made a ruling that the status quo be maintained

MINUTE NO. 177/2013 COMMITTEE OBSERVATIONS

The Committee observed that Dubai Bank offered a financial instrument worth a million dollars to a client only known to them for 6 days since the opening of the account. Mr. Karume indicated to the Committee that he had known one of the Directors of M/s Erad Supplies and General Contracts (Mr. Jacob Juma) earlier through an opinion report from the National Bank of Kenya for road projects in Western Kenya.

The Committee further questioned the source of the draft contract and its use by Dubai Bank to issue the Performance Bond since NCPB depended on the performance bond to issue the contract as one of the conditions to be met. Further the validity of the issued performance bond was put to question considering that it was conditional.

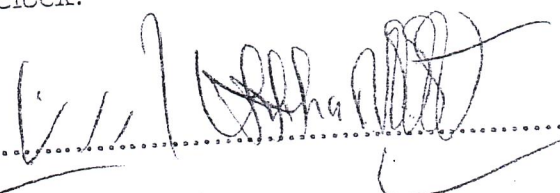
MINUTE NO. 178/2013 EVIDENCE BY MR. SUNDIP PATEL OF KAPU
KENYA

Mr. Sundip Patel, Managing Director, KAPU Kenya accompanied by Mr. Kimwara Kuria, Advocate appeared before the Committee to give evidence on NCPB's indebtedness. However, the Managing Director indicated that he had been out of the country and that he was not adequately prepared and sought the indulgence of the Committee to appear before it in a week's time.

After deliberations, the Committee considered Mr. Sundip Patel's request and its program to finalise the investigations and resolved to reschedule the appearance to Thursday, 1st August, 2013 at 5.00 pm.

MINUTE NO. 179/2013 ADJOURNMENT

There being no other business the meeting adjourned at Fifty Five minutes past Eleven O'clock.

Signed:  Date: 6/8/2013

(Chairperson)



11

12

13

14

15

16

17

MINUTES OF THE THIRTY SIXTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON WEDNESDAY 31ST JULY, 2013 NCPB BOARDROOM
AT 11.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. – Chairperson
2. Hon. Kimani Ichung'wah, M.P. – Vice Chairperson
3. Hon. Cornelly Serem, M.P.
4. Hon. Korei Ole Lemein, M.P.
5. Hon. Mithika Linturi, M.P.
6. Hon. Johana Ngeno, M.P.
7. Hon. Dr. Oburu Oginga, M.P.
8. Hon. Wafula Wamunyinyi, M.P.
9. Hon. Bernard Munyoki Kitungi, M.P.
10. Hon. Chrisanthus Wamalwa, M.P.
11. Hon. Ogutu John Omondi, M.P.
12. Hon. Francis Nyenze Mwanzia, M.P.
13. Hon. Mwadeghu Thomas, M.P.
14. Hon. Adan M. Nooru, M.P.
15. Hon. John Aluoch Olago, M.P.
16. Hon. John M. Nyaga, M.P.
17. Hon. Eng. John Kiragu, M.P.
18. Hon. Onesmus Njuki, M.P.
19. Hon. Abdullswamad Sheriff, M.P.
20. Hon. Irungu Kang'ata, M.P.

ABSENT WITH APOLOGY

1. Hon. Mary Keraa Sally, M.P.
2. Hon. Beatrice Nyaga, M.P.
3. Hon. Major (Rtd) John Waluke, M.P.
4. Hon. Bare Shill, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Paul Otuoma, M.P.
2. Hon. Njogu Barua, M.P.
3. Hon. Sammy Mwaita, M.P.

IN - ATTENDANCE

Hon. John Serut, M.P.
Hon. Justice Komei, M.P.
Hon. Silas Tiren, M.P.
Hon. Kareke Mbiuki, M.P.

NATIONAL ASSEMBLY

Ms. Esther Nginyo - Third Clerk Assistant
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. L.B. Achika - Ag. Director
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

INSPECTORATE OF STATE CORPORATIONS

Mr. Nelson Kweya

THE TREASURY

Mr. John Munge - Accountant 1

MINUTE NO. 180/2013 PRELIMINARIES

The Chairperson called the meeting to order and gave a brief on the purpose for the visit. He informed the meeting that due to the ongoing investigation on the NCPB indebtedness, the Committee found it prudent to visit the facility to witness the situation.

The Board Chairperson on his part welcomed the Committee and thanked the Members for the role they have played in saving the organization.

MINUTE NO. 181/2013 PRESENTATION BY THE MANAGING DIRECTOR

The Managing Director, NCPB made a presentation to the Committee. He informed the Committee that:-

- (i) The organization was established in 1939, as Maize and Produce Marketing Board. In 1985, the NCPB Act, Cap 338 was enacted to ensure proper regulation and control of grains and scheduled produce. The Government together with the European Union, World Bank and IMF commenced the Grains Sector reform programme to liberalize the sector in

1988. The Government further attempted unsuccessfully to commercialize the organization in 1996-1997.

- (ii) The Board operates a network of 110 depots / storage facilities consisting of silos, conventional stores / warehouses, supporting infrastructure such as dryers, cleaners, offices, houses.
- (iii) NCPB has a countrywide network in all the counties except in Tharaka Nithi where they have a buying centre.
- (iv) NCPB is mandated to undertake commercial commodity, provide grain related services, procure and manage grains on behalf of Government on agency basis and provide logistical support services on food security issues.
- (v) NCPB has achieved as a market outlet for grain produce, price stabilization, distribution of famine relief, maintenance of SGR and intervention during time of shortages, storage for produce through the WRS system and distribution of farm inputs especially fertilizer

MINUTE NO. 182/2013 IMPACT OF ERAD CASE TO THE NCPB

The Managing Director made a presentation on the adverse effects that Erad's case has had on NCPB which include;

- (i) Attachment of assets leading to loss of vehicles & equipment
- (ii) Suspension of banking facilities
- (iii) Boards inability to import fertilizer
- (iv) Suspension of purchase of commercial maize
- (v) Low volumes of trading activities from gross sales of Kshs 5.2 billion in 2011/2012 to Kshs. 0.5 billion in 2012/2013
- (vi) Delayed payments to suppliers and staff
- (vii) Quality of stock may be compromised due to inability to manage stocks
- (viii) Loss in turnover of Kshs. 4.7 billion

MINUTE NO. 183/2013 NCPB RESTRUCTURING OF NCPB

The Committee heard that the Government through the Ministry of Agriculture, Livestock & Fisheries had hired Ernst & Young, a consulting firm to assist in the restructuring of NCPB to enhance service delivery. The Terms of Reference for restructuring include;

- (i) Assessing the economic and financial viability and sustainability of the NCPB
- (ii) Identifying and assess potential additional functions that could be performed on commercial terms and contribute to NCPB's current mandate especially through WRS and Commodity Exchange.
- (iii) Assessing the expectations of the stakeholders given the new constitutional dispensation and advise on the viability and

appropriateness of the establishment of the NCPB facilities in the devolved counties.

- (iv) Recommending on the appropriate legislation that would facilitate and enhance the restructuring of the NCPB.

MINUTE NO. 184/2013 NCPB'S PLEA TO GOVERNMENT AND PUBLIC INVESTMENTS COMMITTEE

Due to the prevailing circumstances, the management made a plea to Government as follows:

- (i) Government to take over the matter since NCPB acted as an agent
- (ii) Government to open NCPB bank accounts
- (iii) Payment of all outstanding government debts to the tune of Ksh. 3.2 billion (i.e. subvention Ksh 2.2 billion and agency Ksh. 1 billion)
- (iv) Streamlining agency and business relationships between government and NCPB through restructuring programme
- (v) reviewing of the NCPB legal framework to make it relevant in a liberalized trading environment and protect strategic public assets

Further, the Management made pleas to the Public Investments Committee as follows;

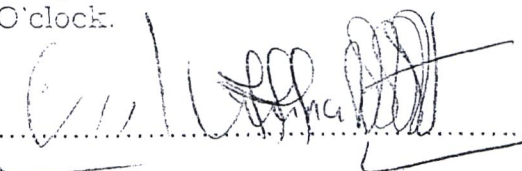
- To assist in fast-tracking the requests made to government
- To assist in resolving the M/s Erad matter

MINUTE NO. 185/2013 MEETING WITH NCPB STAFF

The Committee met with the members of staff of NCPB and thanked them for their dedication at work despite the hard conditions the organization was operating in. The Committee further assured the staff on its dedication to resolve the matter of NCPB Vs M/s Erad as the organization played a crucial role in food security of the country.

MINUTE NO. 186/2013 ADJOURNMENT

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

Signed:  Date: 6/8/2013
(Chairperson)

MINUTES OF THE THIRTY SEVENTH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, AUGUST 1ST, 2018 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 5.00 P.M.

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Firmant Ichung'wah, M.P. - Vice Chairperson
3. Hon. Dr. Oburu Oginga, M.P.
4. Hon. Bernard Munyoki Kitungi, M.P.
5. Hon. Bare Shill, M.P.
6. Hon. Ogutu John Omondi, M.P.
7. Hon. John M. Nyaga, M.P.
8. Hon. Onesmus Njuki, M.P.
9. Hon. Wafula Wamunyinyi, M.P.
10. Hon. Mwadeghu Thomas, M.P.
11. Hon. Mary Keraa Sally, M.P.
12. Hon. Abdullswamad Sheriff, M.P.
13. Hon. Johana Ngeno, M.P.
14. Hon. Beatrice Nyaga, M.P.
15. Hon. Paul Otuoma, M.P.
16. Hon. Adan M. Nooru, M.P.
17. Hon. Chrisanthus Wamalwa, M.P.

ABSENT WITH APOLOGY

1. Hon. John Aluoch Olago, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.

ABSENT WITHOUT APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Eng. John Kiragu, M.P.
3. Hon. Cornelly Serem, M.P.
4. Hon. Njogu Barua, M.P.
5. Hon. Irungu Kang'ata, M.P.
6. Hon. Korei Ole Lemein, M.P.
7. Hon. Mithika Linturi, M.P.
8. Hon. Francis Nyenze Mwanzia, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Principal Clerk Assistant I
Ms. Esther Nginyo - Third Clerk Assistant
Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal Counsel
Mr. Rogers Munyoki - Hansard Officer
Mr. Michael Njenga - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. Lameck Aohika - Ag. Director, Audit
Mr. P.D. Lugerah - Ag. Manager
Mr. H.M. Manegene - Senior Supervisor

THE NATIONAL TREASURY

Mr. John Munge - Accountant I

MINUTE NO. 187/ 2013 EVIDENCE: KAPU KENYA LIMITED

Mr. Sundip Jagdish Patel, Managing Director, KAPU Kenya Limited accompanied by Mr. Kimwaro Kuria, Advocate appeared before the Committee to adduce evidence on Joint Venture Agreement between M/s Erad Supplies and General Contracts Limited and KAPU Kenya Limited.

Mr. Sundip adduced evidence as follows, that:-

- (i) KAPU Kenya Limited entered into a Joint Venture Agreement with M/s Erad Supplies and General Contracts Ltd to supply 40,000 metric tons of maize in 2004.
- (ii) Kapu Kenya obtained a bid bond dated 4th August, 2004 from I & M Bank. Kapu and M/s Erad Supplies and General Contracts Ltd executed counter indemnities as required by the bank. They (KAPU) realized later that the bid bond was conditional after they had paid 0.5% of the cover.
- (iii) Ropack International gave a partial performance bond and the rest was given by Dubai Bank. KAPU Kenya Ltd did not however deal with Ropack International. Ropack only dealt with M/s Erad Supplies and General Contracts Ltd.
- (iv) KAPU Kenya did not operate an account with I & M Bank Limited in 2004. It was however not the first time that the company had obtained a performance bond from the bank.

- (v) The role of KAPU in the contract was limited to providing funds to M/s Erad Supplies and General Contracts Ltd to finance the maize importation and other financial needs of the company.
- (vi) In consideration for KAPU providing the funds, KAPU was to get a 1/3 of the share of the profits. M/s Erad Supplies and General Contracts Ltd gave a written undertaking to pay as agreed.
- (vii) KAPU gave Erad Kshs. 30 million as part of the financing agreement through the director of M/s Erad Supplies and General Contracts Ltd, Mrs. Grace Wakhungu. Mrs. Wakhungu acknowledged receipt of the money. She later issued post dated cheques as security.
- (viii) All the directors of M/s Erad Supplies and General Contracts Ltd jointly and severally guaranteed KAPU to ensure total performance of the terms of the agreement.
- (ix) M/s Erad Supplies and General Contracts Ltd changed and never involved KAPU in the tender when the contract was entered into. KAPU exited when they were advised by M/s Erad Supplies and General Contracts Ltd that the Government was to issue Letter of Credit.
- (x) After M/s Erad Supplies and General Contracts Ltd received the part payment, they dishonored their obligation necessitating the filing of HCC No. 31 of 2013 against M/s Erad Supplies and General Contracts Ltd claiming money under the said agreement. The case is pending before the court.
- (xi) No agreement has been entered between M/s Erad Supplies and General Contracts Ltd and Kapu to vary the Joint Venture Agreement.
- (xii) Kenya Revenue Authority raided their company, KAPU Kenya, and took all the documents in 2007.

MINUTE NO. 188/2013 COMMITTEE OBSERVATIONS

The Committee made the following observations that:-

- (i) The Joint Venture Agreement was entered into after the bid bond had been obtained.
- (ii) As per the Joint Venture Agreement KAPU was to provide capital finance in form of bank deposits, Letters of Credit and other forms of financing suitable to the venture alluded to.
- (iii) M/s Erad Supplies and General Contracts Ltd was to use the financial capital availed to purchase, procure the specified grains, pay for the cost of freight for the grains and pay for cost consequent upon or arising from

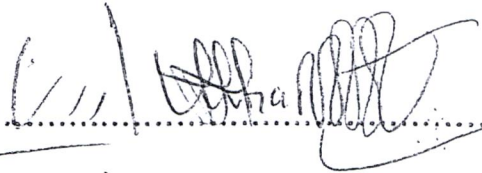
the tender requirements such as storage, insurance, transport and related Government levies and taxes.

(iv) The profits and losses, as per the Joint Venture Agreement, was to be shared between M/s Erad Supplies and General Contracts Ltd and KAPU on a ratio of 50:50 of the net proceeds of the tender and not the 1/3 claimed by Mr. Sundip.

(v) Contrary to Mr. Sundip submission that all the Directors of M/s Erad Supplies and General Contracts Ltd jointly and severally guaranteed to KAPU to ensure total performance of the terms of the agreement by executing a guarantee, only two of the Directors, Mr. John Walukhe and Grace Wakhungu signed the guarantee.

MINUTE NO. 189/2013 ADJOURNMENT

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

Signed: 

(Chairperson)

Date: 6/8/2013

44

MINUTES OF THE THIRTY EIGHTH SITTING OF THE PUBLIC
INVESTMENTS COMMITTEE HELD ON TUESDAY, AUGUST 6, 2013 AT
FLAMINGO BEACH HOTEL, MOMBASA AT 10.00 AM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Korei Ole Lemein, M.P.
4. Hon. Dr. Oburu Oginga, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Bare Shill, M.P.
7. Hon. Ogutu John Omondi, M.P.
8. Hon. John M. Nyaga, M.P.
9. Hon. Onesmus Njuki, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Mwadeghu Thomas, M.P.
12. Hon. Njogu Barua, M.P.
13. Hon. Cornelly Serem, M.P.
14. Hon. Francis Nyenze Mwanzi, M.P.
15. Hon. John Aluoch Olago, M.P.
16. Hon. Mary Keraa Sally, M.P.
17. Hon. Mithika Linturi, M.P.
18. Hon. Abdullswamad Sheriff, M.P.
19. Hon. Irungu Kang'ata, M.P.

ABSENT WITH APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Paul Otuoma, M.P.
3. Hon. Beatrice Nyaga, M.P.
4. Hon. Johana Ngeno, M.P.
5. Hon. Chrisanthus Wamalwa, M.P.
6. Hon. Major (Rtd) John Waluke, M.P.
7. Hon. Adan M. Nooru, M.P.
8. Hon. Eng. John Kiragu, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emején	-	Principal Clerk Assistant I
Mr. Joash Kosiba	-	Fiscal Analyst
Mr. Hassan Odhowa	-	Research Officer

Ms. Eunice Lumallas - Legal Counsel

KENYA NATIONAL AUDIT OFFICE

Mr. Lameck Achika - Ag. Director, Audit

THE NATIONAL TREASURY

Ms. Beatrice W. Gathirwa - Deputy Director, Investment.

Mr. John Munge - Accountant I

MINUTE NO. 190/ 2013 CONFIRMATION OF MINUTES

- Minutes of the eighth sitting were confirmed as true records of the deliberations and proposed by Hon. Bare Shill, MP and seconded by Hon. Korei ole Lemein, MP.
- Minutes of the ninth sitting were confirmed as true records of the deliberations and proposed by Hon. Thomas Mwadeghu, MP and seconded by Hon. Kimani Ichung'wah, MP.
- Minutes of the tenth sitting were confirmed as true records of the deliberations and proposed by Hon. Mary Sally, MP and seconded by Hon. John Nyaga, MP.
- Minutes of the eleventh sitting were confirmed as true records of the deliberations and proposed by Hon. Irungu Kangata, MP and seconded by Hon. John Omondi Ogutu, MP.
- Minutes of the twelfth sitting were confirmed as true records of the deliberations and proposed by Hon. Korei ole Lemein, MP and seconded by Hon. John Omondi Ogutu, MP.
- Minutes of the thirteenth sitting were confirmed as true records of the deliberations and proposed by Hon. Njogu Barua, MP and seconded by Hon. Dr. Oburu Oginga, MP.
- Minutes of the fourteenth sitting were confirmed as true records of the deliberations and proposed by Hon. Bernard Kirungi, MP and seconded by Hon. Mwadeghu Thomas, MP.

- Minutes of the fifteenth sitting were confirmed as true records of the deliberations and proposed by Hon. Wafula Wamunyinyi, MP and seconded by Hon. Cornelly Serem, MP.
- Minutes of the sixteenth sitting were confirmed as true records of the deliberations and proposed by Hon. Dr. Oburu Oginga, MP and seconded by Hon. Onesmus Njuki, MP.
- Minutes of the seventeenth sitting were confirmed as true records of the deliberations and proposed by Hon. Kimani Ichung'wah and seconded by Hon. Cornelly Serem, MP.
- Minutes of the eighteenth sitting were confirmed as true records of the deliberations as proposed by Hon. Koréi ole Lemein, MP and seconded by Hon. Hon. Mwadeghu Thomas, MP.
- Minutes of the nineteenth sitting were confirmed as true records of the deliberations and proposed by Hon. John Omondi Ogutu and seconded by Hon. Mwadeghu Thomas, MP.
- Minutes of the twentieth sitting were confirmed as true records of the deliberation and proposed by Hon. Kimani Ichung'wah and seconded by Hon. Francis Nyenze, MP.
- Minutes of the twenty first sitting were confirmed as true records of the deliberations and proposed by Hon. Bare Shill, MP and seconded by Hon. Francis Nyenze, MP.
- Minutes of the twenty second sitting were confirmed as true records of the deliberations and proposed by Hon. Cornelly Serem, MP and seconded by Hon. Mary Sally, MP.
- Minutes of the twenty third sitting were confirmed as true records of the deliberations and proposed by Hon Bare Shill, MP and seconded by Hon. Mithika Linturi, MP.
- Minutes of the twenty fourth sitting were confirmed as true records of the deliberations and proposed by Hon. Onesmus Njuki, MP and seconded by Hon. John Omondi, MP.

- Minutes of the twenty fifth sitting were confirmed as true records of the deliberations and proposed by Hon. Korei ole Lemain, MP and seconded by Hon. Francis Nyenze, MP.
- Minutes of the twenty sixth sitting were confirmed as true records of the deliberations and proposed by Hon. Wafula Wamunyinyi, MP and seconded by Hon. Irungu Kangata, MP.

MINUTE NO. 191/ 2013 MATTERS ARISING

Under Minute No. 49/2013 - Members observed that there was need to pursue the matter of Telkom Kenya. The Committee resolved to invite the Cabinet Secretaries, Ministry of Information, The National Treasury, Director General, Communication Commission of Kenya, Alcazar, Privatization Commission, Attorney General and the Auditor General.

Under Minute No. 79/2013 - Mr. Juma was claiming USD. 3.1 Million and interest charged at 12%.

Under Minute No. 79/2013 - Mr. Jacob Juma alleged that he would provide CCTV footage showing Mr. Bryan Yongo being bribed by Prof. Gideon Misoi.

Under minute No. 88/2013 - The Ethics and Anti-Corruption Commission had promised to provide the Committee with their investigations on the matter of M/s Erad Supplies and General Contracts Vs National Cereals and Produce Board. The committee directed that the report by EACC be submitted to the Committee.

Under Minute No. 120/2013 - The Committee noted with concern that the issue of land had taken long to conclude.

Under Minute No. 138/2013 - Mr. Katwa Kigen had submitted that the Committee is properly seized of the matter and that it is not sub judice.

MINUTE NO. 192/2013 ADJOURNMENT

The meeting was adjourned at Forty Five Minutes past One O'clock.

Signed:.....  Date: 

(Chairperson)

MINUTES OF THE THIRTY NINTH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON TUESDAY, AUGUST 6, 2013 AT FLAMINGO BEACH
HOTEL, MOMBASA AT 2.30 PM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Korei Ole Lemein, M.P.
4. Hon. Dr. Oburu Oginga, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Bare Shill, M.P.
7. Hon. Ogutu John Omondi, M.P.
8. Hon. John M. Nyaga, M.P.
9. Hon. Onesmus Njuki, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Mwadeghu Thomas, M.P.
12. Hon. Eng. John Kiragu, M.P.
13. Hon. Njogu Barua, M.P.
14. Hon. Cornelly Serem, M.P.
15. Hon. Francis Nyenze Mwanzia, M.P.
16. Hon. John Aluoch Olago, M.P.
17. Hon. Mary Keraa Sally, M.P.
18. Hon. Mithika Linturi, M.P.
19. Hon. Irungu Kang'ata, M.P.
20. Hon. Chrisanthus Wamalwa, M.P.

ABSENT WITH APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Paul Otuoma, M.P.
3. Hon. Beatrice Nyaga, M.P.
4. Hon. Johana Ngeno, M.P.
5. Hon. Major (Rtd) John Waluke, M.P.
6. Hon. Adan M. Nooru, M.P.
7. Hon. Abdullswamad Sheriff, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejen	-	Principal Clerk Assistant I
Ms. Esther Nginyo	-	Clerk Assistant III
Mr. Joash Kosiba	-	Fiscal Analyst

Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal Counsel

KENYA NATIONAL AUDIT OFFICE

Mr. Lameck Achika - Ag. Director, Audit

THE NATIONAL TREASURY

Ms. Beatrice W. Gathirwa - Deputy Director, Investment.
Mr. John Munge - Accountant I

MINUTE NO. 198/ 2013 CONFIRMATION OF MINUTES

- Minutes of the Twenty Seventh Sitting were confirmed as true records of the deliberations and proposed by Hon. Korei ole Lemein, MP and seconded by Hon. Cornelly Serem, MP.
- Minutes of the Twenty Eighth Sitting were confirmed as true records of the deliberations and proposed by Hon. Njogu Barua, MP and seconded by Hon. Dr. Oburu Oginga, MP.
- Minutes of the Twenty Ninth Sitting were confirmed as true records of the deliberations and proposed by Hon. Dr. Oburu Oginga and seconded by Hon. Mwadeghu Thomas, MP.
- Minutes of the Thirtieth Sitting were confirmed as true records of the deliberations and proposed by Hon. Korei ole Lemein, MP and seconded by Hon. Kimani Ichung'wah, MP.
- Minutes of the Thirty Second Sitting were confirmed as true records of the deliberations and proposed by Hon. John Omondi, MP and seconded by Hon. John Nyaga, MP.
- Minutes of the Thirty Third Sitting were confirmed as true records of the deliberations as proposed by Hon. Francis Nyenze, MP and seconded by Hon. Korei ole Lemein, MP.
- Minutes of the Thirty Fourth Sitting were confirmed as true records of the deliberations and proposed by Hon. Kimani Ichung'wah, MP and seconded by Hon. John Nyaga, MP.

- Minutes of the Thirty Fifth Sitting were confirmed as true records of the deliberations and proposed by Hon. Mithika Linturi, MP and seconded by Hon. Bare Shill, MP.
- Minutes of the Thirty Sixth Sitting were confirmed as true records of the deliberations and proposed by Hon. Mwadeghu Thomas, MP and seconded by Hon. Bare Shill, MP.

MINUTE NO. 194/2013 CONSIDERATION OF THE REPORT

The Committee considered the report and resolved as follows:-

- The report should build the case before bringing the recommendations.
- Documents submitted by M/s Erad Supplies and General Contracts Ltd including; The prayers to the court, Loss of profit, Storage costs, General damages for breach and Cost of arbitration be included in the report
- The litigation aspects with regard to the technical grounds that made NCPB lose all the cases be included in the report.

The Members deliberated as to whether the bid bond invalid or defective bid bond.

MINUTE NO. 195/2013 ADJOURNMENT

The meeting was adjourned at Fifty Minutes past Six O'clock.

Signed:.....  Date: 8/9/13

(Chairperson)

MINUTES OF THE FORTIETH SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON WEDNESDAY, AUGUST 7, 2013 AT FLAMINGO
BEACH HOTEL, MOMBASA AT 9.30 AM

PRESENT

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

ABSENT WITH APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejien - Principal Clerk Assistant I
Ms. Esther Nginyo - Clerk Assistant III

Mr. Joash Kosiba - Fiscal Analyst
Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal Counsel

KENYA NATIONAL AUDIT OFFICE

Mr. Lameck Achika - Ag. Director, Audit

THE NATIONAL TREASURY

Ms. Beatrice W. Gathirwa - Deputy Director, Investment.
Mr. John Munge - Accountant I

MINUTE NO. 196/ 2013 CONSIDERATION OF THE REPORT

The Committee agreed that the title of the report will be;

"Special Report of the Public Investments Committee on the Contract between National Cereals and Produce Board and M/s Erad Supplies and General Contracts for Supply of Maize."

The Committee further agreed on the following issues to be included in the report;

- (i) The need to set aside money equivalent to the claim be allocated to cushion NCPB as the legal issues are being pursued.
- (ii) The question on why NCPB opened Letters of Credit for local firms importing maize to sell for them.
- (iii) Distribution of money from the garnishee order.
- (iv) The fact that had the I&M Bank not signed the invalid bond, M/s Erad Supplies and General Contracts Ltd could not have been awarded the tender and the issue of breach of contract could not have arisen.
- (v) The fact that the Permanent Secretary, Treasury wrote a letter on 28th August, 2004, two days after the contract signing. The PS was a member of the Strategic Grain Reserve Trustees that decided on the use of the Letter of Credit. The letter appears to have been done to clear his name.

MINUTE NO. 197/2013 ADJOURNMENT

The meeting was adjourned at Thirty Two Minutes past One O'clock.

Signed:.....
(Chairperson)



Date: 12/9/10.....

MINUTES OF THE FORTY FIRST SITTING OF THE PUBLIC INVESTMENTS
COMMITTEE HELD ON WEDNESDAY, AUGUST 7, 2013 AT FLAMINGO
BEACH HOTEL, MOMBASA AT 2.30 PM

PRESENT:

1. Hon. Adan Keynan, M.P. - Chairperson
2. Hon. Kimani Ichung'wah, M.P. - Vice Chairperson
3. Hon. Korei Ole Lemein, M.P.
4. Hon. Dr. Oburu Oginga, M.P.
5. Hon. Bernard Munyoki Kitungi, M.P.
6. Hon. Bare Shill, M.P.
7. Hon. Ogutu John Omondi, M.P.
8. Hon. John M. Nyaga, M.P.
9. Hon. Onesmus Njuki, M.P.
10. Hon. Wafula Wamunyinyi, M.P.
11. Hon. Mwadeghu Thomas, M.P.
12. Hon. Eng. John Kiragu, M.P.
13. Hon. Njogu Barua, M.P.
14. Hon. Comelly Serem, M.P.
15. Hon. Francis Nyenze Mwanzia, M.P.
16. Hon. John Aluoch Olago, M.P.
17. Hon. Mary Keraa Sally, M.P.
18. Hon. Bethika Linturi, M.P.
19. Hon. Irungu Kang'ata, M.P.
20. Hon. Chrisanthus Wamalwa, M.P.
21. Hon. Paul Otuoma, M.P.
22. Hon. Beatrice Nyaga, M.P.
23. Hon. Johana Ngeno, M.P.
24. Hon. Adan M. Nooru, M.P.
25. Hon. Abdullswamad Sheriff, M.P.

ABSENT WITH APOLOGY

1. Hon. Sammy Mwaita, M.P.
2. Hon. Major (Rtd) John Waluke, M.P.

IN - ATTENDANCE - NATIONAL ASSEMBLY

Mr. Nicholas Emejien - Principal Clerk Assistant I
Mr. Joash Kosiba - Fiscal Analyst

Mr. Hassan Odhwa - Research Officer
Ms. Eunice Lumallas - Legal Counsel

KENYA NATIONAL AUDIT OFFICE

Mr. Lameck Achika - Ag. Director, Audit

THE NATIONAL TREASURY

Ms. Beatrice W. Cathirwa - Deputy Director, Investment.
Mr. John Munge - Accountant I

MINUTE NO. 198/ 2013 CONSIDERATION OF THE REPORT

The Committee noted the following;

- (i) That the Government had forecasted drought and famine in August, 2004 and yet there was a bumper harvest in September/October, 2004. There could have been a conspiracy within government to create an artificial shortage of maize so as to allow selected companies to "import" maize.
- (ii) Contrary to Mrs. Grace S. Wakhungu's evidence that they decided to get Performance Bond in another bank due to time constraints I & M Bank had stated that they declined to issue the performance bond due to failure of by M/s Erad Supplies and General Contracts and alleged international partners to provide Stand By Letter of Credit.
- (iii) M/s Erad Supplies and General Contracts Ltd had liquidity problem and therefore sought KAPU Kenya to assist in financing them to secure the bid bond.

MINUTE NO 199 /2013 ADOPTION OF THE REPORT

The Committee adopted the report as proposed by Hon. Francis Nyenze, MP and seconded by Hon. Kimani Ichung'wah, MP.

MINUTE NO. 200/2013 ADJOURNMENT

The meeting was adjourned at Fifty Eight Minutes past Six O'clock.

Signed:.....  Date: 16/9/13

(Chairperson)

ANNEXES

ANNEX 1



MINISTRY OF AGRICULTURE
Office of the Permanent Secretary

Telegraphic Address "MINAG" NAIROBI

Telex: 22766

Telephone: 718870/9

Fax: 711149

When replying please quote:



KILIMO HOUSE
CATHEDRAL ROAD
P.O. Box 30028
NAIROBI

Ref. No: MOA/LDM/F.10/9A Vol.IV/39

Date: 19th July, 2004

Mr. Tirop Kosgey,
Managing Director,
National Cereals and Produce Board,
NAIROBI.

CONFIDENTIAL

CA/BS

Dear *Tirop,*

**IMPORTATION OF 2 (TWO) MILLION BAGS OF MAIZE BY
NATIONAL CEREALS AND PRODUCE BOARD (NCPB)**

Following the declaration of the current drought as a National disaster by His Excellency the President, the government has authorized the National Cereals and Produce Board to import 2(two) million bags of white maize for SGR and famine relief. A further 2(two) million bags will be imported by the private sector in order to cover the shortfall of 4 million bags.

To facilitate this exercise, the government has authorized waiver of 25% duty on imported white maize from 1st July to 31st September, 2004. This duty will be reinstated once the required quantity of maize is imported, but not later than 1st October, 2004, when main harvesting of maize commences. The authority on waiver is being finalized by the treasury in the normal manner.

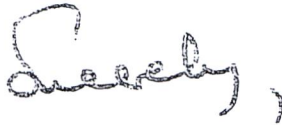
As the government agent, you are now mandated to proceed and exercise the above-mentioned decision. As you undertake this exercise it is imperative to ensure that maize imported into the country is of good quality and fit for human

CONFIDENTIAL

consumption. In this respect you need to liaise with KEPHIS and KEBS to ensure compliance with the quality standards.

You should also ensure that all the necessary import regulations and procurement procedures are strictly adhered to.

Yours



JAMES E. O. ONGWAE, EBS, OGW
PERMANENT SECRETARY

c.c. **Amb. Francis K. Muthaura, MBS**
Permanent Secretary, Secretary to the
Cabinet and Head of the Public Service
Harambee House
P.O. Box 30510
NAIROBI

Mr. Dave M. Mwangi, OGW
Permanent Secretary
Provincial Administration and
National Security
Office of the President
Harambee House
P.O. Box 30510
NAIROBI

Mr. Joseph K. Kinyua, EBS
Permanent Secretary
Ministry of Finance
P.O. Box 30007
NAIROBI

Mr. Mahboub M. Maalim, OGW
Permanent Secretary
Special Programmes
Office of the President
Harambee House
P.O. 30510
NAIROBI

CONFIDENTIAL

ANNEX 2

ANNEX VI

LIST OF FIRMS WHO
SUBMITTED BIDS

NATIONAL CEREALS AND PRODUCE BOARD
TENDER FOR THE SUPPLY OF WHITE MAIZE 2004-2005 FY
ANALYSIS OF TENDERS RECEIVED ON THURSDAY 5TH AUGUST AT 12.30 PM

ANNEX II

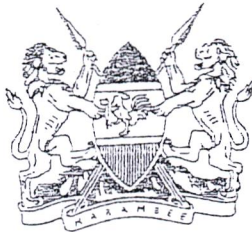
Item No. (a)	Tender Serial No. (b)	Name Of Supplier/Firm (c)	Item Description (d)	Quantity M/T Kgs (e)	Unit Price Kshs/US\$ (f)	Country Of Origin (g)	Submission of bid bond (h)
1		Inreratrira Grains Ltd	W/Maize	90,000.00	215.75	USA/SA	Not Submitted
2		Offshore maritime		180,000.00	243.50	SA	Not Submitted
3		Aembur Farm Ltd		30,000.00	245.00	SA	Submitted
4		La and Vaa		3,000.00	206.00	Uganda	Not Submitted
5		Hala Trading Co. Ltd		90,000.00	229.00	SA	Submitted
6		Glencoae Ltd		25,000.00	245.00	SA	Submitted
7		Mana Styles Ltd		180,000.00	192.00	Brazil	Submitted
8		Louis Drefus		180,000.00	245.00	SA	Not Submitted
9		Akaba Investments		10,000.00	245.00		Not Submitted
10		Versa Trade International		90,000.00	229.00	SA	Submitted
11		Seaboard Overseas		66,000.00	189.75	USA	Not Submitted
				25,000.00	213.75	SA	Not Submitted
				25,000.00	216.50	SA	Not Submitted
				25,000.00	218.75	SA	Not Submitted
12		Free State		180,000.00	280.00	SA	Not Submitted
13		J. Mwangi Macharia		30,000.00	234.50	SA	Not Submitted
14		Vas Distributors		30,000.00	225.00	USA/SA	Submitted
15		Prima Holdings Ltd		180,000.00	189.00	Brazil	Submitted
16		Fraba Investments Ltd		180,000.00	190.00	SA	Submitted
17		Erad Supplies Ltd		85,000.00	233.00	Ethiopia	Submitted
18		African Trade Supplies		25,000.00	211.00	USA	Not Submitted
19		Wanizame Ltd		180,000.00	225.25	SA	Submitted
20		Kashyo Ltd		180,000.00	-	SA	Not Submitted
21		Devjan and Kashajvi Ltd		15,000.00	240.00	SA	Submitted
22		Rambo Supplies		180,000.00	209.00	USA/SA	Submitted
23		Nairobi Calibration Services		180,000.00	208.00	Various	Submitted
24		Exom		130,000.00	205.55	USA	Submitted
25		Devji and Meiji Bros		5,000.00	224.00	SA	Submitted
26		Remington Agencies		25,000.00	224.00	SA	Not Submitted
27		Shewood International		50,000.00	225.00	SA	Submitted
28		Nortline Ltd		2,000.00	1,400.00	Zimbabwe	Submitted
29		Supernatural T. company		5,000.00	260.00	Zambia	Submitted
30		Export Trading company Ltd		20,000.00	247.00	India/Ethiopia	Submitted
31		Agri Commercial Finance		12,500.00	251.80	Tanzania	Submitted
32		Mombasa maize millers		90,000.00	229.20	SA	Submitted
33		Probela trading company Ltd		14,000.00	232.50	Ethiopia	Submitted
34		Holbud Ltd		90,000.00	227.63	SA	Submitted
35		Kentre Commodities		25,000.00	213.00		Not Submitted
36		Rift Investments		-	1,850.00		Not Submitted

ANNEX 3

ANNEX 3

REPUBLIC OF KENYA
MINISTRY OF FINANCE

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 330426
Telephone: 338111
When replying please quote



THE TREASURY
P.O. Box 30007
NAIROBI
KENYA

PPD.2/20/10/(103)

23rd July, 2004

The Permanent Secretary
Ministry of Agriculture
P.O. Box 30028
NAIROBI.

Fax 720586

RE: AUTHORITY FOR EMERGENCY PURCHASE OF WHITE
MAIZE THROUGH RESTRICTED TENDERING
PROCEDURE – QUANTITY 2,000,000 BAGS OF 90KG (180,000
MT)

Your letter Ref.MOA/LDM/F.10/9A/VOL.III/38 of 20th July, 2004 refers.

Approval is hereby given to use restricted tendering method in the purchase of the maize as requested.

Also considering that the shortage of food has been declared a National emergency you may choose to use direct procurement procedure as provided for by regulation 35(1) of the Exchequer and Audit (Public Procurement) Regulations, 2001 in which case the tendering period will not apply.

If you chose restricted tendering procedure you may reduce the tendering period from 28 days to 7 days as requested subject to there being no objection from any of the candidates invited to participate in the tender.

These approvals are subject to necessary approvals by your tender committee of the choice of procurement method and the contract award.

Kenneth

Kenneth N. Mwangi

For: PERMANENT SECRETARY/TREASURY

ANNEX 4

SECRET

ANNEX VII

RESULTS OF THE TECHNICAL
EVALUATION

REPORT OF THE TECHNICAL EVALUATION COMMITTEE CONSTITUTED TO ANALYSE TENDERS FOR THE SUPPLY OF 180,000 METRIC TONNES (2 MILLION BAGS) OF WHITE MAIZE

1.0 COMPOSITION OF THE TECHNICAL EVALUATION COMMITTEE (TEC)

The Main Tender Committee during its sitting on 5th August 2004, appointed twelve (12) members of the Technical Evaluation Committee (TEC) consisting of officers from NCPB and one official each, from the Ministries of Agriculture, Office of the President (Special Programmes) and the Ministry of Finance. The appointed TEC members are as follows:-

1. Mr. J. C. Boit - Research & Development Manager (NCPB) – Chairman
2. Mr. B.O. Umba - Operations Manager (NCPB)
3. Mr. R. K. Langat - Technical Manager (NCPB)
4. Mr. P. N. Mutua - Chief Financial Analyst (NCPB)
5. Mr. C. K. Ngelechey - Deputy Chief Accountant (NCPB)
6. Mr. H. K. Kipyego - Chief Supplies Officer (NCPB)
7. Mr. P. M. Karanja - Senior Legal Officer (NCPB)
8. Mr. J. M. Gichuru - Budget Accountant (NCPB)
9. Mr. J. C. Oduor - Senior Agricultural Officer – (Ministry of Agriculture)
10. Mr. P.T.C. K'Opiyo – Ministry of Finance
11. Mr. K.J. Ochwando - Procurement Officer (Office of the President - SP.)
12. Mr. W.K. Korir - Import /Export Co-ordinator (NCPB) - Secretary

2.0 TERMS OF REFERENCE OF TEC

The Main Tender Committee assigned the following terms of reference to the Technical Evaluation Committee:-

- a) Examine the bids received
- b) Evaluate the bids
- c) Prepare a report and to give recommendations
- d) Complete the report on or before Monday 9th August, 2004 by 5.00 p.m.

3.0 SALE OF TENDER DOCUMENTS

The TEC noted that a total of 81 firms/candidates purchased tender documents as per attached Annex I

4.0 BIDS RECEIVED

The TEC confirmed that out of the eighty one (81) firms/candidates who purchased tender documents, only thirty six (36) firms submitted their bids as per attached Annex II. The committee further noted that Bid number 8 which had been treated as from Louis Dreyfus was actually from Akaba Investments while bid number 3b was from Louis Dreyfus. The committee therefore allocated a new number to Bid number 8b to read number 36.

5.0 CRITERIA USED FOR EVALUATION

The TEC guided by the tender document used the following criteria:

5.1 Preliminary Examination

These levels of criteria consisted of a number of non - scoring compulsory requirements. These were as follows: -

- i) Submission of Bid Bonds
- ii) Submission of maize sample
- iii) Purchase of tender document
- iv) Validity of Bid Bonds
- v) Validity of price Offer

27 firms/candidates who did not meet the preliminary evaluation criteria were found to be non - responsive and were therefore disqualified as per Annex III attached.

5.2 Other evaluation criteria

Nine (9) firms who were found to be responsive were subjected to further evaluation. Two evaluation criteria namely, Technical and Financial were adopted. Of the two criteria, Technical was apportioned 60 points while Financial was apportioned 40 points.

The points assigned to each parameter were as follows:-

5.2.1 Technical Evaluation

PARAMETERS	MAXIMUM POINTS	POINTS ALLOCATION	POINTS
Quality	20	Phytosanitary Certificate	10
		Quality Certificate ²	10
Quantity (180,000 MT)	5	1 - 36,000 MT	1
		36,001 - 72,000 MT	2
		72,001 - 108,000 MT	3
		108,001 - 144,000 MT	4
		144,001 - 180,000 MT	5
GMO certificate	5	GMO Certificate	5
Validity of offer	5	0 - 29 days	0
		30 or more days	5
Lead time - from notification of award of tender	20	1 st two weeks = ratio of quantity/180,000 x 20 points	
		2 nd two weeks = ratio of quantity/180,000 x 15 points	
		3 rd two weeks = ratio of quantity/180,000 x 10 points	
		4 th two weeks = ratio of quantity/180,000 x 5 points	
Business profile *	5	All three documents:	5
		Any two documents	3
		Any one document	1
TOTAL	60		

* 1) Past business experience in the supply of maize 2) Registration Certificate
3) reference business contacts for the past three years.

5.2.2 Financial Evaluation

PARAMETERS	MAXIMUM POINTS	POINTS ALLOCATION	POINTS
Price	20	Pro-rated as per Annex 4 attached	
Bid Bond:	5	i) Bank	3
		ii) 5% of Bid	2
		iii) Other Securities	2
Terms of Payment:	10	i) Sight	5
		ii) 60 days	+1
		iii) 90 days	+2
		iv) 120 days	+3
		v) 180 days	+5
* Provision of Audited Accounts	5	Audited accounts	5
		Non-provision of Accounts	0
TOTAL	40		

6.0 EVALUATION AND RANKING OF BIDS

The nine (9) responsive bids were subjected to thorough scrutiny, awarded points and eventually ranked as indicated in Annexes V to VII but summarised below.

	B I D.	Bidder	Quantity MT	Bid Price USD/TON	Total Points on Technical	Total Points on Financial	Grand Total	Ranking / Position
a	b	c	d	e	f	g	h	
1	5	Hala General Trading LCC	90,000	229.00	45.50	24.20	69.70	1
2	9	Versatrade International CC	90,000	229.00	38.20	24.20	62.40	2
3	16	Erad Supplies & General Contracts Limited	85,000	233.00	27.50	24.00	51.50	3
4	14	Purma Holdings Ltd.	180,000	189.00	16.00	35.00	51.00	4
5	15	Freba Investments	180,000	190.00	20.30	28.60	49.50	5
6	7	Mano Styles Limited	180,000	192.00	16.00	26.20	42.20	6
7	18	Wanizame Trading (PTY) Ltd	180,000	225.75	21.70	20.00	41.70	7
8	31	Mombasa Maize Millers Ltd	90,000	222.00	14.00	25.80	39.80	8
9	24	Debvji Meghji & Eros. Ltd.	5,000	222.00	12.30	20.80	33.10	9

7.0 COMMENTS / OBSERVATIONS

7.1 Hala General Trading LLC

The firm met all the necessary conditions.

7.2 Versatrade International CC / Euroworld commodities Ltd.

The firm met all the necessary conditions.

7.3 Erad Suppliers & General Contractors Ltd.

The committee noted that the firm did not submit Phytosanitary Certificate and they had quoted the highest price among the top ranked nine (9) firms.

7.4 Purma Holdings Ltd.

The committee noted that M/s Purma Holdings Limited quoted the lowest evaluated bid price of US\$. 189.00 per metric ton. However the Phytosanitary Certificate issued was not authenticated and was issued by South African government whereas the source of maize was indicated to be from Brazil. It was also noted that the phytosanitary certificate issued was same as the one presented by Mano Styles Limited.

In addition, Purma Holdings Ltd. did not specify the delivery period as contained in the tender document but indicated that the total quantity of 180,000 metric tons would arrive within 60 days.

7.5 Freba Investments

The committee noted that the firm quoted second lowest price of US\$ 190.00 per M/ton but did not attach the quality and Phytosanitary Certificates. It was also noted that the Bid bond did not bear a letter head, reference number and seal from the issuing Bank. They did not also furnish the previous Business contacts/ reference.

7.6 Mano Styles Limited

The committee noted that M/s Mano Styles Limited quoted the third lowest evaluated bid price of US\$. 192.00 per metric ton. However the Phytosanitary Certificate issued was not authenticated and was issued by South African government whereas the source of maize was indicated to be from Brazil. It was also noted that the phytosanitary certificate issued was same as the one presented by Purma Holdings Limited indicated in 7.4 above.

In addition, Mano Styles Ltd. did not specify the delivery period as contained in the tender document but indicated that the total quantity of 180,000 metric tons would arrive within 60 days.

7.7 Wanizame Trading (PTY) Ltd.

The committee noted that Wanizame Trading (PTY) Ltd. did not submit the quality and Phytosanitary Certificates as well as the GMO certificate.

7.8 Mombasa Maize Millers

The committee observed that the quality and Phytosanitary certificates presented were issued in June and July 2003 respectively.

7.9 Devji Meghji & Bros. Ltd.

The committee noted that the firm did not submit the quality certificate. The quantity of 5,000 metric tons were far much below the 180,000 metric tons required and the lead time was too low.

8.0 RECOMMENDATIONS

Based on the Technical and Financial evaluations, and taking into considerations the need to ensure timely arrival and to spread the risk, the TEC therefore recommends that the tender to supply 130,000 metric tons of white maize be awarded to the following seven (7) firms having fulfilled the conditions contained in the tender document and apportioned as follows:-

- 1) M/s. Hala General Trading LLC, having been ranked number 1, by obtaining 69.7 points out of 100 points, be awarded the tender to supply 40,000 metric tons of white maize, being total quantity bided, at their quoted bid price of US\$. 229.00 per metric ton; Cost and Freight free out (CFRfo) Mombasa.
- 2) M/s. Versatrade International CC / Euroworld Commodities Ltd. , having been ranked number 2, by obtaining 62.4 points out of 100 points, be awarded the tender to supply the balance quantity of 40,000 metric tons at their quoted price of US\$. 229.00 per metric ton, Cost and Freight free out (CFRfo) Mombasa.
- 3) M/s. Erad Supplies & General Contracts Ltd. , having been ranked number 3, by obtaining 51.50 points out of 100 points, be awarded the tender to supply the balance quantity of 20,000 metric tons at their quoted price of US\$. 233.00 per metric ton, Cost and Freight free out (CFRfo) Mombasa.
- 4) M/s. Purma Holdings Ltd. , having been ranked number 4, by obtaining 51.00 points out of 100 points, be awarded the tender to supply the balance quantity of 20,000 metric tons at their quoted price of US\$. 189.00 per metric ton, Cost and Freight free out (CFRfo) Mombasa.
- 5) M/s. Freba Investments, having been ranked number 5, by obtaining 49.50 points out of 100 points, be awarded the tender to supply the balance quantity of 20,000 metric tons at their quoted price of US\$. 190.00 per metric ton, Cost and Freight free out (CFRfo) Mombasa.

6) M/s. Mano Styles Limited , having been ranked number 6, by obtaining 42.20 points out of 100 points, be awarded the tender to supply the balance quantity of 20,000 metric tons at their quoted price of US\$. 192.00 per metric ton, Cost and Freight free out (CFRfo) Mombasa.

7) M/s. Wanizame Trading (PTY) Ltd. , having been ranked number 7, by obtaining 41.70 points out of 100 points, be awarded the tender to supply the balance quantity of 20,000 metric tons at their quoted price of US\$. 225.75 per metric ton, Cost and Freight free out (CFRfo) Mombasa.

The delivery schedule by each firm for the entire quantity of 180,000 metric tons is as follows:

B I D.	Bidder	1 st - 2 weeks (MT)	2 nd - 2Weeks (MT)	3 rd - 2weeks (MT)	4 th - 2weeks (MT)
1	Hala General Trading	-	40,0000	-	-
2	Versatrade International C/C/ Euroworld commodities ltd.	-	25,000	15,000	-
3	Erad Supplies & General Contractis Limited	20,000+ 10,000	-	20,000	20,000
4	Purma Holdings Lfd.	-	-	20,000	20,000
5	Freba Investments	20,000+10,000	-	-	-
6	Mano Styles Limited	-	-	-	20,000
7	Wanizame Trading (PTY) Ltd.	20,000	-	-	-
	Total	60,000 ✓	65,000 ✓	55,000 35,000	40,000 20,000

(1) Price
(2) Risk
(3)

	NAME	SIGNED	DATE
1	Mr. J. C. Boit		9/8/04
2	Mr. B.O Umba		9-8-04
3	Mr. R. K. Langat		9-8-04
4	Mr. P. N. Mutua		9/8/007
5	Mr. C. K. Ngelechey		9/8/2000
6	Mr. H. K. Kipyego		9/8/04
7	Mr. P. M. Karanja		9/8/04
8	Mr. J. M. Gichuru		9/8/04
9	Mr. J. O. Oduor		9/8/04
10	Mr. P. T. O. K'Opiyo		
11	Mr. K.J. Ochwando		9/8/04
12	Mr. W.K. Korir		9/8/04

NATIONAL CEREALS AND PRODUCE BOARD
STATUS REPORT ON PURCHASES OF THE TENDER DOCUMENTS
IMPORTATION OF 180,000 METRIC TONS OF WHITE MAIZE
AS AT THURSDAY 5TH AUGUST, 2004

ANNEX I

NO	TENDER NO	MISC. RECEIPT	NAME OF COMPANY	TELEPHONE NUMBER	FAX / BOX NO.	PERSON TO CONTACT
1	2	348450	Mombasa Maize Millers Co.	555859	17630 (box)	Munir
2	3	348701	Kitale Industries Ltd	555859	616 (box)	Munir
3	4	348704	United Millers Ltd	218770	610 (box)	Sunil
4	5	348705	Erad Supplies & General Contract Ltd	2714419	73523 -00100	Grace Wahungu
5	1	348702	Concordia Agri	722517226	of Singapore	Horseman
6	6	348707	Export Trading Co. Ltd	2722626/7	57661(box)	PR Patel
7	7	348706	Agri Commodity & Finance FZE	2724086	Nairobi	Alok
8	8	348708	Jumala Services Ltd	2729460 722730176	28411	Jacob Juma
9	9	348709	Euro World Commodities Ltd	2087953338	334/336 (box)	Mr. Kolecha
10	10	348710	Hala General Trading	97143348595	5561(box)	J. Shindo
11	11	348703	Golden Sparrow Trading Ltd	722205452 41230220	81515 (box) Msa	Sabrina
12	12	348711	Freba Investments	722516813 821229	60988 (box) Nrb	Mudumba
13	13	348712	Cross Border Ltd	225716 (Msa)	86613 Msa	Husein
14	14	348713	Derchad Keshakji (K) Ltd	221957	80478 (Box)	Kirit.Kahabal
15	15	348714	Hydery P. Ltd	228647 / 22837	82576 (box) Msa	Mohammed
16	16	348715	Holdbud Ltd	0207488 4910	66 Leman street London E.I	Mohammed
17	17	348716	Intertrading Africa Pty Ltd	722518353	1720 Parklands 2121 R.S.A	Henry Nyanjau
18	18	348717	Remington Agency Ltd	534554 / 5	49726-00100	Anwar Pandya
19	19	348718	Mea Ltd	860103 or 861531	44480 (box)	Mr. Muriuki E.M
20	20	348719	Devji Megji & Bros Ltd	339684	62 (box) Ruiru	J. Patel
21	21	348720	Inter Africa grains Pty Ltd	0722 450995	368 Strubens Valley, 1735 South Africa	P. Otieno
22	22	348721	Portland Company Import Export Cereals Ltd	5551 92222733	701105 vargas Neto	Karimjee Abdulali
23	23	348722	Mombasa raha Ltd	244720, 868109	427 (box) Msa	Mohammed Abdalla
24	24	348723	Protoil (PTY)	218308/9	51565 (Water front 8002 Cape Town, South Africa)	Mike Dunford
25	25	348724	Midgulf International Grains Food	215511	Division Jordan A5402	Henry Nanta
26	26	348725	Eurotech Ltd	4451879	41711-00100	Titus Mwingi
27	27	348726	Solar Tags Rural Credit Ltd	240423 or 7213930	75939 (box)	J. Cheruryot
28	28	348727	Louis Deylus Ltd	733727663	Fax: 041-223936 222141 34250 (box)	Henryx

TENDER NO	MISC. RECEIPT	NAME OF COMPANY	TELEPHONE NUMBER	FAX / BOX NO.	PERSON TO CONTACT
29	348729	Jaffer & Jaffer Trading Ltd		0181515 (ncx) Msa	
30	348730	Sea Board Overseas Trading	0722-411843	27745 (Box)	Paul
31	348731	Zynmart Group of Companies	820587	4000 -00506	Mr. Saliman
32	348732	Maina Coffee	7542068130	1901csole road lot 208 eihart Indiana 21P 46514	Esther Kamu
33	348733	Awal Ltd	533505/533705 722354405	17983 (box)	Emmanual Mukua
34	348734	G.S.L Africa Investments	2725679	Private Bag x-033 R. Vona 2128 Johannesburg S.A	Joe Kamau
35	348736	Pack. Barrow (PVT) Ltd	2730739	17 Law Avenue, Milton Port Harare	Mr. Ojwang
36	348737	Tropella Trading Co. Ltd	722335413 41220270	36 byron Avenue Vicosia, Cyprus	Mr. Lino
37	348738	Kawar Kalyan	722222040	85562 (box)	Michamood Taki
38	348739	Uzia Agencies	2715998 721850149	6714 (box)	Yuvialis
39	348741	P.S.M Financial Services Ltd	313940	South Africa	Advocate Jane
40	348740	VAS Distributors	533858	78449 (box)	Mbugua
41	348742	Blashara Petroleum Products Ltd	254-020213914 0722-257779 0722-311456	38408-00200	Mr. Stanley M. Angaine or Ahmed Sheikh Dahir
42	348743	American Traders Bureau	722331228	14717 -00100	Paul Murimi
43	348744	The Commodity House Ltd	722415438	Msa	Isack Kalwa
44	348754	Allied International Marketing Co-orporation	720877022	380 maple avenue, suite no. 205 vianna va 22130 USA	Abdi Dire
45	348746	Purma Holdings LTD	240048 722524353	63772 Nrb	Mary /Ruth
46	348747	Manostyles Ltd	243594 722521212	46240 (box) Nrb	Winni Nyawera
47	348748	Premier Flour Mills	531313/534960 722203105	59307 (box) Nrb	Shahid
48	348749	E.L. Johnsons Sons & Mowat	722771763	17983 (box)	Fazal
49	348750	African Trade Consultants	734405328 571196	44684 -00100 (box)-Nrb	Kabaria
50	348701	Tarjan Investments	229021 722371396	88999 (box) Msa	Nuru Kassim
51	348752	Exon Investments Ltd	722519570	40772-00100 (box) Nrb	Jetna
52	348753	Kasoyo Ltd	722772920	1320 (box) Eld	Timothy Chesira
53	348755	Oddasy Investmnet	721851505	57853 (box) Nbi	Orida
54	348756	Afro- Impex Coop Ltd	722842345	52408-00200 (box) Nbi	Fred Mungai
55	348757	Messrs Mchamed Enterprise		260660 (Box) Dafa salani	Gulam Davii

TENDER NO	MISC. RECEIPT	NAME OF COMPANY	TELEPHONE NUMBER	FAX / BOX NO.	PERSON TO CONTACT
56	56	348758 National Rice	733597829	66661-00800 (Box) Nbi	Peter Hurst
57	57	348759 Wanizana Trading and Absa Ba	324170968	126651013 fax Fourways Water Ford Office Park (RSA)	Stefan Pretorius
58	58	348760 Jardine Investment Lid Sort Centre	722511971	1536-00600 (box) Nbi	H.S Marwa
59	59	348761 Glencore International AgBaarermtt Strasse	2711007	77 CH 6341BAAR Switzerland (Box)	Pradip Patel
60	60	348762 Noia Farm Co Ltd	0721 679530	56869 (box) Nbi	Cyrus Irungu
61	61	348763 Nobel Enterurises Ltd	315509 722519419	69217 (Box) Nbi	Kimeli
62	62	348764 Louis Drais Africa	721294924	73030 (box) Nbi	Abdalla Mustafa
63	63	348765 United Overseas Ltd	447765142859 Tel	442089527696 (Fax) UK	Thakker
64	64	348766 Welwyr Int. Ltd	971507701508 tel	97165341923 (Fax)	Harry
65	65	348767 Grains of the World	2828670	851-00606 (box) Nbi	Paul
66	66	348769 Talis Holdings	2570953	65002 (box) Nbi	Grace
67	67	348769 Dzan Barclay EA Ltd	537551	4062-00106 (box) Nbi	Yvonne
68	68	348770 Super Natural Trading Co Ltd	27654	254203748571 (Fax)	Jimmy Mutinda
69	69	348771 Pida Investment	51215473	15851 (Box) Nku	W. Kerario
70	70	348772 Garryann Traders	720901469	78211 (Box) Nrb	Daniel Munene
71	71	348773 Salat & Hassan	722919240	15107 -00100	Mohamed Hassan
72	72	348774 Akaba Investments Ltd	011-605214	99562 (Box) Mombasa	Fred Atayo
73	73	348775 Northline Ltd	722709933	50690 (Box) Nrb	John Mugo
74	74	348776 Nairobi Calibration services Ltd	722710512	11108 (box)	Mr. Ali
75	75	348777 Rombo Supplies	722524479	5479 (Box)	Mr. Rono
76	76	348778 Free State Enterprises Co. Ltd	721921274	43309 (Box)	Mr. Milton Kangagi
77	77	348779 Asmbu Farm Co.	722854455	62296 (Box) Nrb	Sharif
78	78	348780 Zambia High Commission / Fra	0722 960053	48741 (Box) Nairobi	Henry Kapacha
79	79	348781 John Mwangi Macharia	722785555	1755 Kilale	John Mwangi
80	80	348782 Ahmednasir Abdikadir & Co. Advocate	02-217886 02-215422	57731 (Box) Nrb 213582 (Fax)	Ahmed Nasir
81	81	348783 Offshore Maritime Ltd	722712877 733727633	00515050 (Box)	David / Mbogori

NATIONAL CEREALS AND PRODUCE BOARD
TENDER FOR THE SUPPLY OF WHITE MAIZE 2004-2005 FY
ANALYSIS OF TENDERS RECEIVED ON THURSDAY 5TH AUGUST AT 12.30 PM

ANNEX II

m	Tender Serial No. (b)	Name Of Supplier/Firm (c)	Item Description (d)	Quantity M/T Kgs (e)	Unit Price Kshs/US\$ (f)	Country Of Origin (g)	Submission of bid bond (h)
1		Interafrica Grains Ltd	W/Maize	90,000.00	215.75	USA/SA	Not Submitted
2		Offshore Maritime		180,000.00	243.50	SA	Not Submitted
3		Aembu Farm Company		90,000.00	245.00	SA	Submitted
4		Solar Tea and Rural Credit		3,000.00	206.00	Uganda	Not Submitted
5		Hala General Trading (LLC)		90,000.00	229.00	SA	Submitted
6		Glencoae Ltd		25,000.00	245.30	SA	Submitted
7		Mano Styles Ltd		180,000.00	192.00	Brazil	Submitted
8		Akoba Investments		10,000.00	245.00		Not Submitted
9		Versatrade International CC		90,000.00	229.00	SA	Submitted
10		Seaboard Overseas		66,000.00	189.75	USA	Not Submitted
		Option 1		25,000.00	213.75	SA	Not Submitted
		Option 2		25,000.00	216.50	SA	Not Submitted
		Option 3		25,000.00	213.75	SA	Not Submitted
11		Free State Enterprises Ltd		180,000.00	280.00	SA	Not Submitted
12		John Mwangi Macharia		30,000.00	234.50	SA	Not Submitted
13		vas Distributors		30,000.00	225.00	USA/SA	Submitted
14		Purma Holdings Ltd		180,000.00	189.00	Brazil	Submitted
15		Freba Investments Ltd		180,000.00	190.00	SA	Submitted
16		Erad Supplies and General Contracts Ltd		85,000.00	231.00	Ethiopia	Submitted
17		Africa Trade Supplies		25,000.00	211.00	USA	Not Submitted
18		Wanji Trading Ltd		180,000.00	225.75	SA	Submitted
19		Kase		180,000.00		SA	Not Submitted
20		Devji Mehanji Kashajvi Ltd		15,000.00	240.00	SA	Submitted
21		Romb		180,000.00	209.00	USA/SA	Submitted
22		Nairobi		180,000.00	208.00	Various	Submitted
23		Exon Investments Ltd		180,000.00	205.55	USA	Submitted
24		Devji Mehanji and Eros Ltd		5,000.00	222.00	SA	Submitted
25		Remington Agency		25,000.00	224.00	SA	Not Submitted
26		Sherwood International		50,000.00	225.00	SA	Submitted
27		Northline Ltd		2,000.00	1,400.00	Zimbabwe	Submitted
		Supernatural Trading Company		5,000.00	260.00	Zambia	Submitted
29		Export Trading company Ltd		20,000.00	244.70	India/Ethiopia	Submitted
30		Agri Commodities & Finance-FZE		12,500.00	241.80	Tanzania	Submitted
31		Mombasa Maize Millers		90,000.00	229.20	SA	Submitted
32		Irobela trading company Ltd		14,000.00	232.50	Ethiopia	Submitted
33		Horbud Limited		90,000.00	227.63	SA	Submitted
34		Kentmere Commodities		25,000.00	213.00		Not Submitted
35		Rift Investments			1,850.00		Not Submitted
36		Louis Dreyfus					Not Participated

NATIONAL CEREALS AND PRODUCE BOARD

UN-RESPONSIVE BIDS NOT EVALUATED

Twenty seven (27) firms submitted un-responsive as indicated below:-

	Bid No.	Bidder	Did not Purchase Tender Document	Did not submit Bid Bonds	Did not submit Samples	Submitted invalid Bid Bonds	Price Validity below required 30 days
a	b	c	d	e	f	g	h
1	1	Inter Africa Grains Ltd		✓			✓
2	2	Offshore Maritime		✓			
3	3	Aembo Farm Company			✓		
4	4	Solar Tea and Rural Credit		✓	✓		
5	6	Glencoe International Ltd.		✓			✓
6	8	Akaba Investments			✓	✓	
7	10	Seaboard Overseas		✓		✓	
8	11	Free State Enterprises Ltd.		✓	✓		
9	12	John Mwangi Macharia		✓			
10	13	Vas Distributors		✓	✓	✓	
11	17	Africa Trade Suppliers.			✓		
12	19	Kasoyo Ltd.		✓	✓		
13	20	Devchand Kesinaji Ltd.				✓	✓
14	21	Rombo Suppliers					✓
15	22	Nairobi Calibrations Services					✓
16	23	Exon Investment Ltd.		✓			
17	25	Remington Agency Ltd.		✓			
18	26	Snowood International			✓		
19	27	Northline Ltd.			✓	✓	
20	28	Supernatural Trading Co.			✓		
21	29	Export Trading Co. Ltd.					✓
22	30	Agri Commodities and Finance. FZE					✓
23	32	Irobella Trading Company Ltd.				✓	
24	33	Hobud Ltd.				✓	
25	34	Kentmere Commodities	✓	✓	✓		
26	35	Rift Investments	✓	✓	✓		
27	36	Louis Drevius					

Annex IV

Schedule for awarding Marks on
Price Quotations

	Price US\$/MT	Points Awarded
1	189.00	20.00
2	190.47	19.60
3	191.94	19.20
4	193.41	18.80
5	194.88	18.40
6	196.35	18.00
7	197.82	17.60
8	199.29	17.20
9	200.76	16.80
10	202.23	16.40
11	203.70	16.00
12	205.17	15.60
13	206.64	15.20
14	208.11	14.80
15	209.58	14.40
16	211.05	14.00
17	212.52	13.60
18	213.99	13.20
19	215.46	12.80
20	216.93	12.40
21	218.40	12.00
22	219.87	11.60
23	221.34	11.20
24	222.81	10.80
25	224.28	10.40
26	225.75	10.00
27	227.22	9.60
28	228.69	9.20
29	230.16	8.80
30	231.63	8.40
31	233.10	8.00
32	234.57	7.60
33	236.04	7.20
34	237.51	6.80
35	238.98	6.40
36	240.45	6.00
37	241.92	5.60
38	243.39	5.20
39	244.86	4.80
40	246.33	4.40
41	247.80	4.00

NATIONAL CEREALS AND PRODUCE BOARD ANNEX V

TECHNICAL EVALUATION OF BIDS RECEIVED IN RESPECT OF TENDER FOR THE SUPPLY OF 190,000 metric tons (2,000,000 BAGS) OF WHITE MAIZE

B	I	D	HO	a	b	c	d	e	f	g	h	i	j	k
NAME OF BIDDER				QUANTITY M/TONS	QUALITY	QUANTITY	GMO	VALIDITY OF OFFER	LEAD TIME	BUSINESS PROFILE	TOTAL SCORES	REMARKS		
TOTAL SCORES / POINTS ---->				20	20	5	5	5	20	5	60			
1	5		Itala General Trading (L.L.G.)	90,000	20	3	5	5	7.50	5	45.5			
2	7		Mauo Styles Limited	120,000	-	5	-	5	5.00	1	16.0			
3	9		Versavade International CC/ Euroworld commodities Ltd.	90,000	20	3	-	5	5.20	5	38.2			
4	14		Pjuma Holdings Limited	180,000	-	5	-	5	5.00	1	16.0			
5	15		Freba Investments	180,000	-	5	-	5	9.90	1	20.9			
6	16		Eratt Supplies & General Contracts Limited	85,000	10	3	-	5	8.50	1	27.5			
7	18		Wanizame Trading (PTY) Ltd	100,000	-	5	-	5	10.70	1	21.7			
8	24		Devji Meghji & Bros. Ltd.	5,000	10	1	-	0	0.30	1	12.3			
9	31		Monibasa Maize Millers Limited	90,000	-	3	-	5	5.00	1	14.0			

NAME	DESIGNATION	SIGNATURE	DATE
1 Mr. J.C. Boit	R&DM	[Signature]	9/18/04
2 Mr. B.O. Umba	OM	[Signature]	9/18/04
3 Mr. R.K. Langat	TM	[Signature]	9/18/04
4 Mr. P.N. Mutua	CFA	[Signature]	9/18/04
5 Mr. C. K. Ngelechey	DCA	[Signature]	9/18/04
6 Mr. H.K. Kipyego	CSO	[Signature]	9/18/04
7 Mr. P.M. Karanja	SLO	[Signature]	9/18/04
8 Mr. J.M. Gichuru	BA	[Signature]	9/18/2004
9 Mr. J. O. Odior	SAO (MOA)	[Signature]	09/23/04
10 Mr. P.T.O. Kopyo	Treasury	[Signature]	9/18/2004
11 Mr. J. J. Ochwandu	PO (OP)	[Signature]	9/18/04
12 Mr. W.K. Korir	IEC	[Signature]	9/18/04

NATIONAL CEREALS AND PRODUCE BOARD

FINANCIAL EVALUATION OF BIDS RECEIVED IN RESPECT OF TENDER FOR THE SUPPLY OF 100,000 METRIC TONS (2,000,000 BAGS) OF WHITE MAIZE

S/N	NAME OF BIDDER	QUANTITY (MTONS)	BID PRICE C&F MSA	SCORE	AUDITED ACCOUNTS	BID BONDS		TERMS OF PAYMENTS					TOTAL SCORES	REMARKS
						WORKING	OTHER	SIGHT	60 DAYS	90 DAYS	120 DAYS	180 DAYS		
	TOTAL SCORES													
1	Hala General Trading	50,000	229.00	5.20	5	3.00	2.00	5	1	2	3	5	40	
2	Kaano Styles Limited	100,000	192.00	19.20	5	3.00	2.00	5					24.20	
3	Verisafab International CC / Euroward Corn Products Ltd	50,000	229.00	9.20	5	3.00	2.00	5					26.20	
4	Petra Holdings Ltd	100,000	189.00	20.00	5	3.00	2.00	5					24.20	
5	Fresh Investments	100,000	190.00	19.60	5	3.00	2.00	5					35.00	
6	Erol Supplies & General Contracting Limited	100,000	235.00	9.00	5	3.00	2.00	5					20.00	
7	Wanacome Trading (PTY) Ltd	100,000	225.75	10.00	5	3.00	2.00	5					20.00	
8	Deep Height & Bros. Ltd	5,000	222.00	10.80	5	3.00	2.00	5					25.00	
9	Isoribusa Flour Mills Limited	50,000	222.00	10.80	5	3.00	2.00	5					25.00	

S/N	NAME	DESIGNATION	SIGNATURE	DATE
1	Mr J.C. Bui	R&D M	[Signature]	9/8/08
2	Mr B.O. Umaga	DM	[Signature]	9/8/08
3	Mr E.K. Langaal	T/A	[Signature]	9/8/08
4	Mr P.H. Luwisa	CFA	[Signature]	9/8/08
5	Mr C. E. Njigache	DCA	[Signature]	9/8/08
6	Mr H.R. Mngobane	CSO	[Signature]	9/8/08
7	Mr P.M. Parrella	S/O	[Signature]	9/8/08
8	Mr J.A. Gachani	BA	[Signature]	9/8/08
9	Mr J.C. Gichor	S/O (MOA)	[Signature]	9/8/08
10	Mr P.T. Otiyayo	Treasurer	[Signature]	9/8/08
11	Mr K.J. Ochieng'o	PO (OF)	[Signature]	9/8/08
12	Mr W.K. van	SEC	[Signature]	9/8/08

NATIONAL CEREALS AND PRODUCE BOARD

ANNEX VII

RANKING OF BIDS RECEIVED FOR MAIZE TENDER WHICH CLOSED ON 5TH AUGUST 2004

B I D D E R N O	a b c	d	e	f	g	h	i
	NAME OF BIDDER	QUANTITY MTONS	BID PRICE C&F MISA	TOTAL TECHNICAL SCORE	TOTAL FINANCIAL SCORE	RANK/ POSITION	REMARKS
5	Hala General Trading	90,000	229.00	45.50	24.20	1	
9	Versatrade International CC / Euroworld Commodities Ltd.	90,000	229.00	38.20	24.20	2	
16	Erad Supplies & General Contracts Ltd.	85,000	233.00	27.50	24.00	3	
14	Purma Holdings Ltd	180,000	189.00	16.00	35.00	4	
15	Freba Investments	180,000	190.00	20.90	28.60	5	
7	Mano Styles Limited	130,000	192.00	16.00	26.20	6	
18	Wanizame Trading (PTY) Ltd	180,000	225.75	21.70	20.00	7	
31	Mombasa Maize Millers Limited	90,000	222.00	14.00	25.80	8	
24	Devji Mleglji & Bros. Ltd	5,000	222.00	12.30	20.80	9	

	NAME	DESIGNATION	SIGNATURE	DATE
1	Mr. J.C. Boit	R&D M		9/8/04
2	Mr. B.O. Umba	OM		9/8/04
3	Mr. R.K. Langat	TM		9/8/04
4	Mr P. N. Mutua	CFA		9/8/04
5	Mr. C. K. Ngelechey	DCA		9/8/04
6	Mr. H.K. Kipvego	CSO		9/8/04
7	Mr. P.M. Karanja	SLO		9/8/04
8	Mr. J.M. Gichuru	BA		9/8/04
9	Mr. J. O. Oduor	SAO (MCA)		9/8/04
10	Mr. P.T.O. K'apiyo	Treasury		9/8/04
11	Mr. K.J. Ochwaranda	PO (CP)		9/8/04
12	Mr. W.K. Korir	IEC		9/8/04

0

0

ANNEX 5

ANNEX A 5

WARE IMPORT CONTRACT

BETWEEN

NATIONAL CEREALS & PRODUCE BOARD

AND

TRAD SUPPLIES & GENERAL
CONTRACTS LIMITED

DATED 26TH AUGUST, 2004

NATIONAL CEREALS AND PRODUCE BOARD

CONTRACT BETWEEN THE NATIONAL CEREALS AND PRODUCE BOARD AND M/S. ERAD SUPPLIES & GENERAL CONTRACTS LIMITED FOR SALE OF 40,000 METRIC TONS OF WHITE MAIZE

THIS CONTRACT is made this ^{26th} day of ^{August} 2004
between National Cereals and Produce Board of post office
Box 30588, Nairobi (hereinafter called 'BUYER') of the one
and Erad Supplies & General Contracts Limited of
Post Office Box 73523 - 00200 Nairobi, Kenya (herein after
called the 'SELLER') of the other part.

WHEREAS the Seller has offered to sell and the Buyer has
agreed to purchase maize on terms and conditions hereinafter
contained:-

NOW IT IS HEREBY AGREED BY AND BETWEEN THE
PARTIES AS FOLLOWS:-

1.0 QUANTITY

The Seller shall sell and ship to the Buyer forty thousand metric
tons (40,000 M / tons) of white maize.

2.0 QUALITY SPECIFICATION

The maize to be supplied shall be fit for human consumption
and shall conform to the quality specifications shown in table
below:



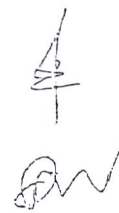
Quality Parameters

	Parameters	Grade K2 or better
1	Moisture Content	13.5% Max.
2	Foreign matter /Broken Grain (1% foreign matter)	3.0% Max.
3	Pest damaged grains	3.0% Max.
4	Rotten diseased and discoloured grains	2.0% Max.
5	Other coloured grains	1.0% Max.
6	Total defects - (pest damaged grains, rotten, diseased and discoloured and discoloured grains)	8.0% Max.
7	Crop year - 2003 / 2004 - free from live insect infestation	
8	Total Aflatoxin (with B1 5% maximum)	(10 PPB) Max.

The quality and weight of the maize shall be determined by an internationally recognised inspection company (e.g. Cotecna, SGS, Bivac etc) who shall be engaged by the Seller at its cost to carry out the physical inspection of the maize prior to loading. The inspection company shall issue the Weight and quality Certificates confirming the weight and quality as per KEBS Standard respectively.

3.0 PRICE

The Unit price of white maize is US\$. 229.00 per metric ton (in Bulk or in 50kgs bags in containers) Cost and Freight (C&F) free out basis, Mombasa Port as per INCOTERMS 2000.



4.0 SHIPMENT / DELIVERY

- 4.1 The consignment of 40,000 metric tons of maize shall be shipped so as to arrive at the port of Mombasa within four (4) weeks from the date of signing of Contract. The Seller shall endeavour to ship the maize earlier than the above dates.
- 4.2 The Seller must notify the Buyer promptly of the Chartering of the Vessel. The Seller must include the following details in the notification letter:
- i) The name of the Vessel
 - ii) The flag
 - iii) The age of the vessel
 - iv) the number of holds
 - v) The cubic capacity of each hold
 - vi) The quantity of the grain to be loaded in each hold
 - vii) The position (location) of the vessel at the time of Chartering
 - viii) The estimated time of loading the maize at loading port
 - ix) The estimated time of departure at Loading port
 - x) The estimated time of arrival (ETA) of the vessel at the loading port.

The Seller must keep the Buyer informed on a daily basis about the vessel's loading progress. On completion of loading the Seller must give the Buyer **Notice of vessel's Appropriation** which shall indicate the following details:-

- a) Quantity Loaded - gross/net weight in metric tons
- b) Bills of Lading number & date
- c) Date and time the vessel completed loading
- d) The date the vessel sailed off the loading port
- e) Estimated time of arrival (ETA) of vessel at the port of Mombasa

4.3 The vessel must be capable of entering and berthing alongside quay at the port of Mombasa and have a maximum

4
 SW

of 560 feet LOA and Draft of 30 feet (SWAD). The nominated vessel must be a dry cargo vessel or bulk carrier with fully bleeding wing tanks, geared or gearless, self trimming and must have at least two (2) units of in built off-loading cranes which may be used for off-loading operations at no cost to the Buyer. The vessel must not be older than 15 years and classed not lower than 100A1 in Lloyds Register or top classification of other equal Registers. In case the vessel is older than 15 years of age the over-age insurance premium shall be for the account of the Seller.

4.4 The entire Cargo of forty thousand (40,000) metric tons must be shipped in a maximum of three (3) vessel.

5.0 DISCHARGE

5.1 Notice During Voyage

The Captain through telefax transmission must give three (3) notices to the Buyer 7 days, 96 hours, and 24 hours prior to the arrival of the vessel at the port of Mombasa.

5.2 Notice of readiness and commencement of laytime

Notification of the vessel's readiness to discharge at the port of Mombasa shall be delivered in writing to the office of the Buyer's Shipping Manager's Office located at Mahindi Street off Shimanzi Road, Mombasa, between 0800 Hours and 1700 hours on any day except Sundays, Saturdays and Public Holidays (SSHEX) even if used (EIU).

Such notices shall be delivered after arrival of the vessel at the Customary anchorage. After receipt of notice of readiness and acceptance by the buyer, laytime will commence at 0800 hours of the next working day after the vessel has been cleared by Kenya Ports Authority and/or Customs and Excise Department of the Kenya Revenue Authority (KRA) and brought alongside the allocated berth. The time used for



Bank Limited, Kencom House, P.O Box 48400 Nairobi in favour of the Seller.

- 6.2 All charges relating to the opening of the Letter of Credit (L/C) within the Board's Bankers (**Excluding Confirmation charges of the L/C if any**) shall be for the Buyer's account. All charges relating to the opening of the Letter of Credit outside the Board's Bankers (**including confirmation charges if any**) shall be for the account of the Seller.
- 6.3 If the Buyer opens an operative Letter of Credit in favour of the seller and the Seller is unable to perform to the contract for whatever reasons (with the exception of circumstances specified in Clause 13), the seller shall be liable to pay all local charges for the establishment and handling of the Letter of Credit within Kenya and where the Buyer has paid any of the charges, the seller shall fully reimburse the Buyer.

7.0 SHIPPING DOCUMENTS

- 7.1 The Seller shall upon loading the maize into nominated Marine Vessel, issue the shipping documents and forward them to the buyer through its bankers namely, Trade Finance Centre, Kenya Commercial Bank Limited, Kencom House, P.O Box 48400 Nairobi. The said documents should reach the Buyer's Bankers at least five (5) days before the vessel docks at the port of Mombasa.
- 7.2 The required shipping documents are as detailed below:-
- a) Original Bills of Lading as described in Clause 7.3
 - b) Signed Commercial invoices in three originals, which should not include seller's commission and any other handling charges.

b

EW

- c) Final Sellers Invoice to bear Cotecna Inspection S.A Sticker or that of their appointed agents.
- d) Certificate of origin issued by Ethiopia Local Chambers of Commerce.
- e) Certificate of Weight issued by Cotecna Inspection S.A / SGS or that of their appointed agents.
- f) Certificate of Quality issued by Cotecna Inspection S.A / SGS or that of their appointed agents, evidencing that the goods were inspected prior to shipment.
- g) Packing list in duplicate.
- h) Customs Clean Report of Findings (CCRF) issued by Cotecna Inspection S.A local office.

7.3 Ocean Bills of Lading

- a) The will submit full set of three (3/3) originals. Clean on Board, Ocean Bills of Lading marked "Freight Pre-paid" and issued to the Order of Trade Finance Centre, Kenya Commercial Bank, Kencom House A/C National Cereals and Produce Board, P.O Box 30586, Nairobi.
- b) The Bills of Lading must specify Mombasa as the Port of discharge.

7.4 Shipping documents specified in Clause 7.1 above must be presented to the Buyer's bankers namely, Trade Finance Centre, Kenya Commercial Bank Limited, Kencom House, P.O Box 48400 Nairobi as early as possible after shipment. The Buyer must have the documents at least five (5) days before arrival of vessel in Mombasa. In case the shipping documents do not arrive in time and as a consequence the Buyer is obliged to pay any fees or expenses to Kenya Ports Authority for allowing the vessel to wait in Kenyan waters, then any such fees will be for the account of the

£

AW

Seller. Further copies of all shipping documents are to be delivered to the Managing Director, National Cereals and Produce Board Head Office, located along Machakos Road, Industrial Area, P.O Box 305586, 00100 - GPO, Nairobi Kenya.

8.0 TERMINATION OF CONTRACT

The Buyer shall have the option to terminate this Agreement in the event that the Seller does not ship the said maize bags, within the period specified under Clause 4 hereto and upon such termination the Buyer shall hold the Seller liable to indemnify the buyer for any expense, loss, damage or costs suffered by the buyer as a result of such default.

9.0 PERFORMANCE BOND

- 9.1 The Seller shall prior to the signing of this Agreement furnish the Buyer with Performance Bond equivalent to 10% of the contract sum to be valid for a period of 90 days. Such Performance Bond must be issued by a reputable commercial bank.
- 9.2 The Seller's Bankers must Irrevocably guarantee the Buyer through the Performance Bond, that the Seller will honour its obligations under the Contract and in the event of non-performance by the Seller (either partially or entirely) the Buyer shall be entitled to claim an amount of USD 916,000.00 or prorata.
- 9.3 For the purposes of interpretation, the term "**Obligations**" as stated in the Performance Bond, shall be construed to mean all the Seller's Obligations specified in the relevant Clause of this Agreement.

10.0 AMENDMENT

This Agreement may only be amended with prior written request and mutual consent of both parties duly signed by the signatories to this Agreement, or their authorised representatives.

11.0 GOVERNING LAW

The Agreement shall be subject to the Laws of Kenya.

12.0 ARBITRATION

All disputes arising out of or in connection with this Agreement or for breach hereof that cannot be settled amicably by the parties hereto, shall be settled by a sole arbitrator and such arbitration to be held in Nairobi, Kenya, Under the Arbitration Act. The Arbitrator shall be appointed by Agreement between the parties or in default of Agreement by the Chairman of the Kenya Chapter of the Chartered Institute of Arbitrators.

13.0 FORCE MAJEURE

Each party shall promptly notify the other in writing of any situation or occurrence of any event beyond its reasonable control that in any way renders it impossible to carry out the obligations herein. Such causes shall include but are not limited to acts of God or the public enemy, acts of the Government either in its sovereign or contractual capacity, fires, strikes, civil commotion, wars and lockouts. Upon the occurrence of any event of force majeure, both parties shall have the option of cancelling the whole or any part of this contract or executing the same as soon as the circumstances permit subject to mutual agreement. Provided that force majeure shall not include any event, which is caused by negligence, nor shall it include any event which a diligent party could reasonably have foreseen, avoided or overcome.


AW

14.0 EFFECTIVE DATE

This agreement shall become effective upon signing by both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their dully authorised representatives the day, month and year first above written.

SIGNED for and on behalf of:)
NATIONAL CEREALS AND)
PRODUCE BOARD)

In the presence of:-)

SENIOR LEGAL COUNSEL)
N. C. P. *[Signature]*)
BOARD SECRETARY)

[Signature]

BOARD SECRETARY)

TIROP KOSGEY)
MANAGING DIRECTOR)

Signed for and on behalf of)
ERAD SUPPLIES &)
GENERAL CONTRACT -)
LIMITED)

By the duly authorised)
representatives)

[Signature]

GRACE S. WAKHUNGU)
MANAGING DIRECTOR)

[Signature]

BAISAMA DUMA)
WITNESS)

ANNEX 6

OFFICE OF THE PRESIDENT
PERMANENT SECRETARY
SPECIAL PROGRAMMES

Telegraphic Address: "RAIS"
Fax No.: 227622
Telephone: 227411

P.O. Box 30510
NAIROBI
KENYA

When replying please quote

OP/SP 9/94A

26th November 2004

Mr. Tirop Kosgey
Managing Director
National Cereals & Produce Board
P. O. Box 30586
NAIROBI

Dear *Mr. Kosgey*

RE: FUNDING FOR PROCUREMENT OF LOCAL MAIZE

Your letter No. C.6/5 of 25th November 2004 refers.

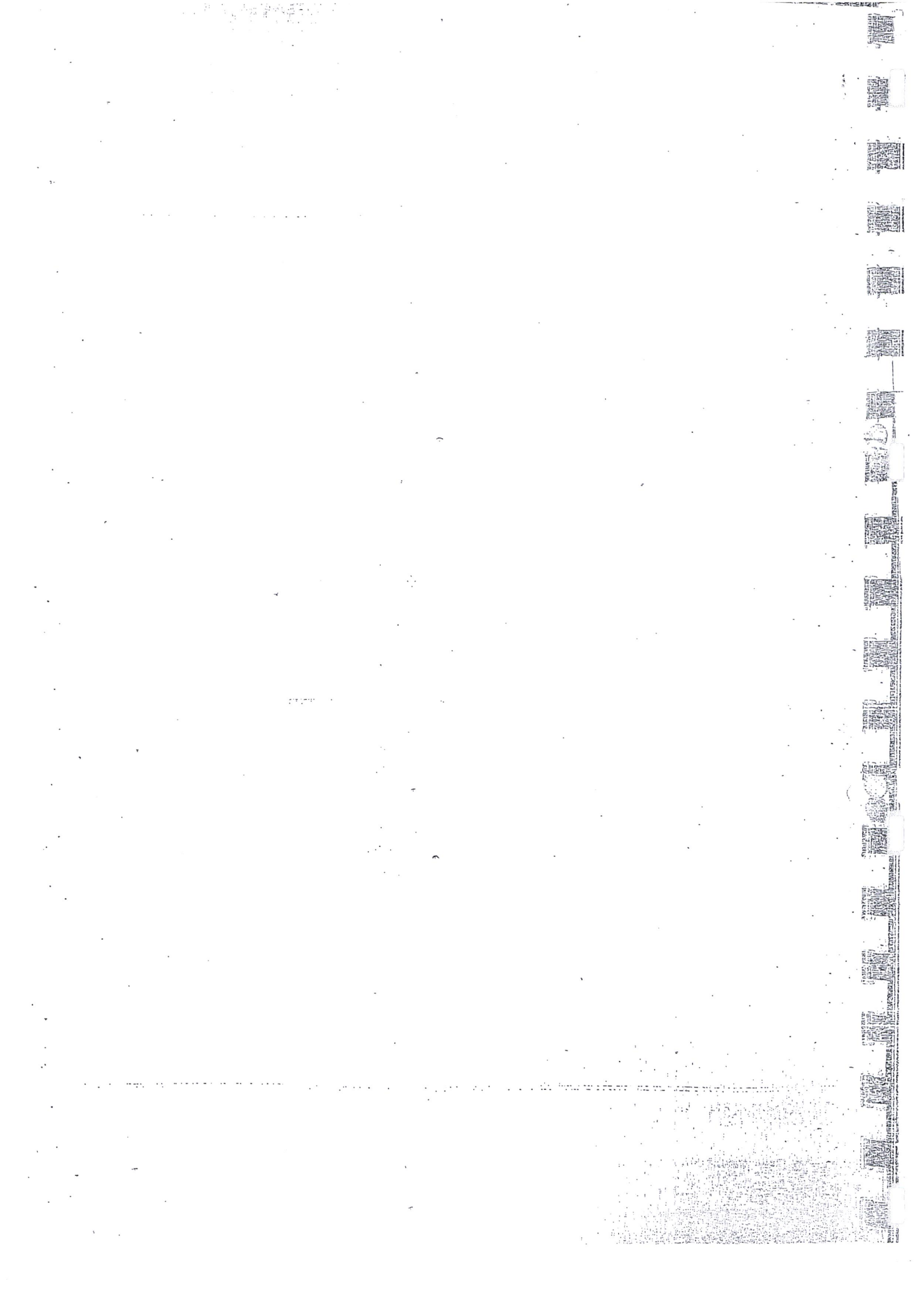
Further to my earlier letter No. OP/SP 9/94A of 10th November 2004 you may proceed to utilize Kshs.150 million towards procurement of local maize from the funds initially meant for maize importation.

Please note that additional funds shall be availed as soon as the Treasury releases the same as indicated in my earlier correspondence.

Yours *Sincerely*

Mahbous M. Maalim
MAHBOUS M. MAALIM, OGW
PERMANENT SECRETARY

SECRETARY
DEPUTY SECRETARY
ASSISTANT SECRETARY
CHIEF OF STAFF
CHIEF OF SECURITY
CHIEF OF INFORMATION
CHIEF OF LEGAL
CHIEF OF FINANCE
CHIEF OF ADMINISTRATION
CHIEF OF PROTOCOL
CHIEF OF PUBLIC RELATIONS
CHIEF OF RECORDS
CHIEF OF DOCUMENTATION
CHIEF OF ARCHIVES
CHIEF OF LIBRARY
CHIEF OF POSTAL
CHIEF OF TELEVISION
CHIEF OF RADIO
CHIEF OF PRESS
CHIEF OF PUBLICATIONS
CHIEF OF MISCELLANEOUS
CHIEF OF OFFICE
CHIEF OF SECURITY
CHIEF OF INFORMATION
CHIEF OF LEGAL
CHIEF OF FINANCE
CHIEF OF ADMINISTRATION
CHIEF OF PROTOCOL
CHIEF OF PUBLIC RELATIONS
CHIEF OF RECORDS
CHIEF OF DOCUMENTATION
CHIEF OF ARCHIVES
CHIEF OF LIBRARY
CHIEF OF POSTAL
CHIEF OF TELEVISION
CHIEF OF RADIO
CHIEF OF PRESS
CHIEF OF PUBLICATIONS
CHIEF OF MISCELLANEOUS
CHIEF OF OFFICE



ANNEX 7

NATIONAL CEREALS AND PRODUCE BOARD

INSTRUCTIONS TO BIDDERS

TENDER INVITATION FOR THE SUPPLY OF 180,000 METRIC TONNES OF IMPORTED WHITE MAIZE / CORN

The National Cereals and Produce Board (hereinafter referred to as "the Board" invites bid offers from reputable suppliers and/or Traders / dealers for the supply of imported white maize/corn under the following terms and conditions:-

1.0 COMMODITY

White maize / corn.

2.0 QUANTITY

180,000 Metric tonnes (2.0 million bags x 90 Kgs) of white maize/corn

3.0 QUALITY

Specifications

The maize to be supplied shall be fit for human consumption and shall conform to the quality specifications shown in the table below.

Quality Parameters

	Parameters	Grade K2 or better
1	Moisture content -	13.5% Max.
2	Foreign matter / Broken Grain (1% foreign matter)	3.0 % Max.
3	Pest damaged grains	3.0 %Max.
4	Rotten diseased and discoloured grains	2.0 % Max.
5	Other coloured grains	1.0 % Max.
6	Total defects - (pest damaged grains, rotten, diseased and discoloured grains).	8.0 % Max.
7	Crop year - 2003/2004 - free from live insect infestation	
8	Total Aflatoxin (with B1 5% maximum)	(10 PPB) Max.

Bidders must submit a certificate of GMO status issued by reputable Organizations / Agencies.

4.0

PACKAGING & DELIVERY

The Maize to be delivered shall be in Bulk or bagged in 90 kgs or 50 kgs jute bags. The bids submitted for maize to be sourced from the Comesa region, with competitive prices when compared to the prevailing international prices, will have an added advantage.

5.0

SUPPLY TERMS**Lead Time**

The successful bidder (s) shall supply 180,000 metric tons or part thereof, of white maize / corn to NCPB at the Port of Mombasa within 60 calendar days from the date of notification of the letter of award of the tender.

Give a detailed breakdown of the expected arrival date of each consignment of maize at the port of Mombasa as per table shown below:

Item Description	Total Quantity (MT)	August 2004		September 2004	
		1st - 15th	16th - 31st	1 st to 15 th	16 th to 30th
1 st Consignment					
2 nd Consignment					
3 rd Consignment					
4 th Consignment					
5 th Consignment					
6 th Consignment					
Total quantity (MT)					

6.0 PRICES/OFFERS

All price offers for offshore sources, must be quoted in US dollars on Cost & Freight (CFR), free out basis, Mombasa and/ or delivered into the following NCPB depots at ; Kisumu, Bungoma, Nairobi and Narok; as per *International Commercial Terms (INCOTERMS) 2000* using the format below.

No.	Item Description	Remarks
1	Type of Maize	
2	Qty M/tons	
3	Unit Price US\$ - FOB	
4	Unit Price US\$ - Freight	
5	Total C&F	
6	Finance Cost	
7	Total (5 &6)	
8	Country of origin	
9	Delivery Lead time	

6.1. Credit facility for 180 days deferred payment will be an added advantage.

6.2 The bidders should clearly disclose the various components of cost i.e. Cost (FOB), Freight (CFr) and Finance cost (if any).

7.0 GUARANTEES

7.1 Bid Bond

All offers must be accompanied by a Bid Bond equivalent to five percent (5%) of the total value of maize offered, and the Bond must be valid for forty five (45) working days from the date of the closing of the tender. The bond must bear the exact wording as per the sample shown on the last page. Any offer un-accompanied by a Bid Bond shall be disqualified.

7.2 Performance Bond

The successful Bidder(s) shall provide to the Buyer a Performance Bond equivalent to ten percent (10%) of the quoted price within seven days from the date of the letter of award and prior to entering into a formal contract. The Bond must be issued by a Commercial bank of international repute.

ANNEX 8

NATIONAL CEREALS AND PRODUCE BOARD
STATUS REPORT ON PURCHASES OF THE TENDER DOCUMENTS
IMPORTATION OF 180,000 METRIC TONS OF WHITE MAIZE
AS AT THURSDAY 5TH AUGUST, 2004

ANNEX I

NO	TENDER NO	MISC. RECEIPT	NAME OF COMPANY	TELEPHONE NUMBER	FAX / BOX NO.	PERSON TO CONTACT
1	2	348450	Mombasa Maize Millers Co.	555359	17630 (box)	Munir
2	3	348701	Kitale Industries Ltd	555359	616 (box)	Munir
3	4	348704	United Millers Ltd	218770	610 (box)	Sunil
4	5	348705	Erad Supplies & General Contract Ltd	2714419	73523 -00100	Grace Wanungu
5	1	348702	Concordia Agri	722517225	of Singapore	Horseman
6	6	348707	Export Trading Co. Ltd	2722626/7	57561(box)	PR Patel
7	7	348706	Agri Commodity & Finance FZE	2724086	Nairobi	Alok
8	8	348708	Jumala Services Ltd	2729460 722730175	28411	Jacob Juma
9	9	348709	Euro World Commodities Ltd	2087953338	334/336 (box)	Mr. Kotecha
10	10	348710	Hala General Trading	9/143348595	6557(box)	J. Shindu
11	11	348703	Golden Sparrow Trading Ltd	722205452 41230220	81515 (box) Msa	Sabrina
12	12	348711	Fraba Investments	722516813 821229	60988 (box) Nrb	Mudumba
13	13	348712	Cross Border Ltd	225716 (Msa)	86613 Msa	Husein
14	14	348713	Derchad Keshakji (K) Ltd	221957	80476 (Box)	Kirit Kahabal
15	15	348714	Hydery P. Ltd	228647 / 22837	82576 (box) Msa	Mohammed
16	16	348715	Holdbud Ltd	0207488 4910	66 Leman street London E.I	Mohammed
17	17	348716	Intertrading Africa Pty Ltd	722518353	1720 Parklands 2121 R.S.A	Henry Nyanjau
18	18	348717	Remington Agency Ltd	534554 / 5	49726-00100	Anwar Pandya
19	19	348718	Mea Ltd	850103 or 851531	44480 (box)	Mr. Muriuki E.M
20	20	348719	Devji Megji & Bros Ltd	339684	62 (box) Ruiru	J. Patel
21	21	348720	Intar Africa grains Pty Ltd	0722 450995	368 Strubens Valley, 1735 South Africa	P. Otieno
22	22	348721	Farmland Company Import Export Cereals Ltd	5551 92222733	701105 vargas Neto	Karimjee Abdulali
23	23	348722	Mombasa raha Ltd	244720, 868109	427 (box) Msa	Mohammed Abdalla
24	24	348723	Protoil (PTY)	218508/9	51555 (Water front 8002 Cape Town, South Africa)	Mike Dunford
25	25	348724	Midgulf International Grains Food	215511	Division Jordan A5402	Henru Nania
26	26	348725	Eurotech Ltd	4151379	41711-00100	Titus Mwangi
27	27	348726	Solar Tags Rural Credit Ltd	240423 or 7213930	75939 (box)	J. Cheruoyot
28	28	348727	Louis Deyfus Ltd	733727683	Fax: 041-220936 222141 31258 (box)	Henryk

NO.	TENDER NO	MISC. RECEIPT	NAME OF COMPANY	TELEPHONE NUMBER	FAX / BOX NO.	PERSON TO CONTACT
29	29	346729	Jaffer & Jaffer Trading Ltd		0181515 (nox) Msa	
30	30	348730	Sea Board Overseas Trading	0722-411840	27745 (Box)	Paul
31	31	348731	Zynmart Group of Companies	320587	4000 -00506	Mr. Salman
32	32	348732	Maina Coffee	7542068130	1901osolo road lot 208 eihari Indiana 21P 46514	Esther Kamu
33	33	348733	Awai Ltd	530505/530706 722354405	17983 (box)	Emmanuel Mukua
34	34	348734	G.S.L Africa Investments	2725679	Private Bag x-033 R. Vona 2128 Johannesburg S.A	Joe Kamau
35	35	348736	Back Barrow (PVT) Ltd	2730739	17 Law Avenue, Milton Port Harare	Mr. Djwang
36	36	348737	Tropella Trading Co. Ltd	722335413 41220270	36 Byron Avenue /icosia, Cyprus	Mr. Limo
37	37	343738	Yawar Kalyan	722222040	85562 (box)	Mohammad Taki
38	38	348739	Uzia Agencies	2715998 721850149	6714 (box)	Yuvialis
39	39	348741	P.S.M Financial Services Ltd	313940	South Africa	Advocate Jane
40	40	348740	VAS Distributors	533858	78449 (box)	Mbugua
41	41	348742	Bashara Petroleum Products Ltd	254-020213914 0722-257779 0722-311456	38408-00200	Mr. Stanley M. Angaine or Ahmed Sheikh Dahir
42	42	348743	Agri Traders Bureau	722331228	14717 -00100	Paul Murimi
43	43	348744	The House Ltd	722415436	Msa	Isack Kalwa
44	44	348754	Allied International Marketing Co-Operation	720877022	360 maple avenue, suite no. 205 vienna va 22180 USA	Abdi Dire
45	45	348746	Purnia Holdings LTD	240048 722524353	63772 Nrb	Mary /Ruth
46	46	348747	Manostyles Ltd	243394 722521212	46240 (box) Nrb	Winni Nyawera
47	47	348748	Premier Flour Mills	531313/534960 722203105	59307 (box) Nrb	Shahid
48	48	348749	E.L. Johnsons Sons & Mowat	722771763	17923 (box)	Fazal
49	49	348750	African Trade Consultants	734405328 57.1196	44664 -00100 (box)- Nrb	Kaberia
50	50	348701	Tanjah Investments	229021 722371396	88999 (box) Msa	Nuru Kassim
51	51	342702	Exon Investments Ltd	722519570	40/72-00100 (box) Nrb	Jeitha
52	52	348753	Kasoyo Ltd	722772920	1320 (box) Eld	Timothy Chesire
53	53	348755	Odyssey Investmnet	721861505	57853 (box) Mbi	Omida
54	54	348756	Afro- Impex Corp Ltd	722842345	52408-00200 (box) Nbi	Fred Mungai
55	55	348757	Messrs Mohamed Enterprises		240660 (Box) Dara salem	Gulam Dewji

NO	TENDER NO	MISC. RECEIPT	NAME OF COMPANY	TELEPHONE NUMBER	FAX / BOX NO.	PERSON TO CONTACT
56	56	348758	National Rice	733597829	66661-00600(Box) Nbi	Peter Hurst
57	57	348759	Wanizane Trading and Absa Ba	824170968	126651013 fax Fourways Water Ford Office Park (RSA)	Stefan Pretorius
58	58	348760	Jardine Investment Ltd Sarit Centre	722511971	1536-00600 (box) Nbi	H.S Marwa
59	59	348761	Glencore International AgBaarermaat Strasse	2711007	77 CH 9341BAAR Switzerland (Box)	Pradip Patel
60	60	348762	Ndia Farm Co Ltd	0721 673530	59869 (box) Nbi	Cyrus Irungu
61	61	348763	Nobel Enterprises Ltd	315509 722519419	69817 (Box) Nbi	Kimeil
62	62	348764	Louis Dreyfus Africa	721294924	73030 (box) Nbi	Aboalla Mustafa
63	63	348765	United Overseas Ltd	447765142859 Tel	442089527698 (Fax) UK	Thakker
64	64	348766	Weiwyor Int. Ltd	971507701508 tel	97165341929 (Fax)	Harry
65	65	348767	Grains of the World	2828670	851-00606 (box) Nbi	Paul
66	66	348768	Talis Holdings	2570953	65002 (box) Nbi	Grace
67	67	348769	Sean Barclay EA Ltd	537551	4062-00106 (box) Nbi	Yvonne
68	68	348770	Super Natural Trading Co Ltd	27654	254203748571 (Fax)	Jimmy Mulinda
69	69	348771	Pida Investment	51215473	15851 (Box) Nku	W. Kerario
70	70	348772	Gerryann Traders	720901469	78211 (Box) Nrb	Daniel Murewa
71	71	348773	Salat & Hassan	722919240	15107 -00100	Mohamed Hassan
72	72	348774	Akaba Investments Ltd	011-605214	99562 (Box) Mombasa	Fred Amalyo
73	73	348775	Northline Ltd	722709933	50690 (Box) Nrb	John Mugo
74	74	348776	Nairobi Calibration services Ltd	722710512	11105 (box)	Mr. Ali
75	75	348777	Rombo Supplies	722524479	5479 (Box)	Mr. Rono
76	76	348778	Free State Enterprises Co. Ltd	721921274	43309 (Box)	Mr. Milton Karigagi
77	77	348779	Aembu Farm Co.	722854456	62296(Box) Nrb	Shariff
78	78	348780	Zambia High Commission / Fra	0722 960053	48741(Box) Nairobi	Henry Kapacha
79	79	348781	John Mwangi Macharia	722785555	1755 Kitale	John Mwangi
80	80	348782	Ahmednasir Abdikadir & Co. Advocates	02-217886 02-215422	57731 (Box) Nrb 213582 (Fax)	Ahmed Nasir
81	81	348783	Offshore Maritime Ltd	722712877 733727638	00515050 (Box)	David / mbogori

ANNEX 9

(Legislative Supplement No. 30)

LEGAL NOTICE NO. 90

THE CUSTOMS AND EXCISE ACT

(Cap. 472)

IN EXERCISE of the powers conferred by section 119 of the Customs and Excise Act, and pursuant to a declaration of a national famine disaster or calamity, the Minister for Finance makes the following Order:—

THE CUSTOMS AND EXCISE (AMENDMENT OF THE FIRST SCHEDULE) ORDER, 2004

1. This Order may be cited as the Customs and Excise (Amendment of First Schedule) Order, 2004, and shall, unless earlier revoked, expire on the 30th September, 2004.

2. The First Schedule to the Customs and Excise Act (import duties) is amended by deleting the existing rate of duty in respect of the tariff number and description respectively specified in the first and second columns of the Schedule hereto and substituting therefor the rate of duty specified in the third column.

SCHEDULE

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate of Duty</i>
1005.90.00	Other maize (corn)	Free

Made on the 4th August, 2004.

DAVID MWIRARIA,
Minister for Finance.

ANNEX 10

NATIONAL CEREALS AND PRODUCE BOARD

MINUTES OF THE MAIN TENDER COMMITTEE MEETING
HELD ON TUESDAY, 10TH AUGUST 2004 IN THE BOARD
ROOM TO ADJUDICATE AND AWARD TENDERS FOR THE
SUPPLY AND DELIVERY OF 180,000 METRIC TONS OF
WHITE MAIZE

PRESENT:

1. Mr. Hugo wood - Director (Chairman)
2. Mr. Abdulnasser M. Balala - Director (V.Chairman)
3. Mr. S.K. Maina - Director (Member)

BOARD'S OFFICERS

1. Mr. Tirop Kosgey - Managing Director
2. Mr. C.S Khaemba - Chief Accountant
2. Mr. R. K. A. Langat - Technical Manager
4. Mr. B.O. Umba - Operations Manager
5. Mr. Lt Col (Rtd) W.K Rono - Manager Supplies Services / TC
6. Mr. P. N. Karanja - Senior Legal Officer
5. Mr. H. K. Kipyego - Chief Supplies Officer
(Recording)

IN ATTENDANCE:

1. Mr. J. Bolt - Research & Development Manager
2. Mr. W.K Korir - Import Export Co-ordinator
3. Mr.K.J. Ochwando - Procurement Officer(OP)
4. Mr.J.O. Oduor - Senior Agricultural Officer (MOA)

MIN. NO. 1/03/2004/2005 - OPENING REMARKS

The meeting was called to order at 2.20 pm after an opening prayer by Mr W. K. Korir. The Chairman welcomed the Main Tender Committee members for the day's deliberations, which was to adjudicate and award tender for the supply and delivery of 180,000 metric tons of white maize to alleviate the food problem ravaging the country.

CONFIDENTIAL

The Managing Director informed the meeting that the Government had declared the current food shortage in the country a National Disaster.

The Government through the Ministry of Agriculture had further granted authority to the Board to use direct procurement or restricted tendering procedures in sourcing the commodities.

He further informed the meeting that in applying the recommended procedures, the Board used the restricted tendering by inviting potential suppliers and those others who inquired were allowed to purchase the tender document.

During the opening of the bids on Thursday 5th August 2004, the Main Tender Committee constituted a Technical Evaluation Committee comprising of the board's officers and those from the Ministry of Agriculture, Ministry of Finance and Office of the president.

MIN. NO. 2/03/2004/2005 – CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETING – 10TH AUGUST 2004

The secretary read the minutes of the previous meeting held on 5th August 2004. The meeting having considered the items discussed, confirmed that the minutes were a true record of the proceeding thereof.

MIN. NO. 3/03/2004/2005 – PRESENTATION OF THE TECHNICAL EVALUATION COMMITTEE REPORT

The chairman of the Main Tender welcomed the Chairman of the technical evaluation committee to present the report to the meeting.

The chairman of the technical evaluation committee informed the meeting that the terms of reference taken in account by the Technical Evaluation committee were as follows;

- a) Examine the bids received
- b) Evaluate the bids
- c) Prepare a report and give recommendations
- d) Complete the report on or before Monday, 9th August 2004.

He further informed the meeting that the Technical Evaluation Committee used the following criteria in evaluation of the bids received.

(1) Preliminaries Evaluation

He informed the meeting that the non-scoring Compulsory requirements were as follows:

- (i) Submission of Bid Bond
- (ii) Submission of maize sample
- (iii) Purchase of tender documents
- (iv) Validity of Bid Bonds
- (v) Validity of Price Office.

He further reported that out of thirty six (36) firms/candidates, 27 did not meet the above criteria thus were found to be non-responsive and therefore disqualified.

(2) Other Evaluation Criteria

The chairman of the Technical Evaluation Committee further informed the Main Tender Committee that other evaluation criteria adopted were as follows;

- (i) Technical - was allocated 60 points
- (ii) Financial - was allocated 40 points.

MIN. NO. 4/04/2003/2004 – TECHNICAL EVALUATION COMMITTEE RECOMMENDATIONS

The Chairman of Technical Evaluation Committee informed the meeting that the remaining nine (9) bidders were subjected to the technical and finance criteria while taking into consideration timely arrival of the commodities, and spreading the risks of non-performance.

The Technical Evaluation Committee recommends that the tender of 180,000 metric of white maize be awarded to the seven (7) firms having fulfilled the conditions as set out in the tender documents and the quantities be apportioned to accommodate the above variables as follows;

- a) **M/s Hala General Trading LLC**, having been ranked number 1, by obtaining 69.7 points out of 100 points, be awarded the tender to supply 40,000 metric tons of white maize, being total quality bided, at their quoted bid price of **US\$. 229.00 PER METRIC TON, COST AND FREIGHT FREE OUT (CFRfo)** Mombasa.
- b) **M/s Versatrade International CC / Euroworld.Commodities Ltd.** Having been ranked number 2, by obtaining 62.4 points out 100 points, be awarded the tender to supply the quality of 40,000 metric tons at their quoted price of **US\$. 229.00** per metric tons, cost and freight free out **(CFRfo)** Mombasa.
- c) **M/s Erand Supplies & General Contracts Ltd**, having been ranked number 3, by obtaining 51.50 points out of 100 points, be awarded the tender to supply the quantity of 20,000 metric ton, Cost and Freight free out **(CFRfo)** Mombasa.
- d) **M/s. Purma Holdings Ltd.** , having been ranked number 4, by obtaining 51.00 points out of 100 points, be awarded the tender to supply the quantity of 20,000 metric tons at their quoted price of **US\$.189.00** per metric ton. Cost and Freight free out **(CFRFO)** Mombasa.
- e) **M/s. Freba Investments**, Having been ranked number 5, by obtaining 49.50 points out of 100 points, be awarded the tender to supply the quantity of 20,000 metric tons at their quoted price of **US\$. 190.00** per metric ton, Cost and Freight free out **(CFRfo)** Mombasa.
- f) **M/s Mano Style Ltd**, having been ranked number 6, by obtaining 42.20 points out of 100 points, be awarded the tender to supply the quantity of 20,000 metric tons at their quoted price of **US\$. 192.00** PER METRIC TON, cost and Freight free out **(CFRfo)** Mombasa.
- g) **M/s Wanizame Trading (PTY) Ltd.**, having been ranked number 7, by obtaining 41.70 points out of 100 points, be awarded the tender to supply the quantity of 20,000 metric tons at their quoted price of **US\$. 225.75** per metric ton, Cost and Freight free out **(CFRfo)** Mombasa.

The committee further recommended the apportionment and delivery schedule by each firm for the entire quantity of 180,000 metric tons as follows:

Bid No	Bidder	1 st 2 Weeks (m/tons)	2 nd 2 Weeks (m/tons)	3 rd 2 Weeks (m/tons)	4 th 2 Weeks (m/tons)
1	Hala General Trading		40,000		
2	Versatrade International cc/Euroworld Commodities		25,000	15,000	
3	Erاند Supplies & General	20,000			
4	Purima Holdings				20,000
5	Freba Investments	20,000			
6	Mano Styles Ltd				20,000
7	Wanizame Trading (Pty)	20,000			
	Total	60,000	65,000	15,000	40,000

MIN. NO. 5/03/2003/2004 – ADOPTION OF THE TECHNICAL EVALUATION COMMITTEE REPORT BY THE MAIN TENDER COMMITTEE

The Main Tender Committee deliberated in detail the recommendations of the technical evaluation committee and made the following recommendations as indicated below;

- (i) The different prices quoted by the different suppliers were from different sources.
- (ii) The tender be awarded to the first five (5) firm as listed in the table below

- (iii) The quantities allocated to the last two firms be distributed among the others as indicated in the table below.

Bid No	Bidder	1 st 2 Weeks (m/tons)	2 nd 2 Weeks (m/tons)	3 rd 2 Weeks (m/tons)	4 th 2 Weeks (m/tons)
1	Hala General Trading		40,000		
2	Versatrade International cc/Euroworld		25,000	15,000	
3	Erad Supplies & General Contracts	40,000			
4	Purma Holdings				30,000
5	Freba Investments	30,000			
	Total	70,000	65,000	15,000	30,000

MIN. NO. 6/03/2003/2004 – CLOSING REMARKS

The Chairman thanked the members of the Technical Evaluation Committee for the commendable work. He further thanked the members of the Main Tender Committee for attending the meeting and the day's fruitful deliberation.

There being no any other business, the meeting ended at 4.30 p.m.

Confirmed this 19th day of August 2004


Mr. Hugo Wood
CHAIRMAN


Mr. H.K. Kipyego
SECRETARY

ANNEX 11

REPUBLIC OF KENYA
MINISTRY OF FINANCE

Telegraphic Address: 22921
FINANCE-NAIROBI
Fax No.: 330426
Telephone: 338111
When replying please quote



P.O. Box 30007
NAIROBI
KENYA

ZZ..40/06

Ref. No.

Date: August 28, 2004

Mr. Mahboub M. Maalim
Permanent Secretary
Special Programmes
Office of the President
NAIROBI.

CA/BS/om/cpa

RE: IMPORTATION OF DISASTER RELIEVE MAIZE - 2 MILLION BAGS

Thank you for your letter Ref. No. CP/SP/57/6A of August 27, 2004.

We have carefully reviewed your letter and have the following comments to make. First, we find its contents very wanting. On several occasions, we have tried to explain to you the procedure that is followed in releasing money from the Consolidated Fund in line with the Statutory Financial Regulations. It has been made clear to you that you need to provide Treasury with a firm procurement programme to assist the Exchequer Committee to plan release of funds, based on spending pattern but bearing in mind the statutory authorizations.

Secondly, you have indicated in your letter that tenderers are awaiting opening of Letters of Credit (LCs) by National Cereals and Produce Board (NCPB) in order to commence the importation. This begs the question: Who is doing the actual importation of maize, is it the NCPB or the tenderers? If it is the tenderers, on behalf of NCPB, would issuing of LCs not be tantamount to advance payment before delivery? Did NCPB assess the financial and technical ability of these tenderers to procure the required maize?

You ought to know that, in the past, the Government has lost a lot of money in similar circumstances. The case of Mr. Somaia and National Bank of Kenya, purchase of the London look taxis demonstrates this point. The Treasury, as custodian of public funds, should not knowingly allow this to happen again. The winners of these tenders should import the maize and deliver it to NCPB. On its part, NCPB should certify that the maize is good quality and quantity is right before paying. If the tenderers cannot afford to finance purchase of the maize, or such basic costs as LCs, you should be concerned of their ability to deliver.

CONFIDENTIAL

In the meantime, Treasury wishes to assure you of its commitment to avail the resources required to finance the approved purchase of famine relief maize. In this regard, Treasury will arrange to release, in the course of the week, Ksh 1.5 billion as we await to receive your firm procurement schedule, being part of the funds required for this purpose.

You are, however, strongly advised that payment to the tenderers should be made only on delivery and confirmation that the imported maize meets the quality requirements as specified in the tender.

Yours

Joseph K. Kinyua, EBS
PERMANENT SECRETARY/TREASURY

Copy to:

Amb. Francis K. Muthaura, MBS
Permanent Secretary/Secretary to the
Cabinet and Head of Public Service
Office of the President
NAIROBI

Mr. Dave M. Mwangi, OGW
Permanent Secretary
Provincial Administration and
National Security
Office of the President
NAIROBI

Mr. James E.O. Ongwae, EBS, OGW
Permanent Secretary
Ministry of Agriculture
Kilimo House
NAIROBI

The Managing Director
National Cereals and Produce Board
NAIROBI



ANNEX 12

REPUBLIC OF KENYA



MINISTRY OF AGRICULTURE

OFFICE OF THE PERMANENT SECRETARY

Telegraphic Address "MINAC" NAIROBI
Telex: 22766
Telephone: 718870/9
Fax: 718318
When replying please quote:

KILIMO HOUSE
CATHEDRAL ROAD
P.O. Box 30028
NAIROBI

Ref. No: MOA/LDM/F.10/9A/VOL.1V

Date: 11th November, 2004

Mr. Mahboub Mohammed,
Permanent Secretary (Special Programmes),
Office of the President,
P.O. Box 30510,
NAIROBI.


CA

Dear *Trump,*

**RE: REQUISITION OF FUNDS BY NATIONAL CEREALS AND
PRODUCE BOARD FOR STRATEGIC GRAIN RESERVE
PROGRAMME - LOCAL MAIZE PURCHASES AND THE
IMPORTATION PROGRAMME**

This has reference to two letters from NCPB Ref: C. 6/5 dated 27th October 2004 and 2nd November 2004 addressed to you and copied to me requesting for speedy release of funds for the maize importation to cover the remaining Letter of Credit and logistical costs amounting to Kshs.1,675,173,319 and for procurement of local maize amounting to Kshs.4,783,526,903 respectively whose details are as per attached **Annex I & II.**

As you are aware the first ship carrying 15,021 metric tonnes of maize has already been offloaded whereas the next one carrying 29,338 metric tonnes of maize which arrived on Friday 5th November 2004 is offloading and the subsequent ones are to follow thereafter.



It is important that funds for logistical costs to cover port charges, handling and upcountry transport are availed on timely basis in order for the programme to run smoothly. It is important to mention that delay in releasing the funds may result in penalties and logistical complications in handling the maize at the port due to congestion and transferring the maize from the port to upcountry destinations.

Equally important is the need to release the shortfall of funds to facilitate the opening of the remaining Letter of Credit to avoid the obvious consequence of **litigation**. I am told that Lawyers for the company have already written to NCPB and there are indications that the supplier NOT issued with a letter of credit might go into Litigation. In this regard, time is of essence given that duty waiver extension was up to 30th November 2004.


As you are also aware when the current emergency relief maize import programme started, an amount of **Kshs 1.5 billion** was drawn from the strategic grain reserve trust fund (SGRTF). These funds were used to open the first two letters of credit. The understanding at the time was that these funds were to be refunded by November 2004 in readiness for procurement of strategic grain reserve from the local crop. It is noted that the strategic grain reserve are now **depleted** as all the available stocks have been transferred to famine relief programme. It is therefore, critical that the strategic grain reserve stocks are replenished to the statutory level of **3 million bags**. ✓

Please note that the current prices for imported maize are in the tune of Kshs 1,800 to 1,900 per 90kg bag while the local maize is between Kshs 1400 to 1500 per 90kg bag. This now makes it more competitive and prudent to purchase maize locally to avoid any future importation. Also the harvest season has started to pick up in the North Rift and Western Kenya and the delivery of maize to NCPB depots will continue rising. This therefore means that the Board will require a continuous flow of funds to cope with the deliveries of maize as detailed in the attached **Annex II**. The **Kshs1.5 billion** originally borrowed from SGRTF should be released immediately to kick start the Programme as further funds are sought.

As I conclude, I wish to reiterate the need for your personal indulgence in ensuring that the funds are availed in time for the two programmes. If necessary, a meeting of the SGR trustees could be convened to conclusively deliberate on this issue.

The reality of lack of SGR vis-à-vis the funding requirement must be confronted sooner than later.

Yours



JAMES E.O. ONGWAE, EBS., OGW.,
PERMANENT SECRETARY

c.c.

Amb. Francis K. Muthaura, MBS.,
Permanent Secretary, Secretary to the Cabinet and
Head of Public Service,
Harambee House,
P.O. Box 30510,
NAIROBI.

Mr. Joseph K. Kinyua, EBS.,
Permanent Secretary,
Ministry of Finance,
Treasury Building,
NAIROBI.

Mr. Dave M. Mwangi, OGW.,
Permanent Secretary,
Provincial Administration and National Security,
Office of the President,
Harambee House,
P.O. Box 30510,
NAIROBI.

Mr. Tirop Kosgey,
Managing Director,
National Cereals and Produce Board,
P.O. Box 30586,
NAIROBI.

ANNEX 13

In breach of the contract you have to date failed to establish the letter of credit as stipulated. On account of this failure by you, our client has therefore been unable to perform the contract as required.

If you had performed your obligations our client would have made a sum of US\$ 49 per ton of maize. On account of your failure, that is now not possible. The loss incurred by our client on this aspect alone is US\$ 1,960,000. In addition our client has incurred costs to the supplier for storage of the maize totaling US\$ 1,338,000.

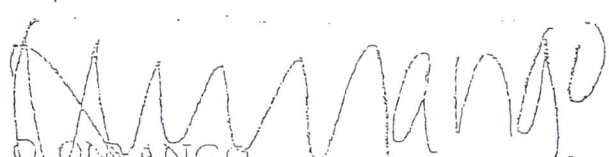
In addition to the above, and in spite of the clear ability of our client to perform the contract, you have issued statements that seem to suggest that it is our client, rather than the Board, that has been unable to perform under the contract. For that we have been asked to demand that you admit liability.

Our instructions are to demand, as we hereby do, that you admit liability for our said breaches and pay to our client damages to be quantified.

TAKE NOTICE that if we do not receive your admission of liability within the next SEVEN (7) days from the date hereof we shall institute proceedings against you for recovery of special and general damages. At your sole risk as to costs and consequences. We trust that we shall receive your admission within the stipulated time frame.

Yours faithfully,

OCHIENG, ONYANGO, KIBET & OHAGA.


TOM O. ONYANGO

cc. Etad Supplies & General Contracts Ltd.
P. O. Box 78523-00200
NAIROBI

ANNEX 14

Telex: 24109 MARKET KE
Fax: 542024
Telegrams: MARKETER
Telephone: 536028
Email: cereals@africaonline.co.ke

P.O. Box 30510
NAIROBI
KENYA



ANNEX 1A

OUR REF: C. 12/10
YOUR REF:

3rd November 2004

Mr. Mahboud Mohammed
Permanent Secretary (Special Programmes)
Office of the President
P. O. Box 30510
NAIROBI

Dear *Mahboud*,

RE: CONTRACT FOR THE SUPPLY OF 40,000 METRIC TONES OF WHITE MAIZE BY ERAD SUPPLIES & GENERAL CONTRACTORS LTD

Further to our letter ref. C. 6/5 dated 1st November 2004 we wish to inform you that we have been served with a seven (7) days notice of intention to be sued for breach of contract by the advocates of the above firm as per attached copy.

The eventuality of the matter degenerating into a legal dispute should be avoided, as this would be with risk to us as to the attendant costs and other undesirable consequences that would definitely ensue from litigation. We therefore, request you to take necessary action to resolve the matter by availing the required funds to facilitate performance of the contract on our part.

We would be grateful if you could kindly give the matter your urgent attention to ensure it is amicably resolved.

Yours *Sincerely*
Susoy

Tirop Kosgey
MANAGING DIRECTOR
TK/scn

c.c. Mr. James E.O. Ong'aa, EBS, CGW,
Permanent Secretary,
Ministry of Agriculture,
Kilimo House,
NAIROBI.

Mr. J.K. Kinyua, EBS,
Permanent Secretary,
Ministry of Finance,
Treasury House,
NAIROBI.

Mr. Dave M. Mwangi, CGW,
Permanent Secretary,
Provincial Administration & National Security,
Office of the President,
NAIROBI.

ANNEX 15

NATIONAL CEREALS AND PRODUCE BOARD

P.O. BOX 30586

NAIROBI

SERIAL NO. B 348782

MISCELLANEOUS RECEIPT

NCPB 52

RECEIVED FROM: ATTORNEY GENERAL'S OFFICE

P.O. BOX: 2731 NBS

SHILLINGS: Five thousand only

CENTS: _____

BEING PAYMENT FOR: Tender for Supply of 150,000 kgs of
Important software

TRANSACTION DATE

04 / 08 / 2004

BUDGET CENTRE				ACCOUNT NUMBER	AMOUNT		SIGN.	RECEIPT SERIAL NO.	OTHER DETAILS
COY.	DIV.	DEPT.	SEC.		KSHS.	CTS.			
1			5000	361	5000		—		
1							—		
1							—		
1							—		
1							—		
1							—		
1							—		

RECEIVED BY: _____

M. M. M. M.
FOR NCPB

CASHIER

24 AUG 2004

AFFIX
REVENUE
STAMP

Distribution: COPY 1 (BLACK) - CUSTOMER
COPY 2 (RED) - CASHIER FOR DATA ENTRY
COPY 3 (GREEN) - BOOK COPY

ANNEX 16

MINISTRY OF AGRICULTURE

PRESS RELEASE ON PROGRESS ON MAIZE IMPORTATION AND CURRENT FOOD SITUATION IN THE COUNTRY

1. I am disappointed by the personalization of attack by a section of the press on a public matter of National importance that is not personal at all.
2. I am even more dismayed by the way inaccurate facts and distortions have been used to make a story.
3. It is, therefore, with this background that I wish to inform the public of the real situation surrounding maize importation and food situation in the country.
4. Following Cabinet approval, in end-July 2004, for the Government to import 2 million x 90kg bags of maize through the National Cereals and Produce Board, the Ministry of Agriculture in consultation with the Board and stakeholders put measures and strategies in place to facilitate smooth implementation of the Cabinet decision.
5. As time was of essence, special dispensation was sought from the Ministry of Finance for NCPB to apply restricted tendering procedures in the maize Procurement exercise. The request was granted.
6. Tenders were invited on 29th July 2004 and a total of 31 firms purchased tender documents out of which 26 submitted their bids at the time of tender opening on Thursday 5th August 2004. The tenders were opened in public, attended by representatives of bidding firms and supervised by the Main Tender Committee.
7. Immediately after the tender opening, a Technical Evaluation Committee comprising representatives from the Ministry of Finance, Office of the President (Special Programmes), Office of the President (Provincial Administration and Internal Security), Ministry of Agriculture and NCPB was appointed to evaluate the tenders.
8. The evaluation was carried out from 5th August to 10th August, 2004 when the committee presented their report to the main tender committee of NCPB.
9. The Technical Evaluation Committee evaluated the thirty six (36) firms of whom only 9 firms met all the compulsory requirements set out in the tender document. The requirements included; among others, 45 days Bid Bond validity, submission of maize samples and Phytosanitary certificate. 27 firms were therefore disqualified because they did not meet these mandatory requirements.
10. The nine (9) qualified firms were subjected to the technical and financial evaluation criteria and ranked according to their performance. The Technical Evaluation Committee recommended to the Main Tender Committee that tenders be awarded to the best-ranked seven (7) firms.
11. The Main Tender Committee considered the findings and recommendations of the Technical Evaluation Committee and awarded tenders to five (5) best-ranked firms on 10th August 2004. The process was carried out strictly in line with public procurement procedures and tenders were awarded accordingly.
12. It is worth noting that the Tender results were announced the following day on August 11, 2004. Given that adjudication had commenced after opening of tenders on August 5, 2004, it is very clear that the process was handled expeditiously.
13. In awarding the tenders, the committee considered a number of factors including -- the need to spread the risk of default by the highest-ranked firm. It is for the latter reason that contracts were awarded to five (5) first ranking firms in order to ensure that the imported maize arrives with minimum risk.
14. The five (5) firms were initially offered the tenders at their offer prices with the highest being Erad Supplies and General Contracts quoting US\$ 233 per metric tonne and the lowest being, Purma Holding; Limited, quoting US\$ 189 per tonne. Hala & Euroworld quoted US\$ 229.
15. The firms with lower prices made a case for upward review on the basis that since the quantities they had bid had been reduced, they would not benefit from economies of scale. The Board also felt that the firms with the highest price also needed to review their prices downwards.
16. The companies' requests were referred to the Director of Public Procurement, for his professional advice, and the Tender Committee for consideration and award. The matter was awarded after the Director of Public procurement advised that the appeal had merit. A standard price of US\$ 229 per metric tonne was therefore approved for all the 5 firms.
17. Offer letters were issued to successful bidders on 12th August 2004 who signified their acceptance and signed the contracts between 17th and 27th August 2004. Some contracts took time to sign because of prolonged negotiations, late issuance of Performance Bonds and/or Performance Invoices.
18. The funding requirement for the importation programme had been projected at Kshs. 4.5 billion out of which Kshs. 3.4 billion is towards opening of Letters of Credit (LCs). The Ministry of Finance has so far released Kshs. 3.2 billion on diverse dates which has been used to open LCs for four (4) firms between 25th August and 15th September 2004. Let me also clarify that procurement using Letters of Credit is the acceptable mode of payment for international trade, especially commodity trading.
19. It is worth noting that no Government funds have been paid out to any firm. The funds mobilised, so far, have simply provided assurance against which letters of credit have been opened. As a matter of fact, no Government funds will be paid to anybody until maize is delivered.
20. There was considerable delay between the time of signing contracts and opening of LCs because of difficulties in mobilising funds. Indeed to date one LC for Erad Supplies and General Contracts is yet to be opened because of inadequate funds.
21. On their part, suppliers could not conclude loading/shipping arrangements without the Letters of Credit being put in place. With the latest LC being put in place on 18th September 2004, it would be difficult for the maize to be delivered within the same month of September 2004.
22. So far the private sector players have imported a total of 140,539 mt (1,551,000 x 90kg bags) which is 70% of the projected quantity of maize. 70,219 mt (780,558 x 90kg bags) has come through Mombassa while the rest has come from Uganda and Tanzania through cross border trade. It is therefore incorrect to give an impression that the private sector has been denied the chance to import when they have in fact brought in 70% of the private sector allocation duty free.
23. The initial plan was for all the 2 million x 90kg bags to arrive in the country before 30th September 2004. The inevitable delays in arrival has been occasioned by a number of factors including late opening of Letters of Credit, delays in issuance of LCs leading to the South Africa suppliers not being able to hold on to the initial prices and consequently compelling the suppliers to look for alternate sources, logistical problems associated with railage in transporting the maize from the inland to the Port of Durban, which takes about three (3) weeks and likely delays at the Port of Durban during loading because of inadequate facilities to handle large quantities of maize.
24. The press gives false impression that maize being imported by the Government will not come. On the contrary, arrival of maize being imported by the Government is expected between 27th October and 15th November 2004. Since this is GoK maize, extension of duty waiver is being finalised.
25. The standard newspaper gives the impression that the country does not have sufficient food. However, the correct situation is as follows:
26. With regard to relief food NCPB has stock of 696,267 x 90kg bags which include 180,000 bags of committed stocks that are yet to be collected by the relief agencies. The Government, through the NCPB, is also buying maize locally, which is part of the long rains 2004 production being harvested. The country will realise 19 million bags from the long rains.
27. With the carry-over stock of 2 million of bags at the beginning of this year in July and importation of 1.5 million bags by private sector, this quantity is sufficient to sustain the country for a period of 7 months up to March 2005. The above capacity has not even taken into consideration the expected harvest for the period November 2004 to February 2005 of 5 million bags thus leading to an overall projected harvest of 24 million bags from the long and short rains.
28. The Standard newspaper gives the wrong impression that Ministers have influenced the tendering process. This is not true since tendering was witnessed by officers from Ministry of Finance, Office of the President (Special Programmes), Office of the President (Provincial Administration and Internal Security) and Ministry of Agriculture, who were satisfied with the process.
29. It is very strange to allude that Ministers were involved in ordering or influencing the process. There has been no complaint from losing bidders and it is difficult to understand what is motivating the standard newspaper to personalize the issues where there are no complaints from the tenderers. We would be happy to reply to any complaints from the bidders. In addition, the Public Appeals Tribunal is available to aggrieved parties.
30. Procurement of goods and services in Parastatals is covered under the Exchequer and Audit (Public procurement) regulations, 2001. These rules vest the authority to make decisions of any procuring entity in an established Tender Committee. The same rules establish the office of the Directorate of Public Procurement whose main function includes policy formulation, implementation, human resource development and oversight of the public procurement process in Kenya. The office has specific powers to grant special dispensations to facilitate smooth implementation of procurement process in public entities.
31. Let me say that I am extremely disappointed by the Standard Newspaper coverage of the matter. This unwarranted bashing and kangaroo assessment of Public servants by the press is contrary to civilized journalism.

Hon. Mkiprute Arap Kirwa, MP,
Minister for Agriculture

19th October, 2004

ANNEX 17

RECEIVED

- 7 MAY 2012

OFFICE OF THE CHIEF
REGISTRAR OF THE JUDICIARY
MINISTRY OF JUSTICE

17

7

REPUBLIC OF KENYA

IN THE MATTER OF THE ADVOCATES ACT, CAP. 16 OF THE LAWS OF KENYA

AND

IN THE MATTER OF A COMPLAINT AGAINST AHMEDNASIR ABDULLAHI BY
BRYAN YONGO

AFFIDAVIT

I, BRYAN YONGO of Post Office Box Number 331, Sarit Centre, Nairobi and residing in Nairobi in the Republic of Kenya make oath and state as follows:-

1. THAT I am an adult male of sound mind residing and working for gain in Nairobi, in the Republic of Kenya.
2. THAT I make this Affidavit, being a complaint against AHMEDNASIR ABDULLAHI, P105/25/77/93 of professional misconduct including disgraceful or dishonourable conduct incompatible with the status of an Advocate in accordance with Section 60(1) of the Advocates Act, Cap. 16 of the Laws of Kenya.
3. THAT the first complaint against AHMEDNASIR ABDULLAHI relates to his professional and academic qualifications for admission as an Advocate as set out under PART IV of the Advocates Act.
4. THAT I am aware that AHMEDNASIR ABDULLAHI was admitted to the Roll of Advocates in 1993 on a Petition supported by a Certificate of Completion of Pupillage purportedly signed by Peter Simani dated 26th November, 1992.
5. THAT on or about November, 1992 while working for Peter Simani Advocate, the said AHMEDNASIR ABDULLAHI came to the offices of Peter Simani wherein he introduced himself to me and told me that the purpose of his visit was to procure Certificate of Pupillage from Peter Simani.
6. THAT Peter Simani was not in the office at the time and I explained to AHMEDNASIR ABDULLAHI that Peter Simani was away but he could leave the documents with me for Peter Simani's execution.

Bryan Yongo

CHIEF REGISTRAR OF
THE JUDICIARY

07 MAY 2012

RECEIVED

THAT when I notified Peter Simani of the same, he told me that AHMEDNASIR ABDULLAHI did not attend and/or complete pupillage with him and as such, he was reluctant to sign the said documents.

THAT AHMEDNASIR ABDULLAHI persistently sought audience with Peter Simani to no avail and finally he told me that he was desperate and to my surprise signed the said documents in my presence purporting it to have been signed by Peter Simani.

THAT I verily believe that AHMEDNASIR ABDULLAHI is not qualified to practise as an Advocate, to be a member of the Law Society of Kenya, to be a Senior Counsel or to hold any public office in particular, in the Judicial Service Commission of which he is a member elected by the Law Society of Kenya on the ground that his admission to the Roll of Advocates was based on a forged Certificate of Completion of Pupillage.

THAT the second complaint against AHMEDNASIR ABDULLAHI relates to the sharing of profits contrary to Section 37 of the Advocates Act.

THAT AHMEDNASIR ABDULLAHI has shared his profits in respect of professional business with me on several matters. I will enumerate a few of them:

THAT I introduced the Administrators of the estate of the late JASON ATINDA OUKO to AHMEDNASIR ABDULLAHI for the latter to act for the estate on several matters in Court and out of Court in respect of property L.R. No. 3589/5.

THAT on 21 June, 2011 I procured the execution of a contract between the Administrators of the estate of JASON ATINDA OUKO and FAZAA MARINA LIMITED, a company whose shareholders and directors are nominees and proxies of AHMEDNASIR ABDULLAHI on the basis of which professional services would be rendered through AHMEDNASIR ABDULLAHI and I and remunerated by transfer of 17 acres out of property L.R. No. 3598/6, the same to be shared equally between the two of us. Annexed herewith and marked as "B71" is a true copy of the contract in that regard.

THAT AHMEDNASIR ABDULLAHI has the conduct of the following matters in respect of property L.R. No. 3589/6:-



J.C.C ELC No. 483 of 2011, The Estate of Jason Atinda Ouko -vs-
Iomon Scit;

J.C.C ELC No. 305 of 2011, The Estate of Jason Atinda Ouko -vs- John
Woria;

J.C.C ELC No. 20 of 2009, Geoffrey Njeru Mutakha -vs- The Estate of
son Atinda Ouko;

J.C.C ELC No. 67 of 1991, Jason Atinda Ouko -vs- Rosemary Moraa;

J.C.C ELC No. 1295 of 1991, Tom Mogaka -vs- Jason Atinda Ouko;

J.C.C ELC No. 311 of 2011, Dr. Charles Maranga & Others -vs- The
estate of Jason Atinda Ouko;

J.C.C Civil Application No. 473 of 1995, Joseph Mwangi -vs- Jason
Atinda Ouko;

J.C.C ELC No. 282 of 2011, Tom Mogaka -vs- The Estate of Jason Atinda
Ouko;

J.C.C.C No. 302 of 2011, The Estate of Jason Atinda Ouko -vs- Mrs.
Kageni;

Mrs. Muthemba -vs- The Estate of Jason Atinda Ouko;

Musa Muna -vs- The Estate of Jason Atinda Ouko;

Rose Muthemba -vs- The Estate of Jason Atinda Ouko;

Martin Waitnaka -vs- The Estate of Jason Atinda Ouko; and,

Heilen Wanjiru Mwangi -vs- The Estate of Jason Atinda Ouko.

On 13th June, 2011 I paid Kshs. 350,000.00 to Aaron Ouko an
administrator of the said estate of Jason Atinda Ouko to enable the
procurement of deed plans for property L.R. No. 3589/6. Annexed herewith
collectively marked as "BY2" are true copies of the payment cheque
and acknowledgement thereof.

I undertook the fencing and securing of property L.R. No. 3589/6 on
the basis of the contract dated 1st June, 2011 and instructions from
AHMEDNASIR ABDULLAHI. Annexed herewith and collectively marked as
"BY3" are true copies of the letters in evidence of the above and of invoices
raised for services rendered.

I am aware that the occupants of property L.R. No. 3589/6 have
complained to several judicial offices of the conduct of AHMEDNASIR
ABDULLAHI. Annexed herewith and collectively marked as "BY4" are true
copies of the correspondences in evidence of the above and extracts of
newspapers reporting of the same.

throughout the conduct of matters related to property L.R. No. 5. AHMEDNASIR ABDULLAHI has made several payments to me or to her, on account of profits for professional services rendered in respect of disputes on the property. Annexed herewith and collectively marked '5' are true copies of the payment cheques in that regard.

I introduced JACOB JUMA, a director of ERAD SUPPLIERS & GENERAL FACTS to AHMEDNASIR ABDULLAHI who now acts for the company as Counsel in Misc. Civil Case No. 559 of 2009, Erad Suppliers & General facts vs- National Cereal & Produce Board.

It was agreed amongst AHMEDNASIR ABDULLAHI, JACOB JUMA and I that our total consideration would be Kshs. 50,000,000.00 to be shared equally. Annexed herewith and collectively marked as "BY6" is a true copy of a ruling delivered in the said case and letters addressed to me on the subject of payments.

[I] paid the hefty fee of Kshs. 50,000,000.00 was negotiated by AHMEDNASIR ABDULLAHI on the promise to JACOB JUMA that the former enjoyed patronage with the Judge before whom the claim is pending whose appointment he participated in and he would ensure 100% delivery within the shortest time possible.

At the speed of the progression of the claim before the said Judge is a testimony of AHMEDNASIR ABDULLAHI's claim of patronage and promise of speedy delivery.

As a characteristic of him, AHMEDNASIR ABDULLAHI has procured the cancellation of the written instructions for my payment now that he is in breach of delivery of the promise to Jacob Juma as evidenced by the letter dated 7th March, 2012 exhibit as part of "BY6" above.

I introduced JACOB JUMA to AHMEDNASIR ABDULLAHI to represent him in a claim over a prime property in Lower Kabete pending before the Judge in the Environmental and Land Division, who again, AHMEDNASIR ABDULLAHI claimed enjoyed patronage with and would ensure 100% delivery within the shortest time possible.

It was agreed amongst JACOB JUMA, AHMEDNASIR ABDULLAHI and I that the remuneration for professional services in the matter would be 4

was to be excised from the suit property, valued at Kshs. 400,000,000.00
the same to be shared equally between AHMEDNASIR ABDULLAHI and I.

THAT AHMEDNASIR ABDULLAHI also indicated that he enjoyed patronage
from the Attorney General and would ensure to 100% delivery in the case by
contacting the Attorney General's office for assistance.

THAT I have since established that AHMEDNASIR ABDULLAHI indeed wrote
to the Attorney General on 27th February, 2012 in terms of his
representation to ensure 100% delivery. Annexed herewith and marked as
BY7" is a true copy of the letter in evidence of the above.

THAT AHMEDNASIR ABDULLAHI did not get to act in any of the matters
resaid on his own but through my introduction and agency. He is for all
practical purposes my Agent.

THAT there are many other instances of disgraceful or dishonourable
conduct on the part of AHMEDNASIR ABDULLAHI arising out of the matters
deposed to hereinabove, including but not limited to contravention of:-

Chapter Six of the Constitution of Kenya, 2010 in so far as he is a
member of the Judicial Service Commission;

Section 39 of the Advocates Act in so far as he has acted as my agent;
and

Section 46 of the Advocates Act in so far as it relates to the various
agreements for remuneration by way of purchase of interests in the
subject matters of the cases he is acting in.

THAT there are many other instances of disgraceful or dishonourable
conduct on the part of AHMEDNASIR ABDULLAHI, namely:-

3. AHMEDNASIR ABDULLAHI confided to me that whilst the interviews for
the Chief Justice were underway, he and a Senior Counsel took the
current Chief Justice, Honourable Willy Mutunga to AHMEDNASIR
ABDULLAHI's residence in Karen for "couching". AHMEDNASIR
ABDULLAHI told me that NSIS officers trailed them up to his residence in
Karen but the officers could not go beyond the gate nor could they take
any photographs of them;

Brown

Whilst the interviews for the judges were underway, AHMEDNASIR ABDULLAHI told me that he would ensure that the following are not appointed as judges because he had a bone to grind with them:-

- i. Rosemelle Mutoka;
- ii. Boat Olao;
- iii. Gilbert Mutembej; and,
- iv. Reuben Nyakundi.

AHMEDNASIR ABDULLAHI has further told me that "they" had agreed to fix Honourable Justices Omolo, Bosira, O'kubasu and Nyamu and that the four would not survive the vetting board;

AHMEDNASIR ABDULLAHI further told me that he has full control over the Judicial Service Commission and the judges recently appointed by the Commission as well as the Advocates he has appointed for the Commission including Issa Mansur who was his pupil and employee;

AHMEDNASIR ABDULLAHI has leaked to me several deliberations and decisions of the Judicial Service Commission and this can be verified from text messages transmissions records from his cellphone number 0722515050 to my cellphone number 0704594922.

It is therefore, my request that the complaint against AHMEDNASIR ABDULLAHI be thoroughly investigated and the following actions taken instated:-

Removal from the Roll of Advocates;

Removal from the Roll of Senior Counsel;

Removal from the membership of the Law Society of Kenya; and,

Removal from the membership of the Judicial Service Commission.

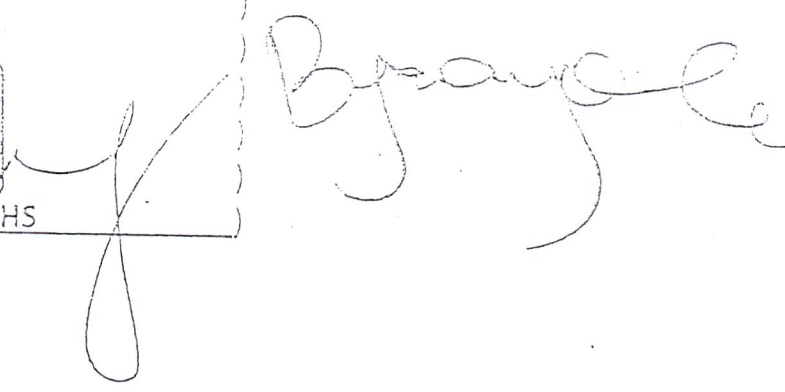
I swear this Affidavit in support of my complaint against AHMEDNASIR ABDULLAHI and pray that the same be acted upon.

THAT What is deponed to herainabove is true and correct to the best of my knowledge and belief save as to matters deponed to on information sources whereof have been disclosed and matters deponed to on belief wheraupon grounds have been given.

SWORN by the said BRYAN YONGO)
at Nairobi this 3rd day of May, 2012)

BEFORE ME

GRARD, GEOFFREY
ADVOCATE & COMMISSIONER
FOR OATHS
P.O. Box 4613 00100 NAIROBI
COMMISSIONER FOR OATHS



DRAWN BY:-

BRYAN YONGO
BOEFAR COURT, APT. 6
KINDERET AVENUE, OFF KANDARA ROAD
KILELESHWA
P.O. BOX 331-00600, SARIT CENTRE
NAIROBI



ERAD SUPPLIES & GENERAL CONTRACTS LIMITED

P.O. BOX 73523-00200 NAIROBI, KENYA.

TEL: 254-020-2715872/2717061 FAX: 254-020-2714419 Email: eradcoes@yahoo.com
PIN NO. P011510248 VAT NO. 01291700

Ref No. ERAD/NCPB/Invoice 00005

Date: 26th August, 2004

INVOICE No. 00005

Our Suppliers:

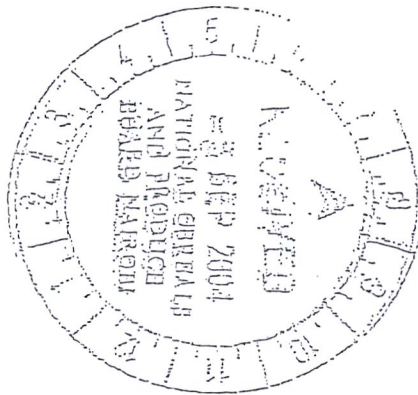
To: National Cereals and Produce Board
Nyumba Ye Nafaka
Muchakos/Enterprise Road
P.O. Box 30586
Nairobi, Kenya.

Ethiopian Grain Trade Enterprise
Tel: 251-1-650234
Fax: 251-1-652792

Product Description	Quantity	Unit Price	Total Price
	Metric Tons	USD	USD
White Maize Grain Grade K2 or better 1. Moisture Content 13.5% 2. Foreign Matter/Broken Grain 3.0% (1% Foreign Matter) 3. Pest Damaged Grain 3.0% 4. Rotten diseased and discoloured grain 2.0% 5. Other Coloured Grains 1.0% 6. Total defects (pest damaged grains, rotten diseased and discoloured grain) 8% 7. Crop Year - 2003/2004, free from live insect infestation. 8. Total Aflatoxin (with B1 5% maximum) (10 PPB) Max	40,000 MT	\$195.94	\$7,877,600
Cost of Goods (F.O.B)			\$7,877,600
Freight	40,000 MT	\$32.06	\$1,282,400
Total Cost and Freight	40,000 MT	\$229.00	\$9,160,000

Payment Terms: Irrevocable Transferable Sight Letter of Credit.

Seal



- iv. ERAD upon receipt of such funds or in expectation of receiving the same through the bank or banks stated above shall commit the financial capital so availed to:
- a. Purchasing, procuring the specified grains in accordance with the tender.
 - b. Pay for the cost of freight of such cargo of grains as it shall order
 - c. Pay for any other costs consequent upon or necessarily arising out of the tender requirements including but not limited to insurance, transport, storage, relevant government levies and taxes, etc.
 - d. ERAD shall maintain/keep proper records of all transactions attendant to satisfaction of the tender. ERAD shall provide copies of all of the documents arising from and in the course of supplying the tender alluded to above.
 - e. KAPU shall have a right to recommend service providers ranging from Shipping agents clearing agents, overland transporters, insurers, etc. to ensure that the tender is fully and satisfactorily performed. HOWEVER KAPU DOES NOT and will not by any of its actions assume any legal liability that may accrue against ERAD by the government of Kenya whether arising from its action (KAPU) or in action.
- v. KAPU shall counter sign all payments to be made to any third parties to this agreement.
- vi. ERAD shall provide KAPU with a detailed budget plan for fulfilling the tender.

2. Delivery Satisfaction Of The Tender Requirements

- i. ERAD shall ensure that all the grain required under the tender is delivered and fully acknowledge by the government
- ii. ERAD shall only provide quality grains as specified in the tender documents AND KAPU shall not be responsible and does not assume responsibilities for substandard grains delivered or partial delivery. Full legal and contractual liabilities lie with ERAD.

ERAD SUPPLIES & GENERAL CONTRACTS LIMITED

(DIRECTOR)

ERAD SUPPLIES & GENERAL
CONTRACTS LIMITED

P.O. BOX 70523-00100
NAIROBI

2

KAPU (KENYA) LIMITED

(DIRECTOR)

P.O. BOX 11023, NAIROBI
TEL: 5503677/516, 5543367
FAX: 550660, 218291, 30466

3. Statements of Accounts, profit and loss

- i. Both parties are entitled to access bank statement(s) for the accounts through which the tender is being financed
- ii. Both parties either by themselves or through a mutually agreed accountant or auditor shall work out the expense and costs arising out of financing the tender and ensure that KAPU and or its bankers are fully indemnified of such expense before profits or loss can be apportioned.
- iii. Profits and loss shall be apportioned between KAPU and ERAD on a ratio of 50:50 of the NET proceed of the tender except in case of extra financial assistance.
- iv. Payment received or to be received from the government of Kenya shall be paid to account number I & M Bank, Kenyatta Avenue Branch.
- v. ERAD shall advise the government of Kenya as such vide a suitable letter copied to KAPU and I & M bank respectively.

4. Assignment

- i. This agreement is strictly for financing ERAD by KAPU and its breach shall not constitute a defence by ERAD against the government of Kenya for mal-performance or underperformance by ERAD of its obligations under the tender requirements.
- ii. No partner shall transfer or assign its duties, or benefits under this agreement to a third party without prior written consent of the other partner.

5. Undertakings

- i. Each of the partners to this agreement undertakes to the other that in addition to its other obligations under this agreement it shall;
 - a. Promote the best interests of the parties herein and consult fully on all matters materially affecting the fulfillment of the common undertaking, that is, fulfillment of the tender alluded to above.
 - b. Act in good faith towards the other in order to promote the success of the joint undertaking.

ERAD SUPPLIES & GENERAL CONTRACTS LIMITED

(DIRECTOR)

ERAD SUPPLIES & GENERAL
CONTRACTS LIMITED
P.O. BOX 10000-00100
NAIROBI

3

KAPU (KENYA) LIMITED

(DIRECTOR)

KAPU (KENYA) LTD
P.O. BOX 10000, NAIROBI
TEL: 550055/7/8/9, 554058/7
FAX: 550050, 218251, 554668

6. Indemnity

- i. ERAD hereby agrees with and undertakes to indemnify KAPU and to keep it indemnified at all times against all losses, demands charges, claims, actions costs expenses and other liabilities of whatever nature suffered or incurred by KAPU arising out of:
 - a. The non-performance by ERAD of any of its obligations under this agreement
 - b. The non-performance by ERAD of any of its obligations under the tender contract between it (ERAD) and the government of Kenya.

7. Guarantee

All the directors of ERAD jointly and severally personally guarantee to KAPU to ensure total performance of the terms of this agreement and shall execute a suitable guarantee as annexed to this agreement.

8. Confidentiality and Announcements

- i. Each partner to this agreement shall at all times during the subsistence and after the lapse of this agreement, use its endeavors to keep confidential all commercial and technical information which it may acquire in relation to the terms of this agreement or otherwise of its other business or its customers business affairs, affiliates, etc.
- ii. The announcement in connection with the subject matter of this agreement shall not be made or issued by or on behalf of either partners without the written approval of both partners.

9. Waivers and Amendments

- i. No failure or delay on the part of any partner in exercising any power or right under this agreement and no granting of any indulgence or forbearance by such partner (s) to the other shall operate as a waiver of any covenant, agreement or provision to be performed by such other or in any way affect, diminish, restrict or prejudice the rights and powers of the first-mentioned partner
- ii. No amendment or variation of this agreement shall be effective unless in writing and signed by both parties.

ERAD SUPPLIES & GENERAL CONTRACTS LIMITED
(DIRECTOR) _____

ERAD SUPPLIES & GENERAL
CONTRACTS LIMITED
P.O. BOX 1000-00100
NAIROBI

4

KAPU (KENYA) LIMITED
(DIRECTOR) _____

KAPU (KENYA) LIMITED
P.O. BOX 40215, NAIROBI
TEL: 550000/550001
FAX: 550660, 5160 50858

10. Severability

If any provision of this agreement or part thereof is found invalid or illegal the remainder of this agreement shall be binding on the partners and shall be construed as if the invalid or illegal provision of part thereof had been deleted from this agreement.

11. Governing Law settlement of disputes

This agreement shall be governed by and construed in accordance with KENYAN LAW.

12. Entire agreement

This agreement (taken with the appendixes) constitutes the entire agreement and understanding of partners with respect to subject matter hereof and none of the partners has entered into this agreement in reliance upon any representation, warranty or undertaking by or on behalf of any partner which is not expressly set out herein.

IN WITNESS WHEREOF the parties have duly executed this agreement, the day and year first hereinbefore written.

SIGNED, SEALED and DELIVERED by
ERAD INVESTMENT

DIRECTOR

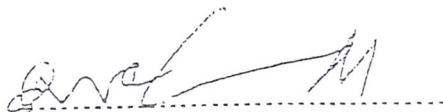
In the presence of

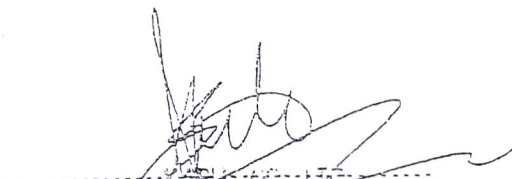
SIGNED by the

KAPU KENYA LIMITED

DIRECTOR

In the presence of






KAPU (K) LTD
P.O. BOX 41023, NAIROBI
TEL: 550586/7/8/9, 554356/7
FAX: 550650, 218231, 334668

DRAWN BY:
ALEX KARANJA & CO. ADVOCATES
SHANKARDASS HOUSE, 2ND FLOOR,
P.O. BOX 52334-00200
NAIROBI.

ERAD SUPPLIES & GENERAL CONTRACTS LIMITED - 5
(DIRECTOR) 

ERAD SUPPLIES & GENERAL
CONTRACTS LIMITED
P.O. BOX 71530-CAROL
NAIROBI

KAPU (KENYA) LIMITED
(DIRECTOR) 

KAPU (K) LTD
P.O. BOX 41023, NAIROBI
TEL: 550586/7/8/9, 554356/7
FAX: 550650, 218231, 334668

ANNEX 20

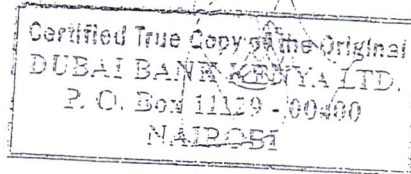
ANNEXURE - 2

(10)



August, 2004

The Managing Director
National Cereals and Produce Board
Nairobi



INVESTMENTS & MORTGAGES
BANK LIMITED

I&M Bank House
2nd Ngong Avenue
P.O. Box 30238
00100 CPD Nairobi
Kenya.

Tel: +254 (0)20 271129-40

311111

Fax: +254 (020) 271129-1937

E-mail: invest@imbank.co.ke

Website: www.imbank.co.ke

BID BOND No. NG 454

WHEREAS, Erad Supplies and General Contract Limited (hereinafter called "The Bidder") has submitted its bid for the supply of imported maize (hereinafter called "The Bid") KNOW ALL MEN by these presents that we Investments & Mortgages Bank Limited of P.O. Box 30238, Nairobi, Kenya having our registered offices at I & M Bank House, 2nd Ngong Avenue, Nairobi (hereinafter called "the Bank") are bound to the National Cereals and Produce Board (hereinafter called "the buyer") in the sum of US\$ 1,000,000.00 (United States Dollars One million only) for which payment will truly to be made to the said buyer, the Bank binds itself, its successors and assigns these present.

THE CONDITIONS of obligation are:-

If the Bidder withdraws its bid during the period of bid validity specified by the Bidder on the bid form; or

If the bidder having been notified of the acceptance of its bid by the buyer during the period of bid validity

a) fails or refuses to execute the Contract form if required; or

b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to bidders;

The Bidder undertakes to pay the buyer up to the above amount upon receipt of its first written demand, without the buyer having to substantiate its demand, provided that in its demand the buyer will note that the amount claimed by it is due to it owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

...../2

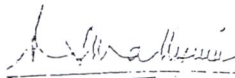
(Handwritten signatures)


BID BOND NG 464

The foregoing notwithstanding, however it is an overriding condition of this bond that the same will be effective, valid and in force only on receipt of a Stand by letter of credit in favour of Investments and Mortgages Bank Limited issued by an acceptable international Bank of repute for an amount of not less than US\$ 1,000,000.00 (United States Dollars One million only) on terms and conditions which are acceptable to the Bank.

This Guarantee will expire on 2nd November, 2004 whereupon the Bank's liability shall be null and void. Any claims should be received by the bank by that date

For and on Behalf of Investments and Mortgages Bank Limited


Authorised Signatory


Authorised Signatory

Certified True Copy of the Original
DUBAI BANK KENYA LTD
P. O. Box 11129 - 00100
NAIROBI

ANNEX 21

ROPACK CC

INTERNATIONAL

STATE, KIDONYALE
KUPALE ROAD,
NAIROBI 00100
KENYA

TEL: 27(01)4690-1111
FAX: 27(01)4690-1111
E-mail: ropack@ropack.co.ke

National Bank of Kenya
National Bank Building
Harambee Avenue
P.O. Box 72866-00100
City Square Nairobi
00254 020 224471
00254 020 339690
00254 020 330784
23 August 2004
F Logo
Mr Ogunu / Mr Bor

By order of ERAD SUPPLIES & GENERAL CONTRACTS LIMITED, TENDER FOR NATIONAL CEREALS AND PRODUCE BOARD AWARD LETTER REF. NO. IMP/MZ/TEN/2004-2005 FOR SUPPLY OF WHITE MAIZE IN FAVOUR OF NATIONAL BANK OF KENYA LIMITED

At the request of M/S ERAD SUPPLIES & GENERAL CONTRACTS LIMITED, we ROPACK CC confirm that we have taken the required steps towards lodging the necessary Performance Bond.

We have completed the following:

- Lodged funds with Standard Bank to the extent of US\$250,000
- Communicated with the supplying source for them to lodge the balance required. This is in the process of being done
- The full value of the Performance Guarantee will be US\$844,000 and will be lodged by ROPACK CC on confirmation from Ethiopian Grain Trade Enterprise of their Performance Guarantee. We are currently waiting for this confirmation from the Ethiopian Grain Trade Enterprise bankers.

Yours faithfully


FRANK LOGO



Member: Frank Logo

CR: 1044019790/23

ANNEX 22

PERFORMANCE BOND

The Managing Director,
National Cereals and Produce Board,
P. O. Box 30536,
Nairobi

PERFORMANCE BOND NO. CREDIT/rak/338/2004 BY ORDER OF ERAD
SUPPLIES AND GENERAL CONTRACTS LTD. - TENDER NO. TENI/2004/2005
FOR SUPPLY OF 40,000 M/TONS OF WHITE MAIZE

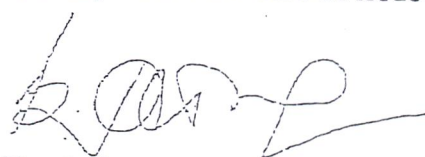
At the request of M/s ERAD SUPPLIES AND GENERAL CONTRACTS LTD, we DUBAI BANK KENYA LIMITED P.O BOX 11129, NAIROBI, hereby guarantee you to the extend of USD 932,000.00 (USDollars Nine Hundred Thirty Two Thousand Only) covering the good execution by Erad Supplies and General Contracts Ltd of sale of 40,000 M/tons of white maize at a price of USD 233 per metric ton.

We hereby engage with ERAD SUPPLIES AND GENERAL CONTRACTS LTD and undertake to pay you any amount up to a maximum of USD 932,000.00 (USD Nine Hundred Thirty Two Thousand Only) without any objection whatsoever, upon receipt of your first written demand that Erad Supplies and General Contracts Ltd have not complied with the condition of the contract.

This Performance Bond will be valid for 90 days from the date of issue.



Bank Signatory



Bank Signatory

Date: 16th August, 2004



DUBAI BANK
KENYA LIMITED

22

PERFORMANCE BOND

Managing Director
National Cereals and Produce Board
P.O. Box 30586
NAIROBI

PERFORMANCE BOND NO. CREDIT/rak/37/2004 BY ORDER OF FREBA INVESTMENTS - TENDER NO.TENI/2004/2005 FOR SUPPLY OF 30,000 M/TONS OF WHITE MAIZE

At the request of M/s. FREBA INVESTMENTS, we DUBAI BANK KENYA LIMITED P O BOX 11129, 00400 NAIROBI, hereby guarantee you to the extent of USD.687,000 (USDollars Six hundred Eighty Seven thousand only) covering the good execution by Freba Investments of a contract for the supply of 30,000 M/tons of White Maize at a price of USD 229 per metric ton.

We hereby engage with FREBA INVESTMENTS and undertake to pay you any amount up to a maximum of USD.687,000 (USDollars Six hundred Eighty Seven thousand only) without any objection whatsoever, upon receipt of your first written demand that Freba Investments have not complied with the condition of the contract.

This Performance Bond will be valid for 90 days from the date of issue.

Client Signatory

Bank Signatory

Date: 19th August, 2004

ANNEX 23



ERAD SUPPLIES & GENERAL CONTRACTS LIMITED

P.O. BOX 73523-00200 NAIROBI, KENYA,
TEL: 254-020-2715872/2717061 FAX: 254-020-2714419 Email: erad@erad.com
PIN NO. 2011510248

14th September, 2004.

General Manager,
Kenya Commercial Bank Limited,
KCB Trade Centre,
P.O. BOX 14959
NAIROBI.

Dear Sir,

RE: TENDER FOR SUPPLY OF 40,000 METRIC TONNES OF WHITE MAIZE -
NATIONAL CEREALS & PRODUCE BOARD

OPENNING OF LETTER OF CREDIT

We write with reference to the opening of a Letter of Credit for the above mentioned tender.

This is to advise that the Letter of Credit be opened in our account held at KCB Sarit Centre Branch account no. 016 200581001 at US\$ 180 per metric tonne to cover 40,000 MT - US\$ 7,200,000.

Since we are selling at US\$ 229 per MT the difference of US\$ 49 x 40,000 MT - US\$ 1,960,000 be transferred to our account No. 80141668, DUBAI BANK KENYA LIMITED, ICEA BUILDING, KENYATTA AVENUE BRANCH, P.O. BOX 11129, TOM MBOYA STREET, NAIROBI, ATTENTION - MANAGING DIRECTOR, MR. HASSAN ZUBEDI

We look forward to your continued support and assistance.

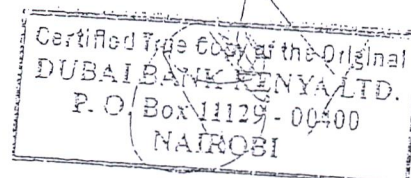
Yours faithfully,

Grace S. Wakiungu
DIRECTOR

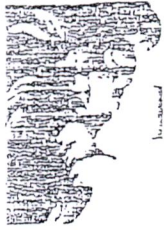
Jacob Juma
DIRECTOR

John Waluke
DIRECTOR

c.c. Mr. Hassan Zubedi
Managing Director
Dubai Bank Kenya Limited
Kenya Avenue Branch
NAIROBI.



ANNEX 24



KCB

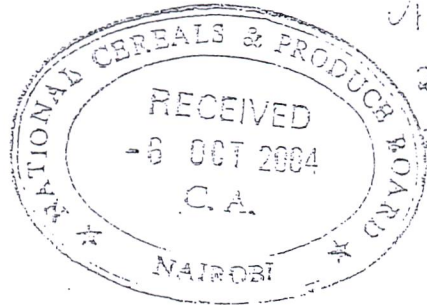
Making the Difference

WINE 24
Kenya Commercial Bank Limited

Head Office
Kencorn House, Moi Avenue
P.O. Box 46-00 Nairobi, Kenya
Telephone: 339441 / 245474
Fax: 216077
Email: kcbna@kcb.co.ke
Website: <http://www.kcb.co.ke>

5th October 2004

The Chief Accountant,
National Cereals and Produce Board,
P.O. Box 30586,
NAIROBI.



TO Note
M. MD ✓
BS
IEC
D4
7/10 CA

Attn: C.S. Khaemba

Dear Sir,

REF: VALIDITY AND GENUINNESS OF PERFORMANCE BONDS

Your letter Ref. C.1/6 dated 6th September 2004 on the above subject refers.

We confirm having received confirmations in respect to the authenticity and validity of all the performance Bonds, however additional comfort can be attained through the following suggested amendments.

- a) The subject of the Performance Bond should cite amount of the Guarantee.
- b) The Performance bonds should have reference to the initial Contract (Tender number.)
- c) Include the Wording "without objection or contestation whatsoever".
- d) Amount in words should indicate the currency i.e. United States Dollars.
- e) Foreign Bank performance Bond should be issued through a Kenyan Bank preferably through your Bankers) and must be governed by the Kenyan Law.

Kindly note to diarise the expiry dates of these Performance Bonds to ensure that your claims are promptly made on or before expiry dates; better still the Bonds should allow lodgment of claims up to 15 days after the expiry date.

Yours faithfully,

B.M. MUHATI,
MANAGER, GUARANTEES
TRADE SERVICES

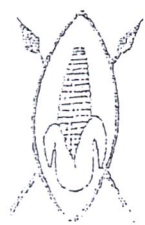
G.M. MBURU
MANAGER,
TRADE SERVICES

c.c. Mr. Elijah Mwangi
Unit Head-Corporate
KCB- Head Office

24

NATIONAL CEREALS AND PRODUCE BOARD

Fax: 557622/650710
Telegrams: MARKETER
Telephone: 536028
Email: cereals@africaonline.co.ke



P.O. Box 30586
NAIROBI
KENYA

OUR REF: C. 1/6

6th September 2004

YOUR REF:

The Corporate Relationship Manager
Kenya Commercial Bank Ltd
Kencom House
Moi Avenue
NAIROBI



Attn: Messrs. E. J. Mwangi

Dear Sir,

RE: VALIDITY AND GENUINNESS OF PERFORMANCE BOND

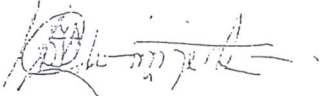
As you are aware, the Board is in the process of importing 2,000,000 x 90kg bags of maize on behalf of the Government. As part of the process, we called for and have now received Performance Bonds as detailed here below:-

	Name	Performance Bond NO	Date of Issue	Value of Performance Bond US\$	Issuing Bank
1	Euroworld Comm. Ltd	G/153/2004	18/8/2004	916,000.00	Ciro Commercial Bank Ltd
2	Hala Trade	G-006097	17/8/04	916,000.00	HSBC Geneva
3	Erad Supp.& Contracts	Credit/rak/38/2004	16/8/04	916,000.00	Dubai Bank
4	Purma Holdings Limited	a) b) EBS/HQ/PB/01-10044	23/8/04	120,000.00	Equity Building Society
5	Freba Investments	Credit/rak/37/2004	19/8/04	687,000.00	Dubai Bank

The purpose of this letter is to request you to give us your professional opinion on the genuiness and validity of these Bonds.

Kindiy revert to us at your earliest convenient time possible.

Yours faithfully,



C.S. Khaemba
CHIEF ACCOUNTANT

CSK/CKN/IW



C.K. Ngelechey
DEPUTY CHIEF ACCOUNTANT

NOO

Cc Managing Director
Import/Export Coordinator

ANNEX 25



KENYA REVENUE AUTHORITY

25

DOMESTIC TAXES DEPARTMENT
ISO 9001 2008 CERTIFIED

~~Handwritten scribbles~~

28 FEB 2013

IT/REF. 19/
PIN: P051177048C

Date: 28TH February 2013

THE MANAGING DIRECTOR - KENYA COMMERCIAL BANK HEADQUARTRES NAIROBI	Copy to: ERAD SUPPLIES & GENERAL CONTRACT LTD P.O.BOX 73523 -00200 NAIROBI
---	---

RE: NATIONAL CEREALS AND PRODUCE BOARD FOR ERAD SUPPLIES AND GENERAL CONTRACT LTD

In exercise of the powers conferred upon me by Section 96 of the Income Tax Act, I hereby declare you to be agent of the above person and require you to pay me the sum of Sh. 156,600,000 being tax due by the said person, from any money including pensions, salary, wages or any other remuneration which may, at any time within twelve months from the date of this notice be held by you for, or due by you to, the said person.

Subject to sufficiency of such moneys, payment should be made by you as follows:

Immediately: From any funds held in any account(s) maintained by the above named company, until all the above outstanding tax is fully cleared.

In case of an employec who leaves your employment before all tax under this notice has been recovered, please notify this Office before he leaves of the proposed date of leaving and of the balance of remuneration due.

Please note that subsection (7) of Section 96 provides that in default of payment being made by you in accordance with this notice, the tax may be recovered from you under the provisions of the Act relating to the collection and recovery of tax.

When making such remittances, please quote the above reference. Your cheque should be drawn in favour of the COMMISSIONER – DOMESTIC TAXES DEPARTMENT and forwarded to the Domestic Taxes Department SOUTH OF NAIROBI - WILSON AIRPORT.

TOM OKUMU
SENIOR ASSISTANT COMMISSIONER



Note section 96 of the Income Tax Act, is reproduced overleaf.

I.T. 516

Tulipe Akhuru Tujogemee!



"agent" means a person appointed as such under subsection (2) of this section;

"appointment notice" means a notice issued by the Commissioner under the subsection appointing an agent;

"moneys" includes salary, wages and pensions payments and any other remuneration whatsoever;

"principal" means the person in respect of whom an agent is appointed

2. The Commissioner may in his discretion by written notice addressed to any person-
 - (a) appoint him to be the agent of another person for the purpose of the collection and recovery of tax due from such other person and
 - (b) specify the amount of such tax to be collected and recovered.
3. An agent shall pay the tax specified in the appointment notice out of any moneys, which may at any time during the twelve months following the date of the notice, be held by him for, or due from him to his principal.
4. Where an agent claims to be, or to have become unable to comply with subsection (3) of this section by reason of the lack of moneys, held by, or due from him, he shall as soon as may be practicable, notify the Commissioner accordingly in writing setting out fully the reasons for his inability so to comply, and the Commissioner may -
 - (a) accept the notification and cancel or amend the appointment notice accordingly; or
 - (b) if he is not satisfied by such reasons reject the notification in writing.
5. Unless and until a notification is given by an agent under subsection (4) of this section:-
 - (a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal and
 - (b) in any proceedings for the collection or recovery of such tax he shall be stopped from asserting the lack of such money.
6. For the purposes of this section, the Commissioner may, by notice in writing, at anytime require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return showing any moneys which maybe held by such person for, or due by him to any other person from whom tax is due.
7. Where an agent fails to pay any amount of tax specified in his appointment notice within thirty days:-
 - (a) of the date of service of such notice on him or
 - (b) of the date on which any moneys come into his hands for, or become due by him to his principal, whichever is the later, and:
 - (i) he has not given a notification under subsection (4) of this section; or
 - (ii) he has given such notification which has been rejected by the Commissioner,

the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery or such amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.
8. An agent who has made any payment of tax under this section shall for all purposes be deemed to have acted therein with the authority of his principal and of all other persons concerned and shall be indemnified in respect of such payment against all proceedings, civil or criminal and all process, judicial, or extra judicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.
9. Any person who, in giving a notification under subsection (4) of this section, wilfully makes any false or misleading statement, or willingly conceals any material fact, shall be guilty of an offence.
10. For the purposes of this section, cases where moneys are held by an agent for, or due by him to, his principal shall include cases where the agent:-
 - (a) owes or is about to pay money to the principal; or
 - (b) holds money on account of the principal; or
 - (c) holds money on account of some other person for payment to the principal or
 - (d) has authority from some other person to pay money to the principal.

ANNEX 26

APPENDIX 1

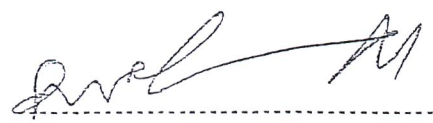
GUARANTEE BY DIRECTORS

We, GRACE WAKHURU, JOHN WALUKE being the current directors of ERAD Investment do hereby jointly and severally give our irrevocable guarantee to indemnify KAPU (K) of all financial losses and expenses that may be suffered by KAPU (K) as a result of the non-performance or mal-performance by ERAD of its obligations under this Agreement or any other losses that KAPU may incur not occasioned by KAPU or its agents.

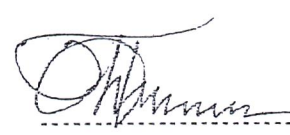
Our liability jointly and severally under this agreement shall be limited to Kshs.

SIGNED by the said DIRECTORS)

1. GRACE WAKHURU)

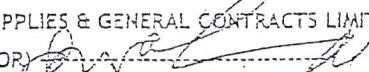


2. JOHN WALUKE)



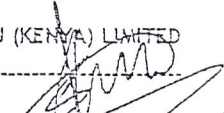
In the presence of)

DRAWN BY:
ALEX KARANJA & CO. ADVOCATES
SHANKARDASS HOUSE, 2ND FLOOR,
P.O. BOX 52384-00200
NAIROBI.

ERAD SUPPLIES & GENERAL CONTRACTS LIMITED
(DIRECTOR) 

ERAD SUPPLIES & GENERAL
CONTRACTS LIMITED
P.O. BOX 44053, NAIROBI

6

KAPU (KENYA) LIMITED
(DIRECTOR) 

KAPU (K) LTD.
P.O. BOX 44053, NAIROBI
TEL: 550586/7/8/9, 534336/7
FAX: 550660, 218251, 334668

