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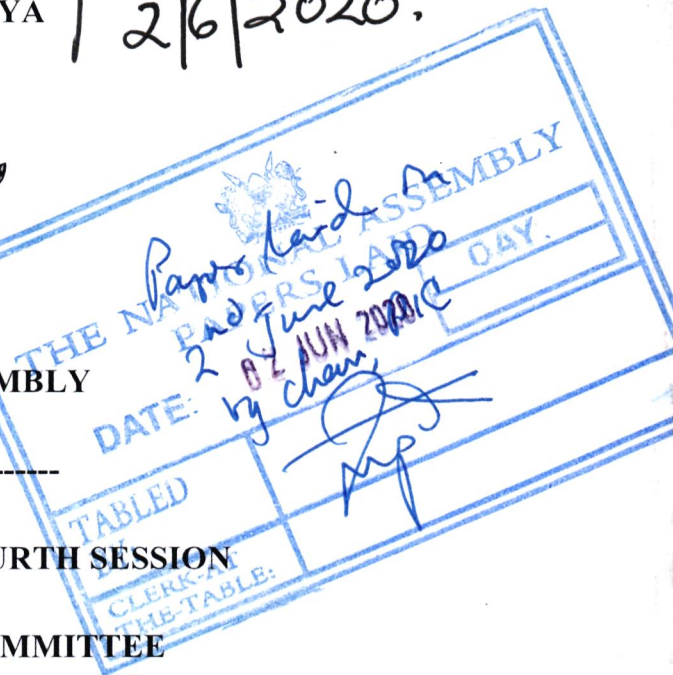
REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION

PUBLIC INVESTMENTS COMMITTEE



**REPORT ON CONSIDERATION OF THE SPECIAL AUDIT REPORT ON
PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY
(PVOC) TO STANDARD SERVICES FOR USED MOTOR VEHICLES, MOBILE
EQUIPMENT AND USED SPARE PARTS BY KENYA BUREAU OF
STANDARDS**

**DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI**

JUNE 2020

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ABBREVIATIONS AND ACRONYMS

ATJ	-	Auto Terminal Japan
JFA	-	Japan Forwarding Agency
KEBS	-	Kenya Bureau of Standards
PPARB	-	Public Procurement Administrative Review Board
PPRA	-	Public Procurement Regulatory Authority
PVOC	-	Pre-Export Verification of Conformity
QSIJ	-	Quality Inspection Services Incorporated Japan
WTO	-	World Trade Organization
TBT	-	Technical Barriers to Trade
UAE	-	United Arab Emirates
UK	-	United Kingdom
AG	-	Attorney General
OAG	-	Office of the Auditor General
ODM	-	Orange Democratic Movement
JP	-	Jubilee Party
FORD	-	Forum for Restoration of Democracy
WDM	-	Wiper Democratic Movement

CHAIRMAN'S FORWARD

Pursuant to the provisions of Article 252 (1) and Article 229 (6) of the Constitution of Kenya and Section 38 of the Public Audit Act, the Office of the Auditor-General conducted a special audit at Kenya Bureau of Standards (KEBS) with a focus on the procurement of Pre-Export Verification of Conformity (PVOC) to Standards Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS under Tender Number: KEBS/T019/2017-2020. The Special Audit Report was tabled in the National Assembly and referred to the Public Investments Committee on 21st November, 2019.

This Special Audit Report served as a follow-up on the previous tender and special audit report dated 16th January 2016, tabled by the Public Investments Committee and adopted by the House on 30th November 2016. The Office of the Auditor-General sought to identify factors that triggered the need for the procurement of Pre-Verification of Conformity (PVOC) Services and review the procurement process for the service by the Kenya Bureau of Standards.

In its consideration of the Report, the Committee sought to ascertain the findings by the Office of the Auditor-General on the current and past bidders for the Pre-Export Verification of Conformity (PVOC) to Standards Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS.

The Committee received representations from the following entities in its consideration of the Special Audit Report:

- (1) Kenya Bureau of Standards
- (2) The Public Procurement Regulatory Authority;
- (3) M/S EAA Company Limited;
- (4) M/S Auto Terminal Japan;
- (5) The Attorney General (AG)
- (6) Quality Inspection Services Inc. Japan (QISJ) and,
- (7) The Office of the Auditor General (OAG).

The Committee further sought to establish if KEBS has implemented the recommendations of the National Assembly on the Special Report on the Inquiry into the Allegations of Procurement Irregularities in the Award of the Kenya Bureau of Standards Tender NO. KEBS/T057/2014-

2015 for the Provision of Pre-Export Inspection Services for Used Motor Vehicles adopted by the House on 30th November, 2016.

This report contains the submissions by the aforementioned entities which appeared before the Committee, observations, findings and recommendations arising from the Committee's consideration of the Special Audit Report by the Office of the Auditor General.

At the conclusion of its sittings, the Committee was able to verify most of the Auditor General's observations in his Special Audit report. Such observations included misrepresentations by M/S EAA and M/S ATJ on ownership of inspection facilities abroad contrary to the reality on the ground; conflict of interest and forgery / falsification of documents. It further emerged that the KEBS had initiated a new tender No. **KEBS/T010-2019-2021** and awarded it both to M/S EAA & M/S ATJ. The effect of the new tender was similar in scope as Tender No. KEBS/T019/2017-2020 that was ongoing between KEBS and M/S QSIJ. Despite the Committee's advice to KEBS to consult the AG on the matter, KEBS procrastinated and eventually awarded the contract against the belated advice of the AG. The effect of that award potentially exposes KEBS to litigations due to contractual breach. Tender No. KEBS/T019/2017-2020 was running to 15th April 2021. The DCI, EACC and the PPRA had seized of the matter with the PPRA returning its interim findings against continuation of the tendering process.

The Committee further found out that the debarment regulations contemplated under Section 41 of the Public Procurement and Disposal Act, 2015 had not been gazetted and therefore there was no legal framework to use in debarment proceedings. This explains why nothing had happened to M/S EAA who had been recommended for debarment in as earlier as 2016.

Having proved the audit observation in the Special Audit and also looked at the tendering process in tender No. KEBS/T019/2017-2020, the Committee is in concurrence with the Auditor General that debarment proceedings should be instituted against M/S EAA and M/S ATJ for flouting procurement law; the KEBS Managing Director, Mr. Bernard Njiraini to be held personally responsible for any losses that may arise out of litigation from awarding tender No. **KEBS/T010-2019-2021** against the advice of the AG; and the Cabinet Secretary for the National Treasury & Planning to expedite processing of the debarment regulations contemplated in Section 41(1)(h) of the PPAD Act, 2015 .

This Committee report speaks to two things: the first limb of the report focusses on the findings of the Audit General's report in his special audit of the KEBS's procurement of the Pre-Export Verification of Conformity (PVOC) to Standards Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS under Tender No:KEBS/T019/2017-2020 while the second limb is about the KEBS's procurement of process of tender No. KEBS/T019-2021 that KEBS that was allegedly awarded in April 2020. I will speak to the two one after the other.

It Is Important to Indicate from the outset that the Committee did not go into the merits of tender No. KEBS/T019-2021 since It was a work in progress by KEBS as at that time. The Committee only looked at the procurement process of the said tender as into was umbilicaly connected to the first tender - with the same bidders and scope of work.

The Committee appreciates the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to it to enable it to operationalise its mandate. The Committee further extends its appreciation to the Office of the Auditor- General and all the witnesses that appeared and made representations when the Committee was considering the Special Audit Report.

May I also extend my appreciation to my fellow Members of the Committee whose immense contributions and dedication to duty has enabled the Committee to examine the audit queries and produce this report.

On behalf of the Public Investments Committee and pursuant to Standing Order 44, it is my pleasant duty to present this Report on the consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity (PVOC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards.


29/07/2020
HON. ABDULLSWAMAD SHARIFF NASSIR, MP
CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE

1.0 PREFACE

1.1 Committee Mandate

The Public Investments Committee is established under Standing Order 206 and mandated to examine reports of the Auditor-General laid before the National Assembly to ensure probity, efficiency and effectiveness in the use of public funds. The Committee is also mandated to examine in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

The Committee is guided by the following pieces of legislations and codes in carrying out its mandate:

- (a) the Constitution of Kenya;
- (b) the National Assembly (Powers and Privileges) Act (Cap. 6);
- (c) the State Corporations Act (Cap. 446);
- (d) the Public Procurement and Disposal Act, 2005;
- (e) the Public Procurement and Disposal Regulations, 2006;
- (f) the Public Procurement and Assets Disposal Act, 2015
- (g) the Public Finance Management Act, 2012;
- (h) the Public Audit Act, 2015 among others.
- (i) the National Assembly Standing Orders 2013;

1.2 Committee Membership

The Public Investments Committee constituted by the House on December 2017 comprises of the following Members:

Name of Member	Constituency	Party
Hon. Abdullswamad Sharif Nassir, MP Chairperson	Mvita	ODM

Hon. Ahmed Abdisalan Ibrahim, MP Vice-Chairperson	Wajir North	ODM
Hon. (Dr.) Chrisantus Wamalwa Wakhungu C.B.S, MP	Kimini	Ford Kenya
Hon. Raphael Bitta Sauti Wanjala, MP	Budalangi	ODM
Hon. Justus Kizito Mugali, MP	Shinyalu	ODM
Hon. Gladys Nyasuna Wanga, C.BS. MP	Homa-Bay County	ODM
Hon. John Muchiri Nyaga, MP	Manyatta	JP
Hon. (Prof.) Mohamud Sheikh Mohammed, MP	Wajir South	JP
Hon. Babu Owino Paul Ongili, MP	Embakasi East	ODM
Hon. James Githua Kamau Wamacukuru, MP	Kabete	JP
Hon. Joash Nyamache Nyamoko, HSC, MP	North Mugirango	JP
Hon. Mary Wamaua Waithira Njoroge, MP	Maragwa	JP
Hon. Mohamed Hire Garane, MP	Lagdera	KANU
Hon. Omar Mohamed Maalim Hassan, MP	Mandera East	EFP
Hon. Paul Kahindi Katana, MP	Kaloleni	ODM
Hon. Purity Wangui Ngirici, MP	Kirinyaga County	JP
Hon. Rashid Kassim Amin, MP	Wajir East	WDM-K
Hon. Zachary Thuku Kwenya, MP	Kinangop	JP

1.3 Committee Secretariat

Mr. Evans Oanda	-	Senior Clerk Assistant
Ms. Marlene Ayiro	-	Senior Legal Counsel
Mr. Mohamed Boru	-	Clerk Assistant II
Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
Mr. Thomas Ogwel	-	Fiscal Analyst III
Mr. Eric Kariuki	-	Research Officer II

Mr. Noelle Chelagat - Media Relations Officer III

Mr. John Mungai - Audio Recording Officer

Committee Proceedings

In its consideration of the Special Audit Report, the Committee held eleven (11) sittings in which it adduced evidence from the following entities:

- (a) Kenya Bureau of Standards;
- (b) The Public Procurement Regulatory Authority;
- (c) M/S EAA Company Limited;
- (d) M/S Auto Terminal Inc. Japan;
- (e) Office of the Auditor General;
- (f) Quality Inspection Services Japan
- (g) Attorney General

CHAPTER TWO

2.1 Introduction

1. The Kenya Bureau of Standards (KEBS) is a statutory body that was established by the Standards Act of 1973, Cap 496. The Standards Act, Part 11 – Section 3(c) empowers the Bureau to enter into contracts and doing or performing all such other things or acts for the proper performance of its functions.
2. KEBS developed a code of practice for inspection of road vehicles that specifies general, safety and environmental requirements. The code came into being to address challenges arising from importation of defective motor vehicles in the Kenyan market.

2.2 General Overview of the Provision of Pre-Export Inspection Services (PVOC)

3. PVOC Program is a conformity assessment program applied to products at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved specifications.

Legal Basis of the Pre-Export Verification of Conformity Programme

4. PVOC programme was started on 29th September 2005 by KEBS, through the publication of Legal Notice No. 78 of 15th July, 2005 by the Minister for Trade and Industry. The program is also fully compliant with the provisions of *Article 5* of World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement.

Objectives of the Pre-Export Verification of Conformity Programme

5. The following are the objectives of the Pre-Export Verification of Conformity programme:
 - (a) To ensure quality of products, health and safety, and environmental protection for consumers.
 - (b) To facilitate trade by ensuring that compliant goods are given expedited clearance at the port of entry.

- (c) To safeguard the country from unfair trade practices and dumping of substandard goods by ensuring that imported products comply with the same requirements to which locally manufactured goods are subjected.
- (d) To safeguard the country's national security.
- (e) To prevent deceptive trade practices.

Operations of the Pre-Export Verification of Conformity Program

- 6. The program is operated by accredited third party inspections companies on behalf of KEBS. The world is divided into nineteen (19) regions based on proximity and trade volumes. In addition, the program provides for multiple partners in majority of the regions to enhance efficiency. The basis of certification is Kenya's standards or approved specifications.
- 7. Unlike other goods, moto vehicles inspection services has not been divided into regions

Special Audit Report of the Auditor General on Kenya Bureau of Standards Tender No.KEBS/T057/2014-2015 for Provision of Pre-Export Inspection Services for Used Motor Vehicles

- 8. After following the set out legal process, in its meeting held in December 2014, the KEBS Tender Committee approved the award of the Tender No. KEBS/T057/2014-2015 of Motor Vehicle inspection/verification services to Quality Inspection Service Inc. Japan and directed that due diligence be carried out before signing the contract.
- 9. A special audit on the tender No KEBS/T057/2014-2015 for the provision of pre-export inspection services for motor vehicles in Japan, United Arab Emirates, United Kingdom and South Africa was carried out following a request by the Clerk of the National Assembly in June 2015.
- 10. The findings of the report were that the procuring entity (KEBS) observed the provisions of the PPAD Act, 2005 and the attendant regulations and due process was adhered to in awarding the tender.
- 11. The PIC report recommendations of 30th November 2016 that could be germane in the current report was to the effect that:

“in order to ensure that a contracted company has a long-term commitment to inspection and keep off speculative bidders, KEBS should set minimum requirements for full ownership of inspection facilities by the inspection companies based on the proportion of the number of vehicles coming from each country. It is recommended that the inspection company should fully own at least fifteen (15) facilities in Japan, three (3) in the United Kingdom and one (1) in the United Arab Emirates, distributed in major ports and towns. Leases in these towns can only be allowed to supplement fully owned facilities. KEBS should properly evaluate ownership of these facilities.”

2.3 Special Audit Report

12. The Auditor-General conducted a follow-up special audit at Kenya Bureau of Standards (KEBS) after the May 2016 Special Audit Report had been finalized with a specific focus on the procurement of pre-export verification of conformity (PVOC) to standards services, For used Motor Vehicles, Mobile Equipment and used Spare Parts. The Auditor-General opted to conduct a second phase of the special audit being guided by the following terms of reference:
 - (a) Identify factor (s) that triggered the need for the procurement of the Pre-Verification of Conformity (PVOC) Services- For used Motor Vehicles, Mobile Equipment and Used Spare Parts;
 - (b) Review the procurement process in line with the provisions of the PPAD, Act 2015 and the attendant Regulations of 2006;
 - (c) Identification of any suspicious, forged or misrepresentation on the documents used in the tendering and procurement process by any of the bidding companies;
 - (d) Review the appeals filed by bidding companies at the Procurement Administration Review Board, Court or tribunals and review the justifications and eventual ruling;
 - (e) Review due diligence and internal audit reports by KEBS to assess the level of performance of current and past bidders;

- (f) Ascertain the terms of the contract and the actual existence of the services as specified in the contracts;
 - (g) Establish current performances of the service provider and total amounts paid in relation to service provided; and
 - (h) Identify and report on any irregularities and culpabilities on the above processes
13. The special audit reviewed the entire procurement process, procedures followed and documentation by the procuring entity and bidders of the Tender for Pre-Export Verification.

Findings of the Second Special Audit Report

14. The Office of the Auditor-General made the following findings in the Second Special Audit Report:
- (a) KEBS followed the proper law in effecting the tender process for the PVOC and awarded Ms Quality Inspection Services Inc. Japan (QISJ) who were the highest bidder with a combined score of 94 marks out of 100. The Company had demonstrated its capacity to deliver on the requirements of the current contract.
 - (b) M/S. EAA Company limited and M/s Auto Terminal Japan (ATJ) Ltd did not win the tender. It was established through the Special Audit that the two companies provided fraudulent and misleading information contrary to the provisions of section 41(1) (h) of the PPAD, 2015.
 - (c) The Auditor General recommended debarment of M/S EAA and M/S ATJ for violating the procurement law.

CHAPTER: EVIDENCE

3.1 EVIDENCE SUBMITTED BY THE KENYA BUREAU OF STANDARDS

15. **Lt. Col. (Rtd.) Bernard Njiraini, the Managing Director of Kenya Bureau of Standards accompanied by Ms. Esther Ngari (Director, Standards); Mr. Ahmed Amin (Head of Department, Inspection); Ms. Josephine Mwakithi (Acting Head of Department, Procurement); Mr. Mmbwanga Brian (Legal Counsel); Dr. James Muriuki (Personal Assistant to the Managing Director); and, Ms. Janet Kamau (Corporate Communication Officer) appeared before the Committee to adduce evidence on the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standards for Motor Vehicles and Spare Parts.**

16. The Committee was briefed as follows:

Background on Pre-Export Verification of Conformity

17. Pre-Export Verification of Conformity (PVOC) to standards was said to be a conformity assessment program applied to products at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved specifications.
18. PVOC program was started on 29th September 2005 by KEBS, through the publication of *Legal Notice No. 78 of 15th July, 2005* by then Minister for Trade and Industry. This Legal Notice was revoked by *Legal Notice No. 127 of 19th June 2018*. On 5th December, 2019, the Cabinet secretary, Ministry of Trade, Industry and Co-operatives revoked this Legal Notice and issued Legal Notice 183. The program is also fully compliant with the provisions of Article 5 of WTO TBT Agreement.

Background on Pre-Export Verification of Conformity

19. Kenya Bureau of Standards established the PVOC program with the following objectives:
- a) To ensure quality of products, health and safety, and environmental protection for consumers.

- b) To facilitate trade by ensuring that compliant goods are expeditiously cleared at the port of entry.
- c) To safeguard the country from unfair trade practices and dumping of substandard goods by ensuring that imported products comply with the same requirements to which locally manufactured goods are subjected.
- d) To safeguard the country's national security.
- e) To prevent deceptive trade practices.
- f) To enhance efficiency of clearance of imported goods at the ports of entry

Operations of the Program

- 20. The PVOC program is operated by accredited third party inspection companies on behalf of KEBS. The basis of certification is Kenya standards or approved specifications by KEBS.

Motor vehicle inspection

- 21. KEBS contracted Quality Inspection Services Inc. Japan (QISJ) to offer Pre-Export Verification of Conformity to Standards services in Japan, United Arab Emirates, United Kingdom, Thailand and South Africa for;
 - a) Used Vehicles, in accordance with **KS 1515:2000 - Code of Practice for Inspection of Road Vehicles** and for the inspection of used vehicles for radioactive contamination and verification of odometer integrity.
 - b) Mobile equipment in accordance with relevant Kenya Standards or approved specification.
 - c) Used spare parts for vehicles, Mobile equipment and Industrial / Agricultural Machinery in accordance with relevant Kenya Standards or approved specification.
- 22. Some of the key parameters that KEBS has set for a vehicle entering Kenya to pass inspection include but not limited to:
 - a) The vehicle shall not exceed 8 years from the date of first registration in the country of origin;
 - b) Must be right-hand drive;

- c) Vehicles must not exhibit any forms of structural defects on the Chassis and critical linkages;
- d) Specialized vehicles like mining trucks, excavators, combines harvesters, tractors, fire trucks are exempt from this once roadworthiness is verified;
- e) Vehicles must not emit visible smoke to prevent environmental pollution; and
- f) Vehicles imported from Japan must be inspected for radiation contamination

Number of Vehicles Inspected Under the PVOC Program

23. The table below indicates the summary of the units inspected under the program from the year 2015:

Year	TOTALS PER YEAR
2015	84072
2016	65535
2017	80545
2018	87739
2019	91179
Total	409070

Table 1: Number of Vehicles Inspected

No	Country	Region	Inspection Companies
1.	Bahamas	Caribbean	Eaa
2.	Bangladesh	South Asia	Jaai, Bv
3.	Chile	South America	No Inspection
4.	D.R. Congo	Africa	Dgda, Occ, Ministry Of Commerce
5.	Fiji	Oceania	Jevic
6.	Georgia	Europe	No Inspection
7.	Jamaica	Caribbean	Atj, Jaai, Jevic
8.	Kenya	Africa	Qisj
9.	Malta	Europe	Vca, Jevic
10.	Mauritius	Indian Ocean	Eas. Jevic, Jaai
11.	Mongolia	Asia	No Inspection
12.	Mozambique	Africa	Intertek
13.	Myanmar	South East Asia	No Inspection
14.	New Zealand	Oceania	Jevic, Atj, Moana
15.	Papua New Guinea	Oceania	Jevic
16.	Philippines	South East Asia	Intertek
17.	Russia	Europe	No Inspection
18.	Singapore	Southern Asia	Eaa, Jevic
19.	South Africa	Africa	No Inspection

20.	Sri Lanka	South Asia	Jevic, Jaai, Bv
21.	Tanzania	Africa	Eaa. Qisj. Atj. Intertek
22.	U.A.E.	Middle East	No Inspection
23.	Uganda	Africa	Eaa. Jabal Kilimanjaro, Auto Elect. Mech
24.	Zambia	Africa	Eaa, Jevic, Atj

Table 2: Motor vehicle Inspection Service providers in the World

Timelines for Vehicle Inspection by QISJ

- a) KEBS monitoring records indicate that on average, it takes four (4) days to inspect a motor vehicle from the date of the request for inspection is submitted by client.
- b) On average, it further takes two (2) days to issue a certificate of road worthiness (COR) from date of inspection.

3.2 KENYA BUREAU OF STANDARDS TENDER NO. KEBS/T019/2017-2020

24. Following the lapse of the previous three-year inspection cycle, KEBS procured for inspection services for the period 2017-2020.

The Tendering Process

25. The Kenya Bureau of Standards (KEBS) advertised the tender no. KEBS/T019/2017-2020 in two dailies; the *Nation* and *the Standard* newspapers, on 21st November, 2017. The tender was also advertised in the KEBS website for a period of twenty-one days. The tender was opened on 6th December, 2017 by the tender processing committee in the presence of bidders.
26. Fours bids were received from the following companies:
 - a) M/S Nippon Inspection Centre Corporation;
 - b) M/S Auto terminal Japan Ltd;
 - c) M/S Quality Inspection Services Inc. Japan; and
 - d) M/S EAA Company Limited.

Evaluation of Bids

27. Evaluation of the bids was carried out in line with the provisions of Section (80) of Public Procurement and Asset Disposal (PPAD) Act 2015. M/S Nippon Inspection Centre Corporation and M/S EAA Company Limited were disqualified at preliminary stage for not

substantially responding to the requirement of clause 2.2.11 (a) on 15 of 49 of the tender document. The two companies did not qualify to proceed to the Technical evaluation stage as per evaluation report.

28. Bidders M/S Auto terminal Japan Ltd and M/S Quality Inspection Services Inc. Japan were responsive to all the requirements of clause 2.2.11 (a) hence proceeded to the technical evaluation stage.
29. According to the evaluation report, M/S Auto terminal Japan Ltd scored 40% out of 80% and failed to meet the minimum technical score of 70% to proceed to financial evaluation. M/S quality Inspection services Japan (QISJ) attained a score of 74% out of 80% and met minimum technical score of 70% to proceed to financial evaluation.
30. The financial opening and evaluation was carried to M/s Quality Inspection Services Inc. Japan (QISJ).

Due Diligence

31. Due diligence was conducted in conformity with the provisions of Section 83(1) Public Procurement and Asset Disposal (PPAD) Act 2015 to the M/s Quality Inspection services Japan (QISJ) who were recommended for the award.
32. Having met the requirements of the tender documents the contract was awarded to M/s Quality Inspection services Japan (QISJ) on 10th January, 2018 for a period of 36 months.

The Auditor General carried out a special audit to three firms out of the four (qualified and disqualified) firms which submitted their bid documents i.e. M/s Auto terminal Japan Ltd, M/s Quality inspection services Inc. Japan and M/s EAA company Limited.

Appeal for Re-Evaluation of the Technical Proposal

33. On 17th January, 2018, the Public Procurement Administrative Review Board (PPARB) wrote a letter ref: PPRA/ARB/7/14/2018 to the KEBS notifying it of a Request for Review by M/s Auto Terminal Japan Ltd seeking re-evaluation of the technical proposal.

34. On 6th February, 2018 PPARB heard and determined the Request for Review. The Request for Review by Auto Terminal Japan Ltd was dismissed by PPARB and KEBS was advised to proceed with the procurement to its logical conclusion.

Award of Contract

35. KEBS and Quality Inspection Services Inc. Japan (QISJ) entered into contract agreement on 3rd April 2018 for a period of 3 years effective 15th April 2018.

Kenya Bureau of Standards Tender NO. KEBS/T010/2019-2021 - Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) Services

36. The tender was advertised on 3rd December 2019 on MyGov in the Daily nation newspaper and KEBS website. The tender sought to expand the contract for provision of PVOC services by bringing in additional service providers for the contract duration.
37. The tender opening and the tender evaluation committees were appointed on 6th January, 2020 and 7th January 2020 respectively, by the accounting officer/ Managing Director as per Section 46(1) of the Public Procurement and Asset Disposal Act 2015 to evaluate the international tender number KEBS/T010/2019-2021 and conduct due diligence prior to award of the tender.
38. Tender evaluation was carried out as per Section 80 of Public Procurement and Asset Disposal Act 2015. The tender evaluation committee began evaluation on 9th January 2020. The evaluation of the bids was carried out in three (3) stages as per the requirement 2.11.2 in the appendix to instructions to the tenderers;

Preliminary Evaluation

39. M/S Nippon was disqualified at the preliminary evaluation stage for failing to minute the requirement prescribed in the tender document, page 19 of 55. The tender evaluation committee recommended that their bid be declared unresponsive. M/S EAA Company Limited and M/S Auto Terminal Japan Limited qualified to proceed for technical evaluation.

Technical Evaluation

40. The tender evaluation committee scored individually the bids as per the criteria in the tender documents. Based on the technical evaluation results, M/S EAA Company Limited and M/S Auto Terminal Japan Limited attained scores above the minimum score. Therefore, the committee recommended the two companies to proceed to financial evaluation stage.

Financial Evaluation

41. The financials for the two companies which qualified at technical evaluation; M/S EAA Company Limited and M/S Auto Terminal Japan Limited were opened on 15th January, 2020 in the presence of the bidders whose technical proposal was successful. The two bidders met requirements of the financial criteria prescribed in the tender documents.

Tender Evaluation Committee Recommendation

42. The tender evaluation committee recommended the award of the international tender KEBS/T010-2019-2021 for Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) to standards services for used motor vehicles, mobile equipment and spare parts to EAA Company Limited and Auto Terminal Japan Limited. The two companies had scored the required overall score of 90.7 and 90.9 marks respectively, out of a maximum 100 points. The award was subject to conduct of due diligence and consideration of the report confirming and verifying the qualifications of the bidders.

3.3 EVIDENCE BY EAA COMPANY LIMITED

43. **Mr. Prosper Sugai, the Chief Executive Officer of EAA Company Limited, accompanied by Mr. Andrew Ombwayo (Advocate) appeared before the Committee to adduce evidence on the Special Audit Report on the Pre-Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.**
44. The respondent raised preliminary objections to the Committee's consideration on the following grounds:
- a) Constitutional Grounds – The respondent stated that hat the National Assembly, and specifically the Public Investment Committee (PIC), was time-barred under Article

229(8) Constitution of Kenya 2010 from holding this hearing to consider the afore mentioned Auditor-General's Report.

He cited Article 229(8) of the Constitution of Kenya which obligates the National Assembly to debate and consider the Auditor-General's report, and take appropriate action upon it, all within three (3) months of receiving the report. Since the Special Audit Report before the PIC was presented to the House on 13th November, 2019, the House had until the 11th February, 2020 to debate and consider it, and to take appropriate action upon it in default of which the House, and the PIC, could not hold the said hearing.

- b) Want of Publication and Publicization of the Special Audit Report –Neither Parliament nor the Auditor General published or publicized the Special Audit Report under review as required by Section 32 Public Audit Act No. 34 of 2015. As a result, the intention of Parliament, which was to allow public scrutiny and involvement, or even awareness of, the audit process, had been skipped and otherwise obviated, on account of which the said hearing, to consider the subject report, was rendered both invalid, null and void ab initio, and any recommendation that may or arising from it should equally be rendered a nullity.
- c) Auditor-General Acted Ultra Vires His Constitutional and Statutory Mandate - Auditor-General exceeded both his Constitutional and Statutory mandate in the manner it carried out its examination, inspection and audit, which birthed the special audit report under review. The Constitutional mandate of the Auditor-General under Article 229 Constitution 2010 limits the Auditor-General to conducting audits of the Government and public institutions, and of public funds and its use, and does not extend to private companies who lost in their bid and have no linkage to public funds.
- d) Breach of Respondent's Right to Natural Justice - The respondent accused the Auditor-General of failure to give the respondent notice, whether formal or informal, of its intention to examine, inspect or audit the respondents' books, company offices and inspection sites, subsidiaries and affiliates or to interview any of the respondent's employees, for whatever purposes whatsoever, including that in its terms of reference of the special audit report under review before the National Assembly.

- e) The respondent raised further objections on account of a previous report by the Committee that indicated the company had the capacity to provide the inspection services.

Mr. Sugai further briefed the Committee as follows:

45. **Company Details** - EAA Company Limited was formed on 6th July 2007 and registered on 12th September 2011. Thereafter, the company changed its name and expanded its purposes to include export-inspection of used cars, evaluation work on used cars, testing and training for used car evaluators. This enabled it to provide pre-shipment/ export inspection services to standards agencies like the Kenya Bureau of Standards (KEBS), and to participate in the Pre-Export Verification of Conformity (PVOC) to Standards Services, and to bid for such work as and when advertised.
46. **Participation in PVOC Tender** - EAA Company Limited bid in the Procurement of PVOC to Standards - Used Motor Vehicles, Mobile Equipment and Used Parts by Kenya Bureau of Standards Tender No. KEBS/T019/2017-2020 and was disqualified. The company was enjoined in an application for review of that tender/ procurement process at the Public Procurement Administrative Review Board where the application for review was dismissed and the procuring entity (KEBS) was allowed to proceed to contract the successful bidder, M/s Quality Inspection Services Inc. Japan (QISJ)
47. There were only five (5) companies offering pre-export/ pre shipment inspection of used motor vehicles, mobile equipment and used parts. The recommendations in the Special Audit Report by the Auditor General to debar two (2) of them, and to recommend only one company to offer that service to Kenya, amounted to bias, a pre-conceived report and the establishment of a monopoly. These five (5) companies are: EAA Company Limited; Quality Inspection Services Inc. Japan (QISJ); Auto Terminal Japan Limited (ATJ); JEVIC Limited; and Nippon Logistics Limited. However, KEBS had indicated that there were more than five companies that can do the job.
48. **OAG Special Audit Report, 2016** - The PIC report of 30th November 2016 had also cleared the respondent of any fraud in an earlier procurement process for the year 2014-2015, tender No. KEBS/T057/2014-2015, in its Special Audit Report dated 25th January 2016. In the Report, the Office of the Auditor General gave a clean bill of health to that

procurement process, and there is thus no reason why the respondent would subsequently misrepresent facts.

Audit query

49. Inspection Facilities in Japan - The Audit report observed that M/s. EAA listed having (17) inspection centers in Japan in its technical proposal and a receipt as evidence of purchasing 17 inspection facilities/equipment. However, the company only provided eight lease agreements as part of the technical proposal which could not demonstrate how the 17 inspection facilities/equipment purported to have been purchased were distributed to the twelve (12) inspection centers considering there were only eight leases.

Response to the audit query

50. M/s EAA Company Limited responded by noting that the audit team sampled and visited only Yokohama, Kisakazu and Kawasaki, and stated that they were visiting for purposes of conducting due diligence on behalf of KEBS in respect of the winning bidder, QISJ. The respondent's official thus gratuitously gave out the leases the seventeen leases that were in his immediate possession, but the audit team reported only eight of them.

Audit query

51. **Lack of inspection facility and/or staff in Nagoya** - In the Nagoya region, where M/s. EAA had indicated to own an inspection facility, EAA management opted to have the team visit a leased facility from M/s. Flash Rise Limited. The lease agreement provided in the tender documents was for an existing relationship between M/s. EAA and M/s. Runglobal Co. Limited (Nagoya) instead of M/s. Flash Rise Limited. The inspection further revealed no activity by EAA and EAA Senior Management could not identify the facility they purported to have leased. It was noted that one of the inspection lines actually belonged to QISJ Inc., who was actually undertaking real-time inspection at the time of our visit on 1st March 2019. There was no presence of EAA staff noted.

Response to the audit query

52. The respondent stated that during low business season, employees do not sit around the inspection sites hence the reason why the audit team had a problem. In addition, there was no notice given to assemble the respondent's employees.

Audit query

53. **Partnership with M/s. ECL Agency Ltd** - The special audit team also sampled and engaged one of the agents according to the list of leased M/s EAA's contracts, M/s. ECL Agency Ltd. M/s. ECL Agency Ltd. actually disowned the EAA leases presented by the special audit team for verification. M/s. ECL confirmed that they did not have any lease agreements with M/s. EAA. Furthermore, ECL confirmed EAA used the staff of ECL to perform inspection service for other countries. This scenario exacerbated the doubt as to whether M/s. EAA really does inspections by itself or sub-contracts using other service providers staff.

Response to the audit query

54. Mr. Sugai stated that there was mis-communication and lack of adequate notice. M/s ECL officers speak only Japanese. Mr Kiyooki Hatano brought the audit team to M/s ECL on a courtesy call as ECL had previously done business with QISJ and that Mr. Sugai was not involved in that interaction. In addition, the confusion was caused because the audit team relied upon Mr Kiyooki Hatano to interpret for them without separately verifying what information they were being given.

Audit query

55. **Lack of Staff at Inspection Facilities** - M/s. EAA had no listing of staff assigned in Kisarazu, Kawasaki, Kitakyushu and Moji. The special audit noted there were no staff assigned to any of these regions and management noted that all the technical staff were on contract and were only on boarded when there were inspection services needed for those regions. It therefore cast doubt as to the staff capacity and equally all the accreditation attached for the key staff could not be validated as no originals/notarized copies were provided to prove the qualifications, and thus their competency.

Response to the audit query

56. Mr. Sugai observed that their capacity to deliver on any contract, if taken, is known, is tested and has been proven before.

Audit query

57. **Cancellation of M/s EAA's Accreditation** - The Auditors interviewed senior management of EAA who confirmed that their Accreditation of ISO 17020:2012 was once cancelled by Japan Accreditation Board effective 27th November 2014, for reason which management of

EAA could not disclose. The special audit however noted that a new one was issued on 9th November 2016 and was valid until 31st July 2020. A search on the authenticity of the documents under the JAB website under <https://www.jab.or.jp/en/system/iso/search/> yielded no results.

Response to the audit query

58. Mr. Sugai confirmed the ISO accreditation was suspended pending investigations in 2014 but was re-instated and was available when the respondent tendered for the pertinent tender in 2017. The respondent's accreditation was verifiable from JAB website.

Audit query

59. **Potential Conflict of Intertest with M/s Rosper International Limited** - The special audit also noted for potential conflict of interest between M/s. Rosper International Co. Ltd and M/s. EAA through common directorship.

In an interview with Mr. Prosper Sugai, the CEO of EAA, he stated that he was not aware of the said company nor having been involved as a director. However, a search of company records in Japan confirmed that Mr. Prosper Sugai was the owner of Rosper International Co. Ltd. for the period from 18th November 2002 to 18th August 2014.

The objectives of M/s. Rosper International Co. Ltd was listed among others as purchase and sale and export of used cars, used motorcycles and used car parts. This was a clear conflict of interest and information that was concealed to KEBS when the EAA was tendering for the past and current tender.

Response to the audit query

60. Mr. Sugai explained that there was no conflict of interest as he resigned in 2014 from Rosper International Limited and could not possibly be conflicted in the year 2017 when the respondent bid. In addition, Rosper International Limited dealt in medical equipment.

Audit query

61. **Presence of EAA in the UK** – The Audit observed that M/s EAA Company Limited had no presence in the UK. The UK Company named EAA Automobile Ltd was owned by Mr. Seth Nguku with 100 per cent shareholding when Mr. Prosper Sugai ceased to be a director

of the company and transferred his shares to Mr. Nguku. This means the company was officially a standalone with no affiliation with M/s. EAA Company Limited by either common directorship or even shareholding a fact that was also misrepresented in the technical proposal as it highlighted that the EAA Automobile Ltd was a branch.

Response to the audit query

62. Mr. Sugai stated that there was no representation to the technical proposal as the respondent's bid had been determined at the preliminary stage and never proceeded to technical evaluation. Its technical qualifications were thus not evaluated. In addition, the retained a partner in the said company in the United Kingdom which was in tandem with the tender requirements.

Audit query

63. **Ownership of Inspection Facility in the UK** - It was noted that EAA did not own any inspection centers against a required one (1) owned inspection center for United Kingdom. This is despite having indicated in their proposal to have leased (2) inspection facilities at Woodhouse MOT 96A, London and Unit Tilbury Industrial, Freeport Tilbury, Essex, England RM18 7HB, in the United Kingdom, which were not verifiable.

EAA also attached a lease deed dated 1 May 2014, which seemed forged as there was no presence of EAA in the United Kingdom at the time of audit. The Port Manager of Tilbury Mr. Cox Laurence confirmed that the Company was not a tenant in any of the identified premises or facilities as indicated on the technical proposal via telecom.

Response to the audit query

64. Mr. Sugai stated that there was no forgery and had not been shown any statement from Mr Cox Laurence to verify what the audit team stated. He said that he gave information that he believed to be true to the best of its knowledge, information and belief. In addition, the technical evaluation committee never evaluated this technical requirement and there is no foundation for fraud.

Audit query

65. The Audit report noted that as part of the technical proposals, a document indicating EAA had leased Office Space in Tilbury port dated 19th August 2014, could not be verified or

authenticated by the Port Manager of Tilbury Mr. Cox Laurence. The deed was signed by Mr. Christopher Boniface Lukosi. On enquiry the special audit team was informed that Mr. Christopher Boniface Lukosi was a director in both EAA and a company called Serengeti Global Services. The yard and brand at the Offices of Serengeti indicated they were involved in Sea and Coast Services.

Response to the audit query

66. Mr. Sugai explained that they had confused documents presented by Mr Lukosi who had left the company under distressful conditions and had set out to sabotage the company. The respondent had nevertheless presented valid documents which were however never evaluated by the technical evaluation committee.

Audit query

67. **Lack of Inspection Facilities and Staff in the UK** – The Auditors reported that in an interview with Mr. Prosper Sugai and Mr. Lee Sayer, it was confirmed that a visit to any of the purported Inspection Centers was not necessary on revelation that such facility did not exist because there was no reason to retain the centers when there was no business.

A request to also visit any of the purported partners of M/s. EAA was also not granted either. This confirmed that even the listed employees; one Manager Supervisor, 3 Supervisors and 6 Inspectors stationed within the United Kingdom was misrepresented by EAA in its technical proposal.

Response to the audit query

68. Mr. Sugai stated that the facility existed but staff are retained as and when business arise. The respondent had not been contracted by the KEBS and could not retain those employees by the time the audit was being done.

Audit query

69. **Presence and Ownership of Inspection Facilities in the UAE** – The Audit report noted that M/s EAA Company Limited had failed to meet the tender requirements where bidders were required to be legally registered and licensed to perform the service, and confirm if they owned inspections centers against the set criteria for UAE where subcontracting is not allowed.

Mr. Prosper Sugai, Director, EAA Company Ltd and an EAA UAE representative Mr. Rashid Abeid Suba who was not identified anywhere in the technical proposal hosted the team at location named Jabal Kilimanjaro Auto Elec. Mech.

70. Mr. Rashid Abeid Suba was the owner of M/s. Jabal Kilimanjaro Auto Elec. Mech. and is also a current Pre-Export Verifying Agent for Tanzania (TBS). TBS requirement for Pre-Export Verifying are done independently and in zones and therefore there could not have been an existing relation between M/s. Jabal Kilimanjaro Auto Elec. Mech. and M/s. EAA for purposes of this bid and being cognizant of the requirements of TBS for service providers of inspections.
71. EAA Company Ltd, provided a document which could not be verified as it purported to indicate that EAA bought the inspection facility in UAE in 2014, from M/s. Jabal Kilimanjaro Auto Elec. Mech. and entered into agreement with Mr. Rashid Abeid Suba to guide their operations, an allegation that Mr. Rashid Abeid Suba could not confirm as he owns the facility and uses it to service another contract for Tanzania

Response to the audit query

72. Mr. Sugai claimed to have presence in UAE but his bid was not evaluated by the tender evaluation committee so that there was no opinion on it, of fraud or otherwise. The audit team got Mr Rashid Abeid Suba, and did not get other officials because they did not request for an interview.
73. The respondent further stated that all documents submitted in the 2017-2020 bid were genuine and only in Japan is partnering not allowed. In any event, the evaluation committee never evaluated the documents submitted and the respondent could have answered any question posed.

Audit query

74. **Lack of presence in Thailand and South Africa** – The Audit report noted that M/s. EAA did not provide documentation to demonstrate its legality and presence in South Africa and Thailand.
75. Mr. Sugai observed that the Company had specifically indicated in its bid that it did not have offices in Thailand and South Africa but that it would sub contract its works if it won

the tender. Thailand and South Africa contributed barely 1% of all second hand vehicle imports into Kenya which advised the decision to sub contract if contracted by KEBS.

Audit query

76. **Adverse Findings Against EAA in KEBS Due Diligence Report** - The special audit also noted a due diligence report dated 9th January 2015 by KEBS which highlighted among other issues; the suspension of the Company's accreditation status in Japan, the lack of a UK inspection facility in the physical address it had provided in the bid documents, and forgery of its registration documents depicting it was registered in 2013 instead of 2014.

The Due diligence report also noted that the company M/s. EAAS Limited lacked the requisite infrastructure in the UK and UAE, and that the company had presented forged and falsified documents in their bidding which enabled them to erroneously attain the minimum technical score for advancement to the financial evaluation stage. The team recommended disqualification from the procurement process and debarment from any such similar exercises by KEBS.

Response to the audit query

77. Mr. Sugai stated that M/S EAA had not received a copy of the due diligence report and they can only summarize that it was being quoted in bad faith to the exclusion of all other reports that have given it a clean bill of health.
78. The respondent denied providing false information with respect to its competence and this has been attested to by previous PIC Reports and the fact that it had been sub-contracted in 2012-2014 by QISJ to do the same work. He concluded that the findings of the Special Audit Report were biased and meant to lock the respondent out of the Kenyan market.

3.4 EVIDENCE BY AUTO TERMINAL JAPAN (ATJ) LIMITED

79. **Dr. Isaac Kalua, Africa Director for Auto Japan Co Ltd., accompanied by Mr. Philip Mutee (Auto Manager), Ms. Lena Kitavi (Communications Manager), Mr. David Kiseko (Intern), Jackson Mati (Manager, Operations) and Mr. Wilbroad Peter appeared before the Committee to adduce evidence on the Special Audit Report on the Pre-Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.**

He briefed the Committee as follows:

Audit query

80. **Directorship of the Company** – The Audit found that M/s ATJ had provided false information in the confidential business questionnaire by listing Mr. Mamoru Fujie as the sole Director and failing to disclose details of the Company's Directors. Mr. Tetsuro Shirahama, was listed as the owner of the company with 100 percent shares, and other Directors include Dr. Isaac Kalua, Mr. Wilson Mutabazi and Mr. Nithul Lakshmanan.

Response to the audit query

81. M/S ATJ stated that Mr. Tetsuro Shirahama is the sole shareholder with 100% of shares and hence no shares were unissued; all shares are held by one person. Accordingly, Mr. Mamoru Fujie, the CEO of ATJ is also a sole Director as declared in the business questionnaire.
82. ATJ has one shareholder and one Director. This had been the case since the company started. This was similar to Kenya company culture. Kenyan laws allow a situation where a person can be a shareholder and not a director. The only difference is that there is no issued statement from the company registry in Japan for private companies regarding proprietorship. The information regarding Japanese company and number of documents to be disclosed were available on www.japanpi.blog/business-blog/japan-company-registry. (Annexure - "List of Shareholders").

Audit query

83. **Ownership of Tokyo-Bay Main Office in Kisarazu** – The Audit Report observed that M/S ATJ listed a capacity of sixteen inspection lines stationed in 12 inspection centers including the Tokyo Bay Main Office. The Tokyo Bay Main Office in Kisarazu was leased through an agreement with Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association. Further Analysis revealed similar arrangement with Kobe City Government. This contradicted the information provided in the technical proposal by M/s Auto terminal Japan that claimed ownership of the Tokyo Bay facility.

Response to the audit query

84. M/S ATJ stated that the property in Kisarazu was commissioned to the Company by the above referenced Housing Association since the year 2006. M/S ATJ thus claimed ownership of the facility and its operations because they purchased, installed and owned the inspection equipment. The Housing association owns huge tracks of land in this high value area and commissioned it to specific target institutions to do complimentary business.
85. In Kobe Prefecture, M/S ATJ had a similar arrangement where Kobe City has commissioned very high value land to M/S ATJ. The office block, inspection facility including all its equipment was purchased, operated and owned by M/S ATJ. The Company noted that the land in such strategic areas like Ports in Japan is mostly managed by Government.

Audit query

86. **Use of the Tokai Facility and Functionality of the Nagoya Facility** - The Audit Report observed that the M/S ATJ Tokai Office was on a large parcel of land with other on-going logistics operations including clearing and forwarding agents. With this parcel of land being owned by M/S ATJ, it cast doubt on their involvement with only Road Worthiness Inspection of used motor vehicles for export. The Nagoya inspection facility also revealed no activity and a dilapidated structure that had seemingly been idle with no staff presence. While these had been noted to be an owned inspection center, the facility did not exhibit a state-of-the-art testing equipment as alleged in the technical proposal.

Response to the audit query

87. M/S ATJ confirmed its ownership of the Tokai inspection facility including all equipment. M/S ATJ stated that it had leased about 16,000 square meter to M/s Japan Forwarding Agency as a customs bonded area for proper utilization of the asset in a business sense. These are two different entities which operate in entirely different standards and operating procedures.

Audit query

88. **Lack of invoices confirming activity at inspection lines** – The Special Audit Report indicated that ATJ had separate lease agreements at a number of inspection lines which provided that every 10th date of the month an invoice would be raised to M/S ATJ by all these entities to confirm activity.

However, there was no documentary evidence or invoices raised by the sampled companies to M/S ATJ to validate the authenticity of the leases and inspection activity at the leased locations which raised questions about M/S ATJ's claim in the technical proposal of undertaking 1,500 and 1,380 monthly inspections in owned and partner facility respectively.

Response to the audit query

89. M/S ATJ provided invoices from the inspection lines leased from M/s. Flash rise Co. LTD, M/s. Nagase Auto Inc, M/s. Daiei Jidousya Kogyo Co. Ltd, M/s. Hotta Auto Aichi Co. Ltd, M/s. Gulliver International Co, Ltd. M/s. Kojima Corporation and M/S. FWT Logistics Co. Ltd to confirm activity at the respective lines.

Audit query

90. **Dispute on Use of Inspection Facilities at Flashrise** – The Audit Report noted that M/S ATJ's technical proposal claimed that it had leased two inspection lines from M/S Flash rise Co. Ltd. However, during Audit it was observed that the site in question had two inspection lines; one leased to M/S ATJ and one leased to M/S QISJ.
91. M/s ATJ stated that they had two inspection lines in the same locality as submitted in the technical proposal. One inspection line was within M/S Flash Rise and a second one at a different location 300m from their Flash rise offices. The Company had a separate agreement since the physical address is different. During tendering and submission in the technical proposal, M/S ATJ submitted documents for one inspection line for this tender since second leased facility in the same inspection line had not undergone calibration process.

Audit query

92. **Engagement in Vehicle Repair Business** – M/s ATJ's license issued by the Japan's Ministry of Land, Infrastructure, Transport and Tourism (MLTT) stated that the company was in the business of maintaining motor vehicles. Additionally, the Accreditation statements by M/s. ATJ confirmed being a recipient of the Type A accreditation which gave the company the added benefit and advantage of being able to provide diagnostic services onsite. These conflicted the sworn statements, dated 7 December 2017, which

were also attached stating that the company was not conflicted. This was therefore against the tender requirement where bidders were not expected to be in a conflict of interest, for this case providing diagnostic services including repair works.

Response to the audit query

93. In Japan, ISO Type A 1720 is for independent inspection company. M/s ATJ was initially accredited with ISO Type C 1720 which means an organization has an inspection company also doing additional customer related services. Upon process evaluation the IANZ (International Accreditation New Zealand) approved ISO Type A to include quarantine inspection since AutoTerminal Japan Limited does not operate works like cleaning/washing the car. At this point all inspection programme and process of AutoTerminal Japan Limited became part of Type A certification. Accordingly, M/S ATJ possess ISO Type A Accreditation license which is of the highest rank in Japan. In addition, motor vehicles repairs had its own category of license in Japan and certification and M/s ATJ was not in the business of maintaining motor vehicles.

Audit query

94. **Engagement in Export Business** – The Special Audit observed that M/s. ATJ's audited accounts for the past three years contained details relating to sales from domestic and export business. The company also disclosed that it had consumption tax receivable, often attributable to companies engaged in export business. The statements also disclosed accounts payable and receivable to companies like M/s. Japan Forwarding Agency Ltd. where the relationships could not be clearly explained by M/s. ATJ management.

Response to the audit query

95. M/S ATJ explained that the norm of the business was that automobiles predestined for export were usually in on Duty Free basis. It was only after the Roadworthiness inspection and/or the inspection and Export Declaration that their customs bond were released. This means that the automobiles are bonded items before inspection. Once the bonded custom duties are paid then the automobiles become domestic units ready for export. Usually Road Worthiness Inspection (RWI) automobiles meant for Kenya, Jamaica, Tanzania and Zambia are allocated in this category since the exporter engages in customs clearance after the "PASS" inspection.

On the other hand, regarding quarantine inspection for New Zealand and Australia, M/S ATJ Limited conducts inspection after customs clearance because inspection had to be done within 21 days before shipment. Accordingly, M/s ATJ had to invoice the inspection fee to the agents of the importer. This inspection fee is including the cleaning/washing fee was operated by JFA, so JFA will bill to AutoTerminal Japan Limited for payment.

On the other hand, JFA as an agent of the importer will order for Inspection services to ATJ e.g. JFA order RWI, odometer inspection, radiation inspection etc. instead of the exporter, so AutoTerminal Japan Limited also billed to AutoTerminal Japan Limited. M/s Japan Forwarding Agency (JFA) was a customer to AutoTerminal Japan Limited.

Audit query

96. **Common Directorship at ATJ and JFA** – The Audit established that Mr. Mamoru Fujie, CEO of M/S ATJ Ltd was a director of Japan Forwarding Agency Ltd for the period from September 2013 to February 2015. This was a clear conflict of interest and this information was not disclosed to KEBS while M/S. ATJ was a service provider for the third cycle of contract between 2012-2015.

Further scrutiny revealed that ATJ had been granted a permit for customs clearance business effective 10th January 2007, by the Director of Yokohama Customs – Mr. Hiromichi Tanigawa for the Tokyo-Bay area, which exacerbated the potential conflict of interest as the said company could have been involved in export business.

Response to the audit query

97. M/S ATJ responded that M/s Japan Forwarding Agency (JFA) was established in September 2013. Upon the new requirement by KEBS in the tender, M/s AutoTerminal Japan Limited surrendered the license of Customs Clearance business to the authorities and was left with the inspection business only. It was also at this stage and moment that AutoTerminal Japan Limited was accredited with ISO17020 Type A on Nov 2013.

M/s AutoTerminal Japan Limited was an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited was clear. AutoTerminal Japan Limited was not in conflict of interest for inspection business whatsoever. In addition, the concept of “Conflict of interest” was first introduced by KEBS

during this period and not earlier and therefore M/S ATJ adhered to this requirement for compliance.

98. M/s AutoTerminal Japan Limited operates in different countries globally and had never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the “Conflict of interest” issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship.
99. **Lack of Inspection Facility in the UK** – The Audit observed that M/s. ATJ didn’t own any inspection centers nor had they contracted an inspection center (s) through “corporate partnerships” against the requirement for the United Kingdom where subcontracting was not allowed.

Response to the audit query

100. The Director of ATJ Limited stated that AUTO TERMINAL UK LTD was a company incorporated in by the Registrar of Companies for England and Wales as company Number 12010599. *The specifics of the audit query were not addressed by the respondent.*

Audit query

101. **Lack of Inspection Facility in the UAE** – The Audit report noted that M/s. ATJ attached a reservation name for the United Arab Emirates with no further details to demonstrate that it owned any inspection centers nor had they contracted an inspection center (s) through “corporate partnerships” against the requirement for the UAE where subcontracting was not allowed. This is despite ATJ having indicated in their proposal to own an inspection centers in the UAE which could not be verified.

There was an existing lease document as evidence of existing operations within the United Arab Emirates. The lease documents dated 27th May 2014 was signed between M/s. Green Coast Real Estate and M/s. Pal Auto Garage and signed on 1st June 2014, although it did not demonstrate any relationship with M/s. ATJ. This therefore cast doubt on the physical presence of M/s. ATJ in the UAE. While M/s. ATJ also listed Mr. Nithul Lakshmanan as a director for M/S ATJ Auto Service, it was noted he was an employee of M/s. PAL Auto Garage (PAL).

Response to the audit query

102. Dr. Kalua submitted that M/s AutoTerminal Japan Limited was a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections. He provided the said license in his bundle of documents as annex 10.
103. Through the Tender notice, M/S AutoTerminal Japan Limited received a one month notice by KEBS to establish a company and purchase own equipment in the UK and UAE. This being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and the UK ahead of the tender closure. This process has since been completed.
104. Allegations of Impropriety by the Office of the Auditor General. Dr. Kalua raised the following concerns regarding the conduct of the auditors while undertaking the audit assignment; the behaviour he believed was not expected from the Office of the Auditor General:
- a) It was unprocedural for the office of the Auditor General to use M/S QISJ in Visa applications, logistical and accommodation bookings. He tabled a letter from Jaffar Hassan (Manager of QISJ – UK Branch) addressed to the Visa Officer of the British High Commissioner Nairobi Kenya and dated 8th February 2019. This booking was done by QISJ requesting issuance of visas for the four auditors scheduled to travel to UK for audit. To Dr. Kalua, government entities should only deal with the Kenyan Embassy and not audities to avoid suspicion of bias.
 - b) He further tabled an email from QISJ addressed to Ngeno J. of KEBS indicating dated 9th February 2019 indicating that QISJ had sent an invitation letters for Japan and Hotel bookings. The same email had invitation letters for UK and hotel bookings. The email further indicated that QISJ will apply for Dubai Visas on behalf of the Kenyan delegation and send them ones granted.
 - c) Dr. Kalua tabled hotel booking in London Enfield Hotel for the Kenyan delegation that travelled to the UK for audit. The booking was done by Mr. Jaffar Hassan of QISJ. He further tabled hotel bookings dated 8th February 2019 for the Kenyan delegation going to Japan in JR-East Hotel Vets Yokohama Tsurumi.

- d) Dr. Kalua tabled an email from QISJ addressed to the Japan Embassy in Kenya dated 8th February 2019 inviting the Kenyan delegation to Japan for audit assignment. In the same date, the QISJ further emailed the Japanese Embassy in Kenya offering letters of guarantee and reasons for the Kenyan delegation travelling to Japan.
- e) The QISJ was notified as earlier of the impending audit assignment by Dr. Joseph Ngeno of KEBS in his email of 6th February 2019 while the M/S EAA and M/S ATJ were informed on 11th February 2019. This, to Dr. Kalua, indicated bias.
- f) The totality of the documents provided by Dr. Kalua painted the entire audit exercise as compromised by one of the competitors to the disadvantage of the others.

3.5 SUBMISSION BY THE OFFICE OF THE AUDITOR GENERAL

- 105. Through his letter to the Committee dated 24th March 2020, Mr. Fredrick Odhiambo (deputy Auditor General) denied the accusations from Dr. Isaac Kalua on conflict of interest when conducting the Special Audit assignment.
- 106. Mr. Odhiambo submitted that visa applications for OAG officials were made directly to the respective embassies in coordination with the Ministry of Foreign Affairs before travel. He provided the following documents to buttress his assertion:
 - (a) Letter Ref: C.228/Vol.XVIII/(38), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the Principal Secretary in the Ministry of Foreign Affairs requesting facilitation of issuance of entry visas to South Africa for officers scheduled to travel for Special Audit assignment.
 - (b) Letter Ref: C.228/Vol.XVIII/(39), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the Embassy of the United Arab Emirates requesting issuance of entry visas to Dubai for officers scheduled to travel for Special Audit assignment.
 - (c) Letter Ref: C.228/Vol.XVIII/(33), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the Principal Secretary in the Ministry of Foreign Affairs requesting facilitation of issuance of entry visas to Japan for officers scheduled to travel for Special Audit assignment.

- (d) Letter Ref: C.228/Vol.XVIII/(36), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the British High Commission requesting facilitation of issuance of entry visas to UK for officers scheduled to travel for the Special Audit assignment.
- (e) Letters dated 14th February 2019 signed by Charles Kalobia of International Conformity Assessment Solutions and addressed to the head of Consular Section of the South African High Commission requesting facilitation of issuance of entry visas to South Africa for officers scheduled to travel for the Special Audit assignment.
- (f) Letter Ref: MFA.PRO 7/15/25/VOL.IX (36) dated 18th February 2019 from the Ministry of Foreign Affairs and addressed to the British High Commissioner requesting facilitation of issuance of entry visas to UK for officers scheduled to travel for Special Audit assignment.
- (g) A proforma invoice from City Lodge Hotel Fourways dated 11th February 2019 and addressed to International Conformity Assessment Solutions indicating reservations for 5 rooms.
- (h) A certified copy of the bank statement from Standard Chartered Bank for Mr. Fredrick Odhiambo indicating that his debit card was debited with Ksh. 94,935 from Intercontinental Yokohama Grand Yokohama (hotel). He further provided the invoice of the breakdown of the 94,935 dated 3rd March 2019. He also provided his hotel booking confirmation for Yokohama dated 24th February 2019.
- (i) Receipts for visa processing fee to Dubai and Japan dated 28th and 22nd February 2019 respectively. The amount for Japan was 8250 while that for UAE was AED3,150.
- (j) While confirming that indeed M/S indeed provided invitation letters to the Kenyan delegation going for Special Audit assignment, Mr. Odhiambo pointed out that the application guidelines specified the in documents to be attached including invitation letters from the institution being visited. By virtue of being the Company contracted by KEBS to provide PVOC services, QISJ provided the invitation letters for the visa applications. It is these letters that Dr. Kalua had tabled before the Committee. He dispelled fears on any conflict of interest associated with the matter.
- (k) Mr. Odhiambo confirmed that the initial scope of the Special Audit was to focus on the winning bidder (QISJ). However, the scope of audit was expanded to include the other

bidders hence the reason why QISJ it was notified earlier than the others. This was however not intended to give QISJ any undue advantage over the others.

107. KEBS obtained invitation letters and hotel bookings for Japan, United Kingdom and South Africa from QISJ and these were presented by OAG officials to the respective Embassies as required in visa application.
108. KEBS made logistical arrangements for the Auditors to visit sampled sites during the audit and OAG officials used the transport provided by each of the entities being audited to visit their respective sites.
109. The initial scope of the audit was to focus on the successful bidder, QISJ but the scope was later expanded to include all bidders in the tender under review. M/s EAA Company Limited, M/s ATJ Company Limited and M/s Nippon Corporation were thus included in the expanded audit of which the latter was not audited as they provided scanty information that was not verifiable.
110. Mr. Odhiambo underscored the fact that despite M/S QISJ made hotel reservations for the auditors, this was only meant to secure visas and that the M/S did not cater for that cost. The Office of the Auditor General met all the accommodation costs for the officials who conducted the audit and receipts to that effect were presented to the Committee.

3.6 EVIDENCE BY PUBLIC PROCUREMENT REGULATORY AUTHORITY

111. **Mr. Maurice Juma, the Director General of the Public Procurement Regulatory Authority appeared before the Committee and later on made representations on the Special Audit Report on the Pre-Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.**

He briefed the Committee as follows:

112. The Public Procurement Regulatory Authority had received the Special Audit Report from the Office of the Auditor General on 10th July, 2019.
113. Section 41 of the Public Procurement and Assets Disposal Act (2015) mandates the Public Procurement Regulatory Board to debar parties from participating in Public Procurement and Assets Disposal proceedings on various grounds. However, the Board was unable to process requests for debarment because Section 41 (b) of the Act provides that 'the

procedure for debarment shall be prescribed by Regulations' and the Regulations of the Act have not been gazzeted hence all cases related to debarment were pending.

114. The Authority had received a letter from Mr. Isaac Ochieng on 13th December, 2014 requesting for debarment of M/S East Africa Automobile Services Company Limited on grounds of using fake certificates including certificates of registration in the UK and United Arab Emirates as well as tax certificate in the UK.
115. The Authority wrote to M/S East Africa Automobile Services Company on 19th January, 2015 followed by debarment sittings held on 6th May, 4th June and 10th September, 2015. The Company was represented by M/s Prof. Tom Ojienda and Advocates, while the complainant was represented by M/s Andrew Obwayo and Company Advocates. The Company changed their advocates in the course of the debarment proceedings.
116. Further hearings were held on 1st and 26th April, 2016 but the term of the Public Procurement Advisory Board expired before the matter was concluded.
117. The Ethics and Anti-Corruption Commission were investigating the matter of the alleged fake documentation presented by M/s East Africa Automobile Services Company and had written to the PPRA on 6th February, 2018 requesting for tender documents submitted by the Company to assist in the investigation.
118. PPRA wrote a letter to KEBS on 28th February, 2020 requesting for tender documents submitted by M/s EAA Company Limited as well as the technical and financial evaluation reports for tender No. KEBS/T019-2020 that was the subject of the Special Audit Report. The Authority further requested KEBS to submit a copy of a due diligence report which had observed falsification of documents by M/s East Africa Automobile Services Company Limited.
119. The Authority had also written to the Directorate of Criminal Investigation on 25th February, 2020 seeking assistance in verifying the alleged falsification and misrepresentation of documents by the two companies.
120. The PPRA had since considered the tendering process of tender No. KEBS/T019-2021 and found it wanting. PPRA's letter to KEBS dated 21st April 2020 sought for responses on the irregularities identified within seven days. Such irregularities included:

- a. The procurement plan was not approved by the National Standard Council hence in violation of the Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006. Procurement plan had been done on 2nd January 2020 while invitation to tender was done on 3rd December 2019.
- b. Approved procurement plan by Mr. Njiraini lacked estimated cost and source of funding for the project contract to Regulation 21(1)(f) of the PPDA 2006.
- c. The procurement was not based on indicative or approved budget contrary to Section 53(5) of the Act and the Public Procurement (Amendment) Regulations, 2013.
- d. The procurement was done without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
- e. The tender document stifled competition
- f. Addendum 1 and 2 were signed for the Managing Director without the letter delegating that authority.
- g. The invitation to tender failed to declare that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
- h. During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act , 2015.
- i. KEBS charged PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
- j. Despite all bidders being unresponsive, the tender Committee recommended procession to technical evaluation stage contrary to Section 79(3)(b) of the PPAD Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.

- k. Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015
- l. The evaluation criteria omitted the aspect of subcontractors submitting sworn statements.
- m. KEBS failed to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.

3.7 SUBMISSION BY QUALITY INSPECTION SERVICES JAPAN (QISJ)

- 121. **Mr. Kiyako Hatano, the Managing Director of Quality Inspection Services Japan made a written submission to the Committee on the Special Audit Report on the Pre-Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.**
- 122. Quality Inspection Services Japan was a leading vehicle inspection company that had been offering roadworthiness inspection services for KEBS on three year contracts since 2012.
- 123. The contracts were based on competitive bidding process as per KEBS criteria and QISJ has been awarded three separate contracts by KEBS. These three contracts covered three-year cycles and the first contract was awarded on 15th January, 2012 with subsequent awards on 2nd February, 2015 and 3rd April, 2018.
- 124. QISJ received communication from KEBS on the scheduled audit where KEBS requested QISJ, as the current contracted service provider, to facilitate the visit by providing invitation letters to the Auditors for visa application. It is standard procedure for most countries to request invitation letters and hotel bookings during visa application. In Japan, there was an additional mandatory requirement of an undertaking in the form of a guarantee covering any liability that may be occasioned by the visitor to the institution being visited. QISJ provided these documentations as obliged.
- 125. While QISJ made the hotel bookings, the Auditors were to pay for their hotel expenses and QISJ did not make any payment for the Auditors during the audit process. QISJ therefore did not influence the auditors in any way.
- 126. The communication between KEBS and QISJ were not done in secrecy and were purely for the purpose of visa application to enable the auditors to conduct the audit. The manner in

which ATJ accessed confidential communication between QISJ and KEBS should be disclosed.

CHAPTER FOUR

4.1 COMMITTEE OBSERVATIONS AND FINDINGS

In its consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity (PVOC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards, the Committee made the following observations and findings:

4.2 General Observations

- (1) KEBS PVOC Programme was started on 29th September, 2005 by KEBS, through the publication of Legal Notice No. 78 of 15th July, 2005.
- (2) Inspection of vehicles and spare parts at the country of origin is conducted by third party agencies on behalf of KEBS in three-year inspection cycles.
- (3) An international tender for provision of pre-export verifications to conformity to standard: Used Motor Vehicles, Mobile Equipment and used Spare parts was advertised on 21st November, 2017 – Tender Number: KEBS/T019/2017-2021. Four firms responded to the bid i.e. M/S Nippon Inspection Centre Corporation, M/S Auto Terminal Japan (ATJ) Ltd, Quality Inspection Services Inc. Japan (QISJ) and EAA Company Ltd.
- (4) M/S Nippon Inspection Centre Corporation and M/S EAA Company Limited were disqualified at the preliminary evaluation stage for failure to provide relevant documentation required for the tender. M/S Nippon only provided a certificate of incorporation and details of the company directors. M/S EAA failed to provide a number of documents including copies of its current tax compliance certificate, licenses to operate in Japan, UK and United Arab Emirates, proof of financial strength and sworn statement that the company had not filed for bankruptcy.
- (5) M/S Auto terminal Japan Ltd and M/S Quality Inspection Services Inc. Japan were responsive to all the requirements of preliminary evaluation hence proceeded to the technical evaluation stage.
- (6) M/S Auto Terminal Japan (ATJ) was disqualified at the technical evaluation stage due to several reasons including lack of title/lease for inspection centres, lack of

ownership documents for inspection equipment, lack of requisite number of certified inspectors, among others.

- (7) M/S Auto Terminal Japan (ATJ) Ltd filed an appeal to the Public Procurement Administrative Review Board (PPARB) seeking for re-evaluation of the technical proposals on Section 2.22.1 of the tender document to ensure fairness and non-discrimination of the evaluation criteria.
- (8) PPARB dismissed the application by M/S ATJ Ltd indicating that the company did not meet the technical evaluation requirements and that KEBS was directed to proceed with the procurement process.
- (9) Consequently, KEBS and Quality Inspection Services Inc. Japan (QISJ) entered into a contract agreement on 3rd April, 2018 for a period of 3 years effective 15th April, 2018.
- (10) KEBS has an existing contract with Quality Inspection Services Japan (QISJ) for pre-export inspection of motor vehicles. The existing contract is for the current three-year cycle of inspection before a new tender is floated.
- (11) Subject to the provisions of Article 252 (1) and Article 229 (6) of the Constitution of Kenya and Section 38 of the Public Audit Act, the Office of the Auditor-General conducted a special audit at Kenya Bureau of Standards (KEBS) with a focus on the procurement of Pre-Export Verification of Conformity (PVOC) to Standards Services – For used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS – Tender Number: KEBS/T019/2017-2020. The report was tabled in the National Assembly on 23rd November, 2019.
- (12) The Auditors conducted site visits in three out of the four firms that bid for the tender i.e. Quality Inspection Services Japan, EAA Company Ltd and M/S Auto Terminal Japan Ltd. M/S Nippon Inspection Center Corporation, the fourth firm, did not respond to a request for a meeting with the Auditors.
- (13) During the site visits, the Auditors focused on review of documents provided versus the evidence availed by the bidders so as to corroborate the physical and technical infrastructure required to satisfactorily perform the work.
- (14) The Audit established that M/S Auto Terminal Japan did not have the physical and technological infrastructure to perform the inspection service under this tender in the

United Kingdom, Japan and United Arab Emirates. The Company had further grossly misrepresented its technical proposal and recommended its debarment for contravening Section 41 (1) (h) of the Public Procurement and Disposal Act, 2015.

- (15) M/S ATJ was further found to have contravened the ethos of the sworn statement by the Managing Director that the company or its associated companies was not involved in any business that might lead to a conflict of interest and that the tenderer had given full disclosure of its directors and associated companies. The Auditors questioned the overall authenticity and validity of the documentation provided by the company in its bid for the tender.
- (16) The Special Audit Report observed that M/S EAA Company Limited had been knowingly providing falsified documents in the past and continues to do so in its bid for KEBS tenders. The Audit cited a KEBS due diligence report on M/S EAA Company Limited dated 9th January 2015 that had flagged the Company as having forged registration documents and that it did not actually exist in the UK physical address provided in its bid.
- (17) M/S EAA was further found to lack the physical and technological infrastructure to perform the inspection service under this tender in the United Kingdom, Japan and United Arab Emirates. The Company had further grossly misrepresented its technical proposal and should be subjected to proceedings of the law having contravened Section 41 (1) (h) of the Public Procurement and Disposal Act, 2015.
- (18) The Special Audit Report recommended institution of debarment process against M/S Auto Terminal Japan and M/S EAA Company Limited due to their fraudulent violation of the provisions of the procurement law.
- (19) The Public Procurement Regulatory Authority had received the Special Audit Report from the Office of the Auditor General on 10th July, 2019.
- (20) Despite being aware of the existence of the Special Audit Report from as early as 10th July 2019, the PPRA did not act on the recommendations of the said report. It was not until invited to appear before the Committee that PPRA swung into action by initiating investigations. They did this by writing to KEBS on 28th February, 2020 requesting for tender documents submitted by M/s EAA Company Limited as well as the technical and financial evaluation reports for tender No. KEBS/T019 that was the

subject of the Special Audit Report. The Authority further requested KEBS to submit a copy of a due diligence report which had observed falsification of documents by M/s East Africa Automobile Services Company Limited.

- (21) Section 41 of the Public Procurement and Assets Disposal Act (2015) mandates the Public Procurement Regulatory Board to debar parties from participating in Public Procurement and Assets Disposal proceedings on various grounds. However, the Board has not been able to process requests for debarment because Section 41 (b) of the Act provides that *'the procedure for debarment shall be prescribed by Regulations'* and the Regulations of the Act have not been gazzeted hence all cases related to debarment are pending.
- (22) The Authority had received a letter from Mr. Isaac Ochieng on 13th December, 2014 requesting for debarment of M/S East Africa Automobile Services Company Limited on grounds of using fake certificates including certificates of registration in the UK and United Arab Emirates as well as tax certificate in the UK. The Authority initiated debarment proceedings by holding sittings on various occasions from 6th May, 2015 to 26th April, 2016 but the term of the Public Procurement Advisory Board expired before the matter was concluded.
- (23) The Ethics and Anti-Corruption Commission was investigating the matter of the alleged fake documentation presented by M/s East Africa Automobile Services Company and had written to the PPRA on 6th February, 2018 requesting for tender documents submitted by the Company to assist in the investigation.
- (24) The Authority had also written to the Directorate of Criminal Investigation on 25th February, 2020 seeking assistance in verifying the alleged falsification and misrepresentation of documents by the two companies.
- (25) As at the time of compiling this report, there was no indication from PPRA that and the DCI that they had concluded investigating the matter. Further, the Cabinet Secretary for the National Treasury had not gazetted debarment regulations contemplated in Section 41 of the Public Procurement and Asset Disposal Act of 2015. Absence of these regulations held back the PPRA from commencing any debarment proceedings.

4.3 Summary Findings on KEBS Tender T010-2019-2020

- (26) On 3rd December 2019, KEBS advertised a tender for enlargement of provision of PVOC services to bring on additional service providers. The tender KEBS/T010-2019-2021 was advertised in the Daily Nation, the Standard and MyGov website. Limiting the advertisement of an international tender to two local dailies and the MyGov website might have restricted the reach of the tender notice and limited the number of bidders responding to the tender.
- (27) KEBS stated that the rationale for expanding the contract was to mitigate against the risk of relying on one service provider and the imminent exposure in case of dispute or lack of performance by the existing service provider.
- (28) Three companies submitted their bids for the tender including the two companies flagged by the Auditor General in the Special Audit Report for misrepresenting facts in technical proposals, falsifying documents and lacking the requisite physical and technological capacity to carry out the service - M/S Auto Terminal Japan Limited and M/S EAA Company Limited.
- (29) Following preliminary, technical and financial evaluation of the bids, the Tender evaluation committee recommended the award of the international tender KEBS/T010-2019-2021 for Enlargement of Provision of Pre-Export Verification of Conformity(PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts to EAA Company Limited and Auto Terminal Japan Limited who scored the required overall score of 90.7 and 90.9 marks respectively, out of a maximum 100 points, subject to the undertaking of due diligence and consideration of the report confirming and verifying the qualifications of the tenderers.
- (30) In the month of February 2029, the Committee met with the management of KEBS to consider the Special Audit Report. In the said meeting, it emerged that KEBS was processing another contract for Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts. The Committee produced a progress report and tabled it advising KEBS to seek the AG's opinion and also the Committee's recommendations of the National Assembly on the Special Audit Report .

- (31) KEBS Management had shown inconsistencies in the information that it had provided to the Committee. The Managing Director indicated that KEBS had not tendered for the expansion of the contract but had conducted a pre-qualification of service providers before later admitting that they advertised for a tender when documentary evidence to that effect was provided.
- (32) The KEBS sought a legal opinion from the firm of Iseme Kamau and Maema Advocates on the legal implications of procuring additional partners for the PVOC services. The firm opined that the expansion of the terms of the existing contract by bringing in additional partners would amount to splitting of the existing contract contrary to Section 54 (1) of the PPAD Act.
- (33) The Advocates further opined that the proposed tender for additional partner would be subject to challenge unless KEBS could demonstrate procurement planning that would justify the splitting of the services under the existing contract.
- (34) During the second meeting with KEBS, KEBS informed the Committee that Management was in receipt of another legal opinion dated 19th February, 2020. In this opinion, the Advocates advised KEBS that the proposed tender was justifiable and entitled to proceed to its lawful conclusion unless barred by the PPARB or any other lawful process.
- (35) It was not clear why the KEBS management opted to seek the legal advice of their external firm of advocates on the matter and not use the services of the Attorney General thereby incurring a nugatory expenditure.
- (36) The Management of KEBS had belatedly got legal advice from the Office of the Attorney General on the legal implications of expanding the PVOC contract. In his opinion to the KEBS Managing Director, Lt. Col (Rtd.) Bernard Njiraini, Ref: AG/CONF/2/C/78 VOL.1 (75) and dated 26th March 2020, (the same letter was confirmed to the Committee to be authentic by the Attorney General through his letter dated 28th April 2020 and Ref: AG/CONF/2/C/78 VOL.1 (75)) the Hon. Attorney General raised a myriad of issues regarding the tender to wit:
- (a) KEBS had indicated in its previous communications to the Attorney General that it was doing addenda to the existing contract only to be discovered

through KEBS letter to Attorney General dated 21st February 2020 that this was a fresh tender process for enlargement of the services.

- (b) It was unclear whether the fresh procurement process was related to the draft addenda to the five executed contracts forwarded to the Attorney General's office in a letter dated 2nd January 2020.
 - (c) Section 139 of the Public Procurement and Asset Disposal Act of 2015 that guides on variation of contracts did not anticipate floating of a new tender to amend existing contracts. Any new tender should culminate in signing of a new contract and not variation of the existing contract.
 - (d) The KEBS letter to Attorney General dated 21st February 2020 indicated that the tender process had been challenged before the PPRA and the High Court as well as the matter being investigated by the Public Investments Committee of the National Assembly. While PPRA heard and dismissed the petition filed by the Niavana Agencies limited, KEBS did not submit any document to the Attorney General on the matter before the High Court and also the issues that were being canvassed before the Public Investments Committee.
 - (e) The totality of the Attorney General's submission was that the KEBS misrepresented fact to his office that matter in question was for addenda to the existing contract when it was indeed it was a fresh tender and that KEBS had failed to disclose to the Attorney General that the tender had been challenged in Court, was being investigated by the Public Investments Committee and the exact relationship of the fresh procurement and the five addenda.
- (37) Kenya Bureau of Standards Management had proceeded with the tender for Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) services despite adverse findings on previous bidders in the Special Audit Report. The tender was advertised after the Special Audit Report was tabled in the National Assembly and the same companies that had been adversely mentioned in the Special Audit Report ended up being recommended for tender award by KEBS Tender Evaluation Committee.
- (38) M/S EAA Company Limited went to Court regarding the matter with a view to stopping the National Assembly from considering the Special Audit Report. The

Judicial Review Miscellaneous Application (*No. 39 of 2020 – EAA Company Limited vs. The Office of the Auditor General, Clerk of the National Assembly and the National Assembly*) was filed in court on 14th February, 2020. The orders specifically sort against the National Assembly are, orders prohibiting the House from hearing in respect of, debating, adopting and/or enforcing, or causing the enforcement of, the Auditor General's Special Audit Report.

- (39) The petitioner later withdrew the suit against the National Assembly but the case against the Auditor General remained.
- (40) The PPRA had since considered the tendering process of tender No. KEBS/T019-2020 and issued a preliminary report raising several issues through its letter to KEBS Ref: PPRA/CIED/4/30/65 VOL.IV (65) dated 21st April 2020. In the said letter, PPRA sought for responses on the irregularities identified within seven days. The authenticity of the said letter was confirmed to the Committee by the PPRA through its letter Ref: PPRA/CIED/4/30/65 VOL.IV (72) dated 30th April 2020 with a rider that the PPRA had not produced its final report on the matter. Some of the irregularities identified by PPRA during the procurement process included:
 - a. The procurement plan was not approved by the National Standard Council hence in violation of the Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006. Procurement plan had been done on 2nd January 2020 while invitation to tender was done on 3rd December 2019.
 - b. Approved procurement plan by Lt. Col (Rtd.) Bernard Njiraini lacked estimated cost and source of funding for the project contract to Regulation 21(1)(f) of the PPADA 2006.
 - c. The procurement was not based on indicative or approved budget contrary to Section 53(5) of the Act and the Public Procurement (Amendment) Regulations, 2013.
 - d. The procurement was done without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.

- e. The tender document stifled competition
- f. Addendum 1 and 2 were signed for the Managing Director without the letter delegating that authority.
- g. The invitation to tender failed to declare that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
- h. During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act , 2015.
- i. KEBS charged PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
- j. Despite all bidders being unresponsive, the tender Committee recommended procession to technical evaluation stage contrary to Section 79(3)(b) of the PPAD Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.
- k. Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015
- l. The evaluation criteria omitted the aspect of subcontractors submitting sworn statements.
- m. KEBS failed to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.

4.4 Summary of Findings on M/s EAA Company Limited

- (41) M/S EAA raised preliminary objections on the jurisdiction of the Committee to consider the impugned special Audit report on the basis that the said report was not publicized by the Auditor General upon its conclusion; was way past the time allowed under Article 229(8) of the Constitution and fair hearing.

After consideration of all the preliminary objections and construction of the Constitution purposely, the Committee was of the view that it could not have been the intention of the Kenyan People to provide rigid timelines in consideration of audit reports from the Auditor General by the National Assembly. Many factors may lead to delay of consideration of such reports and as such, they should not lapse simply because of the rigidity of time.

On the issue of want of fair hearing, the Committee duly gave M/S EAA an opportunity to be heard and its on the basis of such deliberations that will inform the final decision upon and not necessarily the recommendations of the Auditor General in the Special Audit Report whether or not the Auditor General had reasonably heard from the other witnesses.

- (42) At the time of registration of EAA Company Limited, Mr. Prosper Guku was the sole shareholder but he has since relinquished 50% of the shareholding.
- (43) The Company submitted documentation indicating that they had 17 inspection lines but confirmed that they had only provided lease agreements for 8 plants.
- (44) For the Nagoya plant, EAA provided a lease contract with M/s RunGlobal Ltd yet the plant visited by the Auditors during inspection was owned by M/s Flashrise Ltd. The Auditor confirmed that they visited the site with EAA Employee who spoke fluent English, contrary to claims by EAA that the employees only spoke Japanese.
- (45) The leases provided by M/S EAA Company Ltd. in their bid differed from the leases provided during the meeting.
- (46) M/s ECL Limited, the alleged Leasor of the inspection plant in Kobe-Rokko denied having a lease agreement with EAA Company Limited and further disowned the documents signed by a Director Kiichiro Kichise. ECL stated that they neither had a lease agreement with EAA nor had a Director by the name Kiichiro Kichise.

- (47) M/S EAA Company Limited tabled a further lease agreement for the Kobe-Rokko inspection plant where M/s HAMANAS Company had allegedly leased the plant to EAA Company Limited.
- (48) M/S EAA Company had its accreditation suspended in 2014. The Auditors differed with the company on the duration of the suspension. It was confirmed that they were given new accreditation in 2014.
- (49) M/s Rosper International Limited, of which Mr. Sugai is a Director, was registered as a company that provides motor vehicle export services, among other services. Mr. Sugai stated that he had resigned from the company in 2007 and that the company had not exported any vehicles.
- (50) Mr. Sugai explained that there was no conflict of interest as Mr. Sugai resigned in 2014 and not 2017 as he had indicated in his submission from Rosper International Limited and could not possibly be conflicted in the year 2017 when the respondent bid. In addition, Rosper International Limited dealt in medical equipment.
- (51) Though Mr. Sugai denied forging any document and had not been shown any statement from Mr Cox Laurence, the due diligence done by KEBS in 2015 confirmed the alleged forgery therefore in concurrence with the audit observation.
- (52) Mr. Sugai's assertion that all documents submitted in the 2017-2020 bid were genuine and that it was only in Japan in which partnering was not allowed was contrary to the PIC report findings of 30th November 2016.
- (53) M/S EAA Company acknowledged that they do not own or lease the UK inspection plant as stated in their bid. The UK plant is owned by M/s EAA Automobile Ltd. which has no legal relation with M/s EAA Company Limited. Mr. Sugai explained that the UK does not allow Japanese citizens to open a company hence Mr. Sugai transferred ownership of the company to his brother, Mr. Seth Nguku.
- (54) EAA denied having taken the Auditors to the offices of Serengeti Company in the UK despite the Auditor's confirmation of pictorial evidence to prove the visit took place.
- (55) The Auditors could not confirm the technical capacity of key officer at EAA Company Ltd. submitted in their bid as the officers failed to avail themselves for interviews during the audit.

- (56) There was no evidence provided by M/s EAA Company Limited on ownership of an inspection line in the United Arab Emirates. There was no evidence provided to show that EAA Company Limited bought an inspection facility from M/s Jabal Kilimanjaro as stated by Mr. Sugai.
- (57) There was no evidence provided to indicate presence of M/s EAA Company limited in Thailand and South Africa as per the minimum requirement set by KEBS for participating in the tender.
- (58) M/S EAA denied knowledge of a KEBS Due Diligence Report that flagged the Company as having knowingly falsified documents and that KEBS had recommended the Company for debarment.
- (59) The Public Procurement Regulatory Authority had not instituted debarment proceedings in line with the recommendations of the KEBS Due Diligence Report on EAA Company Limited. This was due to the absence of Public Procurement regulations that inhibit the full operationalization of the Public Procurement and Disposal Act (2015) with regards to debarment of entities.
- (60) The Public Procurement Regulations have not been gazetted and cases relating to debarment of entities that engage in procurement irregularities have been pending since enactment of the PPDA in 2015. The Regulations have been considered by both Houses of Parliament and was under consideration by the Cabinet.

4.5 Summary of Findings on M/s Auto Terminal Japan Limited

- (61) M/s Auto terminal Japan limited has one shareholder and one Director. This has been the case since the company started. This is similar to Kenya company culture. Kenyan laws allow a situation where a person can be a shareholder and not a director. The only difference is that there is no issued statement from the company registry in Japan for private companies in regard to proprietorship.
- (62) The Tokyo Bay Main Office in Kisarazu was leased through an agreement with Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association. Further Analysis revealed similar arrangement with Kobe City Government.

- (63) The property in Kisarazu was commissioned to the Company by the above referenced Housing Association since the year 2006. ATJ thus claimed ownership of the facility and its operations because they purchased, installed and own the inspection equipment.
- (64) M/s ATJ confirmed its ownership of the Tokai inspection facility including all equipment. ATJ stated that it had leased about 16,000 sqm to M/s Japan Forwarding Agency as a customs bonded area for proper utilization of the asset in a business sense. These are two different entities which operate in entirely different standards and operating procedures.
- (65) M/s ATJ provided invoices from the inspection lines leased from M/s. Flash rise Co, LTD, M/s. Nagase Auto Inc, M/s. Daiei Jidousya Kogyo Co Ltd, M/s. Hotta Auto Aichi Co, Ltd, M/s. Gulliver International Co, Ltd. M/s. Kojima Corporation and M/s. FWT Logistics Co, Ltd to confirm activity at the respective lines. The auditors had however not seen them and could not be verified
- (66) M/s ATJ stated that they have two inspection lines in the same locality as submitted in the technical proposal. One inspection line is within M/S Flash Rise and a second one at a different location 300m from their Flash rise offices. The Company has a separate agreement since the physical address is different. During tendering and submission in the technical proposal, M/s ATJ submitted

- (67) documents for one inspection line for this tender since second leased facility in the same inspection line had not undergone calibration process.
- (68) In Japan, ISO Type A 1720 is for independent inspection company. M/s ATJ was initially accredited with ISO Type C 1720 which means an organization has an inspection company also doing additional customer related services. Upon process evaluation the IANZ (International Accreditation New Zealand) approved ISO Type A to include quarantine inspection since AutoTerminal Japan Limited does not operate works like cleaning/washing the car. At this point all inspection program and process of AutoTerminal Japan Limited became part of Type A certification. Accordingly, M/s ATJ possess ISO Type A Accreditation license which is of the highest rank in Japan. In addition, motor vehicles repairs have its own category of license in Japan and certification and M/s ATJ is not in the business of maintaining motor vehicles.
- (69) M/s ATJ explained that the norm of the business is that automobiles predestined for export are usually in on Duty Free basis. It is only after the Roadworthiness inspection and/or the inspection and Export Declaration that their customs bond are released. This means that the automobiles are bonded items before inspection. Once the bonded custom duties are paid then the automobiles become domestic units ready for export. Usually Road Worthiness Inspection (RWI) automobiles meant for Kenya, Jamaica, Tanzania and Zambia are allocated in this category since the exporter engages in customs clearance after the "PASS" inspection.
- (70) On the other hand, regarding quarantine inspection for New Zealand and Australia, M/s ATJ Limited conducts inspection after customs clearance because inspection has to be done within 21 days before shipment. Accordingly, M/s ATJ has to invoice the inspection fee to the agents of the importer. This inspection fee is including the cleaning/washing fee is operated by JFA, so JFA will bill to AutoTerminal Japan Limited for payment.
- (71) On the other hand, JFA as an agent of the importer will order for Inspection services to ATJ e.g. JFA order RWI, odometer inspection, radiation inspection etc. instead of the exporter, so AutoTerminal Japan Limited also bills to AutoTerminal Japan

Limited. M/s Japan Forwarding Agency (JFA) is a customer to AutoTerminal Japan Limited.

- (72) M/s Japan Forwarding Agency (JFA) was established in September 2013. Upon the new requirement by KEBS in the tender, M/s AutoTerminal Japan Limited surrendered the license of Customs Clearance business to the authorities and was left with the inspection business only. It is also at this stage and moment that AutoTerminal Japan Limited was accredited with ISO17020 Type A on Nov 2013.
- (73) M/s AutoTerminal Japan Limited is an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited is clear. AutoTerminal Japan Limited is not in conflict of interest for inspection business whatsoever. In addition, the concept of “Conflict of interest” was first introduced by KEBS during this period and not earlier and therefore ATJ adhered to this requirement for compliance.
- (74) M/s AutoTerminal Japan Limited operates in different countries globally and has never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the “Conflict of interest” issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship as evidenced by attached
- (75) The Director of ATJ Limited stated that AUTO TERMINAL UK LTD is a company incorporated in by the Registrar of Companies for England and Wales as company Number 12010599. (Annexure (ATJ –UK) is attached as Certificate of Incorporation of a Private Limited Company in UK).
- (76) The respondent stated that M/s AutoTerminal Japan Limited Auto Services is a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections (Annexure number 10 is attached as ATJ Auto Services -UAE).
- (77) On dispute on use of Inspection Facilities at Flashrise – Mr. Kalua failed to explain himself on the issue.
- (78) Through the Tender notice, Auto Terminal Japan Limited received a one month notice by KEBS to establish a company and purchase own equipment in the UK and UAE. This being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and the UK

ahead of the tender closure. This process has since been completed. The Committee however found out that the incorporation certificate submitted by M/S ATJ on 11th December 2017 was not authentic after Dr. Kalua confirmed that the Company was incorporated in UK on 22nd May 2019 under certificate No. 12010599. This vindicates the audit observation on lack of presence of M/S ATJ in both UAE and UK and forgery of documents.

- (79) M/s Auto Terminal Japan accused the Auditor General of impropriety by alluding to facilitation of the Auditor by one of the companies under the Audit which could influence the findings of the Audit. The allegations were however proved to be unfounded as the Office of the Auditor General provided receipts of their accommodation and confirmed that their visa application was facilitated by KEBS.
- (80) On the accusations from the Office of the Auditor General by Dr. Isaac Kalua on the alleged conflict of interest from the Office of the Auditor General during the period of conducting the Special Audit, Mr. Fredrick Odhiambo (deputy Auditor General) denied all the allegations. The allegations are dealt with hereunder.
- (81) On the allegation that M/S QISJ assisted the OAG in visa applications, logistical and accommodation bookings- Dr. Kalua had tabled documents including email copies of communication between KEBS Officials and QISJ officials on facilitating visa arrangements for the Office of the Auditor General officials visiting QISJ facilities for the audit. He further tabled hotel bookings of OAG officials allegedly made by QISJ officials.
 - i. Mr. Odhiambo acknowledged that it was indeed true that M/S QISJ wrote invitation letters for the Auditors. He however indicated that it was a requirement from Japan, UAE, South Africa and UK that the institution to be visited had to provide invitation letters to those intending to visit its institution for purposes of visa processing.
 - ii. The visa applications for OAG officials were made directly to the respective embassies in coordination with the Ministry of Foreign Affairs before travel. The application guidelines specified the documents to be attached including invitation letters from the institution being visited. By virtue of being the

Company contracted by KEBS to provide PVOC services, QISJ provided the invitation letters for the visa applications.

- iii. He further submitted that the initial scope of audit to be limited to M/S QISJ alone as it had a running contract with KEBS but the scope changed to include the rest of the bidders hence the reason why M/S was engaged to, through the advice of KEBS, to provide invitation letters.
 - iv. Mr. Odhiambo submitted that the visa processing fees for the auditors was paid by the Office of the Auditor General and provided receipts on the same.
 - v. Mr. Odhiambo produced several letters from the Office of the Auditor General to the Ministry of Foreign Affairs and a Norte from the Ministry of Foreign Affairs requesting issuance of visas to auditors.
- (82) On the allegation that M/S QISJ met accommodation costs for some auditors, Mr. Odhiambo refuted that claim by producing a certified copy of his bank statement from Standard Chartered bank showing that he paid for his bills while in Japan with his debt card. He further produced evidence to the effect that he stayed in Intercontinental Grand Yokohama and not as per the hotel bookings.
- (83) KEBS made logistical arrangements for the Auditors to visit sampled sites during the audit and OAG officials used the transport provided by each of the entities being audited to visit their respective sites.
- (84) The latter information of the of M/S EAA and other bidders of the auditors' proposed audit assignment arose from change of scope of audit exercise and not intended to give M/S QISJ undue advantage.
- (85) It was the Committee's conclusion that all the allegations against the office of the Auditor General were unfounded as all of them were satisfactorily controverted.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

The Committee made the following recommendations having received submissions by the aforementioned entities on its consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity (PVOC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards:

- i. The Cabinet Secretary for the National Treasury should expeditiously develop and gazette debarment regulations contemplated in Section 41(1)(h) of the Public Procurement and Asset Disposal Act, 2015 within sixty (60) days of adoption of this report;
- ii. As per recommendations from Auditor General in the Special Audit Report dated 10th July 2019 and KEBS's due diligence report on Tender No. KEBS/T057/2014-2015, upon gazette of the debarment regulations contemplated under (i) above, the Public Procurement Regulatory Authority should immediately commence debarment proceedings against M/S EAA and M/S ATJ for violating the PPAD Act, 2015 when its misrepresented and forged documentation while tendering for KEBS tenders;
- iii. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/ or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement And Asset Disposal Act 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2021; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team.
- iv. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with award of tender No. KEBS/T019-2021. Potential areas of litigations may include:

- (a) Failure to have procurement plan approved by the National Standard Council before invitation to tender contrary to Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006.
- (b) Procuring without indicative or approved budget contrary to Section 53(5) of the Public Procurement and Disposal Act and the Public Procurement (Amendment) Regulations, 2013.
- (c) Procuring without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
- (d) Failure to declare in the invitation to tender that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
- (e) During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act , 2015.
- (f) Charging of PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
- (g) Approving a recommendation from the tender Committee that all bidders proceed to technical evaluation stage despite being unresponsive contrary to Section 79(3)(b) of the Public Procurement Asset Disposal Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.
- (h) Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015
- (i) Failure to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.

- (j) Section 139 of the Public Procurement and Asset Disposal Act of 2015 that guides on variation of contracts did not anticipate floating of a new tender to amend existing contracts. Any new tender should culminate in signing of a new contract and not variation of the existing contract.
- v. The Directorate of Criminal Investigations (DCI), Director Public Prosecutions (DPP) and the Ethics and Anti-Corruption Commission (EAAC) should expeditiously investigate the circumstances under which the KEBS entered into contract with firms that had been recommended for debarment and in total contempt of the advice of the Attorney General and the Committee contrary to Public Procurement and Asset Disposal Act of 2015 on procurement process, Penal Code Cap 63 on forgery; Public Finance Management Act of 2012 on initiation of a procurement without approved budget and procurement plan among others with a view to preferring charges against the those found culpable.
- vi. KEBS should always as much as possible ensure full implementation of future contractual obligations KEBS enters to avoid unnecessary litigations and loss of public resources.
- vii. Future international tenders should be widely advertised in leading international media houses to enable fair competition and service providing.
- viii. The Public Procurement and Regulatory Authority (PPRA) expeditiously investigates the entire tendering process under tender No. KEBS/T019-2021 and report its findings to the National Assembly, DCI, and DPP within thirty (30) days of adoption of this report for further action.

Sign

Date..... 29/05/2020

HON. ABDULLSWAMAD SHARIFF NASSIR, MP - CHAIRPERSON
PUBLIC INVESTMENTS COMMITTEE

6.0 ANNEXURES

Annex No	Title
Annex 1	Adoption list
Annex 2	Committee Minutes
Annex 3	Special Audit Report of the Auditor General on the Procurement of Pre-Export Inspection Services -Used Motor Vehicles, Mobile Equipment and Spare Parts
Annex 4	Attorney- General's letter to the Committee Ref: Ref: AG/CONF/2/C/78 VOL.1 (75) dated 28 th April 2020 the AG's Letter to KEBS Ref: AG/CONF/2/C/78 VOL.1 (75) and dated 26 th March 2020
Annex 5	PPRA's letter to the Committee dated 30 th April 2020 and PPRA's letter to KEBS Ref: PPRA/CIED/4/30/65 VOL.IV (65) dated 21 st April 2020
Annex 6	Bundle of documents tabled by Dr. Isaac Kalua alleging OAG's conflict of Interest
Annex 7	Bundle of documents presented by OAG responding to Dr. Isaac Kalua allegations
Annex 8	Legal Opinions by Iseme, Kamau & Maema Advocates Ref: STA-005-0184 dated 20 th June 2017 and Ref: KEN-013-003 dated 19 th February 2020
Annex 9	Committee letters Inviting Mr. Bernard Njiraini to Committee meetings

ANNEX 1

ADOPTION LIST

**ADOPTION OF THE REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON
ITS CONSIDERATION OF THE SPECIAL AUDIT REPORT ON PROCUREMENT OF
PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD
SERVICES FOR USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED
SPARE PARTS BY KENYA BUREAU OF STANDARDS (KEBS)**

1. Hon. Abdullswamad Sharrif Nassir, MP (Chairperson)
2. Hon. Ahmed Abdisalan Ibrahim, MP (Vice- Chairperson) *James A. Kiprotich*
3. Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS,MP
4. Hon. Raphael Bitta Sauti Wanjala, MP
5. Hon. Justus Kizito Mugali, MP
6. Hon. John Muchiri Nyaga, MP
7. Hon. Gladys Nyasuna Wanga,CBS MP
8. Hon. (Prof.) Mohamud Sheikh Mohammed, MP
9. Hon. Babu Owino Paul Ongili, MP
10. Hon. James Githua Kamau Wamacukuru, MP
11. Hon. Joash Nyamache Nyamoko, HSC, MP
12. Hon. Mary Wamaua Waithira Njoroge, MP
13. Hon. Mohamed Hire Garane, MP
14. Hon. Omar Mohamed Maalim Hassan, MP
15. Hon. Paul Kahindi Katana, MP
16. Hon. Purity Wangui Ngirici, MP
17. Hon. Rashid Kassim Amin, MP
18. Hon. Zachary Kwenya Thuku, MP

KENYA NATIONAL ASSEMBLY

PUBLIC INVESTMENTS COMMITTEE

MEMBERS' ATTENDANCE REGISTER

AGENDA CONSIDERATION AND ADOPTION OF DRAFT REPORT REPORT
ON PRB-EXPORT VERIFICATION

DATE: 30/04/2020

TIME 10:04AM

	NAME	SIGNATURE
1.	The Hon. Abdullswamad Shariff Nassir, MP (Chairman)	
2.	The Hon. Ahmed Abdisalan Ibrahim, MP (Vice-Chairman)	
3.	The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP	
4.	The Hon. Gladys Nyasuna Wanga, CBS, MP	
5.	The Hon. John Muchiri Nyaga, M.P	
6.	The Hon. Justus Gesito Mugali, MP	
7.	The Hon. Raphael Bitta Sauti Wanjala, MP	
8.	The Hon. (Prof.) Mohamud Sheikh Mohammed, MP	
9.	The Hon. Babu Owino Paul Ongili, MP	
10.	The Hon. James Kamau Githua Wamacukuru, M.P	
11.	The Hon. Joash Nyamache Nyamoko, HSC, MP	
12.	The Hon. Mary Wamaia Njoroge, MP	
13.	The Hon. Mohamed Hire Garane, M.P.	
14.	The Hon. Omar Mohamed Maalim Hassan, MP	
15.	The Hon. Paul Kahindi Katana, MP	
16.	The Hon. Purity Wangui Ndirici, MP	
17.	The Hon. Rashid Kassim Amin, MP	
18.	The Hon. Thuku Zachary Kwenya, M.P	

Committee Clerk

Director Committee Services (NA).....

Evans Oanda 30/04/2020
Henry 30/4/2020

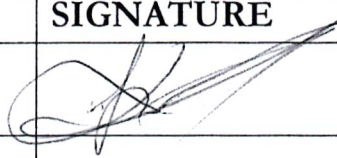
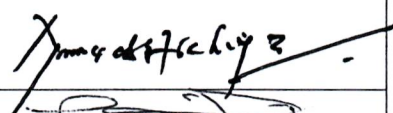
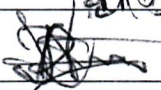
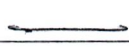
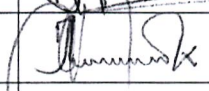
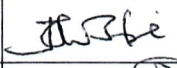
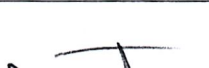
KENYA NATIONAL ASSEMBLY

PUBLIC INVESTMENTS COMMITTEE

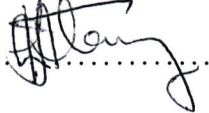
MEMBERS' ATTENDANCE REGISTER

WITNESS: IN HOUSE (CONSOLIDATION OF DRAFT REPORT ON

DATE: 23/04/2020 ^{PRE-EXPORT VERIFICATION} TIME 11:50 AM

	NAME	SIGNATURE
1.	The Hon. Abdullswamad Shariff Nassir, MP (Chairman)	
2.	The Hon. Ahmed Abdisalan Ibrahim, MP (Vice-Chairman)	
3.	The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP	
4.	The Hon. Gladys Nyasuna Wanga, MP	
5.	The Hon. John Muchiri Nyaga, M.P	
6.	The Hon. Justus Gesito Mugali, MP	
7.	The Hon. Raphael Bitta Sauti Wanjala, MP	
8.	The Hon. (Prof.) Mohamud Sheikh Mohammed, MP	
9.	The Hon. Babu Owino Paul Ongili, MP	
10.	The Hon. James Kamau Githua Wamacukuru, M.P	
11.	The Hon. Joash Nyamache Nyamoko, HSC, MP	
12.	The Hon. Mary Wamaia Njoroge, MP	
13.	The Hon. Mohamed Hire Garane, M.P.	
14.	The Hon. Omar Mohamed Maalim Hassan, MP	
15.	The Hon. Paul Kahindi Katana, MP	
16.	The Hon. Purity Wangui Ngirici, MP	
17.	The Hon. Rashid Kassim Amin, MP	
18.	The Hon. Thuku Zachary Kwenya, M.P	

Committee Clerk Evans Oanda 

Director Committee Services (NA)  30/4/2020

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ANNEX 2

COMMITTEE MINUTES

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MINUTES OF THE 1ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 13TH FEBRUARY 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. Gladys Wanga, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
8. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
9. The Hon. Mohamed Hire Garane, M.P.
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. James Kamau Githua Wamacukuru, M.P
12. The Hon. Paul Kahindi Katana, MP
13. The Hon. John Muchiri Nyaga, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 2. Ms. Marlene Ayiro | - | Legal Counsel |
| 3. Ms. Noelle Chelagat | - | Media Relations Officer |
| 4. Mr. John Mungai | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|---------------------------------------|
| 1. Mr. Fred Odhiambo | - | Deputy Auditor General, Special Audit |
| 2. Dr. Sammy Kimunguni | - | Deputy Director, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |

MIN/PIC/001/2020: PRELIMINARIES

The Chairperson called the meeting to order at three minutes past ten O'clock and prayed.

MIN/PIC/002/2020: BRIEF BY THE OFFICE OF THE AUDITOR GENERAL ON THE KENYA BUREAU OF STANDARDS SPECIAL AUDIT REPORT

The Office of the Auditor General briefed the Committee on the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standards for Motor Vehicles and Spare Parts.

The Committee heard that:

1. The Special Audit was conducted pursuant to Articles 252 1(a), (d) and 229(6) of the Constitution of Kenya and Section 38 of the Public Audit Act, 2015;
2. The Auditor-General conducted a special audit at Kenya Bureau of Standards (KEBS) with focus on the procurement of Pre-Export Verification of Conformity (PVOC) to Standards Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS - Tender Number: KEBS/T019/2017-2020. A second phase of the special audit to review the Pre-Export Verification of Conformity (PVOC) to Standards Services - For General Goods in the financial year 2019/2020 is currently ongoing.
3. This special audit also served as a follow-up on the previous tender and special audit report which was published in January 2016.
4. KEBS developed a Code of Practice, the Kenya Standards Code of Practice for Inspection of Road Vehicles (KS 1515:2000) that specify general safety and environmental requirements.
5. KS 1515:2000 required that inspection be carried out by KEBS before importation. KEBS then introduced the PVOC to meet these standards on imported vehicles that required the vehicles to be accompanied by certificate of roadworthiness from the exporting company.
6. This refers to conformity assessment procedures used to verify that used motor vehicles exported to Kenya are in compliance with KS 1515:2000 before shipment from Japan, United Arab Emirates, United Kingdom, South Africa and Thailand as used motor vehicles are mainly imported from this countries.
7. Due to inadequate capacity, KEBS contracts qualified third party inspectors with presence in these countries to undertake the exercise on its behalf at a royal premium payable to KEBS for this service.

Procurement Process

8. Procurement for Pre-Export Verification of Conformity (PVOC) to Standard Services-Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards (KEBS)-Tender Number KEBS/T019/2017-2020 was captured in the Annual Procurement Plan for FY 2017/2018.
9. An international tender for provision of pre-export verifications to conformity to standard: Used Motor Vehicles, Mobile Equipment and used Spare parts was advertised on 21 November 2017.
10. Four firms responded to the bid i.e. M/S Nippon Inspection Center Corporation, M/S Auto Terminal Japan (ATJ) Ltd, Quality Inspection Services inc. Japan (QISJ) and EAA Company Ltd.

11. Quality Inspection Services inc. Japan (QISJ) and EAA Company Ltd emerged the most responsive bidder with a combined score of 94 out of 100 marks.
12. KEBS and Quality Inspection Services inc. Japan (QISJ) entered into contract agreement on 03 April 2018 for a period of 3 years effective 15 April 2018.
13. The audit established that two companies misrepresented facts in their bids. M/s. Auto Terminal Japan (ATJ) bid for the tender and lost. The firm was found to have misrepresented facts in its bid. M/s. EAA Company Ltd also bid for the tender and lost. The firm was also found to have misrepresented facts in its bid.

MIN/PIC/003/2020: MEETING WITH THE MANAGEMENT OF KENYA BUREAU OF STANDARDS

Lt. Col. (Rtd) Bernard Njiraini, the Managing Director of Kenya Bureau of Standards accompanied by Ms. Esther Ngari (Director, Standards), Mr. Ahmed Amin (HoD, Inspection), Ms. Josephine Mwakithi (Ag. HoD, Procurement), Mr. Mmbwanga Brian (Legal Counsel), Dr. James Muriuki (PA to the Managing Director) and Ms. Janet Kamau (Corporate Communication Officer) appeared before the Committee to adduce evidence on the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standards for Motor Vehicles and Spare Parts.

He briefed the Committee as follows:

1. Pre-Export Verification of Conformity (PVOC) to standards is a conformity assessment program applied to products at the respective exporting countries, to ensure their compliance with the applicable to Kenyan Technical Regulations and Mandatory Standards or approved specifications.
2. PVOC program was started on 29th September, 2005 by KEBS through the publication of Legal Notice No. 78 of 2005 and further Legal Notices No. 127 and No. 183 of 2018 and 2019, respectively.
3. The program seeks to ensure quality of products, health and safety, and environmental protection for consumers.
4. The program is operated by accredited third party inspection companies on behalf of KEBS.

Committee Observations

The Committee made the following observations:

1. KEBS has an existing contract with Quality Inspection Services Japan (QISJ) for pre-export inspection of motor vehicles that runs from 3rd April, 2018 to 14th April, 2021. The existing contract is for the current three-year cycle of inspection upon which a new tender is floated.
2. On several dates in December 2019, KEBS advertised a tender for additional service providers to supplement the existing contract for PVOC. KEBS stated that the rationale for expanding the contract is to mitigate against the risk of

relying on one service provider and the exposure in case of dispute or lack of performance by the existing service provider.

3. The management of KEBS had not sought legal advice from the Office of the Auditor General on the legal implications of expanding the PVOC contract. Management opted to seek the legal advice of their external counsel on the matter.
 4. KEBS Management had shown inconsistency in the information provided to the Committee. The Managing Director indicated that KEBS had not tendered for the expansion of the contract but had conducted a pre-qualification of service providers before later admitting that they advertised a tender.
 5. The Management further indicated that they had not received the legal opinion on the expansion of the contract from their external counsel but later confirmed that they had received the opinion after a copy of the same was tabled by a Committee Member.
 6. The legal opinion by KEBS external lawyers confirmed that the Bureau would be exposed to litigation in the proposed addition of service providers as it would amount to splitting of the contract to be undertaken by more than one contractor.
 7. There was no justification for expanding the existing contract given that there is only a year before the current three-year contract lapses and a new tender is advertised.
-

Committee Resolutions

The Committee made the following resolutions:

1. KEBS Management should stop the tender process for expansion of the PVOC contract until the Public Investments Committee concludes its inquiry and the National Assembly makes a determination on the matter, to avoid the risk of litigation.
2. The Bureau should seek the legal opinion of the Attorney General in any such procurement process in line with Section 134 of the Public Procurement and Disposal of Assets (Act), 2015.
3. Management was asked to provide a brief on the status of the tendering process for the expansion of the PVOC contract, the bidders who responded to the tender, any possible objection to the tender by the current service provider and a certified copy of the legal opinion by KEBS' external lawyers.

MIN/PIC/004/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/005/2020: ADJOURNMENT

The meeting was adjourned at nine minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....17/02/2020



MINUTES OF THE 2ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 20TH FEBRUARY 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Gladys Wanga, MP
7. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. John Muchiri Nyaga, M.P
13. The Hon. Babu Owino Paul Ongili, MP
14. The Hon. Justus Kizito Mugali, MP

ABSENT WITH APOLOGY

1. The Hon. Mary Wamaua Njoroge, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Thuku Zachary Kwenya, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 2. Ms. Marlene Ayiro | - | Legal Counsel |
| 3. Ms. Noelle Chelagat | - | Media Relations Officer |
| 4. Mr. John Mungai | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|---------------------------------------|
| 1. Mr. Fred Odhiambo | - | Deputy Auditor General, Special Audit |
| 2. Dr. Sammy Kimunguni | - | Deputy Director, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |

MIN/PIC/006/2020: PRELIMINARIES

The Chairperson called the meeting to order at twenty two minutes past ten O'clock and prayed.

MIN/PIC/007/2020: MEETING WITH THE MANAGEMENT OF KENYA BUREAU OF STANDARDS

Lt. Col. (Rtd) Bernard Njiraini, the Managing Director of Kenya Bureau of Standards accompanied by Ms. Esther Ngari (Director, Standards), Mr. Ahmed Amin (HoD, Inspection), Ms. Josephine Mwakithi (Ag. HoD, Procurement), Mr. Mmbwanga Brian (Legal Counsel), Dr. James Muriuki (PA to the Managing Director) and Ms. Janet Kamau (Corporate Communication Officer) appeared before the Committee to adduce evidence on the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standards for Motor Vehicles and Spare Parts.

He briefed the Committee as follows:

Kenya Bureau of Standards: Tender No. KEBS/T010/2019-2021 - Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) Services

1. The tender was advertised on 3rd December 2019 on MyGov in the Daily nation newspaper and KEBS website. The tender seeks to expand the contract for provision of PVOC services by bringing in additional service providers for the contract duration.
2. The tender opening and the tender evaluation committees were appointed on 6th January, 2020 and 7th January 2020 respectively, by the accounting officer/ Managing Director as per Section 46(1) of the Public Procurement and Asset Disposal Act 2015 to evaluate the international tender number KEBS/T010/2019-2021 and conduct due diligence prior to award of the tender.
3. Tender evaluation was carried out as per section 80 of Public Procurement and Asset Disposal Act 2015. The tender evaluation committee began evaluation on 9th January 2020. The evaluation of the bids was carried out in three (3) stages as per the requirement 2.11.2 in the appendix to instructions to the tenderers;
4. **Preliminary Evaluation** - M/S Nippon was disqualified at the preliminary evaluation stage for failing to minute the requirement prescribed in the tender document, page 19 of 55. The tender evaluation committee recommended that their bid be declared unresponsive. M/S EAA Company Limited and M/S Auto Terminal Japan Limited qualified to proceed for technical evaluation.
5. **Technical Evaluation** - The tender evaluation committee scored individually the bids as per the criteria in the tender documents. Based on the technical evaluation results, M/S EAA Company Limited and M/S Auto Terminal Japan Limited attained scores above the minimum score. Therefore, the committee recommended the two companies to proceed to financial evaluation stage.
6. **Financial Evaluation** - The financials for the two companies which qualified at technical evaluation; M/S EAA Company Limited and M/S Auto Terminal Japan Limited were opened on 15th January, 2020 in the presence of the bidders whose technical proposal was successful. The two bidders met requirements of the financial criteria prescribed in the tender documents.
7. **Tender Evaluation Committee Recommendation** - The tender evaluation committee recommended the award of the international tender KEBS/T010-2019-2021 for Enlargement of Provision of Pre-Export Verification of

Conformity(PVOC) to standards services for used motor vehicles, mobile equipment and spare parts to EAA Company Limited and Auto Terminal Japan Limited who scored the required overall score of 90.7 and 90.9 marks respectively, out of a maximum 100 points, subject to conduct of due diligence and consideration of the report confirming and verifying the qualifications of the tenderers.

Committee Observations

The Committee made the following observations:

1. On 3rd December 2019, KEBS advertised a tender for enlargement of provision of PVOC services to bring on additional service providers. The tender KEBS/T010-2019-2021 for Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts was advertised in the Daily Nation, the Standard and MyGov website.
2. Three companies submitted their bids for the tender including the two companies flagged by the Auditor General in the Special Audit Report for misrepresenting facts in technical proposals, falsifying documents and lacking the requisite physical and technological capacity to carry out the service - M/S Auto Terminal Japan Limited and M/S EAA Company Limited.
3. Following preliminary, technical and financial evaluation of the bids, the Tender evaluation committee recommended the award of the international tender KEBS/T010-2019-2021 for Enlargement of Provision of Pre-Export Verification of Conformity(PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts to EAA Company Limited and Auto Terminal Japan Limited who scored the required overall score of 90.7 and 90.9 marks respectively, out of a maximum 100 points, subject to the undertaking of due diligence and consideration of the report confirming and verifying the qualifications of the tenderers.
4. The contract for Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts had not yet been awarded and the Committee advised the Management of KEBS to await the recommendations of the National Assembly on the Special Audit Report before awarding the contract.
5. The Management of KEBS had not sought legal advice from the Office of the Attorney General on the legal implications of expanding the PVOC contract. Management instead opted to seek the legal advice of their external firm of advocates on the matter, where they ended up incurring further costs in terms of legal fees.

6. Management was in receipt of another legal opinion dated 19th February, 2020 in which the advocates advised KEBS that the proposed tender was justifiable and entitled to proceed to its lawful conclusion unless barred by the PPARB or any other lawful process.
7. KEBS has failed to provide concise justification for the proposed expansion of the existing contract. The risk of exposure by engaging one service provider as cited by the Bureau does not justify the expansion of the contract. The service has consistently been provided by one company across the five cycles of inspection to date. Additionally, the current contract has a year before expiry and the start of a new three-year inspection cycle.

Committee Resolutions

The Committee reiterated its earlier resolutions THAT:

1. KEBS Management should stop the tender process for expansion of the PVOC contract until the Public Investments Committee concludes its inquiry and the National Assembly makes a determination on the matter.
2. The Bureau should seek the legal opinion of the Attorney General in any such procurement process in line with Section 134 of the Public Procurement and Disposal of Assets (Act), 2015.

MIN/PIC/008/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/009/2020: ADJOURNMENT

The meeting was adjourned at forty minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 17/03/2020

MINUTES OF THE 3RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 25TH FEBRUARY 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Gladys Wanga, MP
4. The Hon. Thuku Zachary Kwenya, M.P
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 2. Ms. Marlene Ayiro | - | Legal Counsel |
| 3. Ms. Noelle Chelagat | - | Media Relations Officer |
| 4. Mr. John Mungai | - | Audio Recording Officer |

MIN/PIC/010/2020: PRELIMINARIES

The Chairperson called the meeting to order at twelve minutes past ten O'clock and prayed.

The Chairperson informed the Committee that the Public Procurement Regulatory Authority had requested for rescheduling of their appearance before the Committee to a later date. The Committee acceded to the request and resolved to re-invite on the Authority to appear before it on 10th March, 2020.

MIN/PIC/011/2020: CONFIRMATION MINUTES

1. Minutes of the 1st sitting held on 13th February, 2020 were confirmed as a true record of proceedings having been proposed by the Hon. Gladys Wanga, M.P and seconded the Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2. Minutes of the 2nd sitting held on 20th February, 2020 were confirmed as a true record of proceedings having been proposed by the Hon. Ahmed Abdisalan Ibrahim, MP and seconded by the Hon. Paul Kahindi Katana, M.P.

MIN/PIC/012/2020: COMMUNICATION BY THE CHAIR (No. 004 of 2020)

The Chairperson briefed the Committee on the Communication by the Chairperson (No. 004 of 2020) which notified the House of the request by the Cabinet Secretary, National Treasury to extend the timeline for submission and publishing of audited accounts by public entities due to the absence of an Auditor General.

The Chairperson notified the Members that a Joint Committee had been formed with the Public Accounts Committee and the Special Funds Accounts Committee to consider the request and report to the House by 11th March, 2020. As a result, the Joint sitting would hold its first sitting on Wednesday 26th February, 2020 at 10am to consider the matter.

MIN/PIC/013/2020: ADOPTION OF THE DRAFT PROGRESS REPORT ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY TO STANDARDS FOR MOTOR VEHICLES AND SPARE PARTS BY KENYA BUREAU OF STANDARDS

The Committee considered and adopted the Progress Report on the Procurement of Pre-Export Verification of Conformity to Standards for Motor Vehicles and Spare Parts by Kenya Bureau of Standards.

MIN/PIC/014/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/015/2020: ADJOURNMENT

The meeting was adjourned at five minutes past eleven O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 17/03/2020.

MINUTES OF THE 5TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 3RD MARCH, 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Mary Wamaua Njoroge, MP
4. The Hon. Purity Wangui Ngirici, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Joash Nyamache Nyamoko, MP
13. The Hon. Omar Mohamed Maalim Hassan, MP.

ABSENT WITH APOLOGY

1. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Mr. Eric Kariuki | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Mr. John Mungai | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|--------------------------|---|------------------------|
| 1. Mr. Fredrick Odhiambo | - | Deputy Auditor General |
| 2. Mr. Evans Mogere | - | Manager, Audit |
| 3. Mr. Henry Maregene | - | Manager, Audit |
| 4. Ms. Rose Nandwa | - | Supervisor, Audit |

MIN/PIC/023/2020: PRELIMINARIES

The Chairperson called the meeting to order at twenty nine minutes past ten O'clock and prayed.

The Advocate for EAA Company Limited raised the following preliminary objections:
THAT;

1. The National Assembly, and specifically the Public Investment Committee (PIC), is time-barred under Article 229(8) Constitution of Kenya 2010 from holding this hearing to consider the aforementioned Auditor-General's Report. Article 229(8) of the Constitution obligates the National Assembly to debate and consider the Auditor-General's report, and take appropriate action upon it, all within three (3) months of receiving the report.
2. Neither Parliament nor the Auditor General published or publicized the Special Audit Report under review as required by Section 32 Public Audit Act No. 34 of 2015.
3. The Auditor-General exceeded both his Constitutional and Statutory mandate in the manner it carried out its examination, inspection and audit, which birthed the special audit report under review.
4. The Auditor-General failed to give the respondent notice, whether formal or informal, of its intention to examine, inspect or audit the respondent's books, company offices and inspection sites, subsidiaries and affiliates or to interview any of the respondent's employees, for whatever purposes whatsoever, including that in its terms of reference of the special audit report under review before the National Assembly.
5. The respondent has always been qualified, eligible and capable to carry out pre-export inspection services for used and new motor vehicles, mobile equipment and spare parts on behalf of Kenya Bureau of Standards so that any error in submissions of bids can be explained and does not amount to misrepresentation or lying, or even to the draconian sanction of debarment.
6. The respondent's qualification is attested to by the previous inspection of PIC that resulted in the Special Report of November 2016 on the Inquiry into the Allegations of Procurement Irregularities in the Award of the Kenya Bureau of Standards Tender No. KEBS/T057/2014-2015 for the Provision of Pre-Export Inspection Services for Used Motor Vehicles.

Committee Resolution

The Committee considered the preliminary objections and resolved to make a determination on the matter when drafting its report.

**MIN/PIC/024/2019: CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE
PRE-VERIFICATION OF CONFORMITY TO STANDARDS FOR
MOTOR VEHICLES AND USED SPARE PARTS**

Mr. Prosper Sugai, the Chief Executive Officer of EAA Company Limited, accompanied by Mr. Andrew Ombwayo (Advocate) appeared before the Committee to adduce evidence on the Special Audit Report on the Pre-Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.

He briefed the Committee as follows:

1. EAA Company Limited was formed on 6th July 2007, registered on 12th September 2011, and thereafter changed its name and expanded its purposes to include export-inspection of used cars, evaluation work on used cars, testing and training for used car evaluators, all of which enable it to provide pre-shipment/ export inspection services to standards" agencies like the Kenya Bureau of Standards (KEBS), and to participate in the Pre-Export Verification Of Conformity (PVOC) to Standards Services, and to bid for such work as and when advertise.
2. EAA Company Limited bid in the Procurement of PVOC to Standards - Used Motor Vehicles, Mobile Equipment and Used Parts by Kenya Bureau of Standards Tender No. KEBS/T019/2017-2020, was disqualified, was enjoined in an application for review of that tender/ procurement process at the public procurement administrative review board where the application for review was dismissed and the procuring entity (KEBS) allowed to proceed to contract the successful bidder, M/s Quality Inspection Services Inc. Japan (QISJ)
3. There are only five (5) companies offering pre-export/ pre shipment inspection of used motor vehicles, mobile equipment and used parts so much so that the recommendations to debar two (2) of them, and to recommend only one company to offer that service to Kenya, amounts to bias, a pre-conceived report and the establishment of a monopoly. These five (5) companies are: EAA Company Limited; Quality Inspection Services Inc. Japan (QISJ); Auto Terminal Japan Limited (ATJ); JEVIC Limited; and Nippon Logistics Limited.
4. The Auditor-General had also cleared inter alia the respondent of any fraud in an earlier procurement process for the year 2014-2015, tender No. KEBS/T057/2014-2015, in its Special Audit Report dated 25th January 2016¹³ when it gave a clean bill of health to that procurement process, and there is thus no reason why the respondent would subsequently misrepresent facts.
5. In response to finding 1.30, the audit team sampled and visited only Yokohama, Kisakazu and Kawasaki, and stated that they were visiting for purposes of doing due diligence on behalf of KEBS in respect of the winning bidder, QISJ. The respondent's official thus gratuitously gave out the leases that were in his immediate possession, 17 of them, but the audit team reported only 8 of them.
6. In response to finding 1.31, during low business season, employees do not sit around the inspection sites hence the reason why the audit team had a problem. In addition, there was no notice given to assemble the respondent's employees.
7. In response to finding 1.32, there was mis-communication and lack of adequate notice. ECL officers speak only Japanese. Mr Kiyooki Hatano brought the audit team to ECL on a courtesy call as ECL had previously done business with QISJ and the respondent was not involved in that interaction. In addition, confusion

was caused because the audit team relied upon Mr Kiyoaki Hatano to interpret for them without separately verifying what information they were being given.

8. In response to finding 1.33, the capacity for the respondent to deliver on any contract, if taken, is known, is tested and has been proven as above.
9. In response to finding 1.34, the ISO accreditation was suspended pending investigations in 2014 but was re-instated and was available when the respondent tendered for the pertinent tender in 2017. The respondent's accreditation is verifiable from JAB website contrary to the auditor's contention .
10. In response to finding 1.35, there was no conflict of interest as Rosper resigned in 2007 from Rosper International Limited and could not possibly be conflicted in the year 2017 when the respondent bid. In addition, Rosper International Limited dealt in medical equipment.
11. In response to finding 1.36, there was no representation to the technical proposal as the respondent's bid had been determined at the preliminary stage and never proceeded to technical evaluation. Its technical qualifications were thus not evaluated. In addition, the respondent retains a partner in the said company in the United Kingdom which was in tandem with the tender requirements.
12. In response to finding 1.37, there was no forgery and we have not been shown any statement from Mr Cox Laurence to verify what the audit team stated. The respondent gave information that it believed to be true to the best of its knowledge, information and belief. In addition, the technical evaluation committee never evaluated this technical requirement and there is no foundation for fraud.
13. In response to finding 1.38, the respondent had confused documents presented by Mr Lukosi who had left the company under distressful conditions and had set out to sabotage the company. The respondent had nevertheless presented valid documents which were however never evaluated by the technical evaluation committee.
14. In response to finding 1.39, the facility exists but staff are retained as and when business arise. The respondent had not been contracted by the KEBS and could not retain those employees by the time the audit was being done.
15. In response to finding 1.40, the respondent has presence in UAE but its bid was not evaluated by the tender evaluation committee so that there is no opinion on it, of fraud or otherwise. The audit team got Mr Rashid Abeid Suba, and did not get other officials because they did not request for an interview.
16. In response to finding 1.41, the audit team is not providing any tangible evidence that can be responded to. Nevertheless, the same can be verified on site.
17. In response to finding 1.42, all documents submitted in the 2017-2020 bid were genuine and only in Japan is partnering not allowed. In any event, the

evaluation committee never evaluated the documents submitted and the respondent could have answered any question posed.

18. In response to finding 1.43, the finding is false as the respondent had specifically indicated in its bid that it did not have offices in Thailand and South Africa but that it would sub contract its works if it won the tender. Thailand and South Africa contribute barely 1% of all second hand vehicle imports into Kenya that the decision to sub contract if contracted by KEBS.
19. In response to finding 1.44, the KEBS Due Diligence Report dated 9th January 2015 was not shared with the respondent to date and the respondent can only surmise that it is being quoted in bad faith to the exclusion of all other reports that have given it a clean bill of health.
20. In response to finding 1.45, it is false that the respondent has knowingly provided false information respecting its competence and this has been attested to by previous PI Reports and the fact that it had been sub contracted in 2012-2014 by QISJ to do the same work. The finding is biased and meant to lock the respondent out of the Kenyan market.

Committee Observations

The Committee made the following observations:

1. At the time of registration of EAA Company Limited, Mr. Prosper Guku was the sole shareholder but he has since relinquished 50% of the shareholding.
2. The Company submitted documentation indicating that they had 17 inspection lines but confirmed that they had only provided lease agreements for 8 plants.
3. For the Nagoya plant, EAA provided a lease contract with M/s RUNGLOBAL LTD. Yet the plant visited by the Auditors during inspection was owned by M/s Flashrise Ltd. The Auditor confirmed that they visited the site with EAA Employee who spoke fluent English, contrary to claims by EAA that the employees only spoke Japanese.
4. The leases provided by EAA Company Ltd. in their bid differed from the leases provided during the meeting.
5. M/s ECL Limited, the alleged Leasor of the inspection plant in Kobe-Rokko denied having a lease agreement with EAA Company Limited and further disowned the documents signed by a Director Kiichiro Kichise. ECL stated that they neither had a lease agreement with EAA nor had a Director by the name Kiichiro Kichise.
6. EAA Company Limited tabled a further lease agreement for the Kobe-Rokko inspection plant where M/s HAMANAS Company had allegedly leased the plant to EAA Company Limited.
7. EAA Company had its accreditation suspended in 2014. The Auditors differed with the company on the duration of the suspension.
8. M/s Rosper International Limited, of which Mr. Sugai is a Director, was registered as a company that provides motor vehicle export services, among

other services. Mr. Sugai stated that he had resigned from the company in 2007 and that the company had not exported any vehicles.

9. EAA Company acknowledged that they do not own or lease the UK inspection plant as stated in their bid. The UK plant is owned by M/s EAA Automobile Ltd. which has no legal relation with M/s EAA Company Limited. Mr. Sugai explained that the UK does not allow Japanese citizens to open a company hence Mr. Sugai transferred ownership of the company to his brother, Mr. Seth Nguku.
10. EAA denied having taken the Auditors to the offices of Serengeti Company in the UK despite the Auditor's confirmation of pictorial evidence to prove the visit took place.
11. The Auditors could not confirm the technical capacity of key officer at EAA Company Ltd. submitted in their bid as the officers failed to avail themselves for interviews during the audit.
12. There was no evidence provided by M/s EAA Company Limited on ownership of an inspection line in the United Arab Emirates. There was no evidence provided to show that EAA Company Limited bought an inspection facility from M/s Jabal Kilimanjaro as stated by Mr. Sugai.
13. There was no evidence provided to indicate presence of M/s EAA Company limited in Thailand and South Africa as per the minimum requirement set by KEBS for participating in the tender.
14. EAA denied knowledge of a KEBS Due Diligence Report that flagged the Company as having knowingly falsified documents and that KEBS had recommended the Company for debarment.

Committee Resolution

The Committee made the following resolutions:

1. M/s EAA Company Limited should provide the following additional documentation on or before Monday 9th March, 2020:
 - a. Documentation indicating the length of suspension of the Company's accreditation;
 - b. A copy of Mr. Prosper Sugai's resignation from Rosper International limited;
 - c. Documentation on purchase of an inspection plant in Dubai from M/s Jabal Kilimanjaro Ltd.
2. The Committee would write to the Kenya Accreditation Society to ascertain the duration in which EAA's accreditation was suspended.

MIN/PIC/025/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/026/2020: ADJOURNMENT

The meeting was adjourned at fourteen minutes past two O'clock.

Signed

The Hon. Abdulswamad Sharrif Nassir, MP
(Chairperson)

Date.....

17/03/2020 -

MINUTES OF THE 6TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 5TH MARCH, 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharraf Nassir, MP (Chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Joash Nyamache Nyamoko, MP
13. The Hon. Omar Mohamed Maalim Hassan, MP.

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gladys Wanga, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Mr. Eric Kariuki | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Mr. John Mungai | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-------------------------|---|----------------|
| 1. Ms. Stella Samperu | - | Manager, Audit |
| 2. Mr. Lawrence Oigara | - | Manager, Audit |
| 3. Mr. Njoroge Waithima | - | Manager, Audit |
| 4. Mr. Henry Maregene | - | Manager, Audit |

MIN/PIC/027/2020: PRELIMINARIES

The Chairperson called the meeting to order at seventeen minutes past ten O'clock and prayed.

MIN/PIC/028/2020: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL HOSPITAL INSURANCE FUND

Mr. Nicodemus Odongo, the Ag. Chief Executive Officer of the National Hospital Insurance Fund, accompanied by Mr. B.K Njenga (Ag. Director, Finance), Mr. Michael Wario (Manager, ICT), Ms. Janet Boit (Legal Officer) and Mr. Johnstone Ouma (Ag. Manager, Supply Chain Management) appeared before the Committee to adduce evidence on the audited accounts of National Hospital Insurance Fund for the financial year 2017/18.

He briefed the Committee as follows:

MIN/PIC/029/2020: SHORT TERM INVESTMENTS FY 2017/18

As previously reported, included in the statement of financial position as at 30 June 2018 is short term investments balance of Kshs.17,787,153,816 which is net of provision for impaired investments of Kshs.1,304,410,609 as disclosed in note 26 to the financial statements for the previous year.

The provision includes an amount of Kshs.49, 500,000 which had been deposited by the Fund on 26 June 2001 at the Consolidated Bank Ltd in Nairobi. The entire deposit of Kshs.49, 500,000 was offset by the Bank against a guarantee executed by the former Fund Chief Executive Officer on behalf of Euro Bank Ltd. It is not clear, and the management has not explained the circumstances under which the Fund's deposit was used as a guarantee by the then Chief Executive Officer.

Although the Public Investment Committee recommended in the 21st report that;

- i. The then CEO of NHIF be held accountable for any losses incurred in the irregular investment of the surplus funds in Consolidated Bank and therefore be surcharged for Kshs.40,065,205.45, being the value of the un-deposited cheque No.022477 of 23 September 2002 from Euro Bank;
- ii. The then Consolidated Bank's CEO and Finance Manager should be held accountable for colluding with NHIF to mismanage the invested funds;
- iii. In view of the fact that the Fund had no capacity to provide guarantee for a loan to a private bank, Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund;
- iv. The then Senior Management of Consolidated Bank including the then Managing Director, Mr. Eliud K. Mathiu and Finance Manager Mr. Mwangi should also be held accountable for colluding with NHIF to mismanage the invested funds. In view of the fact that the Fund had no capacity to provide guarantee for a loan to a private bank, Consolidated Bank should pay the amount of Kshs.49.5 million it irregularly offset against deposits of the Fund.
- v. Mr. Eliud K. Mathiu, former Managing Director of Consolidated Bank should be surcharged for the funds that were advanced to Euro Bank in overnight lending. He should further be held accountable for the Kshs.49.5 million which the

Bank could not recover from Euro Bank and consequently offset the same against the fixed deposits of NHIF.

- vi. NHIF should relentlessly pursue the Consolidated Bank for recovery of Kshs.49.5 million;
- vii. NHIF CEO must ensure that all financial investments by the Fund are done in accordance with Treasury Circular No. 10 of 1992 and section 28 (1) of the Public Finance Management Act.

No action has been taken to recover the Kshs.49,500,000 the Fund lost. In the circumstance, it has not been possible to confirm whether the short-term investment balance of Kshs.17, 787,153,816 is fairly stated.

Management Response

The Investments are listed as non-performing and has been provided for with other non-performing investments in the Funds financial statements. As per the recommendation of the Inspector General of state corporations, NHIF has written to consolidated Bank Ltd seeking refund of the Kshs. 49.5M.

As per the 21st Public Investment Committee report, the committee observed that it had exhaustively addressed this matter in its 19th report on the account of state corporations and recommended the query should be excluded from the subsequent reports of the Auditor General provided that the management makes full disclosure of the unresolved matter in its financial statements as required by the International Accounting Standards No. 37. (Refer to Appendix C)

This is a historical issue dating back to 2001 and the Fund has treated this matter in the financial statements as per the recommendation of the 21st PIC report which required that the Fund make full disclosure of the unresolved matter in the financial statements as required by the International Accounting Standards no. 37.

Committee Observations

The Committee made the following observations:

1. Despite the PIC recommendation that NHIF should relentlessly pursue the Consolidated Bank for recovery of Kshs.49.5 million, the Fund had not done sufficient follow up and had not recovered the amount. The Fund wrote to the Bank on 15th and 20th November, 2019 on the matter.
2. Disclosure of the matter was not done in Note 9 of the financial statements of the Fund.

Committee Resolutions

The Committee made the following resolutions:

1. The Fund should pursue the recovery of the amount as per the 21st PIC Report.
2. The Management of Consolidated Bank should appear before the Committee to provide an update on the reimbursement of the amount.

MIN/PIC/030/2020: UNQUOTED INVESTMENTS FY 2017/18

As disclosed at note 27 to the financial statements, unquoted investment balance of Kshs.385,342,946 as at 30 June 2018 includes a balance of Kshs.331,142,946 in respect of a loan advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3 % per annum. However, the loan was not supported with a signed loan agreement between the Fund and MTRH.

Although the management has acknowledged the omission, it was not clearly explained how the anomaly will be resolved and the fall back plan in case of default by the Hospital. Further, the loan balance has not been reflected in MTRH financial statements for the year ended 30 June 2018. The unquoted investment balance of Kshs. 385,342,946 also includes consolidated bank shares of Kshs. 54,200,000 which are not traded and for which no dividend have been paid in the past. Under the circumstances, the investment in consolidated bank shares is impaired.

Consequently, the validity of unquoted investment balance of Kshs. 385,342,946 as at 30 June 2018 could not be confirmed.

Management Response

It is true that there is no signed contract between NHIF and MTRH for the loan. In line with provisions of section 34 (b) of the NHIF Act of 1998, the board approved a credit facility for purchase and acquisition of medical equipment to the MTRH. The board approval is attached (Appendix E).

From the records, it has now been discovered that the MTRH was given a draft contract (Appendix F) in August 2018 but did not respond to the same. The lag time in follow up for action is part of the challenges being experienced by the current acting leadership due to huge information gaps as a result of no handover given the arrest of the Fund's top leadership in November/ December 2018 and the court restrictions thereof.

The Fund reflected the MTRH loan under the unquoted investments as required by the IAS 39 where financial instruments are initially recognized when an entity becomes a party to the contractual provisions of the instrument.

The Fund continues the recovery process of the loan from MTRH claims submitted at a monthly rate of Kshs. 3,178,918 even as the Fund pursues legal ways to deal with the missing contract issue.

Committee Observations

The Committee made the following observations:

1. There is no signed contract between NHIF and MTRH for the loan.
2. The Moi Teaching and Referral Hospital was given a draft contract (Appendix F) in August 2018 but did not respond to the same.

3. The Fund continues the recovery process of the loan from MTRH claims submitted at a monthly rate of Kshs. 3,178,918.
4. The Fund reflected the MTRH loan under the unquoted investments as required by the IAS 39 where financial instruments are initially recognized when an entity becomes a party to the contractual provisions of the instrument.
5. The loan is not reflected in the audited financial statements of MTRH.

Committee Resolution

The Committee made the following resolution:

The Fund was asked to provide a written chronology on the loan indicating how the matter started, the personnel involved in negotiating the loan, the contractual status of the loan, amount paid so far and the outstanding amount.

MIN/PIC/031/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/032/2020: ADJOURNMENT

The meeting was adjourned at ten minutes past twelve O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 7TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 10TH MARCH, 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Mary Wamaia Njoroge, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. Thuku Zachary Kwenya, M.P
13. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Rashid Kassim Amin, MP
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Mr. Eric Kariuki | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Mr. John Mungai | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|----------------------|---|----------------|
| 1. Mr. Joshiah Oyuko | - | Manager, Audit |
|----------------------|---|----------------|

MIN/PIC/033/2020: PRELIMINARIES

The Chairperson called the meeting to order at twenty six minutes past ten O'clock and prayed.

MIN/PIC/034/2020: SUBMISSION BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY

Mr. Thomas Otieno, on behalf of the Director General of the Public Procurement Regulatory Authority, appeared before the Committee to adduce evidence on the Special Audit Report on the Pre-Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.

He briefed the Committee as follows:

1. The Public Procurement Regulatory Authority had received the Special Audit Report from the Office of the Auditor General on 10th July, 2019.
2. Section 41 of the Public Procurement and Assets Disposal Act (2015) mandates the Public Procurement Regulatory Board to debar parties from participating in Public Procurement and Assets Disposal proceedings on various grounds. However, the Board has not been able to process requests for debarment because Section 41 (b) of the Act provides that 'the procedure for debarment shall be prescribed by Regulations' and the Regulations of the Act have not been gazzeted hence all cases related to debarment are pending.
3. The Authority had received a letter from Mr. Isaac Ochieng on 13th December, 2014 requesting for debarment of M/S East Africa Automobile Services Company Limited on grounds of using fake certificates including certificates of registration in the UK and United Arab Emirates as well as tax certificate in the UK.
4. The Authority wrote to M/S East Africa Automobile Services Company on 19th January, 2015 followed by debarment sittings held on 6th May, 4th June and 10th September, 2015. The Company was represented by M/s Prof. Tom Ojienda and Advocates, while the complainant was represented by M/s Andrew Obwayo and Company Advocates. The Company changed their advocates in the course of the debarment proceedings.
5. Further hearings were held on 1st and 26th April, 2016 but the term of the Public Procurement Advisory Board expired before the matter was concluded.
6. The Ethics and Anti-Corruption Commission were investigating the matter of the alleged fake documentation presented by M/s East Africa Automobile Services Company and had written to the PPRA on 6th February, 2018 requesting for tender documents submitted by the Company to assist in the investigation.
7. PPRA wrote a letter to KEBS on 28th February, 2020 requesting for tender documents submitted by M/s EAA Company Limited as well as the technical and financial evaluation reports for tender No. KEBS/T019 that was the subject of the Special Audit Report. The Authority further requested KEBS to submit a copy of a due diligence report which had observed falsification of documents by M/s East Africa Automobile Services Company Limited.
8. The Authority had also written to the Directorate of Criminal Investigation on 25th February, 2020 seeking assistance in verifying the alleged falsification and misrepresentation of documents by the two companies.

Committee Observations

The Committee made the following observations:

1. The Public Procurement Regulatory Board has not been able to process requests for debarment because Section 41 (b) of the Act provides that 'the procedure for debarment shall be prescribed by Regulations' and the Regulations of the Act have not been gazzeted hence all cases related to debarment are pending. The Regulations have undergone public participation and are currently being considered by the Cabinet.
2. The Authority had received a letter from Mr. Isaac Ochieng on 13th December, 2014 requesting for debarment of M/S East Africa Automobile Services Company Limited on grounds of using fake certificates including certificates of registration in the UK and United Arab Emirates as well as tax certificate in the UK. Debarment sittings were held on 6th May, 4th June and 10th September, 2015, but the term of the Public Procurement Advisory Board expired before the matter was concluded.
3. The Ethics and Anti-Corruption Commission was investigating the matter of the alleged fake documentation presented by M/s East Africa Automobile Services Company and had written to the PPRA on 6th February, 2018 requesting for tender documents submitted by the Company to assist in the investigation.
4. The Authority had also written to the Directorate of Criminal Investigation on 25th February, 2020 seeking assistance in verifying the alleged falsification and misrepresentation of documents by the two companies.

MIN/PIC/035/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/036/2020: ADJOURNMENT

The meeting was adjourned at twenty two minutes past eleven O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....23/04/2020

MINUTES OF THE 8TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 12TH MARCH, 2020 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. Purity Wangui Ngirici, MP
10. The Hon. Gladys Wanga, MP
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Thuku Zachary Kwenya, M.P
14. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Justus Kizito Mugali, MP
2. The Hon. James Kamau Githua Wamacukuru, M.P
3. The Hon. Omar Mohamed Maalim Hassan, MP.
4. The Hon. Mary Wamaua Njoroge, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Mr. Eric Kariuki | - | Research Officer |
| 6. Ms. Noelle Chelagat | - | Media Relations Officer |
| 7. Mr. John Mungai | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|--------------------------|---|------------------------------------|
| 1. Mr. Fredrick Otieno | - | Deputy Auditor General |
| 2. Dr. Sammy Kimunguyi | - | Manager, Audit |
| 3. Mr. Henry Maregene | - | Manager, Audit |
| 4. MS. Catherine Mwasho | - | Manager, Audit |
| 5. Mr. John Kisego | - | Inspectorate of State Corporations |
| 6. Mr. Livingstone Mburu | - | Inspectorate of State Corporations |
| 7. Mr. Josiah Oyuko | - | Manager, Audit |

MIN/PIC/037/2020: PRELIMINARIES

The Chairperson called the meeting to order at twenty two minutes past ten O'clock and prayed.

MIN/PIC/038/2020: SUBMISSION OF EVIDENCE BY AUTO TERMINAL JAPAN

Dr. Isaac Kalua, Africa Director for Auto Japan Co Ltd accompanied by Mr. Philip Mutee (Auto manager); Lena Kitavi (Communications Manager); David Kiseko (Intern); Jackson Mati (Manager Operations) and Wilbroad Peter (ATJ) appeared before the Committee to adduce evidence on the the special audit report on the procurement of Pre- Export Verification of Conformity (PVOC) to Standards Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS - Tender Number: KEBS/T019/2017-2020.

He briefed the Committee as follows:

1. **Directorship of the Company** - The Audit found that M/s ATJ had provided false information the confidential business questionnaire by listing Mr. Mamoru Fujie as the sole Director and failing to disclose details of the Company's Directors. Mr. Tetsuro Shirahama, was listed as the owner of the company with 100 percent shares, and other Directors include Dr. Isaac Kalua, Mr. Wilson Mutabazi and Mr. Nithul Lakshmanan.
2. ATJ stated that Mr. Tetsuro Shirahama is the sole shareholder with 100% of shares and hence no shares are unissued; all shares are held by one person. Accordingly, Mr. Mamoru Fujie, the CEO of ATJ is also a sole Director as declared in the business questionnaire.
3. ATJ has one shareholder and one Director. This has been the case since the company started. This is similar to Kenya company culture. Kenyan laws allow a situation where a person can be a shareholder and not a director. The only difference is that there is no issued statement from the company registry in Japan for private companies in regard to proprietorship. The information regarding Japanese company and number of documents to be disclosed are available on www.japanpi.blog/business-blog/japan-company-rgistry. (*Annexure - "List of Shareholders"*).
4. **Ownership of Tokyo-Bay Main Office in Kisarazu** - The Audit Report observed that ATJ listed a capacity of sixteen inspection lines stationed in 12 inspection centers including the Tokyo Bay Main Office. The Tokyo Bay Main Office in Kisarazu was leased through an agreement with Kisarazu Comprehensive Hole Sale Commerce Housing Complex Cooperative Association. Further Analysis revealed similar arrangement with Kobe City Government. This contradicted the information provided in the technical proposal by M/s Auto terminal Japan that claimed ownership of the Tokyo Bay facility.

5. ATJ stated that the property in Kisarazu was commissioned to the Company by the above referenced Housing Association since the year 2006. ATJ thus claimed ownership of the facility and its operations because they purchased, installed and own the inspection equipment. The Housing association owns huge tracks of land in this high value area and commissions it to specific target institutions to do complimentary business.
6. In Kobe Prefecture, ATJ has a similar arrangement where Kobe City has commissioned very high value land to ATJ. The office block, inspection facility including all its equipment is purchased, operated and owned by ATJ. The Company noted that the land in such strategic areas like Ports in Japan is mostly managed by Government.
7. **Use of the Tokai Facility and Functionality of the Nagoya Facility** - The Audit Report observed that the ATJ Tokai Office was on a large parcel of land with other on-going logistics operations including clearing and forwarding agents. With this parcel of land being owned by ATJ, it cast doubt on their involvement with only Road Worthiness Inspection of used motor vehicles for export. The Nagoya inspection facility also revealed no activity and a dilapidated structure that had seemingly been idle with no staff presence. While these had been noted to be an owned inspection center, the facility did not exhibit a state-of-the-art testing equipment as alleged in the technical proposal.
8. ATJ confirmed its ownership of the Tokai inspection facility including all equipment. ATJ stated that it had leased about 16,000 sqm to M/s Japan Forwarding Agency as a customs bonded area for proper utilization of the asset in a business sense,. These are two different entities which operate in entirely different standards and operating procedures.
9. **Lack of invoices confirming activity at inspection lines** - The Audit indicated that ATJ had separate lease agreements at a number of inspection lines which provided that every 10th date of the month an invoice would be raised to ATJ by all these entities to confirm activity.

However, there was no documentary evidence or invoices raised by the sampled companies to ATJ to validate the authenticity of the leases and inspection activity at the leased locations which raised questions about ATJ's claim in the technical proposal of undertaking 1,500 and 1,380 monthly inspections in owned and partner facility respectively.
10. ATJ provided invoices from the inspection lines leased from M/s. Flash rise Co, LTD, M/s. Nagase Auto Inc, M/s. Daiei Jidousya Kogyo Co Ltd, M/s. Hotta Auto Aichi Co, Ltd, M/s. Gulliver International Co, Ltd. M/s. Kojima Corporation and M/s. FWT Logistics Co, Ltd to confirm activity at the respective lines.
11. **Dispute on Use of Inspection Facilities at Flashrise** - The Audit Report noted that M/s ATJ's technical proposal claimed that it has leased two inspection lines from

M/s Flash rise Co. Ltd. However, during Audit it was observed that the site in question had two inspection lines; one leased to M/s ATJ and one leased to M/s QISJ.

12. M/s ATJ stated that they have two inspection lines in the same locality as submitted in the technical proposal. One inspection line is within M/S Flash Rise and a second one at a different location 300m from their Flash rise offices. The Company has a separate agreement since the physical address is different. During tendering and submission in the technical proposal, M/s ATJ submitted documents for one inspection line for this tender since second leased facility in the same inspection line had not undergone calibration process.

13. **Engagement in Vehicle Repair Business** - M/s ATJ's license issued by the Japan's Ministry of Land, Infrastructure, Transport and Tourism (MLTT) stated that the company was in the business of maintaining motor vehicles. Additionally, the Accreditation statements by M/s. ATJ confirmed being a recipient of the Type A accreditation which gave the company the added benefit and advantage of being able to provide diagnostic services onsite. These conflicted the sworn statements, dated 7 December 2017, which were also attached stating that the company was not conflicted. This was therefore against the tender requirement where bidders were not expected to be in a conflict of interest, for this case providing diagnostic services including repair works.

14. In Japan, ISO Type A 1720 is for independent inspection company. M/s ATJ was initially accredited with ISO Type C 1720 which means an organization has an inspection company also doing additional customer related services. Upon process evaluation the IANZ (International Accreditation New Zealand) approved ISO Type A to include quarantine inspection since AutoTerminal Japan Limited does not operate works like cleaning/washing the car. At this point all inspection program and process of AutoTerminal Japan Limited became part of Type A certification. Accordingly, M/s ATJ possess ISO Type A Accreditation license which is of the highest rank in Japan. In addition, motor vehicles repairs have its own category of license in Japan and certification and M/s ATJ is not in the business of maintaining motor vehicles.

15. **Engagement in Export Business** - The Audit observed that M/s. ATJ's audited accounts for the past three years contained details relating to sales from domestic and export business. The company also disclosed that it had consumption tax receivable, often attributable to companies engaged in export business. The statements also disclosed accounts payable and receivable to companies like M/s. Japan Forwarding Agency Ltd. where the relationships could not be clearly explained by M/s. ATJ management.

16. M/s ATJ explained that the norm of the business is that automobiles predestined for export are usually in on Duty Free basis. It is only after the Roadworthiness

inspection and/or the inspection and Export Declaration that their customs bond are released. This means that the automobiles are bonded items before inspection. Once the bonded custom duties are paid then the automobiles become domestic units ready for export. Usually Road Worthiness Inspection (RWI) automobiles meant for Kenya, Jamaica, Tanzania and Zambia are allocated in this category since the exporter engages in customs clearance after the "PASS" inspection.

On the other hand, regarding quarantine inspection for New Zealand and Australia, M/s ATJ Limited conducts inspection after customs clearance because inspection has to be done within 21 days before shipment. Accordingly, M/s ATJ has to invoice the inspection fee to the agents of the importer. This inspection fee is including the cleaning/washing fee is operated by JFA, so JFA will bill to AutoTerminal Japan Limited for payment. (*Annexure - AutoTerminal Japan Limited Standard Operating Procedures*)

On the other hand, JFA as an agent of the importer will order for Inspection services to ATJ e.g. JFA order RWI, odometer inspection, radiation inspection etc. instead of the exporter, so AutoTerminal Japan Limited also bills to AutoTerminal Japan Limited. M/s Japan Forwarding Agency (JFA) is a customer to AutoTerminal Japan Limited.

17. **Common Directorship at ATJ and JFA** - The Audit established that Mr. Mamoru Fujie, CEO of M/s ATJ Ltd was a director of Japan Forwarding Agency Ltd for the period from September 2013 to February 2015. This was a clear conflict of interest and this information was not disclosed to KEBS while M/s. ATJ was a service provider for the third cycle of contract between 2012 - 2015.

Further scrutiny revealed that ATJ had been granted a permit for customs clearance business effective 10th January 2007, by the Director of Yokohama Customs - Mr. Hiromichi Tanigawa for the Tokyo-Bay area, which exacerbated the potential conflict of interest as the said company could have been involved in export business.

18. M/s ATJ responded that M/s Japan Forwarding Agency (JFA) was established in September 2013. Upon the new requirement by KEBS in the tender, M/s AutoTerminal Japan Limited surrendered the license of Customs Clearance business to the authorities and was left with the inspection business only. It is also at this stage and moment that AutoTerminal Japan Limited was accredited with ISO17020 Type A on Nov 2013.

M/s AutoTerminal Japan Limited is an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited is clear. AutoTerminal Japan Limited is not in conflict of interest for inspection business whatsoever. In addition, the concept of "Conflict of interest" was first introduced

by KEBS during this period and not earlier and therefore ATJ adhered to this requirement for compliance.

19. M/s AutoTerminal Japan Limited operates in different countries globally and has never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the "Conflict of interest" issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship as evidenced by attached. (*Annexure - Resignation JFA*).
20. **Lack of Inspection Facility in the UK** - The Audit observed that M/s. ATJ didn't own any inspection centers nor had they contracted an inspection center (s) through "corporate partnerships" against the requirement for the United Kingdom where subcontracting is not allowed.
21. The Director of ATJ Limited stated that AUTO TERMINAL UK LTD is a company incorporated in by the Registrar of Companies for England and Wales as company Number 12010599. (*Annexure (ATJ -UK) is attached as Certificate of Incorporation of a Private Limited Company in UK*). The specifics of the audit query were not addressed by the respondent.
22. **Lack of Inspection Facility in the UAE** - The Audit reported noted that M/s. ATJ attached a reservation name for the United Arab Emirates with no further details to demonstrate that it owns any inspection centers nor had they contracted an inspection center (s) through "corporate partnerships" against the requirement for the UAE where subcontracting is not allowed. This is despite ATJ having indicated in their proposal to own an inspection centers in the UAE which could not be verified.

There was an existing lease document as evidence of existing operations within the United Arab Emirates. The lease documents dated 27th May 2014 was actually signed between M/s. Green Coast Real Estate and M/s. Pal Auto Garage and signed on 1st June 2014, although it did not demonstrate any relationship with M/s. ATJ. This therefore cast doubt on the physical presence of M/s. ATJ in the UAE. While M/s. ATJ also listed Mr. Nithul Lakshmanan as a director for ATJ Auto Service, it was noted he was an employee of M/s. PAL Auto Garage (PAL).
23. The respondent stated that M/s AutoTerminal Japan Limited Auto Services is a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections (*Annexure number 10 is attached as ATJ Auto Services -UAE*).
24. Through the Tender notice, AutoTerminal Japan Limited received a one month notice by KEBS to establish a company and purchase own equipment in the UK and UAE. This being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and the UK ahead of the tender closure. This process has since been completed.

25. **Allegations of Impropriety by the Office of the Auditor General** - The respondent requested the Chairperson of the Committee to guide the Office of the Auditor General on use of third party assistance in Visa applications, logistical and accommodation bookings to avoid suspicion of bias in their work.
26. The respondent undertook to table documents including email copies of communication between KEBS Officials and QISJ officials on facilitating visa arrangements for the Office of the Auditor General officials who would be visiting QISJ facilities for the audit. He further undertook to table hotel bookings of OAG officials allegedly made by QISJ officials.

Committee Observations

The Committee made the following observations:

1. M/s Auto terminal Japan limited has one shareholder and one Director. This has been the case since the company started. This is similar to Kenya company culture. Kenyan laws allow a situation where a person can be a shareholder and not a director. The only difference is that there is no issued statement from the company registry in Japan for private companies in regard to proprietorship.
2. The Tokyo Bay Main Office in Kisarazu was leased through an agreement with Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association. Further Analysis revealed similar arrangement with Kobe City Government.
3. The property in Kisarazu was commissioned to the Company by the above referenced Housing Association since the year 2006. ATJ thus claimed ownership of the facility and its operations because they purchased, installed and own the inspection equipment.
4. M/s ATJ confirmed its ownership of the Tokai inspection facility including all equipment. ATJ stated that it had leased about 16,000 sqm to M/s Japan Forwarding Agency as a customs bonded area for proper utilization of the asset in a business sense,. These are two different entities which operate in entirely different standards and operating procedures.
5. M/s ATJ provided invoices from the inspection lines leased from M/s. Flash rise Co, LTD, M/s. Nagase Auto Inc, M/s. Daiei Jidousya Kogyo Co Ltd, M/s. Hotta Auto Aichi Co, Ltd, M/s. Gulliver International Co, Ltd. M/s. Kojima Corporation and M/s. FWT Logistics Co, Ltd to confirm activity at the respective lines.
6. M/s ATJ stated that they have two inspection lines in the same locality as submitted in the technical proposal. One inspection line is within M/S Flash Rise and a second one at a different location 300m from their Flash rise offices. The Company has a separate agreement since the physical address is different. During tendering and submission in the technical proposal, M/s ATJ submitted

documents for one inspection line for this tender since second leased facility in the same inspection line had not undergone calibration process.

7. In Japan, ISO Type A 1720 is for independent inspection company. M/s ATJ was initially accredited with ISO Type C 1720 which means an organization has an inspection company also doing additional customer related services. Upon process evaluation the IANZ (International Accreditation New Zealand) approved ISO Type A to include quarantine inspection since AutoTerminal Japan Limited does not operate works like cleaning/washing the car. At this point all inspection program and process of AutoTerminal Japan Limited became part of Type A certification. Accordingly, M/s ATJ possess ISO Type A Accreditation license which is of the highest rank in Japan. In addition, motor vehicles repairs have its own category of license in Japan and certification and M/s ATJ is not in the business of maintaining motor vehicles.
8. M/s ATJ explained that the norm of the business is that automobiles predestined for export are usually in on Duty Free basis. It is only after the Roadworthiness inspection and/or the inspection and Export Declaration that their customs bond are released. This means that the automobiles are bonded items before inspection. Once the bonded custom duties are paid then the automobiles become domestic units ready for export. Usually Road Worthiness Inspection (RWI) automobiles meant for Kenya, Jamaica, Tanzania and Zambia are allocated in this category since the exporter engages in customs clearance after the "PASS" inspection.
9. On the other hand, regarding quarantine inspection for New Zealand and Australia, M/s ATJ Limited conducts inspection after customs clearance because inspection has to be done within 21 days before shipment. Accordingly, M/s ATJ has to invoice the inspection fee to the agents of the importer. This inspection fee is including the cleaning/washing fee is operated by JFA, so JFA will bill to AutoTerminal Japan Limited for payment.
10. On the other hand, JFA as an agent of the importer will order for Inspection services to ATJ e.g. JFA order RWI, odometer inspection, radiation inspection etc. instead of the exporter, so AutoTerminal Japan Limited also bills to AutoTerminal Japan Limited. M/s Japan Forwarding Agency (JFA) is a customer to AutoTerminal Japan Limited.
11. M/s Japan Forwarding Agency (JFA) was established in September 2013. Upon the new requirement by KEBS in the tender, M/s AutoTerminal Japan Limited surrendered the license of Customs Clearance business to the authorities and was left with the inspection business only. It is also at this stage and moment that AutoTerminal Japan Limited was accredited with ISO17020 Type A on Nov 2013.
12. M/s AutoTerminal Japan Limited is an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited is clear. AutoTerminal Japan Limited is not in conflict of interest for inspection

business whatsoever. In addition, the concept of "Conflict of interest" was first introduced by KEBS during this period and not earlier and therefore ATJ adhered to this requirement for compliance.

13. M/s AutoTerminal Japan Limited operates in different countries globally and has never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the "Conflict of interest" issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship as evidenced by attached
14. The Director of ATJ Limited stated that AUTO TERMINAL UK LTD is a company incorporated in by the Registrar of Companies for England and Wales as company Number 12010599. (Annexure (ATJ -UK) is attached as Certificate of Incorporation of a Private Limited Company in UK).
15. The respondent stated that M/s AutoTerminal Japan Limited Auto Services is a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections (Annexure number 10 is attached as ATJ Auto Services -UAE).
16. Through the Tender notice, Auto Terminal Japan Limited received a one month notice by KEBS to establish a company and purchase own equipment in the UK and UAE. This being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and the UK ahead of the tender closure. This process has since been completed.
17. M/s Auto Terminal Japan accused the Auditor General of impropriety by alluding to facilitation of the Auditor by one of the companies under the Audit which could influence the findings of the Audit. The respondent alleged that the Office of the Auditor General had been facilitated by Quality Inspection Services Japan in producing the Special Audit Report and that the Report could therefore be biased and lacked objectivity.

Committee Resolution

The respondent was asked to table evidence to substantiate the allegations of impropriety against the Office of the Auditor General during the next meeting.

MIN/PIC/039/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/040/2020: ADJOURNMENT

The meeting was adjourned at eight minutes to two O'clock.

Signed

The Hon. Abdullswamad Sharif Nassir, MP
(Chairperson)

Date..... 23/04/2020

MINUTES OF THE 9TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 17TH MARCH, 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Gladys Nyasuna Wanga, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Mohamed Hire Garane, M.P.
13. The Hon. Joash Nyamache Nyamoko, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP.
15. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
16. The Hon. Mary Wamaua Njoroge, MP
17. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. John Mungai | - | Audio Recording Officer |
| 3. Mr. Bernard Kimutai | - | Intern |

IN ATTENDANCE

- | | | |
|--------------------------|---|------------------------------------|
| 1. Mr. Fredrick Otieno | - | Deputy Auditor General |
| 2. Dr. Sammy Kimunguyi | - | Manager, Audit |
| 3. Mr. Henry Maregene | - | Manager, Audit |
| 4. MS. Catherine Mwasho | - | Manager, Audit |
| 5. Mr. John Kisego | - | Inspectorate of State Corporations |
| 6. Mr. Livingstone Mburu | - | Inspectorate of State Corporations |
| 7. Mr. Josiah Oyuko | - | Manager, Audit |

MIN/PIC/041/2020: PRELIMINARIES

The Chairman called the meeting to order at eighteen minutes past ten o'clock and prayed.

MIN/PIC/042/2020: COMMUNICATIONS FROM THE CHAIR

The Chairman reminded the Committee of the Joint Speakers' communication on the measures to prevent spread of Coronavirus. He urged that the Committee to finalize with the meeting considering that there was a possibility of the House adjourning its sittings in the same afternoon and that Committee would not be allowed to sit going forward.

MIN/PIC/043/2020: CONFIRMATION OF MINUTES

Minutes of previous sittings were confirmed as follows:

1. Minutes of the 1st sitting held on 13th February 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Joash Nyamoko, MP and seconded by the Hon. Omar Maalim, MP;
2. Minutes of the 2nd sitting held on 20th February 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Babu Owino, MP and seconded by the Hon. Gladys Wanga, MP;
3. Minutes of the 3rd sitting held on 25th February 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Gladys Wanga, MP and seconded by the Hon. Babu Owino, MP;
4. Minutes of the 4th sitting held on 27th February 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Joash Nyamoko, MP and seconded by the Hon. Gladys Wanga, MP;
5. Minutes of the 5th sitting held on 3rd March 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Gladys Wanga, MP and seconded by the Hon. Joash Nyamoko, MP;
6. Minutes of the 6th sitting held on 5th March 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Justus Kizito, MP and seconded by the Hon. Babu Owino, MP;

MIN/PIC/044/2020: CONSIDERATION OF THE SPECIAL AUDIT REPORT ON PRE-EXPORT VERIFICATION OF MOTOR VEHICLES - EVIDENCE FROM AUTO JAPAN CO. LTD

Dr. Isaac Kalua, Africa Director for Auto Japan Co Ltd accompanied by Mr. Philip Mutee (Auto manager); Lena Kitavi (Communications Manager); David Kiseko (Intern); Jackson Mati (Manager Operations) and Wilbroad Peter (ATJ) appeared before the Committee to adduce evidence on the the special audit report on the procurement of Pre- Export Verification of Conformity (PVOC) to Standards Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS - Tender Number: KEBS/T019/2017-2020 .

Arising from the previous meeting with the Committee in which Dr. Kalua insinuated alleged impropriety of the officers that carried out the special audit report, he tabled documentation bearing the following:

- i. An email from Dr. John Ngeno of KEBS to mio@qisj.com dated 11th February 2019 informing QISJ that auditors will go to Japan to audit;
- ii. A letter from QISJ to British High Commission in UK dated 8th February 2019 requesting issuance of auditors with Visas;
- iii. A letter from Jaffar Hassan (QISJ manager) dated 8th February 2018 inviting auditors to Japan;
- iv. EAA and ATJ were informed of auditors going to have a discussion and not audit on 11th February 2019 when QISJ was aware of the intended audit four days earlier;
- v. Auditors had time to visit QISJ but could not visit ATJ;
- vi. Hotels accommodation receipts from Intercontinental and another hotel purportedly paid by QISJ;
- vii. A letter appointing Dr. Isaac Kalua as the ATJ Director of Africa.

In the principle of fairness, the Committee asked auditors to study the provided documents and respond to them in writing.

The Committee then proceeded considering specific audit observations pending from the previous meetings as follows:

- 1.17 The AG report reads that M/s AutoTerminal Japan Limited attached a translated version of its license issued by the Japan's Ministry of Land, Infrastructure, Transport and Tourism (MLTT) which stated that M/s AutoTerminal Japan Limited was in the business of maintaining motor vehicles. Additionally, the Accreditation statement by M/s AutoTerminal Japan Limited confirmed being a recipient of the type A accreditation which gave the company the added benefit and advantage of being able to provide diagnostic services onsite. These conflicted the sworn statements, dated 7th December 2017 which was also attached stating that the company was not conflicted. The Audit team concluded that this was against the tender requirement where bidders were not expected to be in a conflict of interest for this case providing diagnostic repair works.

ATJ response

In Japan, ISO Type A 1720 is for independent inspection company. We have attached explanation by IANZ for clarity as Annexure 6. AutoTerminal Japan Limited was initially accredited with ISO Type C 1720 which means an organization has an inspection company also doing additional customer related services which in our case was cleaning and cleaning/Washing cars. Upon process evaluation the IANZ (International Accreditation New Zealand) approved ISO Type A to include quarantine inspection since AutoTerminal Japan Limited does not operate works like cleaning/washing the car. At this point all inspection program and process of AutoTerminal Japan Limited became part of Type A certification. Accordingly, M/s ATJ possess ISO Type A Accreditation license which is of the highest rank in Japan.

In additional Motor vehicles repairs have its own category of license in Japan and certification and M/s AutoTerminal Japan Limited is not in the business of maintaining motor vehicles.

Committee Observations/ findings

The accreditation licence dated 31st March 2018 indicated that ATJ could do extra works such as maintenance that was not disclosed pursuant to clause 2.1 of the tender document

- 1.18 The AG Audit team observed that M/s AutoTerminal Japan Limited noted in their audited financial accounts for the past three years details relating to sales from domestic and export business. The company had also disclosed consumption tax receivables, often attributable to companies engaged in export business. The statement also disclosed accounts payable and receivables to companies like Japan Forwarding Agency Ltd (JFA).

ATJ response

The revenue stream from M/s Japan Forwarding Agency (JFA) can be clearly explained as follows. The norm of the business is that automobiles predestined for export are usually in on Duty Free basis. It is only after the Roadworthiness inspection and/or the inspection and Export Declaration that their customs bond are released, it means that the automobiles are bonded items before inspection. Once the bonded custom duties are paid then the automobiles become domestic units ready for export. Usually Road Worthiness Inspection (RWI) automobiles meant for Kenya, Jamaica, Tanzania and Zambia are allocated in this category since the exporter engages in customs clearance after the "PASS" inspection.

On the other hand, regarding quarantine inspection for New Zealand and Australia, AutoTerminal Japan Limited conducts inspection after customs clearance because inspection has to be done within 21 days before shipment. Accordingly, AutoTerminal Japan Limited has to invoice the inspection fee to the agents of the importer. This inspection fee is including the cleaning/washing fee is operated by JFA, so JFA will bill to AutoTerminal Japan Limited for payment. It is hereby attached as Annexure 7- AutoTerminal Japan Limited Standard Operating Procedures.

On the other hand, JFA as an agent of the importer will order for Inspection services to ATJ e.g. JFA order RWI, odometer inspection, radiation inspection etc. instead of the exporter, so AutoTerminal Japan Limited also bill to AutoTerminal Japan Limited. Clearly and rightfully so M/s Japan Forwarding

Agency (JFA) is a customer to AutoTerminal Japan Limited like any other customer to AutoTerminal Japan Limited.

Committee Observations/Findings

Nothing buttresses the ATJ assertion that JFA was a customer

- 1.19 It was observed by the Audit team that On search of company details in Japan for M/s Japan Forwarding Agency Ltd, it was noted that Mr. Mamoru Fujie, CEO of AutoTerminal Japan Limited was a director of Japan Forwarding Agency Ltd for the period from September 2013 to February 2015 which was a clear conflict of interest and this information was not disclosed to KEBS while M/s AutoTerminal Japan Limited was a service provider for the third cycle of contract between 2012-2015. This question the ethos of the bidder to undertake inspection services. Further scrutiny revealed that AutoTerminal Japan Limited has been granted a permit for Customs clearance business effective 10th January 2007 by the Director of Yokohama Customs Mr. Hiromichi Tanigawa for the Tokyo Bay area which exacerbated the potential conflict of interest as the said company could have been involved in export business.

ATJ response

M/s Japan Forwarding Agency (JFA) was established in September 2013 as evidenced by attached "Registration Cert of JFA". Upon the new requirement by KEBS in the tender, M/s AutoTerminal Japan Limited surrendered the license of Customs Clearance business to the authorities and was left with the inspection business only. It is also at this stage and moment that AutoTerminal Japan Limited was accredited with ISO17020 Type A on Nov 2013. The attached "Annexure 6, JFA Registration" clarifies further. You will notice that AutoTerminal Japan Limited is an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited is clear. AutoTerminal Japan Limited is not in conflict of interest for inspection business whatsoever. In addition, the concept of "Conflict of interest" was first introduced by KEBS during this period and not earlier and therefore ATJ adhered to this requirement for compliance.

Important to note, "Conflict of interest" as defined in Kenyan context is different and a large deviation from the norms in the market. M/s AutoTerminal Japan Limited operates in different countries globally and has never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the "Conflict of interest" issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship as evidenced by attached annexure 8-Resignation JFA.

Committee Observations/finding

Tender documents were explicit on disclosure of conflict of interest in clause 2.1 which ATJ did not comply. Resignation of the CEO was way after the tendering. Even prior to 2015, disclosure of conflict of interest was a requirement. KEBS and OAG need to proof of such a requirement to the Committee at an opportune time.

- 1.20 ATJ did not own any inspection facilities in the UK , UAE and Japan. Same as paragraphs 1.21, 1.22, 1.24 and 1.25.

ATJ response

AUTO TERMINAL UK LTD is a company incorporated in by the Registrar of Companies for England and Wales as company Number 12010599. (Annexure 9 (ATJ -UK) is attached as Certificate of Incorporation of a Private Limited Company in UK).

M/s AutoTerminal Japan Limited Auto Services is a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections (Annexure number 10 is attached as ATJ Auto Services -UAE).

Through the Tender notice, AutoTerminal Japan Limited received a ONE MONTH notice by KEBS to establish our company and purchase own equipment in the UK and UAE. This being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and The UK ahead of the tender closure. This process has since been completed.

Committee Observations/ findings

The queries raised in the audit were not specifically addressed.

The ATJ did not indeed have an inspection facility in the UK. It however confirmed to the Committee it owns facilities in UK, UAE and Japan - not clear when they it acquired ownership.

Though ATJ indicated that prior to the impugned tender, it was not a requirement for a bidder to own a facility in the UK, UAE and Japan; this was a new requirement by KEBS and that ITJ protested in writing. Dr. Kalua undertook to provide the said protest letter.

The Company Number 12010599 was registered on 22nd May 2019 way after the tendering exercise. However, there exist another company registered in 2017, which on the face of it may not be authentic

1.23 ATJ listed employees that it did not have in the tender documents

ATJ response

Was uncontroverted in writing. However, Dr. indicated that at the time of audit, ATJ had no work hence needed no employees on site.

1.26 Alleged conflict of interest with PAL Auto Garage Co ltd

ATJ response

Was uncontroverted in writing. However, Dr. Kalua verbally denied alleged conflict of interest indicating that PAL auto garage was authorized to do roadworks in UAE - same work don by ATJ. Dr. Kalua undertook to provide documentation on this.

1.27 Alleged fake purchase of PAL property by ATJ.

ATJ response

Was uncontroverted in writing. However, Dr. Kalua verbally maintained ATJ had purchase such equipment. He undertook to provide evidence.

MIN/PIC/045/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/046/2020: ADJOURNMENT

The meeting was adjourned at twenty six minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....23/04/2020

MINUTES OF THE 11TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 23RD APRIL 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.04A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Gladys Nyasuna Wanga, CBS, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP.
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Justus Kizito Mugali, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda	-	Senior Clerk Assistant
Mr. Alex Mutuku	-	Senior Serjeant Art Arms
Mr. Mungai Ben	-	Audio Officer

MIN/PIC/2020/052: PRELIMINARIES

The Chairman called the meeting to order at four minutes past ten o'clock and prayed.

MIN/PIC/2020/053: COMMUNICATIONS FROM THE CHAIR

There was no communication issued.

MIN/PIC/2020/054: CONFIRMATION OF MINUTES

Minutes of the 10th sitting held on 23rd April 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Omar Maalim, MP and seconded by the Hon. John Muchiri, MP.

MIN/PIC/2020/055: CONSIDERATION OF THE DDRAFT REPORT ON THE SPECIAL AUDIT REPORT ON PRE- EXPORT VERIFIATION OF MOTOR VEHILCES - EVIDENCE FROM AUTO JAPAN CO. LTD

The following Papers were tabled by the Secretariat:

1. A letter from the Attorney General Ref: AG/CONF/2/C/78 VOL.1(75) and dated 28th April 2020 confirming authenticity of his letter to KEBS dates 26th March, 2020 and Ref: AG/CONF/2/C/78 VOL.1(75).
2. The letter from the PPRA confirming authenticity of the letter PPRA did to KEBS on 21st April 2020 had been dispatched from the PPRA but yet to reach the Committee. The contents of the letter was confirming aunthenticity of the letter to KEBS.

The Chairman reminded Members that it is the responsibility of the Chairman to confirm authenticity of any paper tabled before the Committee using Parliament guidelines.

The Committee then went the through the following sections of the report that were pending from the last meeting:

- i. Attorney General's opinion;
- ii. PPRA's letter to KEBS dated 21st April 2020;
- iii. Auditor General's response to conflict of interest allegations;
- iv. DR. Isaac Kalua's allegations on Auditor General's allegations on conflict of interest; and
- v. Draft recommendations.

The Committee unanimously adopted the draft report bearing the following recommendations:

- i. The Cabinet Secretary for the National Treasury should expeditiously develop and gazette debarment regulations contemplated in Section 41(1)(h) of the Public Procurement and Asset Disposal Act, 2015 within sixty (60) days of adoption of this report;
- ii. As per recommendations from Auditor General in the Special Audit Report dated 10th July 2019 and KEBS's due diligence report on Tender No. KEBS/T057/2014-2015, upon gazetting of the debarment regulations contemplated under (i) above, the Public Procurement Regulatory Authority should immediately commence debarment proceedings against M/S EAA and M/S ATJ for violating the PPAD Act, 2015 when its misrepresented and forged documentation while tendering for KEBS tenders;
- iii. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/ or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement And Asset Disposal Act 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2020; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team.
- iv. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with award of tender No. KEBS/T019-2020. Potential areas of litigations may include:
 - (a) Failure to have procurement plan approved by the National Standard Council before invitation to tender contrary to Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006.
 - (b) Procuring without indicative or approved budget contrary to Section 53(5) of the Public Procurement and Disposal Act and the Public Procurement (Amendment) Regulations, 2013.
 - (c) Procuring without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.

- (d) Failure to declare in the invitation to tender that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
 - (e) During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act , 2015.
 - (f) Charging of PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
 - (g) Approving a recommendation from the tender Committee that all bidders proceed to technical evaluation stage despite being unresponsive contrary to Section 79(3)(b) of the Public Procurement Asset Disposal Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.
 - (h) Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015
 - (i) Failure to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.
- v. The Directorate of Criminal Investigations (DCI), Director Public Prosecutions (DPP) and the Ethics and Anti-Corruption Commission (EAAC) should expeditiously investigate the circumstances under which the KEBS entered into contract with firms that had been recommended for debarment and in total contempt of the advice of the Attorney General and the Committee contrary to Public Procurement and Asset Disposal Act of 2015 on procurement process, Penal Code Cap 63 on forgery; Public Finance Management Act of 2012 on initiation of a procurement without approved budget and

procurement plan among others with a view to preferring charges against the those found culpable.

vi. KEBS should always as much as possible ensure full implementation of future contractual obligations KEBS enters to avoid unnecessary litigations and loss of public resources.

vii. Future international tenders should be widely advertised in leading international media houses to enable fair competition and service providing.

MIN/PIC/2020/056: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/057: ADJOURNMENT

The meeting was adjourned at thirty minutes past eleven O'clock.

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 10TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 23RD APRIL 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.52 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Gladys Nyasuna Wanga, CBS, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Omar Mohamed Maalim Hassan, MP.

ABSENT WITH APOLOGY

1. The Hon. Justus Kizito Mugali, MP
2. The Hon. James Kamau Githua Wamacukuru, M.P
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Mary Wamaui Njoroge, MP
8. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda

- Senior Clerk Assistant

MIN/PIC/2020/047: PRELIMINARIES

The Chairman called the meeting to order at fifty-two minutes past eleven o'clock and prayed.

MIN/PIC/2020/048: COMMUNICATIONS FROM THE CHAIR

There was no communication issued.

MIN/PIC/2020/049: CONFIRMATION OF MINUTES

Minutes of previous sittings were confirmed as follows:

1. Minutes of the 7th sitting held on 10th March 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Kwenya Thuku, MP

- and seconded by the Hon. Gladys Wanga, MP;
2. Minutes of the 8th sitting held on 12th March 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Chrisantus Wamalwa, MP and seconded by the Hon. Joash Nyamoko, MP;
 3. Minutes of the 9th sitting held on 17th March 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Omar Maalim, MP and seconded by the Hon. Gladys Wanga, MP;

**MIN/PIC/2020/049: CONSIDERATION OF THE DDRAFT REPORT ON THE
SPECIAL AUDIT REPORT ON PRE- EXPORT VERIFIATION
OF MOTOR VEHILCES - EVIDENCE FROM AUTO JAPAN CO.
LTD**

The following Papers were tabled:

1. A letter Ref: AG/CONF/2/C/78 VOL.1(75) and dated 26th March, 2020 alleged to have originated from the Office of the Attorney General and addressed to the Managing Director of KEBS. This letter was tabled by the Hon. Joash Nyamoko, MP
2. A letter Ref: PPRA/CIED/4/30/65 VOL.IV (65) and dated 21st April, 2020 alleged to have originated from the Office of the Director General of the Public Procurement Regulatory Authority (PPRA) and addressed to the Managing Director of KEBS. This letter was tabled by the Hon. Kwenya Thuku, MP.

They were both admitted as authentic by the Chairman, but the Committee resolved to confirm their authenticity from their alleged authors before using them as official documents.

The Committee then went the through the draft report and made the following observations/resolutions:

- (a) Specific allegations made by Dr. Isaac Kalua against the auditors and their subsequent rebuttal should be clearly captured in the report;
- (b) The Committee would meet when the Attorney General and the Director General for the PPRA would have authenticated the tabled documents to conclude consideration of the draft report;
- (c) The secretariat to confirm whether indeed KEBS did a due diligence report on M/S EAA in 2015.
- (d) The paragraph relating to the opinion of AG and the PPRA be held abeyance until there is a confirmation of the authenticity of those opinions.
- (e) Despite writing to the Managing Director for KEBS on 18th March 2020 to respond to specific audit queries in the Special Audit report and requiring the

said response by 26th March 2020, KEBS had not replied to the Committee. The Committee had intended to meet with KEBS on 19th March 2020 but was not able to due to closure of Committee meetings due to Corona Virus epidemic.

MIN/PIC/2020/050: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/051: ADJOURNMENT

The meeting was adjourned at forty minutes past one O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 30/04/2020

ANNEX 3:

SPECIAL AUDIT
REPORT

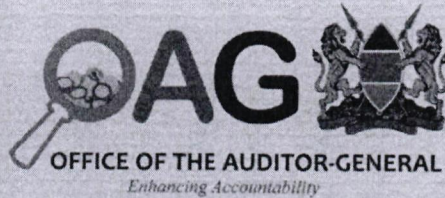
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REPOST

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HEADQUARTERS
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P.O. Box 30084-00100
NAIROBI

Ref: C.868 Z 2/(6)

31 July, 2019

The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI

① D/and.
20/8/19

Dear Mr. Sialai,

RE: SPECIAL AUDIT REPORT ON PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES - USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS BY KENYA BUREAU OF STANDARDS

The Special Audit Report of the Auditor-General on the Procurement of Pre-Export Verification of Conformity (PVOC) to Standard Services-Used Motor Vehicles, Mobile Equipment and Used Spare Parts is now complete as provided for under Section 229 (5) of the Constitution of Kenya.

Enclosed please find a copy of the Special Audit Report.

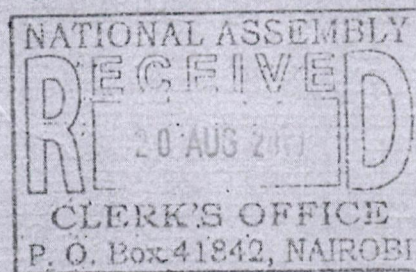
Yours

Sincerely,

F. O. Odhiambo
Deputy Auditor-General
For: AUDITOR-GENERAL

Encl.

Copy to: Ms Betty Chemutai, CBS
Principal Secretary
Ministry of Industry, Trade and Cooperatives
P. O. Box 30547-00100
NAIROBI



Mr. Benard Njiraini
Acting Managing Director
Kenya Bureau of Standards
P. O. Box 54974-00200
NAIROBI

② EVANS
please deep
FA
21/8/19

③ EMETER
please note
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21/8/19

SPECIAL AUDIT REPORT OF THE AUDITOR-GENERAL ON

**PROCUREMENT OF PRE-EXPORT
VERIFICATION OF CONFORMITY (PVOC) TO
STANDARD SERVICES - USED MOTOR
VEHICLES, MOBILE EQUIPMENT AND USED
SPARE PARTS**

BY

KENYA BUREAU OF STANDARDS

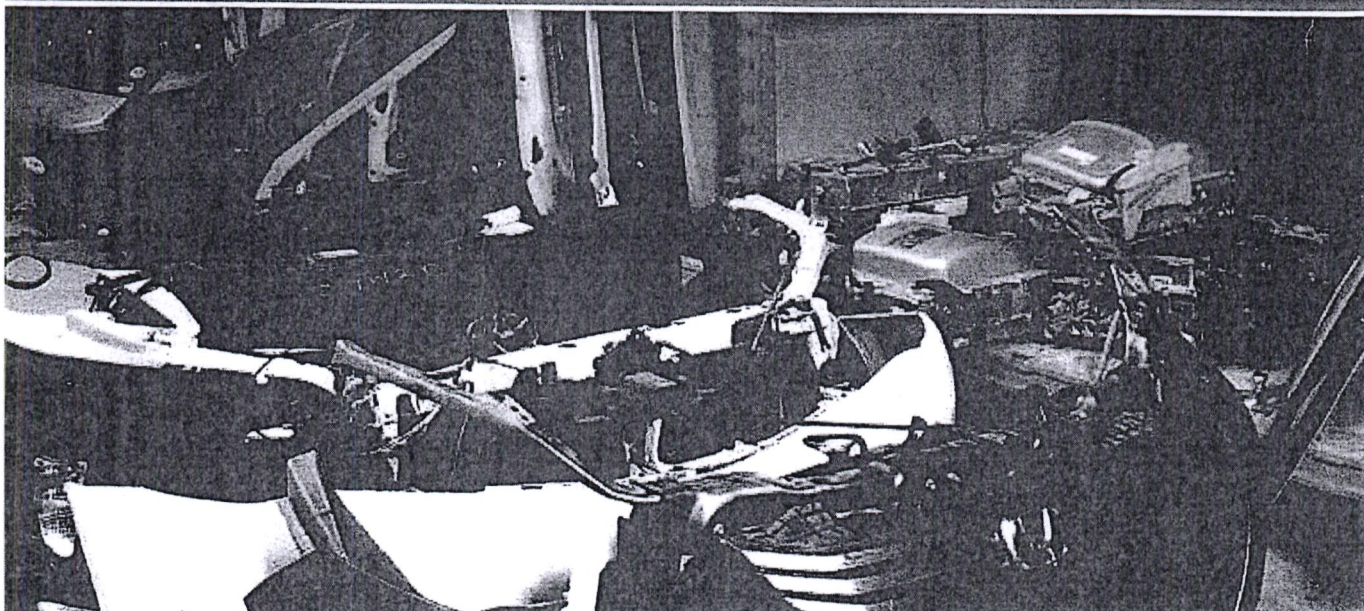


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LIST OF ABBREVIATIONS

Abbreviation	Full Description
ATJ	Auto Terminal Japan Limited
COC	Certificate of Conformity
COR	Certificate of Registration
EAA	East Africa Automotive
FoB	Free on Board
ICAS	International Conformity Assessment Solutions
ICT	Information Communication and Technology
ISO	International Standards Organization
KEBS	Kenya Bureau of Standards
Kshs	Kenya Shillings
Ltd	Limited
PPDA	Public Procurement and Disposals Act
PFMA	Public Finance Management Act
PVOC	Pre-Export Verification of Conformity
QISJ	Quality Inspection Services Inc. Japan
SMCA	Standards, Metrology and Conformity Assessment
UK	United Kingdom
UAE	United Arab Emirates
USD	United States Dollars
ECL	Eastern Car Liner

1 EXECUTIVE SUMMARY

INTRODUCTION

- 1.1 The Auditor-General conducted a special audit at Kenya Bureau of Standards (KEBS) with focus on the procurement of Pre-Export Verification of Conformity (PVOC) to Standards Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS - Tender Number: KEBS/T019/2017-2020. A second phase of the special audit has been scheduled to review the Pre-Export Verification of Conformity (PVOC) to Standards Services - For General Goods in the financial year 2019/2020.
- 1.2 The following Terms of References to guide the special audit:
- Identify factor(s) that triggered the need for the procurement of Pre-Verification of Conformity (PVOC) Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts;
 - Review the procurement process in line with PPAD, Act 2015 and Regulations of 2006 and reference to the Regulations of 2018;
 - Identification of any suspicious, forged or misrepresentation on the documents used in the tendering and procurement process by any of the bidding companies;
 - Review the appeals filed by bidding company(s) at the Procurement Administration Review Board, Court or Tribunals and the justifications and eventual ruling;
 - Review due diligence and internal audit reports by KEBS to assess the level of performance of current and past bidders;
 - Ascertain the terms of the contract and the actual existence of the services as specified in the contracts;
 - Establish current performance of the service provider and total amounts paid in relation to service provided; and
 - Identify and report on any irregularities and culpabilities on the above processes.
- 1.3 This special audit also served as a follow-up on the previous tender and special audit report of May 2016 and incorporates stakeholders and parliamentary interests on the recent happenings at KEBS, which is already in the public domain.

SUMMARY OF FINDINGS AND CONCLUSION

- 1.4 KEBS in its PVOC program under the KS 1515:2000 standard codes clearly stipulated guidance on inspection of Used Motor Vehicle, Mobile Equipment and Used Spare Parts, and the respective fees chargeable for the inspection. KEBS powers to appoint an agent (s) are also stipulated within Section 4 of the Legal Notice No. 78 dated 15th July 2005, and the Standards Act. Cap 496 to conduct conformity assessments on its behalf under a contractual arrangement.
- 1.5 So far since the inception of PVOC program, four out of the five contracts in the program under the KS 1515:2000 were performed by one Service Provider. For the only cycle where three Service Providers were awarded a contract (2012 to 2015), one of the service provider was actually terminated. The provider, M/s. JEVIC was accused of permitting radioactive contaminated and overage vehicles against the regulations. KEBS subsequently terminated its contract with JEVIC on 21st July, 2014, six (6) months before the end of the contract period. This therefore raises significant doubts as to whether KEBS can achieve Conformity to Standards under a multiple contract regime.
- 1.6 The reviews were also guided by the common practices of doing business in certain jurisdictions. Like Japan, which contributes nearly 95 per cent of used motor vehicle the expectation is that; inspection service agents lease land, then buy and install an inspection facility/equipment on the leased land, or lease an inspection facility from its owner and operate it with ones' own staff within, ones' own approved procedures, or sub-contract a facility and the staff from another service provider/agent and pay convenience fee for such services.
- 1.7 KEBS tender processing committee procedurally recommended the award of International Tender No. KEBS/T019/2017-2020 for provision of Pre-Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts to M/s. Quality Inspections Services Inc. Japan (QISJ) who were the highest bidder having attained a combined score of 94 marks out of 100 marks. In the ruling by the Public Procurement Administrative Review Board (PPARB) following an application for a request for review by one of the bidders to the board, M/s. Auto Terminal Japan (ATJ) Ltd was noted not to comply with several requirements of the tender document and consequently dismissed, and KEBS fairly advised to proceed with the procurement process to its logical conclusion.

- 1.8 A recent due diligence surveillance audit report by KEBs' report dated 20th February 2019 highlighted that M/s. QISJ had demonstrated its capacity to deliver on the current contract as it had delivered on its past contracts with KEBS by virtue of having the physical and technological infrastructure required to satisfactorily perform services required under this tender, and the right capacity and competency of staff to satisfactorily perform services required under the tender. Further, there had not been any recorded complains levelled against QISJ in the past two contracts by the contractor KEBS.
- 1.9 Without prejudice to any limitation, the special audit reviewed the entire procurement process, procedures followed and documentation by the procuring entity and the bidders (M/s. Quality Inspection Services Inc. Japan (QISJ), M/s. EAA Company Limited and M/s. Auto Terminal Japan (ATJ) Ltd), of the tender for Pre-Export Verification. The audit reported if any of the bidding companies provided any fraudulent and misleading information which contravenes Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s), where irregularities are identified during tendering process, and eventually report if the services procured is actually being delivered as per the terms of the contract.
- 1.10 The special audit report has four sections; the executive summary, introductions and the detailed approach, the detailed findings and the appendices. The report should therefore be read in its entirety in order to comprehend fully the approach to, and findings. The report has reported on facts as understood, with the aim of informing Public Investment Committee on their deliberations and decision making, cognizant of any limitations raised.

Summary of Findings on M/s. Auto Terminal Japan (ATJ)

- 1.11 M/s. Auto Terminal Japan (ATJ) filed a request for a review against the decision of KEBS in the Tender No: KEBS/T019/2017-2020 at the Public Procurement Administrative Review Board (PPRAB) on 17 January 2018. M/s. ATJ had also filed a petition before PPRAB for the decision of award for Tender Number KEBS/T057/2015 on 22 December 2014. These were two consecutive appeals that were rejected. In reviewing the technical proposal for the current tender, there were significant issues noted which are summarized as below:

- 1.12 Mr. Mamoru Fujie was identified as the sole Director in the confidential business questionnaire without disclosure of (i) Mr. Tetsuro Shirahama who was listed as the owner of the company with 100 percent shares, (ii) other directors for other regions including; Dr. Isaac Kalua, Mr. Wilson Mutabazi and Mr. Nithul Lakshmanan. This was noted to be a serious offence if a bidder provided false information on the confidential business questionnaire. Therefore, M/s. ATJ should have been subjected to the proceedings having committed the offence of not providing accurate or conflicting information on the confidential business questionnaire.
- 1.13 M/s. ATJ listed capacity of sixteen (16) inspection lines stationed in twelve (12) inspection centers. The special audit sampled; Tokyo-Bay Main Office in Kisarazu, Tokai and Nagoya Branch Office. The Tokyo-Bay Main Office based in Kisarazu had been leased through an agreement with Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association for the purpose to provide inspections services using its inspection facilities for Roadworthiness Inspection for export of used motor vehicles. This contradicted the information provided in the technical proposal that the facility actually belonged to M/s. ATJ as the agreement mentioned the facility and equipment was fully leased from Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association. Further analysis revealed a similar arrangement with Kobe City Government agreement signed on 1 August 2011 where the facility was also leased by M/s. ATJ.
- 1.14 The ATJ Tokai Office was on a large parcel of land with other on-going logistics operations including clearing and forwarding agents. With this parcel of land being owned by M/s. ATJ, it cast doubt on their involvement with only Road Worthiness Inspection of used motor vehicles for export. Further scrutiny showed that they attachment evidence of purchase of a parcel of land approximately 20,000 square meters at JPY555,000,000 (USD5Million), which was not ordinary for an inspection service company. A visit to the Nagoya inspection facility also revealed no activity and a dilapidated structure that had seemingly been idle with no staff presence. While these had been noted to be an owned inspection center, the facility did not exhibit a state-of-the-art testing equipment as alleged in the technical proposal of the tenderer. With the level of dilapidation, it was difficult to identify the serial numbers of the equipment or confirm if the testing equipment had been calibrated.

- 1.15 M/s. ATJ had separate lease agreements with M/s. Flash rise Co, LTD, M/s. Nagase Auto Inc, M/s. Daiei Jidousya Kogyo Co Ltd, M/s. Hotta Auto Aichi Co, Ltd, M/s. Gulliver International Co, Ltd. M/s. Kojima Corporation and M/s. FWT Logistics Co, Ltd which provided that every 10th date of the month an invoice would be raised to M/s. ATJ by all these entities to confirm activity. However, there was no documentary evidence or invoices raised by these sampled companies to M/s. ATJ to validate the authenticity of the leases and inspection activity at the leased locations. This misrepresented M/s. ATJ's technical proposal to be undertaking 1,500 and 1,380 monthly inspections in owned and partner facility respectively. Also, it was not possible or even practical to have a consistent number of inspection of motor vehicles on all centers as per the aforementioned.
- 1.16 In one occasion M/s. ATJ had indicated to have leased 2 inspection lines from M/s. Flash rise Co, LTD, the special audit however confirmed that the site had two inspection lines; one of the lines belonged to M/s. Flash Rise Ltd., and the other Line belonged another service provider, to M/s. QJSJ, who were actually undertaking inspections during the time of field visit. This therefore cast doubt on the authenticity of the technical proposal by M/s. ATJ for misrepresenting to have leased two inspection facilities from M/s. Flash Rise Ltd and indicating to be undertaking inspection of up to 1,380 units per line.
- 1.17 M/s. ATJ attached a translated version of its license issued by the Japan's Ministry of Land, Infrastructure, Transport and Tourism (MLTT) which stated that M/s. ATJ was in the business of maintaining motor vehicles. Additionally, the Accreditation statements by M/s. ATJ confirmed being a recipient of the Type A accreditation which gave the company the added benefit and advantage of being able to provide diagnostic services onsite. These conflicted the sworn statements, dated 7 December 2017, which were also attached stating that the company was not conflicted. This was therefore against the tender requirement where bidders were not expected to be in a conflict of interest, for this case providing diagnostic services including repair works.
- 1.18 M/s. ATJ noted in the attached audited accounts for the past three years details relating to sales from domestic and export business. The company also disclosed had consumption tax receivable, often attributable to companies engaged in export business. The statements also disclosed accounts payable and receivable to companies like M/s. Japan Forwarding Agency Ltd. Where the relationships could not be clearly explained by M/s. ATJ management.

- 1.19 On search of company details in Japan for M/s. Japan Forwarding Agency Ltd, it was noted that Mr. Mamoru Fujie, CEO of ATJ Ltd was a director of Japan Forwarding Agency Ltd for the period from September 2013 to February 2015 which was a clear conflict of interest and this information was not disclosed to KEBS while M/s. ATJ was a service provider for the third cycle of contract between 2012 - 2015. This questions the ethos of the bidder to undertake inspection services. Further scrutiny revealed that ATJ had been granted a permit for customs clearance business effective 10th January 2007, by the Director of Yokohama Customs - Mr. Hiromichi Tanigawa for the Tokyo-Bay area, which exacerbated the potential conflict of interest as the said company could have been involved in export business.
- 1.20 M/s. ATJ didn't own any inspection centers nor had they contracted an inspection center (s) through "corporate partnerships" against the requirement for the United Kingdom where subcontracting is not allowed. This is despite M/s. ATJ having indicated to have presence in the United Kingdom. It was noted that M/s. ATJ Inspection UK Ltd was registered on 11th December 2017, registration number 11105092 with Mr. Peter Valaitis listed as the sole director and shareholder of the company. Mr. Peter Valaitis was not identified anywhere in the technical proposal and had ceased being a director of the company on the same date of its registration, and therefore there was no evidence of affiliation between these two companies. This means that as at the time of the tender submission and closer there was no company affiliated to M/s. ATJ in the United Kingdom.
- 1.21 M/s. ATJ attached a letter from an Attorney, M/s. Drake & Scoll Solicitors dated, 8th December 2017, meant to confirm the existence of M/s. ATJ Inspection UK Ltd, and its affiliation with M/s. Auto Terminal Japan. Firstly, this was not a company registration as per the requirements of the tender. Secondly, a search for the Solicitor in the United Kingdom ([find you solicitor http://solicitors.lawsociety.org.uk/](http://solicitors.lawsociety.org.uk/)) yielded no results as the firm did not exist which could mean the document was forged and thus fraudulent. Registration documents actually conflicted this affiliation and identified the agents of M/s. ATJ Inspection UK Ltd as Duport Associates Limited and not M/s. Drake & Scoll Solicitors.
- 1.22 An interview with Mr. Wilson Mutabazi - Director, ATJ Inspection UK Limited, on 13th March 2019, at a location, Clipper House, Tilbury Free Port - Tilbury, United Kingdom RM 18 7SG, which was not the address identified in the technical proposal and therefore not the Office for M/s. ATJ in the UK revealed that; there were no inspection facilities at the locations specified in

the technical proposal. Even a company identified as M/s. JLS Investment Group located at Unit 11, Industrial Complex Tilbury Port, Tilbury Essex RM18 7JB United Kingdom could not be located despite an existing agreement attached to the technical proposal, dated November 1, 2014. Field inspection noted that this same unit was being used by a different company named M/s. Dry Docks Autos. Another lease agreement with Vehicle Approval.com, dated 14th November 2014, noted to be located at Opp 4A Berth, Tilbury, Freeport Essex RM18 7EH United Kingdom revealed that no such company existed at the said location. This cast doubt on any existing relationship between Vehicle Approval.com and M/s. ATJ Japan (UK) Ltd as this was a different company, the initial company having been dissolved.

- 1.23 M/s. ATJ had also listed its Officers in the United Kingdom as Mr. Mark Bead - Test Centre Manager, Mr. Andy Burvill - Vehicle Inspections Manager, and Mr. John Williamson - without a title, whom were all employed in 2014. However, on enquiry none of the employees were available on-site. This cast doubt on the authenticity of the employees listed in the technical proposal.
- 1.24 M/s. ATJ attached a reservation name for the United Arab Emirates with no further details to demonstrate that it owns any inspection centers nor had they contracted an inspection center (s) through "corporate partnerships" against the requirement for the UAE where subcontracting is not allowed. This is despite ATJ having indicated in their proposal to own an inspection centers in the UAE which could not be verified. There was an existing lease document as evidence of existing operations within the United Arab Emirates. The lease documents dated 27th May 2014 was actually signed between M/s. Green Coast Real Estate and M/s. Pal Auto Garage and signed on 1st June 2014, although it did not demonstrate any relationship with M/s. ATJ. This therefore cast doubt on the physical presence of M/s. ATJ in the UAE. While M/s. ATJ also listed Mr. Nithul Lakshmanan as a director for ATJ Auto Service, it was noted he was an employee of M/s. PAL Auto Garage (PAL).
- 1.25 Therefore, there was no company existing in the UAE prior to the submission of the technical proposal. The attached documents related to a trade name reservation certificate which indicated this was still work-in-progress to have a company set up in the UAE for purposes of the tender. The certificate of incorporation had not been issued as at the time of field work on 5th March 2019 despite the trade name reservation certificate having been issued on 28th November 2017, with a reservation of M/s. ATJ Auto Services. These all conflicted the sworn statement dated 11th December 2017, by the MD of M/s.

ATJ indicating that they had submitted an original registration of M/s. ATJ Auto Service. The tradenames business activity was identified as car registration and transfer services.

- 1.26 PAL Auto Garage (PAL) operations includes; mechanical works, computerized vehicle fault diagnosis, regular maintenance works, chassis repairs, dent repairing and painting, wheel alignment and balancing among others. This was also confirmed on the company brochures that it actually deals with motor vehicle repairs and would therefore be in conflict if they were to engage in motor vehicle inspection against the requirements of the tender. Therefore, a service contract provided to demonstrate the relationship between PAL and ATJ being specific to inspection services was against the tender requirements and had expired on 30th April 2017 and therefore could not be used as evidence of an existing relationship for purposes of the special audit.
- 1.27 M/s. ATJ Ltd. attached in its proposal a signed sale agreement purporting to have bought the testing equipment from PAL Auto Garage; Testing lane, headlight tester, emission testers for petrol and diesel respectively, brake tester, side slips, and shock absorber. This was confirmed to be false as audit inspection and discussions with Mr. Nitsul Lakshman, Manager of PAL Auto Garage revealed that the above equipment is still owned by M/s. PAL Auto Garage and motor vehicle services is being carried out Pal Auto Garage employees. Further, there was no evidence of payment for the equipment.
- 1.28 M/s. ATJ therefore failed to meet the threshold of the tender for Kenya as they didn't have any physical and technological infrastructure required to satisfactorily perform services required under this tender in the United Kingdom, Japan and United Arab Emirates. It further had gross misrepresentation on its technical proposal and should therefore be subjected to the proceedings of law as they contravened Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s). They contravened the ethos of their sworn statement by the Managing Director that the company or its associated companies is not associated with any business that may lead to a conflict of interest, and that the tenderer has given full disclosure of its directors and associated companies. This questioned the overall authenticity and validity of the documents attached as part of the technical proposals and indicated a serious red flag on the credibility of M/s. ATJ as a company.

Summary of Findings on M/s. EAA Company Limited

- 1.29 M/s. EAA Company Limited (EAA) is privately owned company incorporated on 6 July 2007 in Japan, with a registration number 0210-01-029586. The CEO/President and sole shareholder of the company was Mr. Guku Prosper Japhet. The company names changed on 27 October 2017 from East Africa Automobile Services Company Limited to EAA Company Limited in an effort to rebrand to get business out of the East African Community as per management. Prior to the name change EAA undertook inspection services for motor vehicles to Uganda, Tanzania and Zanzibar. Subsequent to the name change, EAA does inspection business in Zambia, Mauritius, and is also the only Service Provider for inspection of motor vehicle to the Bahamas. The Director also registered a name change from Mr. Guku Prosper Japhet to Mr. Sugai Prosper, which was noted to be customary when one becomes a Japanese citizen.
- 1.30 M/s. EAA listed having (17) inspection centers in Japan in its technical proposal and a receipt as evidence of purchasing 17 inspection facilities/equipment. However, the company only provided eight lease agreements as part of the technical proposal which could not demonstrate how the 17 inspection facilities/equipment purported to have been purchased were distributed to the twelve (12) inspection centers considering there were only eight leases. The special audit team sampled and visited Nagoya Yokohama and Kisarazu.
- 1.31 In the Nagoya Region, where M/s. EAA had indicated to own an inspection facility, EAA management opted to have the team visit a leased facility from M/s. Flash Rise Limited. The lease agreement provided in the tender documents was for an existing relationship between M/s. EAA and M/s. Runglobal Co. Limited (Nagoya) instead of M/s. Flash Rise Limited. The inspection further revealed no activity by EAA and EAA Senior Management could not identify the facility they purported to have leased. It was noted that one of the inspection lines actually belonged to QISJ Inc., who was actually undertaking real-time inspection at the time of our visit on 1st March 2019. The was no presence of EAA staff noted.
- 1.32 The special audit team also sampled and engaged one of the agents According to the list of leased contracts, M/s. ECL Agency Ltd. M/s. ECL Agency Ltd. actually disowned the EAA leases presented by the special audit team for verification. M/s. ECL confirmed that they do not have any lease agreements with M/s. EAA. Furthermore, ECL confirmed EAA uses the staff of ECL to perform inspection service for other countries. This scenario exacerbated

the doubt as to whether M/s. EAA really does inspections by itself or sub-contracts using other service providers staff.

1.33 M/s. EAA had no listing of staff assigned in Kisarazu, Kawasaki, Kitakyushu and Moji. The special audit noted there were no staff assigned to any of these regions and management noted that all the technical staff were on contract and were only on boarded when there were inspection services needed for those regions. It therefore cast doubt as to the staff capacity and equally all the accreditation attached for the key staff could not be validated as no originals/notarized copies were provided to prove the qualifications, and thus their competency.

1.34 Interviews with senior management of EAA confirmed that their Accreditation of ISO 17020:2012 was once cancelled by JAB effective 27th November 2014, for reason which management of EAA could not disclose. The special audit however noted that their accreditation certificate was reinstated on 9th November 2016 and was valid until 31st July 2020. A search on the authenticity of the documents under the JAB website under <https://www.jab.or.jp/en/system/iso/search/> yielded no results.

1.35 The special audit also noted for potential conflict of interest between M/s. Rosper International Co. Ltd and M/s. EAA through common directorship. In an interview with Mr. Prosper Sugai, the CEO of EAA, confirmed he was not aware of the said company nor having been involved as a director. However, a search of company records in Japan actually confirmed that Mr. Prosper Sugai was the owner of Rosper International Co. Ltd. for the period from 18th November 2002 to 18th August 2014. The objectives of M/s. Rosper International Co. Ltd was listed among others as:

- Purchase and sale and export of used cars, used motorcycles, used car parts, used compressors, used crane trucks, etc;
- Purchase and sale and export of used items; and
- Importing and sales of beauty devices and cosmetic items.

This was a clear conflict of interest and information that was concealed to KEBS when the EAA was tendering for the past and current tender.

1.36 In the United Kingdom, EAA had a company by the identification EAA CO LTD LIMITED, registration number 10341831, originally registered on 23 August 2016 as a private company limited by shares. The shareholders were; Mr. Prosper Sugai (80 percent) and Mr. Seth Nguku (20 per cent). It later changed its name to EAA Automobile Ltd, effective 1st September 2016. Effectively,

7th November 2016, barely two months after registration, Mr. Prosper Sugai transferred his shares to Mr. Seth Nguku who eventually became the sole shareholder of the UK Company named EAA Automobile Ltd with 100 per cent shareholding, on the same date, Mr. Prosper Sugai ceased to be a director of the company. This means the company was officially a standalone with no affiliation with M/s. EAA Company Limited by either common directorship or even shareholding a fact that was also misrepresented in the technical proposal as it highlighted that the EAA Automobile Ltd was a branch.

- 1.37 It was noted that EAA does not own any inspection centers against a required one (1) owned inspection center for United Kingdom, this is despite having indicated in their proposal to have leased (2) inspection facilities at Woodhouse MOT 96A, London and Unit Tilbury Industrial, Freeport Tilbury, Essex, England RM18 7HB, in the United Kingdom, which were not verifiable. EAA also attached a lease deed dated 1 May 2014, which seemed forged as there was no presence of EAA in the United Kingdom at the time of audit. The Port Manager of Tilbury Mr. Cox Laurence confirmed that the Company was not a tenant in any of the identified premises or facilities as indicated on the technical proposal via telecom. Therefore, this cast doubt on any existing relationship or business in the United Kingdom.
- 1.38 It was also noted that as part of the technical proposal's, a document indicating EAA had leased Office Space in Tilbury port dated 19th August 2014, could not be verified or authenticated by the Port Manager of Tilbury Mr. Cox Laurence. The deed was signed by Mr. Christopher Boniface Lukosi. On enquiry the special audit team was informed that Mr. Christopher Boniface Lukosi was a director in both EAA and a company called Serengeti Global Services. The yard and brand at the Offices of Serengeti indicated they were involved in Sea and Coast Services.
- 1.39 In an interview with Mr. Prosper Sugai and Mr. Lee Sayer, it was confirmed that a visit to any of the purported Inspection Centers was not necessary on revelation that such facility did not exist because there was no reason to retain the centers when there was no business. A request to also visit any of the purported partners of M/s. EAA was also not granted either. This confirmed that even the listed employees; one Manager Supervisor, 3 Supervisors and 6 Inspectors stationed within the United Kingdom was misrepresented by EAA in its technical proposal.
- 1.40 EAA Offices in UAE was supported by an attachment relating to a registration document to justify it does business within the Free Zone Area, Sharjah

Media City which had no relationship with the tender prerequisites as per the tender requirements where bidders were required to be legally registered and licensed to perform the service, and confirm if they owned inspections centers against the set criteria for UAE where subcontracting is not allowed. Mr. Prosper Sugai, Director, EAA Company Ltd and an EAA UAE representative Mr. Rashid Abeid Suba who was not identified anywhere in the technical proposal hosted the team at location named Jabal Kilimanjaro Auto Elec. Mech.

- 1.41 Mr. Rashid Abeid Suba was actually the owner of M/s. Jabal Kilimanjaro Auto Elec. Mech., and is also a current Pre-Export Verifying Agent for Tanzania (TBS). TBS requirement for Pre-Export Verifying are done independently and in zones and therefore there could not have been an existing relation between M/s. Jabal Kilimanjaro Auto Elec. Mech. and M/s. EAA for purposes of this bid and being cognizant of the requirements of TBS for service providers of inspections.
- 1.42 EAA Company Ltd, provided a document which could not be verified as it purported to indicated that EAA bought the inspection facility in UAE in 2014, from M/s. Jabal Kilimanjaro Auto Elec. Mech. and entered into agreement with Mr. Rashid Abeid Suba to guide their operations, an allegation that Mr. Rashid Abeid Suba could not confirm as he owns the facility and uses it to service another contract for Tanzania.
- 1.43 M/s. EAA did not provide documentation to demonstrate its legality and presence in South Africa and Thailand.
- 1.44 The special audit also noted a due diligence report dated 9th January 2015 by KEBS which highlighted important findings worth noting in this special audit report as follows:
 - The bidder, East African Automobile Services Limited (EAAS) had its ISO 17020 accreditation status in Japan suspended and therefore not valid as per the governing conditions of the Japan Accreditation Board (JAB). The same company had attached a professional license for a different company called Jabal Kilimanjaro Auto. Elec. Mech in the UAE;
 - In the United Kingdom, it did not exist in the physical address it had provided in the bid documents as the premises, 16D Tilbury Forth Port, was found to be for Serengeti Global Services which was a sea and coastal freight company;
 - EAAS had also forged its registration documents depicting it was registered in 2013 instead of 2014, which was a forgery; and

- This team reported that the company M/s. EAAS Limited lacked the requisite infrastructure in the UK and UAE, and that the company had presented forged and falsified documents in their bidding which enabled them to erroneously attain the minimum technical score for advancement to the financial evaluation stage. The team recommended disqualification from the procurement process and debarment from any such similar exercises by KEBS.

1.45 It is therefore apparent that the company, EAA has been knowingly providing falsified documents in the past and continued to do so in present tender submissions, and thus failed to meet the threshold of the tender for misrepresentation and not having the required physical and technological infrastructure required to satisfactorily perform services required under this tender in the United Kingdom, Japan, United Arab Emirates South Africa or Thailand. Because of the gross misrepresentation on its technical proposal it should therefore be subjected to the proceedings of the law as they contravened Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s). Further, they contravened the ethos of the sworn statement by the Managing Director as M/s. EAA had sworn a statement that the company or its associated companies was not associated with any business that may lead to a conflict of interest, and that the tenderer has given full disclosure of its directors and associated companies. This questioned the authenticity and the veracity of the documents attached as part of the technical proposals and indicated a serious red flag on the credibility of M/s. EAA as a company.

Summary of Findings on M/s. Quality Inspection Services Inc. Japan (QISJ)

1.46 QISJ had earlier been an interested party to a petition by M/s. ATJ, and they filed an affidavit in response to the application by M/s. ATJ to the Public Procurement Administrative Review Board (PPARB) on the decision of KEBS dated 10th January 2018, referenced Application No.14 of 2018. On 6th February 2018, the PPARB heard the appeal in the presence of representatives from both the applicant, KEBS and interested parties and the Board noted that M/s. ATJ did not comply with several requirements of the tender document and consequently dismissed it and advised KEBS to proceed with the procurement process to its logical conclusion. Earlier on, QISJ had also been an interest party of another petition filed against KEBS for the Tender No. KEBS/T057/2014-2015. Again, the PPARB, on 28th January 2015 in its wisdom made several orders in respect of application No.55/2014,

No.56/2014 and No.59/2014 in respect to the provisions of Section 98 of the Public Procurement and Disposal Act (2005).

- 1.47 The Public Investments Committee (PIC) drawing its mandate from Standing Order No. 206 (6) had also previously made a resolution and commenced an inquiry into the award of KEBS Tender No. KEBS/T057/2014-2015 for provision of pre-export inspection services to QISJ based on the decision by KEBS to award to QISJ a contract of used motor vehicle inspection services for a period of 36 months. The PIC requested the Office of the Auditor-General (OAG) to undertake a special forensic audit on the aforementioned tender. The audit was carried out to its conclusion pursuant to the request from the Clerk of the National Assembly on behalf of the PIC as per Article 229 of the Constitution, and the findings of the Auditor-General were laid on the table of the House on 11th February, 2016.
- 1.48 The special audit report noted that the winning bidder QISJ was capable of handling the contract as required by KEBS standard No KS 1515:2000 code of practice, and further recommended that KEBS should ensure that contracted company(s) have a long term commitment to inspection and keep off speculative bidders, and this was achievable by setting minimum requirements for full ownership of inspection facilities by the inspection companies based on number of vehicles coming from those country. The audit even recommended in details that the inspection company should fully own at least fifteen (15) facilities in Japan, three (3) in the United Kingdom and one in United Arab Emirates, distributed at major ports and towns. Leases in these towns should only be allowed to supplement fully owned facilities and that KEBS should be keen to properly evaluate ownership of these facilities.
- 1.49 QISJ were also a subject of due diligence review by KEBS management/various committees. In 2016 and 2018 KEBS teams were sent to Japan, United Kingdom and United Arab Emirates to carry out due diligence to verify and validate documentary evidence, infrastructural, technical and managerial competence of QISJ to provide service as per the Kenya Standard KS 1515:2000 code of practice. A report dated 9th January 2015 was issued by the due diligence team of six members who were involved in the exercise recommending that KEBS enter into contractual agreement with QISJ. The team was satisfied that the company had the requisite capacity to provide the service as per the Kenya Standard KS 1515:2000. The team established that QISJ is a legal entity with an adequate presence in all the key regions required, and with sufficient preparedness in terms of human, infrastructural

and technical capacity to provide the services outlined in the RFP for the Tender No. KEBS/T057/2014-2015.

1.50 A recent report named; Supplier's Surveillance Audit Report on QISJ conducted between 13th and 20th February 2019 performed in line with the provisions of the contract also concluded that:

- QISJ had systems in place to perform the roadworthiness inspection of used motor vehicles, machineries and used spare parts which met the requirements of KS1515:2000 and KS2190:2013;
- QISJ had met all the required timelines stipulated in the contract in issuance of Certificate of Compliance (CoC)/Non-Conformity Reports (NCR) and remittance of reports; and
- That the visited inspection centers were found to have all the equipment specified in the standard and were up to date in their calibration status.

1.51 The aforementioned findings notwithstanding, the special audit team focused its independent review on the tender documents versus the evidence by the bidders to corroborate the physical and technological infrastructure required to satisfactorily perform services required under this tender in Japan, United Kingdom and United Arab Emirates where subcontracting is not allowed, and South Africa where subcontracting is allowed and noted the following:

1.52 M/s. Quality Inspection Services Inc. Japan was incorporated in Japan on 22nd July 2009. The Company's Head Office and physical address in Japan at the time of registration was 1-18-12 Komaoka, Tsurumi, Yokohama. The sole shareholder of the Company is the Managing Director - Mr. Kiyoaki Hatano. The Company moved in March 2011 to its current Headquarters which is based on the 6th Floor at YCC 1608, 22 Daikoku Fotou, Tsurumi, Yokohama, Japan and has a registration number 0200-010062427 which corresponded with the registration document submitted for the tender under review. The special audit also reviewed the latest lease document and records of recent rent payments to confirm they had been occupying the premises.

1.53 QISJ has a total of 20 inspection centers (11 owned facilities and 9 leased). However, the special audit noted that QISJ had only submitted a listing of fifteen (15) inspection centers for purposes of the tender. These inspection centers were noted to be spread around the four provinces of Japan; Kanto, Kansai, Kyusu and Chubu and they were all positioned near ports of export of Yokohama, Hitachinaka, Kobe, Nagoya, Kisarazu, KitaKyusu and Osaka. To validate these, the review focused on the documentation to verify the

existence and to prove the presence of the said inspection centers that were either owned or leased by QISJ in Japan. Assurance was obtained from receipts and invoices of the on-going rental payment and fees for the leased premises. The team confirmed using a tailored checklist that the sampled machines were performing the activities as required under KS 1515:2000 and the equipment were modern and had valid calibration status. The facilities were also branded QISJ for ease of identification. The sampled and visited inspection center were located in the following:

- Kawasaki, at the address; 80HiagashiOgishima, Kawasaki-ku, Kawasaki-shi, Kanagawa. The Machine was verified to have been bought from a company named M/s. Banzai and the invoice and calibration was verified. There was evidence of monthly payment to the leased land.
- Nagoya, at the address, 5-8 Nishi Suehiro, Yatomi-shi, Aichi the audit noted that the land was leased from M/s. Flash Rise and the inspection facility was also bought from M/s. Flash Rise. This was verified with the receipt for payment of the lease and equipment and monthly payment of the commissions due.

1.54 QISJ had also invested on an IT infrastructure platform for efficiency. The team undertook a walkthrough of the system and experienced a live demonstration of how to on board new clients, make requests for inspection, tracking progress of inspection real-time. QISJs' platform is interfaced with a Japanese government database to corroborate on the vehicles year of manufacture. This was complemented by a risk management procedure that QISJ adhered to in terms of documentation, manuals, procedures and processes to be followed to mitigate against fraudulent practices. The IT platform was also noted to be interfaced with the Procuring Entity (KEBS) for real time monitoring on the activities the service provider is undertaking.

1.55 Enquiry on potential conflict of interest between JANS Trading and QISJ as had been previously reported in PIC report to parliament dated 22nd November 2016. The special audit noted there was no relationship between Jan's Trading Co. Ltd and Quality Inspection Services Inc. Japan (QISJ). It was noted that the Directors of the Jan's Trading Co. Ltd were Mr. Umar H. Jan and Mr. Yassin Jan who are brothers. They are of Pakistani origin doing business in Japan. The special audit confirmed that that current Managing Director of QISJ Mr. Kiyoaki Hatano was a former employee of Jan's Trading Co. Ltd up until 2009. Mr. Kiyoaki Hatano, later formed QISJ to undertake pre-export inspections services of used motor vehicles for export. The

special audit therefore noted no conflict of interest between Jan's Trading Co. Ltd and Quality Inspection Services Inc. Japan (QISJ).

- 1.56 M/s. Quality Inspections Services Japan Limited was registered as a private limited Company in United Kingdom on 21st February 2012, and as a subsidiary of the parent company in Japan. The company registration number was 7957279. The company was subsequently changed to be a branch of the headquarters and was renamed to M/s. Quality Inspection Services Inc Japan UK Branch Limited with a registration number 10651781. M/s. QISJ UK Branch Ltd reported to owns two (2) inspection centers/facility in Edmonton and Tilbury and also had leased other facilities which are approved by Ministry of Transport and Communications. The special audit performed an inspection and noted the machines were performing the activities as required under KS 1515:2000 and all the equipment were modern and had valid calibration status. The facilities were also branded QISJ for ease of identification.
- 1.57 QISJ UK branch had staff at the inspection center in Tilbury, United Kingdom. The technical proposal presented indicated a total of three (3) senior members of staff who were present during our visit on 11th March 2019. The audit also noted two inspectors performing inspection services, all whom demonstrated competency and capacity to offer inspection services based on their resume and years of experience working with QISJ in the United Kingdom.
- 1.58 In the UAE, QISJ had leased a warehouse in RAS Al Khor, alAwir Industrial 3, Dubai from Mr. Essa Al Kous for the purpose of vehicle inspection. There was evidence of QISJ operations at the said facility and this was further corroborated with the existing lease agreement, and records of rent payments to the landlord. It was noted that company has both the Registration Renewal Certificate for the Branch of Foreign Facility No. 4157 valid from 20th March 2013 to 19th March 2020 and professional license No. 684010 valid from 21st February 2013 for surveying and evaluating services. These license are required for companies to conduct inspection services in the UAE.
- 1.59 To support ownership of the equipment, the audit team reviewed invoice No. 1577 dated 3rd March 2013 from M/s. Jaffer Moh'd Ali Garage to support the purchase of a full set of used motor vehicle testing equipment namely; Hydraulic jacks/ pit, slid slip tester/wheel alignment tester, brake tester, speedometer tester, exhaust proximity noise tester, headlight tester, Exhaust gas tester for petrol engines and diesel engines and tape measure.

The audit team met with the staff including the Chief Inspector Mr. Rommel, who took the audit team through the process of inspection for both motor vehicle at the inspection centre and used spare parts at the yards in Sharja - UAE. The team noted that QISJ has on record four (4) qualified technical staff.

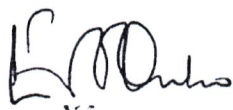
1.60 In South Africa, M/s. QISJ had subcontracted M/s. International Conformity Assessment Solutions (PTY) Ltd. (ICAS) as its liaison office and M/s. DEKRA Ltd as a testing station to manage the roadworthy inspections of motor vehicles. Field inspection on 28 February 2019 by the special audit team confirmed that M/s. DEKRA Ltd is located at 97, Wilem Cruywagen Avenue, Klrsoord, Rosslyn Pretoria. The company has six technical staff who carry out the vehicle testing. Further the team confirmed that DEKRA Ltd owns all the testing equipment listed in the tender documents namely; Hydraulic jacks/pit, slid slip tester/wheel alignment tester, brake tester, speedometer tester, exhaust proximity noise tester, headlight tester, exhaust gas tester for petrol engines and diesel engines and tape measure.

1.61 The special audit thus concluded that M/s. QISJ had demonstrated capacity to deliver one the current contract as it had delivered on its past contracts with KEBS. QISJ was noted to have the required physical and technological infrastructure, and the right capacity and competency of staff to satisfactorily perform services required under this tender in Japan, United Kingdom, United Arab Emirates, and South Africa where sub-contracting is allowed. Further, there had not been any recorded complains levelled against QISJ in the past contracts by the contractor KEBS. A similar conclusion was reached in a recent due diligence surveillance audit report by KEBS' report dated 20th February 2019.

RECOMMENDATIONS

1.62 Based on the aforementioned findings and conclusion, the special audit therefore recommends the following:

- The Procurement Entity - KEBS, should put in place control mechanisms to deter and detect the use of falsified documents by bidding companies and speculative bidders. Furthermore, the Procurement Entity - KEBS together with relevant state institutions should ensure that these aforementioned companies M/s. Autoterminal Japan Ltd. and EAA Company Limited and any future bidding company that provide falsified documentation or misrepresented themselves, be subjected to the proceedings of the law as they have contravened Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate to initiate debarment proceedings to serve as an example of deterring such practices by speculative bidders in the public procurement arena; and
- The Procurement Entity - KEBS, should structure its due diligence processes for bids and bidders to commence at the start of the evaluation by having special teams perusing through the documents thoroughly to ensure the bidders demonstrate with evidence their capability to service any tender. Further, the Procurement Entity - KEBS, should enforce the requirement that the awarded company, currently Quality Inspection Services Inc. Japan transfer the knowledge and technology of inspections services to ensure sustainability and improve on local content since it is already provided for in the contractual arrangements with such companies.



FCPA EDWARD R. O. OUKO, CBS
AUDITOR - GENERAL

10 July 2019

2 INTRODUCTION

2.1 What Governed and Triggered the Special Audit?

- 2.1.1 Article 252 Section 1(a) and (d) of the Constitution of Kenya mandates the Auditor-General to carry out investigations on financial mismanagement in the public sector. The investigation could either be undertaken as a reactive special audit resulting from written requests to the Auditor-General when fraud has occurred, or a proactive special audit which involves the analysis of probable risks in an entity's operations that may lead to occurrence of fraud.
- 2.1.2 The purpose of such a special audit is to identify the weakness and identify culpability at both the individual level and/or institutional level or even third parties involved with a public institution, and suggest preventive mechanism that may deter and prevent the re/occurrence of fraud. Article 229(6) of the Constitution of Kenya also requires the Auditor-General to confirm and report to the public whether public funds were used in a lawful and effective manner.
- 2.1.3 Section 38 of the Public Audit Act, 2015, requires the Auditor-General to examine the public procurement and asset disposal processes of a state organ(s) or a public entity(s) with a view to confirm as to whether procurement is done lawfully and in an effective way. Additionally, Section 34 of the Public Audit Act, 2015 also mandates the Auditor-General at his own initiative to conduct periodic audits which shall be proactive, preventive, and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in state organ(s) or a public entity(s).
- 2.1.4 Based on public interest and on his own initiative, the Auditor-General conducted a special audit at Kenya Bureau of Standards (KEBS). The special audit scoped the work into two phases; Phase 1, which is a subject of this special audit report focused on the procurement of Pre-Export Verification of Conformity (PVOC) to Standards Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS - Tender Number: KEBS/T019/2017-2020. This special audit also serves as a follow-up on the previous tender and special audit report and incorporates stakeholders and parliamentary interests on the recent happenings at KEBS, which also led to the suspension of the MD of KEBS.

2.1.5 The Auditor-General has scheduled to review the Pre-Export Verification of Conformity (PVOC) to Standards Services - For General Goods under Phase 2 in the next financial year 2019/2020.

2.2 Background Information about KEBS and the Criteria

2.2.1 Kenya Bureau of Standards (KEBS) is a government agency responsible for governing and maintaining the standards and practices of metrology in Kenya. It was established by an Act of Parliament; *the Standard Act*, Chapter 496 of the Laws of Kenya. KEBS started its operations in July 1974. Its Head Office is in Nairobi, and has Regional Offices throughout Kenya. It was mandated by the Standards Act, Chapter 496 of the Laws of Kenya to provide Standards, Metrology and Conformity Assessment (SMCA) Services.

2.2.2 KEBS developed a code of practice, the Kenya Standard Code of Practice for Inspection of Road Vehicle (KS 1515:2000), for inspection of road vehicles that specify general, safety and environmental requirements. The standard applies to both used and new motor vehicles, which include motorbikes, cars, vans, buses and truck of all sizes. Inspection of imported vehicles in Kenya thus began pursuant to a Legal Notice No. 78 of 15 July 2005. It provides a list of products to be inspected.

2.2.3 KS 1515:2000 required that the inspection be carried out by an authorized government body which is KEBS before importation. KEBS then introduced the Pre-Export Verification of Conformity (PVOC) to meet these standards on imported vehicles which required these vehicles to be accompanied by a certificate of road worthiness from the exporting country. The road vehicles were to be inspected in inspection centers approved by relevant authorities and equipment used in inspection centers were to be certified by an authorized authority.

2.2.4 KS 1515:2000 critical parameters include:

- The age limit shall be less than 8 years from the year of first registration;
- The difference between the date of manufacture and the date of first registration shall be not more than one year;
- The drive shall be Right Hand Drive-(RHD);
- Road-Worthiness shall be determined by compliance to requirements specified in the standard; and
- Prohibition of modified vehicles; It is imperative that all used vehicles undergo inspection and verification to detect any major modification e.g. LHD to RHD.

2.3 Pre-Export Verification of Conformity (PVOC) to Standards Services.

- 2.3.1 PVOC program was started on 29th September 2005 by KEBS, through the publication of Legal Notice No. 78 of 15th July, 2005 by the Minister for Trade and Industry. It is a Conformity Assessment Program applied to products at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved specifications. The PVOC program is operated by a qualified third party inspection company(s) on behalf of KEBS in the trade regions in the world.
- 2.3.2 These conformity assessment procedures are used to verify that Used Motor Vehicles exported to Kenya are in compliance with the KS 1515:2000 before shipment from Japan, United Kingdom United Arab Emirates, South Africa and Thailand as used motor vehicles are mainly imported from these countries. Statistically, by 2018 Japan provided nearly ninety five (95) per cent of the imported vehicles in Kenya. KEBS has no capacity to undertake this exercise not only in Japan but other enlisted countries, hence it contracts qualified third party inspection company(s) with presence in these countries to undertake the exercise on its behalf. A royalty payment is made to KEBS for this service.
- 2.3.3 The volume and activities of imports for used Motor-vehicles from these top five countries are analyzed as per the table below, for FY 2017/2018:

Table 1: PVOC Countries

	Name of country/ region	Units inspected
1.	Japan	82,975
2.	United Kingdom	3,158
3.	United Arab Emirates	794
4.	South Africa	327
5.	Thailand	314
	Total	87,568

Source: OAG Analysis of KEBS data.

- 2.3.4 Since the Legal Notice No. 78 of 15th July 2005 became effective, and the introduction of PVOC on Used Motor Vehicle, KEBS has awarded five cycle of contracts for the conformity assessment procedures. The service provider(s) is identified after a procurement processes by the procuring entity and the winning bidder is awarded a contract for a period of three (3) years. The Service Provider for such a contract is therefore required to have presence in Japan, United Arab Emirates (UAE), United Kingdom (UK), and may sub-contract in other areas like South Africa, Thailand, and other jurisdictions.

- 2.3.5 Phase 1, which is a subject of this special audit report noted there were five cycle of contracts, and the following service providers have been contracted by KEBS as shown in table 2 below:

Table 2: Chorology of the PVoC on Used Motor Vehicles

Cycle	Name of Company (s)	Period
1	JAAI	2005 to 2008
2	JEVIC	2009 to 2011
3	JEVIC, QISJ and ATJ	2012 to 2015
4	QISJ	2015 to 2018
5	QISJ	2018 to 2021

Source: OAG Analysis

- 2.3.6 The special audit noted that four out of the five contracts were performed by one Service Provider, and for the only cycle (2012 to 2015), where three Service Providers were awarded a contract, one of the service provider was actually terminated. The provider M/s. JEVIC was accused of permitting radioactive contaminated and overage vehicles into the country when a high radioactive reading was found to be coming from a container with four second hand vehicles at the Port of Mombasa.
- 2.3.7 In a letter dated 14th June 2016, JEVIC admitted that it inspected some of the vehicles with extremely radioactive contaminations, and following complaints and investigations of letting in defective and overage vehicles into the country, against the regulations, KEBS terminated its contract with JEVIC in 21st July, 2014, see **Appendix 38**, six (6) months before the end of the contract period, and for the list of overage vehicles certified by JEVIC, see **Appendix 39**. This therefore raises significant doubts as to whether KEBS can achieve Conformity to Standards under a multiple contract regime.
- 2.3.8 The current cycle under contract is the fifth cycle, signed between KEBS and Quality Inspections Services Japan, Inc. on 3 April 2018 for a period of **three years**. The contracts' deliverables were timeliness in meeting customers' requests for vehicle inspection, procedures of handling customer complaints, inspection fees and payment of royalties to KEBS. KEBS is also required under the contract to audit the service provider to establish adherence to the provisions of the contract which was undertaken by KEBS during the period from 13th - 20th February, 2019.

2.4 Objectives of the Special Procurement Audit

- 2.4.1 The special procurement audit aimed at reviewing the entire procurement process, procedures followed and documentation by the procuring entity and

the bidders of the tender for Pre-Export Verification of Conformity (PVOC) to Standards Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts. This were reviewed for compliance against the Public Procurement and Disposals Act, 2015 and the Regulations of 2006 and 2018 to verify if the procurement for the agent was done lawfully and in an efficient and effective manner.

2.4.2 The special procurement audit also aimed to identify and report if any of the bidding companies provided any fraudulent and misleading information which contravenes Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s).

2.4.3 Additionally, the special procurement audit aimed to confirm if there were any irregularities in the tendering process and if the services procured are actually being delivered as per the terms of the contract.

2.5 Terms of References of the Special Audit

2.5.1 The special audit developed the following Terms of References to guide the special audit:

- Identify factor(s) that triggered the need for the procurement of Pre-Verification of Conformity (PVOC) Services - For used Motor Vehicles, Mobile Equipment and Used Spare Parts;
- Review the procurement process in line with PPAD, Act 2015 and Regulations of 2006 and reference to the Regulations of 2018;
- Identification of any suspicious, forged or misrepresentation on the documents used in the tendering and procurement process by any of the bidding companies;
- Review the appeals filed by bidding company(s) at the Procurement Administration Review Board, Court or Tribunals and the justifications and eventual ruling;
- Review due diligence and internal audit reports by KEBS to assess the level of performance of current and past bidders;
- Ascertain the terms of the contract and the actual existence of the services as specified in the contracts;
- Establish current performance of the service provider and total amounts paid in relation to service provided; and
- Identify and report on any irregularities and culpabilities on the above processes.

2.6 Sampling Procedures and Scope of Work

- 2.6.1 Due to time and resource constraints, the special audit sampled a total of ten (10) regional inspection centers distributed within Japan, United Kingdom, Dubai and the Republic of South Africa to form the subject of this special procurement audit. This was based on the data collected and highlighted under **table 1** which indicates the level of activities in each country. Thailand was therefore excluded from inspection on this premise.
- 2.6.2 To obtain a more accurate sample population, the exporting countries were stratified according to the number of inspection centers there-in and the number of units (volume) of motor vehicles inspected in each center as detailed in **Appendix 1**. Consequently, the inspection centers with the highest units of motor vehicles inspected were selected as follows representing 57 per cent of the total population:

Table 3: Sampling procedures and Sample Size for the period under review

No.	Country	Inspection Centers	Units Inspected
1	Japan	Kisarazu, Nagoya and Yokohama	45,613
2	United Kingdom	Tilbury	3,158
3	United Arab Emirates	Dubai	372
4	Republic of South Africa	Johannesburg	129
Total			49,272

Source: OAG Sample Size Analysis

2.7 Source of Information and Audit Procedures:

- 2.7.1 The special procurement audit team obtained information based on the following audit procedures:
- Document examination: several documents were reviewed in the course of the special audit. These included procurement records, contracts and correspondences.
 - Data analysis: Procurement and expenditure transactions.
 - Inspection: site visits and inspection in select regions.
 - Interviews and meetings: The table below details Officers interviewed during the special audit identified depending on the role they played.

Table 4: Persons Interviewed during Field Work

	Name of Officer	Designation
1	Mr. Bernard Nguyo	Ag. Managing Director - KEBS
2	Mr. Adan Muhammed	Director Finance & Strategy - KEBS
3	Dr. John Ngeno	Head of Procurement - KEBS
4	Mr. Andrew Maiyo	Head of Planning & Strategy - KEBS
5	Mr. Birgen Rono	Ag. QA Chief Manager - KEBS
6	Ms. Luise Rasanga	Head of Legal Department - KEBS
7	Ms. Anne Wanjala	Head of Accounts - KEBS
8	Ms. Phoebe Gituku	Corporate Comm. Manager & PA/MD - KEBS
9	Mr. Augustine Wachira	Deputy Regional Manager Coast - KEBS
10	Mr. Musa Saleri	Officer In Charge of Kilindini Port - KEBS
11	Mr. Patrick Kiptoo	Quality Inspector - KEBS
12	Hatano Kiyoaki	Managing Director - QISJ Inc
13	Masashiro Fushiki	Technical Manager - QISJ Inc
14	Mari Iwamoto	Operations Manager - QISJ Inc
15	Michiko Atarashi	Finance & Human Resource Manager - QISJ Inc
16	Hazuki Ono	Quality Assurance Manager - QISJ Inc
17	Abubakar S. Hassan	IT Manager - QISJ Inc.
18	Hayato Sato	Chief Inspector - QISJ Inc
19	Rommell	Chief Inspector - QISJ Inc, UAE Branch
20	Said Mohamed	Branch Manager, QISJ Inc, UAE Branch
21	Jaffar Hassan	Branch Manager, QISJ Inc, UK Branch
22	Charles Karobia	Director - ICAS Pty (QISJ SA Representative)
23	Prosper Sugai	CEO/President - EAA Company Ltd.
24	Lee Sayer	Vice President/Director - EAA Company Ltd.
25	Toyohiko Hishano	General Manager - EAA Company Ltd.
26	Koichi Mizue	Technical Manager - EAA Company Ltd.
27	Yuichi Sota	Quality Manager - EAA Company Ltd.
28	Shinji Koguma	Administrative Manager - EAA Company Ltd.
29	Rashid Abeid Suba	Representative - EAA Ltd., UAE Agency
30	Mamoru Fujie	CEO/Director - ATJ
31	Isaac P. Kalua	Director, African Affairs - ATJ
32	Seiichi Funami	Technical Manager - ATJ
33	Kaori Nishida	Accounting & Admin Manager - ATJ
34	Osamu Nishihara	Sales Manager - ATJ
35	Mirane B. Nakata	Quality Management Officer - ATJ
36	Shinya Nakatsugawa	Quality Management Chief - ATJ
37	Tomoko Sakihama	Quality Management Staff - ATJ
38	Yushi Kurihara	Quality Management Staff - ATJ
39	Nikul Lakshman	Director, PAL Auto Garage
40	Wilson Mutabazi	Agent for ATJ in UK
41	Hirohito Bando	Vice President - ECL Agency Ltd.
42	Hiroki Yamamoto	Deputy General Manager - ECL Agency Ltd.
43	Toru Kobayashi	Assistant Manager - ECL Agency Ltd.
44	Kotaro Araki	Strategy Officer - ECL Agency Ltd.

Source: OAG summary of persons meet and discussed with during fieldwork

2.8 Previous Special Audit Recommendations.

2.8.1 To minimize unmerited litigation by losing bidders, KEBS should have a register of service providers who are pre-qualified through due diligence to ensure that only companies with required competence, experience to undertake inspection are invited to bid for future contracts.

2.8.2 In order to ensure contracted company, have a long term commitment to inspection and keep off speculative bidders, the Bureau should set minimum requirements for full ownership of inspection facilities by the inspections companies based on proportion of number of vehicles coming from each country. It is recommended that the inspection company should fully own at least fifteen owned facilities in Japan, three in the United Kingdom and one in United Arab Emirates distributed to major ports and towns. Leases in these towns can only be allowed to supplement fully owned facilities. KEBS should adequately evaluate ownership of these facilities.

2.8.3 KEBS and the inspections company should enhance present system of preventing and detecting tampering after inspection by instituting punitive measures against those exporters who have been found to have tampered with already inspected vehicles.

2.8.4 KEBS and its appointed inspections service provider should evaluate possibilities of signing agreements with logistics service providers in country of origin to ensure that custody of inspected vehicles is changed from exporter to the shipping company and moved to the port of exit immediately after inspection.

2.9 Limitations of the Special Audit.

2.9.1 The following were some of the limitations encountered during the special audit exercise. However, these limitations mentioned may not affect the results of this final special audit report:

- It was not possible to visit all the inspection sites for all the bidders under review as they were widely scattered in the Countries. It was also not possible to visit Thailand due to internal resource constraints.

3 DETAILED FINDINGS

3.1 Project Identification and Planning

- 3.1.1 Kenya Bureau of Standards (KEBS) has in place Standard Operating Procedure (SOPs) guiding the PVOC program specifying, the agents for general goods, zones / countries of responsibility, the certification routes for general goods and respective fees charged for each certification route. Most importantly, it has guidance on inspection of used motor vehicle, mobile equipment and used spare parts, and the respective fees charged for their inspection.
- 3.1.2 The SOPs are mainly developed from the KS 1515:2000 standard codes which require that the inspection be carried out by an authorized government body before importation, and imported vehicles be accompanied by a certificate of road worthiness from the exporting country. The road vehicles are to be inspected in inspection centers approved by relevant authorities and equipment used in inspection centers were to be certified by an authorized authority.
- 3.1.3 KEBS relied on Section 4 of the Legal Notice No. 78 dated 15th July 2005, and the Standards Act. Cap 496 to appoint an agent(s) to conduct conformity assessments on its behalf under a contractual arrangement. The legal framework states that KEBS shall appoint an inspection body or bodies in the country of origin of goods to undertake conformity to Kenya Standards or approved specifications.

3.2 Project Budgeting and Financing

- 3.2.1 KEBS prepared the Annual Procurement Plan for the year 2017/2018, and was approved by its Management. In the procurement plan, tender No KEBS/T057/2017-2020 was captured as cost center 20135 detailed as, "Tender Expenses-Evaluation Outside Working Stations, Due Diligence Inspection (PVOC) and Acceptance Committee Procurement of PVOC Inspection Agency for Motor Vehicle and Goods".
- 3.2.2 The special audit noted that the PVOC program is quite broad and the total income budget for the financial year 2017/2018 was Kshs.4,903,608,060, and out of this amount a total of Kshs.1,493,088,000 was allocated to be collectable from the PVOC program. Under the PVOC program KEBS managed to collect a total of Kshs.1,493,486,045 as analyzed in the table below:

Table 5: Receipts in relation to PVOC program for the period 2017/18

S/N	PVOC Contractors	Revenue in Kshs.
Services		
1	Societe Generale De Surveillance	694,445,653
2	Bureau Veritas	125,303,838
3	Intertek International	153,481,765
4	China Certification Inspection	111,770,891
5	Cotecna SA	12,308,998
	Sub-total for Services	1,097,311,145
Used Motor Vehicles, Mobile Equipment and Spare Parts		
6	Quality Inspection Services Inc. Japan	396,174,900
Total Receipts from PVOC Program		1,493,486,045

Source: KEBS Financial Reports

3.3 Finding on the Procurement Process

- 3.3.1 The special audit reviewed the procurement process for used motor vehicles, mobile equipment and used spare parts respectively for Phase 1 as reported under section 2 of this special audit report.

KEBS/T019/2017-2020

INTERNATIONAL TENDER FOR PROVISION OF PRE- EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES: USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS

Advertisement of the International Tender

- 3.3.2 The International Tender for provision of Pre-Export Verification of Conformity to Standard Services: Used Motor Vehicles, Mobile Equipment and Used Spare Parts was advertised in two local dailies; The Daily Nation and The East African Standard Newspapers on 21st November 2017 and on KEBS website for a period of 21 days in accordance to the PPDA Section 96(2) and 89(b). Details of the International Tender are provided under **Appendix 2**.
- 3.3.3 Some bidders sought clarifications because of some conflicting information between the provisions of the instructions to tenderers and the provisions of the appendix to the instructions to tenderers. KEBS replied to these clarifications through an Addendum Number 1 of the Tender No. KEBS/T019/2017-2020 issued on 6th December 2017, which was 15 days after the original advertisement. Details of the Addendum is provided under **Appendix 3**.

3.3.4 A total of six firms purchased the tender documents namely;

- Nippon Inspection Centre Corporation;
- Auto Terminal Japan;
- Quality Inspection Services Inc. Japan;
- East Africa Automobile Services (EAA) Company Limited;
- SGS Kenya Ltd; and
- JAAI Japan.

3.3.5 M/s. SGS Kenya Ltd and JAAI Japan did not return their bid documents and were therefore not considered for further processing at the preliminary evaluation. Only four firms returned their bids for consideration at the preliminary evaluation. The four firms are listed as per the table below.

Table 6: Bidders for PVOC; Used Motor vehicles, Mobile Equipment and Spare Parts

No.	Particulars	Bid Security in USD
1	Nippon Inspection Centre Corporation	200,000
2	Auto Terminal Japan (ATJ) Ltd	200,000
3	Quality Inspection Services Inc. Japan (QISJ)	200,000
4	EAA Company Limited	200,000

Source: KEBS

Opening of the International Tenders

- 3.3.6 The international tender for PVOC to Standard Services; Used Motor vehicles, Mobile Equipment and Used Spare Parts was closed and opened on 17th December 2017. The tender opening and processing committee had been earlier appointed by Mr. Charles Ongwae - Managing Director on 13th December 2017 as per Section 46 (1) of the PPAD Act, 2015.
- 3.3.7 The aforementioned committee was duly constituted and mandated to carry out a comprehensive technical and financial evaluation, due diligence and inspection for the tender in strict adherence to the compliance and evaluation criteria set out in the tender document. This said committee was chaired by Mr. Chris Kibett and its members were; Mr. Birgen Rono, Mr. Gordon Onjore, Mr. James Onyiengo, Mr. Ken Keya, Mr. Brian M'mbwanga and Ms. Rhoda Kirui.
- 3.3.8 Evaluation of bids was done in three stages using the criteria set out in Section 2.11.2 of the Tender Document pursuant to Section 80 (2) of the PPAD Act, 2015 as follows:

- Preliminary Evaluation;
- Technical Evaluation; and
- Financial Evaluation.

Preliminary Evaluation

3.3.9 At the preliminary evaluation the firms were checked for the following documents:

- Copy of certificate of incorporation;
- List of directors;
- Copy of passport or identification for each of the listed directors;
- Copy of current tax compliance certificate or equivalent document certified by a notary public;
- Organizational chart identifying (i) inspection management (ii) ICT services (iii) quality assurance/ risk management and (iv) monitoring of subcontractors' two firms;
- Copies, certified by a notary public of licenses issued by relevant government authority to do business in Japan, United Arab Emirates, United Kingdom;
- Copies of licenses issued by the relevant government authority issued either to tenderer or subcontractor to do business in Thailand and South Africa;
- Duly completed signed and stamped confidential business questionnaire;
- Evidence of accreditation to ISO/ IEC 17020:2012 conformity assessment - Requirements for the operation of various types of bodies performing inspection (Type A Accreditation);
- Verifiable proof of financial strength to perform the contract with minimum annual turnover of USD 10Million; and
- Sworn statement that the company has not filed for bankruptcy, that the company has not had any contract with KEBS terminated because of deficiencies, the tenderer or its associated companies is not associated with any business that may lead to a conflict of interest, and that both tenderer and its legal representatives are free of any impediment to contract with KEBS or the Government of Kenya, and that the tenderer has given full disclosure of its directors and associated companies.

3.3.10 Analysis of KEBS procurement documents revealed the following:

3.3.11 M/s. Nippon Inspection Centre Corporation, provided only certificate of incorporation and identification of the listed company's directors and was therefore disqualified at this stage of the evaluation.

3.3.12 M/s. EAA Co. Ltd. was also disqualified at this stage of the evaluation for failure to avail the following documents:

- Copy of current tax compliance certificate;
- Copies, certified by a notary public of licenses issued by relevant government authority to do business in Japan, United Arab Emirates, United Kingdom;
- Copies of licenses issued by the relevant government authority issued to the tenderer or subcontractor to do business in Thailand and South Africa;
- Verifiable proof that the company has the financial strength to perform the contract having handled roadworthiness inspection for vehicles with a minimum of annual turnover of USD 10 million for the last three years, approved audited accounts for the last three years; and
- Sworn statement that the company has not filed for bankruptcy.

3.3.13 M/s. Auto Terminal Japan and M/s. Quality Inspection Services Inc. Japan were considered responsive to all the preliminary evaluation requirements, and were therefore recommended to proceed for the technical evaluation stage.

Technical Evaluation

3.3.14 The technical evaluation stage required the bidding firms to provide the following information:

- Evidence of physical presence and technical capacity to offer inspection services (For UK, Japan and UAE, where subcontracting is not allowed, bidders were required to lease not more than 50 per cent of their required facilities i.e.; Japan - 15 Centers, United Kingdom - 2 Centers, UAE - 1 Center);
- Accreditation scope of ISO 17020:2012 for machinery, mobile equipment, used spare parts, radiation detection and covers inspection centers;
- Experience gained by providing conformity assessment services to regulatory authorities;
- Qualifications and experience of the company's personnel;
- Information communication technology resources;
- Risk management system; and
- Professional Membership.

3.3.15 Clause 2.22.1 of the tender documents required a firm to score a minimum of 70 marks out of 80 marks to be considered for the next stage of financial evaluation. Documentation provided indicated that M/s. Auto Terminal Japan only managed to score a total of 40 marks out of the possible 80 marks and was therefore disqualified.

3.3.16 Reasons for disqualification M/s. Auto Terminal Japan were itemized as follows:

- No copies of title/lease/tenancy agreement attached for inspection center certified by an attorney in UAE, Thailand and South Africa. In Japan there were 10 copies of lease agreements and 1 copy of title attached out of the 15 centers required as per clause 2.22.1 of the bid document;
- Availability of inspection equipment required to test all parameters specified in KS 1515:2000 and radiation not provided for all centers. There was no list of equipment in United Kingdom, South Africa and Thailand. In Japan there were only 4 centers with list of equipment out of 15 centers which fell below 50 per cent ownership requirement.
- No evidence of ownership of inspection equipment in United Kingdom. Attached photos of equipment in the United Kingdom but no traceability to list of centers provided. Further, there were no serial numbers, make and model as per tender requirement). In Japan there was evidence of ownership of equipment in 4 centers only;
- Attached accreditation certificate number 7558 issued by International Accreditation New Zealand (IANZ), which did not cover machinery, equipment and radiation inspection in the scope of accreditation;
- Figures provided for contracts awarded on total number of vehicles inspected for roadworthiness was below 60,000. The figures provided for New Zealand were for Biosecurity and Quarantine inspection and not roadworthiness);
- Provided evidence of 14 inspectors with Diploma in automotive engineering (or equivalent) and driving license for inspectors instead of 20 inspectors;
- Provided evidence of only 12 inspectors with a minimum of 5 years' experience instead of 20 inspectors;
- No evidence of on brief explanation supported by copies of roadworthiness inspection documents for consignments whose shipment was prevented following successful profiling in the last 3 years; and
- No evidence that the bidder is a member of a professional body/association regulating the conduct of inspection bodies (attached recommendation

letter from Japan Used Motor Vehicle Exporters Association (JUMVEA) which did not indicate any kind of regulation on the conduct of inspection bodies in its activities.

- 3.3.17 M/s. Quality Inspection Services Inc. Japan scored a total of 74 marks out of 80 marks at the technical evaluation, and was recommended to proceed to the financial evaluation stage. The evaluation committee further recommended that a due diligence be undertaken on M/s. Quality Inspection Services Inc. Japan in all the countries namely Japan, United Kingdom, United Arab Emirates, South Africa and Thailand to confirm the information presented in the technical proposal and any inconsistencies.

Financial Evaluation

- 3.3.18 The tender processing committee opened the financial bids on 22nd December 2017. In the tender form dated 8th December 2017, M/s. Quality Inspection Services Inc. Japan offered to provide provision of Pre-Export Verification of Conformity (PVOC) to Standard Services - Used Motor Vehicles, Mobile Equipment and Used Spare Parts for the sum of USD 44,903,585.

- 3.3.19 Further discussions revealed that the inspection fees quoted per vehicle were as follows:

Inspection of Mobile Equipment and Used Spare Parts

- 3.3.20 M/s. Quality Inspection Services Inc. Japan proposed to charge an inspection fee of 0.5 per cent of Free on Board (FoB) Value per shipment of mobile equipment and used spare parts subject to minimum of USD265 and a maximum of USD2700 per unit or consignment. This was the minimum against a set criteria of a maximum 0.75 per cent of Free on Board (FoB) Value per shipment of mobile equipment and used spare parts, subject to minimum of USD265 and a maximum of USD2700 per unit or consignment

Inspection of Used Road Vehicles and other Off-Road Vehicles

- 3.3.21 The proposed motor vehicle inspection fee in USD charged to the exporter per vehicle was as follows as provided for in the requirements for the financial evaluation:

Table 7: Proposed Inspection fees per Motor Vehicle

No.	Country/ Item	Fees charged in USD
1	Japan	155
2	United Arab Emirates	192
3	United Kingdom	225
4	Thailand	250
5	Republic of South Africa	225

Source: Financial proposal for QISJ

Royalty fees payable to KEBS

3.3.22 M/s. Quality Inspection Services Inc. Japan proposed to remit to KEBS on monthly basis royalty fees in the equivalent of 31 per cent of revenue obtained from inspection of Mobile Equipment and Used Spare Parts, and USD45 for each Used Motor Vehicle inspected. This was against a set criteria of royalty fees minimum of 31 per cent of revenue obtained from inspection of Mobile Equipment and Used Spare Parts, and a minimum of USD43 for each Used Motor Vehicle inspected.

3.3.23 M/s. Quality Inspection Services Inc. Japan was therefore awarded a total score of 20 Marks for being within the pricing threshold. This therefore meant that M/s. Quality Inspection Services Inc. Japan the combined score was 94 marks.

3.3.24 Based on the foregoing, the tender processing and evaluation committee therefore recommended the award of International Tender No. KEBS/T019/2017-2020 for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts to M/s. Quality Inspections Services Inc. Japan (QISJ) who had the highest combined score of 94 marks out of 100 marks.

3.3.25 Due diligence exercise was carried out by a team of eight (8) KEBS officials between 17th February 2018 and 3rd March 2018 as listed below

Visiting Japan and UAE

Mr. Chris Kibett
Mr. Gordon Onjore
Mr. Ken Keya
Ms. Rhoda Kirui

Visiting UAE

Mr. James Onyiego
Mr. Joab Mbalanya

Visiting Thailand

Mr. Birgen Rono
Mr. Brian M'mbwanga

3.3.26 The due diligence team concluded in their report to management that information provided by M/s. Quality Inspection Services Inc. Japan was found to be true, complied with the requirements of the tender document and the company had the capacity to perform the contract.

3.3.27 On 10th January 2018, the Head of Procurement at KEBS, issued his professional opinion recommending the award of the tender to the most responsive bidder M/s. Quality Inspection Services Japan Inc. in accordance with Section 84 of the PPAD Act, 2015. A copy of the opinion is attached under **Appendix 4**.

Tender Appeals, Award and Contract

3.3.28 On the same day, 10th January 2018, the Mr. Charles Ongwae - Managing Director at KEBS notified the successful bidder, M/s. Quality Inspection Services Japan Inc. of the award of tender. On the same day the unsuccessful bidder was also notified through letters.

3.3.29 On 17th January, 2018, the Public Procurement Administrative Review Board (PPARB) wrote letter ref: PPRA/ARB/7/14/2018 to the Managing Director of KEBS informing him that the Board had received a request for review of the tender for provision of Pre-Export Verification of Conformity (PVOC) to Standard Services: Used Motor vehicles, Mobile Equipment and Used Spare Parts.

3.3.30 In their application, M/s. Auto Terminal Japan Ltd sought for a re-evaluation of the technical proposals on Section 2.22.1 of the tender document to ensure fairness and non-discrimination of the evaluation criteria.

3.3.31 On 6th February 2018, the PPARB heard the appeal in the presence of representatives from both the applicant, KEBS and interested parties. Upon perusal of the Applicant's tender documents, the Board noted that M/s. Auto Terminal Japan did not comply with several requirements of the tender document and consequently dismissed it and advised KEBS to proceed with the

procurement process to its logical conclusion. A copy of the ruling of the PPARB is included under Appendix 5.

- 3.3.32 The contract agreement between KEBS and M/s. Quality Inspection Services Inc. Japan was signed on 3rd April 2018 for a period of three years effective 15th April 2018. As part of the contract the special audit highlights that the inspection fees charged per vehicle and paid under the contract in United States Dollars were as detailed in the table below:

Table 8: Inspection fees charged per vehicle and paid under the contract

No.	Country/ Item	Fees charged in USD
1	Japan	155
2	United Arab Emirates	192
3	United Kingdom	225
4	Thailand	250
5	Republic of South Africa	225

Source: Contract document between KEBS & QJSJ

- 3.3.33 Also, there was inspection service fee charged for mobile equipment and used spare parts to be equivalent to 0.5 per cent of the FoB value subject to a minimum of USD265 and a maximum of USD2700 per unit of consignment submitted for inspection.
- 3.3.34 Royalty fees charged for mobile equipment and used spare parts shall be 31 per cent of the fees charged. Royalty fees per vehicle payable to the KEBS were as follows:

Table 9: Royalty fees per vehicle

No.	Country/ Item	Fees charged in USD
1	Japan	45
2	United Arab Emirates	45
3	United Kingdom	45
4	Thailand	45
5	South Africa	45

3.4 Finding on Inspection and Documentation Review during Field Visits

- 3.4.1 The special audit team carried out physical verification, interviews and documentation review of the regional sites for all the bidders to understand the firms that bid for the International Tender No. KEBS/T019/2017-2020 for

provision of Pre-Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile Equipment and Used Spare Parts.

3.4.2 Specifically, the special audit reviewed the details of three out of the four firms that responded to our request for meeting at the various firm's headquarters. These were; M/s. Quality Inspection Services Inc. Japan (QISJ), M/s. EAA Company Limited and M/s. Auto Terminal Japan (ATJ) Ltd. M/s. Nippon Inspection Centre Corporation did not respond to our request for a meeting to discuss the procurement process.

3.4.3 The verification exercise involved in-depth review and verification of documents submitted by the contractors during the tendering process, onsite inspection and observation to confirm ownership and existence of inspection equipment, and the agents' staff. Further, the special audit team held interviews with both management and local representatives of the agents in the selected countries and carried out a walk-through test of the inspection process and sites used by the agents.

3.4.4 The reviews were also guided by the common practices of doing business in certain jurisdictions. For example, in Japan, which contributes nearly 95 per cent of used motor vehicle into the country expects that inspection service companies to buy or lease land, however, considering the nature of business, it does not actually pay-off for an inspection company to buy or own land unless it is involved with other logistics of used motor vehicle, like M/s. ECL Agency Ltd that is a logistic company and therefore own large parcels of land around the ports of Japan. It's on this premise that the expectation is that:

- Inspection service agents lease land, then buy and install an inspection facility/equipment on the leased land; or
- Lease an inspection facility from its owner and operate it with ones' own staff within ones' own approved procedures; or
- Sub-contract a facility and the staff from another service provider/agent and pay convenience fee for such services.

3.4.5 The findings are as enumerated per firm below:

3.5 Findings on M/s. Auto Terminal Japan (ATJ)

3.5.1 The special audit team visited M/s. Auto Terminal Japan (ATJ) offices on 27 February 2019 and meet with the Senior Management of the Company. The special audit was focused on determining facts regarding ATJs operations as represented in the technical proposal as part of the submission for Tender No:

KEBS/T019/2017- 2020, for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts.

3.5.2 The focus areas were to understand the operations of ATJ and review documentations submitted by ATJ for the aforementioned tender. The areas included:

- The physical presence of the Company and supporting registration documents;
- The physical and technological infrastructure required to satisfactorily perform services required under this tender in all the requisite jurisdictions;
- Evidence of ownership of the equipment or existing contracts/leases, and supporting documentation for the same;
- Listing of the equipment at each inspection facility, with the calibrations status;
- The human resources required to satisfactorily perform services required under this tender in all the requisite jurisdictions; and
- Quality management systems as required by the Accreditation Agency.

3.5.3 Based on the aforementioned, field inspections of M/s. ATJ mainly focused on the authenticity and validation of information contained in their documents as submitted for the Tender No: KEBS/T019/2017- 2020 in the technical proposal, being their part fulfillment of the tender requirement for each jurisdiction similar to the other bidding companies.

3.5.4 The special audit interest was also exacerbated by the fact that ATJ had filed for a request for a review against the decision of KEBS in the matter of Tender No: KEBS/T019/2017-2020 for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts at the Public Procurement Administrative Review Board on 17 January 2018. Further, the special also noted the same company M/s. ATJ has also filed a petition before PPRAB for the decision of award for tender Number KEBS/T057/2015 on 22 December 2014. The review filed by M/s. ATJ was struck out by PPARB on 30th December 2014, on the ground that it was filed out of time and that the applicants were to bear their own cost for the request for review

3.5.5 In following the tender requirements as detailed in **Appendix 6**, one of the most important requirements was for the bidders to provide evidence of physical presence and technical capacity to offer inspection services.

Specifically, a bidder had to demonstrate ownership of inspection equipment and facilities in the jurisdiction that the company is legally registered to perform services required in; Japan, United Kingdom and United Arab Emirates. Further, the tenderer had the option to sub-contracts in Thailand and South Africa. For UK, Japan and UAE, where subcontracting is not allowed, bidders were required to lease not more than 50 per cent of their required facilities i.e.; Japan - 15 Centers, United Kingdom - 2 Centers, UAE - 1 Center)".

- 3.5.6 This means the special audit focused its review on the documents versus the evidence by the bidders to corroborate the physical and technological infrastructure required to satisfactorily perform services required under this tender in Japan, United Kingdom and United Arab Emirates where subcontracting is not allowed. The findings for each jurisdiction is as enumerated below.

Auto Terminal Japan (ATJ) - Japan Headquarters

- 3.5.7 The special audit noted the physical presence of M/s. Auto Terminal Japan (ATJ) in Japan and confirmed the following in regards to the legitimacy of the registration documents onsite against the documents submitted in the tender.
- 3.5.8 The special audit noted conflicting information regarding M/s. Auto Terminal Japan (ATJ) proposal as it listed Mr. Mamoru Fujie as the sole Director (**Appendix 7a - d**) of the company as part of the confidential business questionnaire. Other details provided in the technical proposals highlighted that Mr. Tetsuro Shirahama was listed as the owner of the company with 100 percent shares but not included as a director in the confidential business questionnaire, and list of directors which were not part of the confidential business questionnaire are per the table below:
- 3.5.9 The tender documents also indicated that it was a serious offence to provide false information, and therefore M/s. ATJ should be subjected to the proceedings of the having committed the offence of not providing accurate or conflicting information in their confidential business questionnaire.

Table 10: List of other Directors of ATJ as attached in the technical proposal

Name	Nationality	Coverage	Title
Dr. Isaac Kalua	Kenya	Africa	Director, Africa
Wilson Mutabazi	British	Europe/UK	Director, ATJ Inspection UK Ltd.
Nithul Lakshmanan	Indian	UAE	Director, ATJ Auto Services

- 3.5.10 M/s. Auto Terminal Japan (ATJ) had listed their Offices as per the table below. The special audit confirmed the physical presence of the Head Office and confirmed their addresses as listed in the table below. The lease documents and records of rent payments were verified by the special audit team to confirm they had been occupying the facilities in question.

Table 11: List of Offices of ATJ

Offices	Visited
Autoterminal Japan Ltd. Tokyo-bay East Main Office 1-17-69 Shiohama Kisarazu- City Chiba 292-0838 Japan	Yes
Tokia Branch Office 99 Ishizuka Chikarao Tado-cho Kuwana Mie 511-0125 Japan	Yes
Kobe Branch Office 1 Mayafuto Nada-ku Kobe 657-0854 Japan	No
Nagoya Branch Office 8-2 Hasshoukawata Shirrahama-cho Tsushima-city Aichi 496-0016 Japan	Yes

- 3.5.11 The special audit noted that ATJ failed to meet the threshold of the tender as they didn't have the physical and technological infrastructure required to satisfactorily perform services required under this tender in Japan. The special audit noted that ATJ only owned four (4) inspection centers, and additionally had eight (8) other contracted inspection centers through "corporate partnerships". This was against the set criteria for Japan where subcontracting is not allowed, and therefore bidders were required to lease not more than 50 per cent of their required facilities i.e. Japan - 15 Centers.
- 3.5.12 Out of the list of sixteen (16) inspection lines that were purported to be stationed in twelve (12) inspection centers, attached under **Appendix 8**, the special audit sampled, visited and confirmed the presence of Tokyo-Bay Main Office in Kisarazu, Tokai and Nagoya Branch Office.
- 3.5.13 For the Tokyo-Bay Main Office based in Kisarazu, it was noted there was an agreement between Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association and M/s. ATJ for leasing of the facility addressed as 1-17-69 Shiohama Kisarazu-city, Chiba-Japan, effective 1 April

2011, with the purpose to provide inspections services using its inspection facilities for Roadworthiness Inspection for export of used motor vehicles, see **Appendix 9**. This meant it contradicted the information provided that the facility actually belongs to M/s. ATJ or whether it was fully leased from Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association. Further analysis revealed a similar arrangement with Kobe City Government agreement signed on 1 August 2011 where the facility was also leased by M/s. ATJ which cast doubt of this lease arrangement, see **Appendix 10**.

3.5.14 An on-site visit to M/s. ATJ Office in Tokai highlighted a large parcel of land with other logistics operations including clearing and forwarding agents. With this parcel of land being owned by M/s. ATJ, it cast doubt on their involvement with only Road Worthiness Inspection of used motor vehicles for export. Further scrutiny highlighted that the attachment was evidence of purchase of a parcel of land approximately 20,000 square meters at JPY555,000,000 (USD5Million), see **Appendix 11**.

3.5.15 A visit to the Nagoya inspection facility located at 8-2 Hasshoukawata Shirrahama-cho Tsushima-city Aichi 496-0016, revealed no activity and a dilapidated structure that had seemingly been idle and with no staff presence. While these had been noted to be an owned inspection center, the facility did not exhibit a state-of-the-art testing equipment as alleged in the technical proposal of the tenderer. With the level of dilapidation, it was difficult to identify the serial numbers of the equipment or confirm if the testing equipment had been calibrated.

3.5.16 The special audit also noted that while the separate lease agreements between M/s. ATJ and M/s. Flash rise Co, LTD, M/s. Nagase Auto Inc, M/s. Daiei Jidousya Kogyo Co Ltd, M/s. Hotta Auto Aichi Co, Ltd, M/s. Gulliver International Co, Ltd. M/s. Kojima Corporation and M/s. FWT Logistics Co, Ltd provided that on every 10th date of the month an invoice will be raised to M/s. ATJ by all these entities to confirm activity, however, there was no documentary evidence or invoices raised by these sampled companies to M/s. ATJ to validate the authenticity of the leases and inspection activity at the leased locations. Which therefore cast doubt on the technical proposals that misrepresented M/s. ATJ to be undertaking 1,500 and 1,380 monthly inspections in owned and partner facility respectively, see **Appendix 12**.

3.5.17 While undertaking on-site inspection, the special audit noted that M/s. ATJ had indicated to have leased 2 inspection lines from M/s. Flash rise Co, LTD, effective 20 January 2015, with the purpose of providing an inspection facility

for Roadworthiness Inspection for export of used motor vehicles. The special audit however noted the following while visiting the Flash Rise yard:

- The site had two inspection lines; one of the lines belonged to M/s. Flash Rise Ltd., and the other Line belonged to M/s. QISJ who were actually undertaking inspections during the time of field visit.
- This therefore cast doubt on the authenticity of the technical proposal by M/s. ATJ for misrepresenting to have leased two inspection facilities from M/s. Flash Rise Ltd and indicating to be undertaking inspection for 1,380units per line.

3.5.18 Further review and verification of the list of the inspection centers and the physical and technological infrastructure in each of the regions revealed inconsistencies between the sworn affidavit by the Managing Director of M/s. ATJ, dated 7 December 2017, where it confirmed that M/s. ATJ only had ten (10) inspection centers instead of the purported twelve (12). This sworn statement also misled the tender as the listing repeated the agreement between M/s. ATJ and M/s. Nagase Auto Inc. Despite only having sworn to have only ten (10) inspection centers, M/s. ATJ provided agreements for twelve (12) centers which cast doubt on the authenticity of the said lease agreements.

3.5.19 In understanding the overall capacity of M/s. ATJ to provide inspection services, the special audit relied on the representation of the technical proposal of M/s. ATJ where it was indicated that each of the owned inspection lines were undertaking 1,500 inspections and leased ones undertaking and 1,380 inspections monthly as represented under Appendix 12 as aforementioned. It was however noted that this may not have been practical to have a consistent number of inspection of motor vehicle on all centers.

3.5.20 It is on this background that the special audit therefore confirmed that M/s. ATJ failed to meet the technology threshold of the tender as they didn't have the physical and technological infrastructure with a listing and calibration of the equipment required to satisfactorily perform services required under this tender in Japan.

3.5.21 The special audit noted that M/s. ATJ attached as part of its technical proposal a translated version of its license issued by the Japan's Ministry of Land, Infrastructure, Transport and Tourism (MLTT). The copy and duly notarized translated accreditation under Appendix 13, clearly stated that M/s. ATJ was in the business of maintaining motor vehicles. Additionally, the Accreditation statements by M/s. ATJ confirmed being a recipient of the Type A

accreditation which gave the company the added benefit and advantage of being able to provide diagnostic services onsite. These conflicted the sworn statements, dated 7 December 2017, which were also attached stating that the company was not conflicted. This was therefore against the tender requirement where bidders were not expected to be a conflict of interest.

- 3.5.22 Under Section 10 of the verifiable proof of financial strength to perform the contract, M/s. ATJ attached the audited accounts for the past three years. The special audit noted that in the statements of accounts details relating to sales from Domestic and Export business which was approximately 82 per cent of the total companies revenues (sales of export JPY427,414,033 out of total revenue of JPY521,391,887). The company also disclosed having consumption tax receivable, which would only be for companies engaged in export business. The statements also disclose accounts payable and receivable to companies like M/s. Japan Forwarding Agency Ltd. And M/s. Jacanna Customs & Freight and their relationships could not be clearly explained by M/s. ATJ management. These could therefore be possible conflicting the expectations of the tenderer to undertake inspection services.
- 3.5.23 On enquiry on potential conflict of interest between M/s. Japan Forwarding Agency Ltd and M/s. ATJ, the special audit noted that Mr. Mamoru Fujie, CEO of ATJ Ltd was a director of Japan Forwarding Agency Ltd for the period from September 2013 to February 2015 as noted under **Appendix 14a**, this was a clear conflict of interest and information was not disclosed to KEBS while M/s. ATJ was a service provider for the third cycle of contract between 2012 - 2015. Further scrutiny noted records of ATJ having been granted a permit for customs clearance business effective 10th January 2007, by the Director of Yokohama Customs - Mr. Hiromichi Tanigawa for the Tokyo-Bay area, see **Appendix 14b**, which exacerbated the potential conflict of interest for the said company being involved in export business.
- 3.5.24 The special audit also noted M/s. ATJ had also invested on an IT infrastructure platform for efficiency. The team undertook a walkthrough of the system and experienced a live demonstration of how to on board new clients, make requests for inspection, tracking progress of inspection real-time. Other discussion with management noted that M/s. ATJ is currently undertaking Roadworthiness inspection of used motor vehicles for Zambia, Tanzania and most recently was awarded a tender as the sole inspector of used motor vehicles to Jamaica. Further, M/s. ATJ also provides bio-security inspection on behalf of Ministry of Agriculture and Forestry of New Zealand and the Department of Agriculture Water and Resources of Australia.

Auto Terminal Japan (ATJ) - United Kingdom

- 3.5.25 M/s. ATJ had indicated to have presence in the United Kingdom. In determining the physical presence of M/s. ATJ in the United Kingdom, the team visited the ATJ UK Office on 13th March 2019, to meet with the local staff as indicated in the technical proposal submitted to KEBS. The special audit noted that M/s. ATJ does not own any inspection centers nor had they contracted an inspection center (s) through “corporate partnerships” against the requirement for the United Kingdom where subcontracting is not allowed, and therefore bidders were required to lease not more than 50 per cent of their required facilities i.e. United Kingdom - two (2) centers. See **Appendix 15** for evidence provided as listing of owned or leased facilities.
- 3.5.26 The special audit further searched for record of M/s. ATJ in the United Kingdom and analyzed its activity which were not represented or misrepresented in the technical proposal. This information was obtained and is still available under the companies records in the United Kingdom (find a company <https://beta.companieshouse.gov.uk/company/09300209/filing-history>). This is summarized as below:
- 3.5.27 M/s. ATJ Inspection UK Ltd was registered on 11th December 2017 just six days before the tender closing date of 17th December 2017. The company registration document indicated it had a registration number 11105092 with Mr. Peter Valaitis listed as the sole director and shareholder of the company. The special audit noted that Mr. Peter Valaitis was not identified anywhere in the technical proposal of M/s. ATJ and even ceased as being a director of the company on the same date of its registration, 11th December 2017, and therefore there was no evidence of affiliation between these two companies, M/s. Auto Terminal Japan Ltd and M/s. ATJ Inspection UK Ltd. This means that as at the time of the tender submission and closer there was company affiliated to M/s. ATJ in the United Kingdom. See **Appendix 16**.
- 3.5.28 In validating the physical presence of M/s. ATJ Inspection UK Ltd, the tenderer attached a letter from an Attorney, M/s. Drake & Scoll Solicitors. The letter dated, 8th December 2017, was meant to confirm the existence of M/s. ATJ Inspection UK Ltd, and its affiliation with M/s. Auto Terminal Japan. Firstly, this was not a company registration as per the requirements of the tender. Secondly, the letter confirmed the Solicitor having related with the client for the past two years. However, a search for the Solicitor in the United Kingdom (find your solicitor <http://solicitors.lawsociety.org.uk/>) yielded no results as the firm did not exist, which could mean the document was forged and thus fraudulent see **Appendix 17**. Registration documents actually identified the

agents of M/s. ATJ Inspection UK Ltd as Duport Associates Limited and not M/s. Drake & Scoll Solicitors.

- 3.5.29 To further corroborate and validate or determine the physical presence of M/s. ATJ in the United Kingdom, an interview was convened with Mr. Wilson Mutabazi - Director, ATJ Inspection UK Limited, on 13th March 2019, at a location, Clipper House, Tilbury Free Port - Tilbury, United Kingdom RM 18 7SG, which was not the address identified in the technical proposal and therefore not the Office for M/s. ATJ in the UK. A request to visit any of the purported Inspection Centers was not granted on revelation by Mr. Wilson Mutabazi that such facility did not exist.
- 3.5.30 A request to also visit any of the purported partners of M/s. ATJ Inspection UK Ltd was not granted either. For example, a company identified as M/s. JLS Investment Group located at Unit 11, Industrial Complex Tilbury Port, Tilbury Essex RM18 7JB United Kingdom could not be located despite an existing agreement attached to the technical proposal, dated November 1, 2014. Field inspection noted that this same unit was being used by a different company named M/s. Dry Docks Autos.
- 3.5.31 As a part of the technical proposal the special audit also noted M/s. ATJ attached lease agreements signed by M/s. Autoterminal Japan UK Ltd., a company that does not exist and had ceased effective 9th February 2016. This means all the lease agreements attached were not binding and therefore misleading to the procuring entity. For example, a sample review of a lease agreement with Vehicle Approval.com, dated 14 November 2014. The address of this company was noted as Opp 4A Berth, Tilbury, Freeport Essex RM18 7EH United Kingdom. However, a visit on the said address revealed that no such company existed at the said location. This cast doubt on any existing relationship between Vehicle Approval.com and M/s. ATJ Japan (UK) Ltd.
- 3.5.32 Further scrutiny of the documentation filed as lease agreements noted that there was no amount indicated on any of the contract which really cast doubt on the authenticity of the said agreements with the said companies; M/s. JLS Investment Group for Unit 11, Industrial Complex Tilbury Port, Tilbury Essex RM18 7JB United Kingdom and M/s. Vehicle Approval.com, for; Opp 4A Berth, Tilbury, Freeport Essex RM18 7EH United Kingdom, Kleer House, Sheerness Docks Sheerness ME12 1 RS United Kingdom and Unit 1, Estuary Works, Wolton Avenue, FelixStowe Suffolk IP11 3HH United Kingdom.
- 3.5.33 In regards to the employees in ATJ United Kingdom, the special audit noted that M/s. ATJ had listed its Offices in the United Kingdom having Mr. Mark Bead

- Test Centre Manager, Mr. Andy Burvill - Vehicle Inspections Manager, and Mr. John Williamson - without a title, whom were all employed in 2014. However, on enquiry none of the employees were available on-site and cast doubt on the authenticity of the employees listed in the had been engaged with technical proposal.

Auto Terminal Japan (ATJ) - United Arab Emirates (U.A.E)

3.5.34 In determining the physical presence of M/s. ATJ in the United Arab Emirates (UAE), the special audit requested to visit the ATJ UAE Office, 5th March 2019, to meet with the staff as indicated in the technical proposal submitted to KEBS. The special audit noted that M/s. ATJ attached a reservation name as indicated under **Appendix 18**, with no further details to demonstrate that it owns any inspection centers nor had they contracted an inspection center (s) through “corporate partnerships” against the requirement for the UAE where sub-contracting is not allowed, and therefore bidders were required to lease not more than 50 per cent of their required facilities i.e. United Arab Emirates - one (1) centers.

3.5.35 This is despite ATJ having indicated in their proposal to own an inspection centers in the UAE which could not be verified. See **Appendix 19** for evidence provided as listing of owned or leased facilities. The special audit also noted an existing leased document as evidence of existing operations within the United Arab Emirates. The lease documents dated 27 May 2014 was actually signed between M/s. Green Coast Real Estate and M/s. Pal Auto Garage signed on 1st June 2014 and did not demonstrate any relationship with M/s. ATJ. This therefore cast doubt on the physical presence of M/s. ATJ in the UAE. While M/s. ATJ also listed Mr. Nithul Lakshmanan as a director for ATJ Auto Service, it was noted he was an employee of M/s. PAL Auto Garage (PAL).

3.5.36 The above notwithstanding, the special audit further meet with Mr. Nithul Lakshmanan of PAL Auto Garage in the presence of one of ATJs Director in charge of Africa to understand the existing relationship between M/s. ATJ and M/s. PAL Auto Garage (PAL) in case the facts were not represented or misrepresented in the technical proposal. The special audit noted and corroborated the following:

- There was no company existing in the UAE prior to the submission of the technical proposal. The attached documents related to a trade name reservation certificate which indicated this was still work-in-progress to have a company set up in the UAE for purposes of the tender.

- On enquiry, the certificate of incorporation had not been issued as at the time of field work on 5th March 2019 despite the trade name reservation certificate having been issued on 28th November 2017, with a reservation of M/s. ATJ Auto Services.
- These all conflicted the sworn statement dated 11th December 2017, by the MD of M/s. ATJ indicating that they had submitted an original registration of M/s. ATJ Auto Service. The tradenames business activity was identified as car registration and transfer services.
- Enquiry on the operations of PAL Auto Garage (PAL) indicated that PAL was a garage with operations which includes; mechanical works, computerized vehicle fault diagnosis, regular maintenance works, chassis repairs, dent repairing and painting, wheel alignment and balancing among others. This was also confirmed on the company brochures Attached under **Appendix 20**.
- The aforementioned confirmed that PAL Auto Garage (PAL) actually deals with motor vehicle repairs and would therefore be in conflict if they were to engage in motor vehicle inspection against the requirements of the tender.
- A service contract provided to demonstrate the relationship between PAL and ATJ being specific to inspection services was noted to have expired on 30 April 2017 and therefore could not be used as evidence of an existing relationship for purposes of the special audit. See excerpt of the contract under **Appendix 21**.
- The special audit also noted that On 25th November 2017, M/s. ATJ Ltd. signed a sale agreement purporting to have bought the testing equipment from PAL Auto Garage, see **Appendix 22**; Testing lane, headlight tester, emission testers for petrol and diesel respectively, brake tester, side slips, and shock absorber. This was confirmed to be false as audit inspection and discussions with Mr. Nitsul Lakshman, Manager of PAL Auto Garage revealed that the above equipment is still owned by M/s. PAL Auto Garage and motor vehicle services is being carried out Pal Auto Garage employees. Further, there was no evidence of payment for the equipment which could imply the document was forged.

Auto Terminal Japan (ATJ) - South Africa

- 3.5.37 Due to constraint of time, the special audit could not visit the ATJ agents based in Durban South Africa. This has also been noted under section 2.9 on the Limitation of the special audit.
- 3.5.38 Overall, these all means that ATJ failed to meet the threshold of the tender as they didn't have any physical and technological infrastructure required to satisfactorily perform services required under this tender in the United Kingdom, Japan and the United Arab Emirates. It further had gross misrepresentation on its technical proposal and should therefore be subjected to the proceedings of the law as they contravened Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s). Further, these contravene the ethos of the sworn statement by the bidder, M/s. ATJ had sworn statement that the company or its associated companies is not associated with any business that may lead to a conflict of interest, and that the tenderer has given full disclosure of its directors and associated companies. This questioned the authenticity of the documents attached as part of the technical proposals and indicated a serious red flag on the credibility of M/s. ATJ as a company.

3.6 Findings on M/s. EAA Company Limited

- 3.6.1 The special audit team visited the M/s. EAA Company Limited offices on 26th February 2019 and meet with the Senior Management of the Company. The special audit was focused on determining facts about EAAs operations as represented in the technical proposal as part of the submission for Tender No: KEBS/T019/2017- 2020, for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts.
- 3.6.2 The focus areas were to understand the operations of the EAA and review documentations submitted by EAA for the aforementioned tender. The areas included:
- The physical presence of the Company and supporting registration documents;
 - The physical and technological infrastructure required to satisfactorily perform services required under this tender in all the requisite jurisdictions;

- Evidence of ownership of the equipment or existing contracts/leases, and supporting documentation for the same;
 - Listing of the equipment at each inspection facility, with the calibrations status;
 - The human resources required to satisfactorily perform services required under this tender in all the requisite jurisdictions; and
 - Quality management systems as required by the Accreditation Agency.
- 3.6.3 The special audit noted that M/s. EAA Company Limited never filed for any review against the decision of KEBS in the matter of Tender No: KEBS/T019/2017- 2020 as they confirmed being content with the decision of KEBS of not meeting the requirements, having failed at the pre-liminary evaluation stage. M/s. EAA however, filed for a request for a review against the decision of KEBS in the matter of Tender No: KEBS/T057/2014-2015, for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts.
- 3.6.4 Despite this, the management of M/s. EAA Company Limited however confirmed their interest to be a part of the special audit by availing staff and documentation to facilitate the special audit processes as participants of the tender No: KEBS/T019/2017-2020 with an objective of understanding areas of improvement for subsequent tenders. Field inspections of M/s. EAA Company Limited was therefore also focused on the authenticity and validation of information contained in their documents as submitted for the Tender No: KEBS/T019/2017-2020 in the technical proposal, being their part fulfillment of the tender requirement for each jurisdiction similar to the other bidding companies.
- 3.6.5 In following the tender requirements, one of the most important requirements was for the bidders to provide evidence of physical presence and technical capacity to offer inspection services. Specifically, a bidder had to demonstrate ownership of inspection equipment and facilities in the jurisdiction that the company is legally registered to perform services required in; Japan, United Kingdom and United Arab Emirates. Further, the tenderer had the option to sub-contracts in Thailand and South Africa. For UK, Japan and UAE, where subcontracting is not allowed, bidders were required to lease not more than 50 per cent of their required facilities i.e.; Japan - 15 Centers, United Kingdom - 2 Centers, UAE - 1 Center)".
- 3.6.6 This means the special audit focused its review on the documents versus the evidence by the bidders to corroborate the physical and technological

infrastructure required to satisfactorily perform services required under this tender in Japan, United Kingdom and United Arab Emirates where subcontracting is not allowed. The findings for each jurisdiction is as enumerated below.

M/s. EAA Company Limited (EAA) - Japan Headquarters

- 3.6.7 The special audit noted the physical presence of EAA in Japan and confirmed the following in regards to the legitimacy of the registration documents onsite against the documents submitted in the tender:
- 3.6.8 M/s. EAA Company Limited (EAA) is privately owned company with its head office located at the physical address; 1-20-5-101, Rinkan, Yamato-shi, Kanagawa-Ken, Japan 242-0003. The company was incorporated on 6 July 2007, with a company registration number 0210-01-029586. The CEO/President and sole shareholder of the company then was Mr. Guku Prosper Japhet. The special audit also noted that EAA had a branch office located at YCC 1608, 22 Daikoku Fotou, Tsurumi, Yokohama, Japan. The special audit reviewed the lease document and records of rent payments to confirm they had been occupying the Office for some time.
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- 3.6.9 The special audit noted the company names changed as filed in the registration documents. It was noted that East Africa Automobile Services Company Limited changed to EAA Company Limited in an effort to rebrand to get business out of the East African Community as per management. This name change was confirmed on the certificate of name change dated 27 October 2017.
- 3.6.10 It was also noted that prior to the name change the company undertook inspection services for motor vehicles to Uganda, Tanzania and Zanzibar. Subsequent to the name change, EAA has since on-boarded pre-export inspection business in Zambia, Mauritius, and in also the only Service Provider for inspection of motor vehicle to the Bahamas. The Director also registered a name change from Mr. Guku Prosper Japhet to Mr. Sugai Prosper, which was noted to be customary when one becomes a Japanese citizen.
- 3.6.11 The registration documents revealed that the EAA Company Limited was licensed to conduct the following businesses:
- Export inspection business of a used car;
 - Consulting services of the commercial transaction of a domestic company, and the overseas government and company, and all other businesses related to the above.

3.6.12 The tenderer listed having (17) inspection centers in Japan in its technical proposal. EAA also provided a receipt as evidence of purchasing 17 inspection facilities/equipment. The listing provided in the technical proposal is attached under **Appendix 23**. However, the company only provided eight leases agreements as part of the technical proposal which included:

- Lease between Run Global Co. Ltd. (Nagoya) and EAA;
- Lease between Moji Kuon Co. Ltd (Kita-Kyusyu, Moji) and EAA;
- Lease between Sankyu Co. Ltd (Kita-Kyusyu, Kanda) and EAA;
- Lease between Mitsui Soko Co. Ltd (Yokohama) and EAA;
- Lease between Nippon Express Co. Ltd (Kawasaki) and EAA;
- Lease between ECL Agency Co. Ltd. (Osaka) and EAA;
- Lease between ECL Agency Co. Ltd. (Kobe) and EAA; and
- Lease between ECL Agency Co. Ltd. (Kisarazu) and EAA.

3.6.13 These lease agreements are also attached under **Appendix 24 (a - h)**. These eight leases did not demonstrate how the 17 equipment purported to have been purchased were distributed to the twelve (12) inspection centers.

3.6.14 Out of the list of seventeen (17) inspection equipment that were purported to be stationed in twelve (12) inspection centers, the special audit sampled, **Yokohama, Kisarazu, and Nagoya** and the Offices as per the table below:

Table 12: List of Office of EAA Company Limited

Offices	Visited
EAA Head Office 1-20-5-101, Rinkan, Yamato-shi, Kanagawa-Ken, Japan 242-0003	No
Yokohama YCC Office YCC1411, 22 Diakokufuto, Tsurumi-Ku, Yokohama-Shi, Kanagawa-Ken,	Yes
Yokohama Silk Centre Office Room No.205, Silk Centre. No.1 Yamashitacho, Naka-Ku, Yokohama-Shi, Kanagawa-Ken	No
Nagoya Office 2-28-12 Izumi, Hasshoukawata Higashi-Ku, Nagoya- Shi Aichi-Ken	No

- 3.6.15 In visiting the Nagoya Region where M/s. EAA had indicated to own an inspection facility, EAA management opted to have the team visit a leased facility from M/s. Flash Rise Limited. The lease agreement provided in the tender documents for an existing relationship between M/s. EAA and M/s. Flash Rise indicated that EAA had listed the facility and not the land which was confirmed to have been falsified as the lease agreement attached was between M/s. EAA and M/s. Runglobal Co. Limited (Nagoya), see Appendix 24 a. The inspection further revealed no activity by EAA and EAA Senior Management could not identify the facility they purported to have leased, it was noted that one of the inspection lines actually belonged to QISJ Inc., who was actually undertaking real-time inspection at the time of our visit on 1st March 2019. The was no presence of EAA staff noted either.
- 3.6.16 The special audit team also sampled and engaged one of the agents According to the list of leased contracts M/s. ECL Agency Ltd. and a meeting with ECL was prompted by the fact that two of the bidders claimed to have contracts with M/s. ECL Agency Ltd. ECL was noted to be a logistic company where inspections companies lease land or equipment's for inspections. M/s. ECL Agency Ltd. agreed to the meeting and actually disowned the EAA leases presented to the special audit team for verification. M/s. ECL confirmed that they do not have any lease agreements with M/s. EAA but only had an agreement with company called M/s. Hamanasu Company Limited. Furthermore, ECL confirmed EAA uses the staff of ECL to perform inspection service for other countries. This scenarios exacerbated the doubt as to whether M/s. EAA really does inspections by itself or sub-contracts using other service providers staff.
- 3.6.17 EAA Company Limited indicated in their proposal to have a total of twenty-five (25) members of staff consisting of fifteen (15) inspectors and one Quality Manager stationed in Tokyo/Yokohama, Nagoya and Osaka/Kobe/Kyushu. There was no listing of staff assigned in Kisarazu, Kawasaki, Kitakyushu and Moji. The special audit further noted there were no staff assigned to any of the mentioned regions and management noted that all these technical staff were on contract and were only on boarded when there was inspection services needed for those regions. It therefore cast doubt as to the staff capacity and equally all the accreditation attached for the key staff could not be validated as no originals/notarized copies were provided to prove the qualifications and therefore cast doubt as to the staff competency.
- 3.6.18 The special audit also noted EAA had also invested on an IT infrastructure platform for efficiency. The team undertook a walkthrough of the system and

experienced a live demonstration of how to on board new clients, make requests for inspection, tracking progress of inspection real-time.

3.6.19 The special audit also noted that EAA was one of the companies accredited to the coveted ISO/IEC 17020:2012 by the Japan Accreditation Board (JAB). The accreditation was first issued in 11 November 2012, prior to the name change. However, interviews with senior management confirmed that the Accreditation of ISO 17020:2012 was once cancelled by JAB effective 27th November 2014, for reason which management of EAA could not disclose. The special audit however noted that their accreditation certificate was reinstated on 9th November 2016 and was to be valid until 31st July 2020. A search on the authenticity of the documents under the JAB website under <https://www.jab.or.jp/en/system/iso/search/> yielded no results.

3.6.20 The special audit also verified for potential conflict of interest between M/s. Rosper International Co. Ltd and M/s. EAA. In an interview with Mr. Prosper Sugai, the CEO of EAA, confirmed he was not aware of the said company nor having been involved as a director. However, a search of company records in Japan actually confirmed that Mr. Prosper Sugai was the owner of Rosper International Co. Ltd. for the period from 18th November 2002 to 18th August 2014, see **Appendix 25**. The objectives of M/s. Rosper International Co. Ltd as per the attached certificate was listed among others as:

- Purchase and sale and export of used cars, used motorcycles, used car parts, used compressors, used crane trucks, etc;
- Purchase and sale and export of used items; and
- Importing and sales of beauty devices and cosmetic items.

This was a clear conflict of interest and information that was concealed to KEBS when the EAA was tendering for the current contract and a service provider in the past contract cycle.

M/s. EAA Company Limited (EAA) - United Kingdom Branch

3.6.21 The special audit noted that there was limited information regarding the legality of the company in the United Kingdom, except for the physical address in the technical proposal. A visit was confirmed and an interview held with EAA Management on 12th March 2019, in Tilbury, United Kingdom.

3.6.22 In an effort to determine the physical presence of M/s. EAA in the United Kingdom, the special audit searched for online records of M/s. EAA in the

United Kingdom and analyzed its activity which may not have been presented or misrepresented in the technical proposal. This information was obtained and is still available under the companies records in the United Kingdom (find a company <https://beta.companieshouse.gov.uk/company/09300209/filing-history> . This is summarized as below:

- EAA CO LTD LIMITED, company number 10341831, was originally registered on 23 August 2016 as a private company limited by shares. The shareholder were; Mr. Prosper Sugai (80 percent) and Mr. Seth Nguku (20 per cent). Having noted an error in the naming of the company, it necessitated the company to pass a resolution to change its name to EAA Automobile Ltd, effective 1 September 2016. The renamed company was located at Capstan House Tilbury, Freeport Tilbury, Essex, England RM18 7SG. See **Appendix 26**.
- Effectively, 7 November 2016, barely two months after registration, Mr. Prosper Sugai who was the majority shareholder (80 percent) transferred his shares to Mr. Seth Nguku who eventually became the sole shareholder of EAA Automobile Ltd with 100 per cent shareholding, on the same date, Mr. Prosper Sugai ceased to be a director of the company. This means the company was officially a standalone with no affiliation with M/s. EAA Company Limited by either common directorship or even shareholding a fact that was also misrepresented in the technical proposal as it was noted that the EAA Automobile Ltd was a branch. See **Appendix 27**.

3.6.23 The special audit noted that EAA does not own any inspection centers against a required one (1) owned inspection center. The special audit also failed to confirm that EAA had contracted an inspection center (s) through “corporate partnerships” against a required minimum of one (1) to bring the total of two (2) as per the tender specifications. This is despite having indicated in their proposal to have leased (2) inspection facilities at Woodhouse MOT 96A, London and Unit Tilbury Industrial, Freeport Tilbury, Essex, England RM18 7HB, in the United Kingdom, which were not verifiable.

3.6.24 However, EAA attached a lease deed dated 1 May 2014, **Appendix 28**, which seemed forged as there was no presence of EAA in the United Kingdom at the time. Similar tele conversations with the Port Manager of Tilbury Mr. Cox Laurence confirmed that the Company EAA was not a tenant in any of the identified premises on facilities as indicated on the technical proposal. Therefore, this cast doubt on any existing relationship or business in the United Kingdom.

- 3.6.25 It was also noted that as part of the technical proposal's, a document indicating to have leased Office Space in Tilbury port dated 19th August 2014, could not be verified or authenticated by the Port Manager of Tilbury Mr. Cox Laurence, **Appendix 29**. The deed was signed by Mr. Christopher Boniface Lukosi. On enquiry the special audit team was informed that Mr. Christopher Boniface Lukosi was a director in both EAA and a company called Serengeti Global Services. The yard and brand at the Offices of Serengeti indicated they were involved in Sea and Coast Services.
- 3.6.26 In an interview with Mr. Prosper Sugai and Mr. Lee Sayer, it was confirmed that a visit any of the purported Inspection Centres was not necessary on revelation that such facility did not exist because there was no reason to retain the centers when there was no business. A request to also visit any of the purported partners of M/s. EAA was also not granted either.
- 3.6.27 In regards to the employees in M/s. EAA in the United Kingdom, the special audit noted that M/s. EAA had listed that it had one Manager Supervisor, 3 Supervisors and 6 Inspectors stationed within the United Kingdom. However, on enquiry none of the employees were available nor were their human resource records available for scrutiny and discussions to confirm that they were indeed employees of EAA. Therefore, apparent that this was a misrepresentation on the part of EAA in its technical proposal.

M/s. EAA Company Limited (EAA) - United Arab Emirates Branch

- 3.6.28 The special audit team visited the EAA Offices in UAE and met with management on 4th March 2019. The team noted that EAA had only attached a registration document to indicate it does business within the Freezone, **Appendix 30** i.e. Sharjah Media City which had no relationship with the tender prerequisites as per the tender requirements where bidders were required to be legally registered and licensed to perform the service, and confirm if they owned inspections centers against the set criteria for UAE where subcontracting is not allowed, and therefore bidders were required to lease not more than 50 per cent of their required facilities i.e. UAE - 1 Center.
- 3.6.29 The team met and interviewed Mr. Prosper Sugai, Director, EAA Company Ltd and a purported EAA UAE representative Mr. Rashid Abeid Suba who was not identified anywhere in the technical proposal. Mr. Rashid Abeid Suba was noted to be actually the owner of a service provider called M/s. Jabal Kilimanjaro Auto Elec. Mech., and is also a current Pre-Export Verifying Agent for Tanzania (TBS). TBS requirement for Pre-Export Verifying are done independently and in zones and therefore there cannot be an existing relation

between M/s. Jabal Kilimanjaro Auto Elec. Mech. and M/s. EAA for purposes of this bid and being cognizant of the requirements of TBS for service providers of inspections.

3.6.30 EAA Company Ltd, provided a document which seemed forged or could not be verified as it purported to indicated that EAA bought the inspection facility in UAE in 2014, (**Appendix 31**), and entered into agreement with Mr. Rashid Abeid Suba to guide their operations, an allegation that Mr. Rashid Abeid Suba could not confirm as he owns the facility and uses it to service another contract for Tanzania.

3.6.31 All the testing equipment listed in the tender documents namely; Brake, Alignment and suspension, Emission testers, Headlight, Vehicle hoist and sound meter were therefore confirmed to be owned by M/s. Jabal Kilimanjaro Auto Elec. Mech and being fully operated by M/s. Jabal Kilimanjaro Auto Elec. Mech. Staff.

3.6.32 Further, vehicle testing was noted to done by the following members of staff who have been contracted. However, a request for the records and qualifications was not provided by M/s. Jabal Kilimanjaro Auto Elec. Mech.

-
- i) Fernan M. Mesario
 - ii) Edelson Cortez Santos
 - iii) Ali Abdalla Juma
 - iv) Adonis Moreno

EAA - South Africa

3.6.33 The special audit noted that this bidder did not provide its legality and presence in South Africa and Thailand which could therefore not be verified. See **Appendix 32**.

3.6.34 The special audit also noted a due diligence report dated 9 January 2015 by KEBS which highlighted important findings worth noting in this special audit report as follows:

- The bidder, East African Automobile Services Limited had its ISO 17020 accreditation status in Japan suspended and therefore not valid as per the governing conditions of the Japan Accreditation Board (JAB). The same company had attached a professional license for a different company called Jabal Kilimanjaro Auto. Elec. Mech in the UAE;

- In the United Kingdom, it did not exist in the physical address it had provided in the bid documents as the premises, 16D Tilbury Forth Port, was found to be for Serengeti Global Services which was a sea and coastal freight company;
- East African Automobile Services had also forged its registration documents depicting it was registered in 2013 instead of 2014 which was a forgery; and
- This team reported that the company M/s. EAAS Limited lacked the requisite infrastructure in the UK and UAE, and that the company had presented forged and falsified documents in their bidding which enabled them to erroneously attain the minimum technical score for advancement to the financial evaluation stage. The team recommended disqualification from the procurement process and debarment from any such similar exercises by KEBS.

3.6.35 Overall, the company, EAA has been knowingly providing falsified documents in the past and present tender submissions, and thereby failed to meet the threshold of the tender as they didn't have any physical and technological infrastructure required to satisfactorily perform services required under this tender in the United Kingdom, Japan and the United Arab Emirates. It further had gross misrepresentation on its technical proposal and should therefore be subjected to the proceedings of the law as they contravened Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s). Further, these contravene the ethos of the sworn statement by the bidder, M/s. EAA had sworn statement that the company or its associated companies is not associated with any business that may lead to a conflict of interest, and that the tenderer has given full disclosure of its directors and associated companies. This questioned the authenticity of the documents attached as part of the technical proposals and indicated a serious red flag on the credibility of M/s. EAA as a company.

3.7 Findings on M/s. Quality Inspection Services Inc. Japan (QISJ)

3.7.1 The special audit team visited the QISJ Offices on 25th February 2019 and meet with the Senior Management of the Company. The special audit was focused on determining facts about QISJ operations as represented in the technical proposal as part of the submission for Tender No: KEBS/T019/2017- 2020, for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts.

- 3.7.2 The focus areas were to understand the operations of the company and review documentations submitted by the company for the aforementioned tender. The areas included:
- The physical presence of the Company and supporting registration documents;
 - The physical and technological infrastructure required to satisfactorily perform services required under this tender in all the requisite jurisdictions;
 - Evidence of ownership of the equipment or existing contracts/leases, and supporting documentation for the same;
 - Listing of the equipment at each inspection facility, with the calibrations status;
 - The human resources required to satisfactorily perform services required under this tender in all the requisite jurisdictions; and
 - Quality management systems as required by the Accreditation Agency.
- 3.7.3 It was noted that QISJ had earlier been an interested party to a petition by M/s. ATJ, and filled an affidavit in response to the application by M/s. ATJ to the Public Procurement Administrative Review Board (PPRAB) in respect to the application made on the decision of KEBS dated 10th January 2018, referenced Application No.14 of 2018.
- 3.7.4 This was triggered by a letter ref: PPRA/ARB/7/14/2018, dated 17th January, 2018, from the PPRAB to the MD of KEBS informing him that the Board had received a request for review of the tender for provision of Pre-Export Verification of Conformity (PVOC) to Standard Services: Used Motor vehicles, Mobile Equipment and Used Spare Parts from M/s. ATJ seeking for a re-evaluation of the technical proposals on Section 2.22.1 of the tender document to ensure fairness and non-discrimination of the evaluation criteria.
- 3.7.5 On 6th February 2018, the PPARB heard the appeal in the presence of representatives from both the applicant, KEBS and interested parties and the Board noted that M/s. ATJ did not comply with several requirements of the tender document and consequently dismissed it and advised KEBS to proceed with the procurement process to its logical conclusion.
- 3.7.6 Earlier on, QISJ had also been an interest party of another petition filed against KESB for the Tender No. KEBS/T057/2014-2015 in respect to motor vehicle inspection/verification services in accordance with Kenya standard code of practice for inspection of road vehicle. Again, the PPARB, on 28th January 2015 in its wisdom made several orders in respect of application No.55/2014,

No.56/2014 and No.59/2014 in respect to the provisions of Section 98 of the Public Procurement and Disposal Act (2005).

- 3.7.7 The Public Investments Committee (PIC) which also draws its mandate from the National Assembly Standing Order No. 206 (6) also previously made a resolution on 29th January, 2015, and commenced an inquiry into the award of KEBS Tender No. KEBS/T057/2014-2015 for provision of pre-export inspection services to Quality Inspection Services Inc. Japan (QISJ) on 12th February 2015, based on the decision by KEBS to award to QISJ a contract of used motor vehicle inspection services for a period of 36 months (3 years). The PIC requested the Office of the Auditor-General (OAG) too undertake a special forensic audit on the aforementioned tender.
- 3.7.8 Special forensic audit on KEBS Tender No. KEBS/T057/2014-2015 for provision of pre-export inspection services for used motor vehicles in Japan, United Arab Emirates, United Kingdom and South Africa in accordance with KEBS (K1515:2000) was carried out to conclusion pursuant to the request from the Clerk of the National Assembly on behalf of the PIC. The special forensic audit was done as per Article 229 of the Constitution, and pursuant to a request from PIC to the Auditor-General, dated 19th June, 2015 on the said tender. The findings of the Auditor-General were laid on the table of the House on 11th February, 2016.
- 3.7.9 The special audit report noted that the winning bidder QISJ was capable of handling the contract as required by KEBS standard No KS 1515:2000 code of practice, and further recommended that KEBS should ensure that contracted company(s) have a long term commitment to inspection and keep off speculative bidders, and this is achievable by setting minimum requirements for full ownership of inspection facilities by the inspection companies based on number of vehicles coming from those country. The audit even recommended in details that the inspection company should fully own at least fifteen (15) facilities in Japan, three (3) in the United Kingdom and one in United Arab Emirates, distributed to major ports and towns. Leases in these towns should only be allowed to supplement fully owned facilities and that KEBS should be keen to properly evaluate ownership of these facilities.
- 3.7.10 QISJ were also a subject of due diligence review by KEBS management/various committees. In 2016 and 2018 and teams were sent to Japan, United Kingdom and United Arab Emirates to carry out due diligence to verify and validate documentary evidence, infrastructural, technical and managerial competence

of QISJ to provide service as per the Kenya Standard KS 1515:2000 code of practice. A report dated 9th January 2015 was issued by the due diligence team of six members who were involved in the exercise recommending that KEBS enter into contractual agreement with Quality Inspection Service Japan Inc.

3.7.11 The team was satisfied that the company had the requisite capacity to provide the service as per the Kenya Standard KS 1515:2000. The team established that QISJ is a legal entity with adequate presence in all the key regions required, and with sufficient preparedness in terms of human, infrastructural and technical capacity to provide the services outlined in the RFP for the Tender No. KEBS/T057/2014-2015.

3.7.12 QISJ was eventually awarded the tender No. KEBS/T057/2014-2015 on 2nd February 2015 the MD of KEBS and MD of QISJ signed and sealed a contract so as QISJ could provide motor vehicle inspection service as per the Kenya Standard KS 1515:2000 code of practice. The contract was witnessed by Mr. George Sichangi for KEBS and Mr. Khalid S. Swaleh for QISJ.

3.7.13 PIC also undertook a due diligence visit between 28th May 2016 and 6th June 2016, and recommended among others, that to minimize unmerited litigation by losing bidders, KEBS should have a register of service providers who are pre-qualified through a due diligence exercise to ensure that only companies with required competence and experience to undertake inspection are invited to bid for future contracts.

3.7.14 A recent report named; Supplier's Surveillance Audit Report on QISJ conducted between 13th and 20th February 2019 performed in line with the provisions of the contract concluded that:

- QISJ had systems in place to perform the roadworthiness inspection of used motor vehicles, machineries and used spare parts which met the requirements of KS1515:2000 and KS2190:2013;
- QISJ had met all the required timelines stipulated in the contract in issuance of Certificate of Compliance (CoC)/Non-Conformity Reports (NCR) and remittance of reports; and
- That the visited inspection centers were found to have all the equipment specified in the standard and were up to date in their calibration status.

3.7.15 The aforementioned notwithstanding, this special audit also focused its independent review on the documents versus the evidence by the bidders to

corroborate the physical and technological infrastructure required to satisfactorily perform services required under this tender in Japan, United Kingdom and United Arab Emirates where subcontracting is not allowed, and South Africa where subcontracting is allowed and the findings for each jurisdiction is as enumerated below.

M/s. Quality Inspection Services Inc. Japan (QISJ) - Japan Head Office

3.7.16 The special audit noted that M/s. Quality Inspection Services Inc. Japan was incorporated in Japan on 22 July 2009 and issued with a registration certificate No. 0200-01-062420. The Company's Head Office and physical address in Japan at the time of registration was 1-18-12 Komaoka, Tsurumi, Yokohama. The Company was incorporated to carry out the following functions among others:

- Survey, inspection, sworn measure & assessment of automobile/electronic product/industry products/ ship/ clinical products/ oil/ mineral products/plastic/metal/fibre/ farm products/foods /medical products; and
- Inspection of products listed above, including physical examination and scientific analysis.

3.7.17 The company aggregate numbers of issuable shares is one thousands six hundred (1600) and the total numbers of shares so far issued is four hundred (400). The share capital of the company is JPY 20,000,000. The sole shareholder of the Company is the Managing Director

3.7.18 The Company moved in March 2011 to its current Headquarters gross misrepresentation on its technical proposal and should therefore be subjected to the proceedings of the law as they contravened Section 41 (1) (h) of the Public Procurement and Disposals Act, 2015, and in such events recommend that it would be appropriate for relevant institutions to initiate debarment proceedings against such bidder(s).

3.7.19 During interview with QISJ Management on 25th February 2019, it was noted that the company has a total of 20 inspection centers (11 owned facilities and 9 leased). However, the special audit noted that QISJ had only submitted a listing of fifteen (15) inspection centers for purposes of the tender, the other inspection centers were being used to service other contracts. These inspection centers were noted to be spread around the four provinces of Japan; Kanto, Kansai, Kyusu and Chubu and they were well positioned near ports of export of Yokohama, Hitachinaka, Kobe, Nagoya, Kisarazu, KitaKyusu and Osaka.

3.7.20 As part of the technical proposal, QISJ reported to be owning inspection equipment used in eleven (11) inspection centers as listed in the table below. Equipment in the remaining four (4) inspection centers namely; Hakata, two centers in Kitakyushu and Yokohama were leased.

Table 13: Listing of owned inspection centers by QISJ

S/N	REGION	NAME	ADDRESS	NEAREST PORT
1	KANTO	QISJ KAWASAKI	80HiagashiOgishima, Kawasaki-ku, Kawasaki-shi, Kanagawa	KAWASAKI
2	KANTO	QISJ YOKOHAMA	43-21Daikoku-cho, Tsurumi-ku, Yokohama-shi, Kanagawa	YOKOHAMA
3	KANTO	QISJ YOKOHAMA DAIKOKU FUTOU	15 Daikoku-Futou, Tsurumi-ku, Yokohama-shi, Kanagawa	YOKOHAMA
4	KANTO	QISJ KISARAZU	14-1 Shin Minato, Kisarazu-shi, Chiba	KISARAZU
5	KANTO	QISJ FUTTU	104 Shin Tomi, Futtu-shi, Chiba	KISARAZU
6	KANTO	QISJ HITACHINAKA	768-38 Terunuma, Touka-mura, Naka-gun, Ibaraki	HITACHINAKA
7	CHUBU	QISJ NAGOYA	77 Shionagi-cho, Minato-ku, Nagoya-shi, Aichi	NAGOYA
8	CHUBU	QISJ FLASH RISE	5-8 Nishi Suehiro, Yatomi-shi, Aichi	NAGOYA
9	KANSAI	QISJ KOBE	9 Koyochi Naka, Higashi Nda-ku, Kobe-shi, Hyogo	KOBE
10	KANSAI	QISJ KOBE SHINKO HIGASHI	6-21 Onohama-cho, Chuo-ku, Kobe-shi, Hyogo	KOBE
11	KANSAI	QISJ OSAKA	9 Yunagi-cho, Izumi Otsu-shi, Osaka	OSAKA

3.7.21 To validate the aforementioned, the review focused on the documentation to verify the existence and to prove the presence of the said inspection centers that were either owned or leased by QISJ in Japan. Assurance was obtained from receipts and invoices of the on-going rental payment and fees for the leased premises. The team confirmed that these machines were performing the activities as required under KS 1515:2000 and all the equipment were modern

and had valid calibration status. The facilities were also branded QISJ for ease of identification. The leases are attached under Appendix 33 a - k.

3.7.22 The sampled and visited inspection center were located in the following:

- Kawasaki, at the address; 80HiagashiOgishima, Kawasaki-ku, Kawasaki-shi, Kanagawa. The Machine was verified to have been bought from a company named M/s. Banzanja and the invoice and calibration was verified. There was evidence of monthly payment to the leased land.
- Nagoya, at the address, 5-8 Nishi Suehiro, Yatomi-shi, Aichi the audit noted that the land was leased from M/s. Flash Rise and the inspection facility was also bought from M/s. Flash Rise. This was verified with the receipt for payment of the lease and equipment and monthly payment of the commissions due.

3.7.23 In both of the facilities inspected, all the inspection equipment comprising of Speed Meter, Brake Tester, Side Slip Tester, Headlight Tester, CO/HC Tester, Diesel Tester, Sound Level Tester, Noise Level Tester, Radiation Tester and Scan Tool were confirmed to be owned by QISJ. The records present at the QISJ Site Office confirmed that indeed the company owned the facility. The special audit team also experience real time inspection at this same facility.

3.7.24 It was noted that QISJ has a large workforce that are distributes across the inspection centers in Japan. The technical proposal presented indicated a total of fifty two (52) members of staff out of which thirty (30) were working as inspectors and reporting to one Quality Control Manager, all whom demonstrated competency and capacity to offer inspection services based on the resume and years of experience working with QISJ.

3.7.25 QISJ had also invested on an IT infrastructure platform for efficiency. The team undertook a walkthrough of the system and experienced a live demonstration of how to on board new clients, make requests for inspection, tracking progress of inspection real-time.

3.7.26 QISJs' platform is interfaced with the Japanese government database to corroborate on the vehicles year of manufacture. This was complemented by a robust risk management procedure that QISJ adhered to in terms of documentation, manuals, procedures and processes to be followed to mitigate against fraudulent practices. The IT platform was also noted to be interfaced with the Procuring Entity (KEBS) for real time monitoring on the activities the service provider is undertaking.

- 3.7.27 QISJ has regulation for dealing with customer and maintaining customer complains records coded QIS-003-008. In this regulations, each complaint was noted to be handled to their logical conclusion in consultations with KEBS whenever necessary.
- 3.7.28 Enquiry on potential conflict of interest between JANS Trading and QISJ as had been previously reported in PIC report to parliament dated 22nd November 2016. The special audit confirmed that there was no relationship between JANS' Trading Co. Ltd and Quality Inspection Services Inc. Japan (QISJ). It was noted that the Directors of the JANS' Trading Co. Ltd were Mr. Umar H. Jan and Mr. Yassin Jan who are brothers. They are of Pakistani origin doing business in Japan.
- 3.7.29 The special audit confirmed that that current Managing Director of QISJ Mr. Kiyoaki Hatano was a former employee of JANS's Trading Co. Ltd up until 2009. Mr. Kiyoaki Hatano, later formed QISJ to undertake pre-export inspections services of used motor vehicles for export. See **Appendix 34 and 35** for the Certificate of incorporation between JANS and QISJ. The special audit therefore noted no conflict of interest between Jan's Trading Co. Ltd and Quality Inspection Services Inc. Japan (QISJ).
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M/s. Quality Inspection Services Inc. Japan (QISJ) - United Kingdom

- 3.7.30 M/s. Quality Inspections Services Japan Limited was registered as a private limited Company in United Kingdom on 21st February 2012, and as a subsidiary of the parent company in Japan. The company registration number was 7957279. The company was subsequently changed to be a branch of the headquarters and was renamed to M/s. Quality Inspection Services Inc Japan UK Branch Limited with a registration number 10651781. See **Appendix 36**.
- 3.7.31 M/s. QISJ UK Branch Ltd reported to owns two (2) inspection centers/facility in Edmonton and Tilbury and also had leased other facilities which are approved by Ministry of Transport and Communications.
- 3.7.32 The audit reviewed the documentation and verified the existence of documentation to prove the presence of the said inspection centers that were either owned or leased by QISJ in the United Kingdom. Assurance was obtained from receipts and invoices of the on-going rental payment and fees for the leased premises. The special audit confirmed that these machines were performing the activities as required under KS 1515:2000 and all the equipment

were modern and had valid calibration status. The facilities were also branded QISJ for ease of identification.

- 3.7.33 The special audit sampled and visited an inspection center located in Tilbury. The inspection center was leased in the Freeport area of Tilbury. All inspection equipment comprising of Speed Meter, Brake Tester, Side Slip Tester, Headlight Tester, CO/HC Tester, Diesel Tester, Sound Level Tester, Noise Level Tester, Radiation Tester and Scan Tool were confirmed to be owned by QISJ and was purchased from a company called V-Tech Ltd.
- 3.7.34 The records present at the QISJ Site Office confirmed that indeed the company owned the facility. The special audit also experienced real time inspection at this same facility. It was further noted the other center in Edmonton, UK has since been closed and the machine was seen on site at the inspection centre in Tilbury, UK. The same was notified to KEBS through letter dated 10th January 2019.
- 3.7.35 The special audit noted that QISJ UK branch had staff at the inspection center in Tilbury, United Kingdom. The technical proposal presented indicated a total of three (3) senior members of staff who were present and working at the time of our visit on 11 March 2019. The audit also noted two inspectors performing inspection services, all whom demonstrated competency and capacity to offer inspection services based on the resume and years of experience working with QISJ in the United Kingdom.

M/s. Quality Inspection Services Inc. Japan (QISJ) - United Arab Emirates

- 3.7.36 The special audit team visited the QISJ Branch in UAE and met with management on 3 March 2019. The special audit team confirmed that M/s. Quality Inspection Services Inc. Japan had leased a warehouse in RAS Al Khor, alAwir Industrial 3, Dubai from Mr. Essa Al Kous for the purpose of vehicles technical testing. There was evidence of QISJ operations at the said facility and this was further corroborated with the existing lease agreement, and records of rent payments to the landlord.
- 3.7.37 It was noted that, the company has both the Registration Renewal Certificate of Branch of Foreign Facility No. 4157 valid from 20 March 2013 to 19 March 2020 and professional license No. 684010 valid from 21 February 2013 for surveying and evaluating services. These license are required for companies to conduct inspection services in the UAE.

- 3.7.38 To support ownership of the equipment, the special audit team reviewed invoice No. 1577 dated 3 March 2013 from M/s. Jaffer Moh'd Ali Garage to support the purchase of a full set of used motor vehicle testing equipment namely; Hydraulic jacks/ pit, slid slip tester/wheel alignment tester, brake tester, speedometer tester, exhaust proximity noise tester, headlight tester, Exhaust gas tester for petrol engines and diesel engines and tape measure.
- 3.7.39 The audit team met with the staff including the Chief Inspector Mr. Rommel, who took the audit team through the process of inspection for both motor vehicle at the inspection centre and spare parts at the yards in Sharja - UAE. The team noted that QISJ has on record four (4) qualified technical staff.

M/s. Quality Inspection Services Inc. Japan (QISJ) - South Africa

- 3.7.40 M/s. Quality Inspection Services Inc. Japan (QISJ), subcontracted M/s. International Conformity Assessment Solutions (PTY) Ltd. (ICAS) as its liaison office and M/s. DEKRA Ltd as a testing station to manage the roadworthy inspections of motor vehicles.
- 3.7.41 A tripartite agreement between QISJ, ICAS and DEKRA Ltd was signed on 1 December 2017. According to the agreement ICAS was to collect the inspection fees and in turn pay DEKRA Ltd for roadworthy testing. ICAS has an office at 13 Sloane Street, Epsom Downs Office Park, Process House, Bryanston. The company was registered with the Companies and Intellectual Property Commission on 13th July 2010. In the same year, it was registered for Value Added Tax (VAT), Tax Registration No. 2010/014813/07. A copy of the agreement is attached under **Appendix 37**.
- 3.7.42 Field inspection on 28 February 2019 by the special audit team confirmed that M/s. DEKRA Ltd is located at 97, Wilem Cruywagen Avenue, Klrsoord, Rosslyn Pretoria. The company has six technical staff who carry out the vehicle testing. Further the team confirmed that DEKRA Ltd owns all the testing equipment listed in the tender documents namely; Hydraulic jacks/pit, slid slip tester/wheel alignment tester, brake tester, speedometer tester, exhaust proximity noise tester, headlight tester, exhaust gas tester for petrol engines and diesel engines and tape measure.
- 3.7.43 Overall, the special audit thus concluded that M/s. QISJ had demonstrated capacity to deliver one the current contract as it had delivered on its past

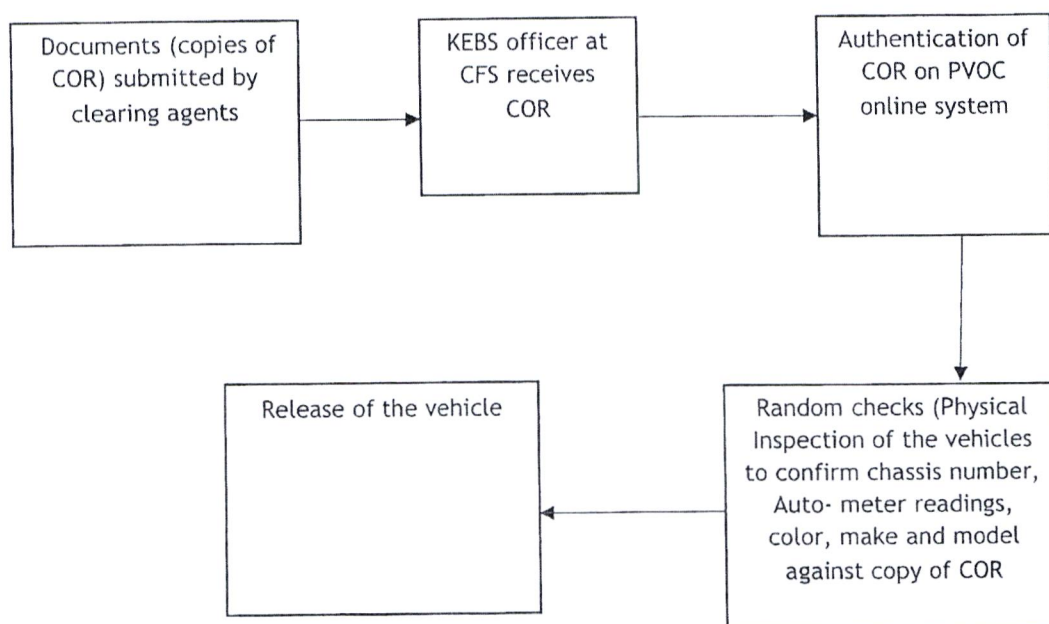
contracts with KEBS by virtue of having the physical and technological infrastructure required to satisfactorily perform services required under this tender, and the right capacity and competency of staff a to satisfactorily perform services required under this tender in Japan, United Kingdom and United Arab Emirates. Further, there had not been any recorded complains levelled against QISJ in the past two contracts by the contractor KEBS. A similar conclusion was reached in a recent due diligence surveillance audit report by KEBS' report dated 20th February 2019. As for South Africa where the requirement was sub-contracting, the special audit also concluded that M/s. QISJ had demonstrated capacity to deliver one the current contract as it had delivered on its past contracts with KEBS by virtue of having the physical and technological infrastructure required to satisfactorily perform services required under this tender in the South Africa the right capacity and competency of staff a to satisfactorily perform services required under this tender in South Africa.

3.8 Findings on Site Inspection at the Port of Mombasa

- 3.8.1 KEBS Mombasa Regional Office has four departments; import inspection, metrology and testing, quality assurance and administration. KEBS office at the Port of Mombasa falls under the import inspection department. Inspection of motor vehicles is done at the port of exit and a copy of the Certificate of Roadworthiness (COR) is posted by QISJ on the PVOC website.
- 3.8.2 Verification by KEBS at the port of entry is done on random basis and involves matching of the copies of COR submitted by the clearing agents against what is posted by QISJ on the PVOC website.

3.8.3 The motor vehicle inspection and clearance process involves the following stages:

Motor vehicle inspection and clearance process flow chart



3.8.4 Motor vehicles are imported and cleared at the Container Freight Stations (CFS) which are privately owned. There are a total of thirty (30) CFSs in Mombasa and KEBS officers from the import inspection department are deployed in the various CFSs to verify motor vehicle import documents.

3.8.5 The special audit team carried out data analysis of motor vehicles imported during the quarter starting October to December 2018. During this period, a total of 28,590 vehicles were received at the 30 CFSs. Out of this, a sample of eight (8) CFSs which handled high volume of imported motor vehicles was selected. The sampled CFSs handled a total of 19,563 motor vehicles as detailed in the table below:

Table 14: Sampled Container Freight stations

No.	Container Freight Station (CFS)	Quantity of vehicles inspected
1	Boss Freight	642
2	Consult Base 2	1,926
3	Interpel	1,534
4	Kencontainers	6,236
5	Mombasa Container Terminal 1	1,831
6	Mombasa Container Terminal 2	4,803
7	Mombasa Island Container Terminal	451
8	Unifreight	2,140
	Total	19,563

- 3.8.6 At the CFS, the special audit team observed the motor vehicle inspection process, which consisted of confirmation of the details contained in Certificate of Roadworthiness namely; the chassis number, auto meter reading, colour, make and model against the details posted online on PVOC system used by the QISJ after which the vehicles are cleared and released. Clearance documents submitted by agents including Certificates of Roadworthiness (COR) were reviewed for conformity and site visits of sampled CFS was done to observe and confirm the inspection process.

4 APPENDICES

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ANNEX 4:

ATTORNEY GENERAL'S

OPINION & LETTER TO

THE COMMITTEE.

ANEX 4:

Atorhedy & Enerys

Opinion & Letter to

the committee



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/2/C/78 VOL. I (75)
Your Ref: KEBS/CONF./IMP/VOL.7/ (59)

26th March, 2020

Lt. Col. (Rtd) Bernard N. Njiraini
Managing Director
Kenya Bureau of Standards
P.O. Box 54974-00200
NAIROBI

RE: KEBS/T010/2019-2021 INTERNATIONAL TENDER FOR PROVISION OF PRE EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARDS SERVICES- USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS

Reference is made to your letter Ref: KEBS/CONF./IMP/VOL.7/ (59) dated the 18th March, 2020 stating that KEBS is in the process of engaging EAA Company Ltd and Auto Terminal Japan Ltd for the provision of Pre Export Verification of Conformity (PVOC) to standards services – used motor vehicles, mobile equipment and spare parts. This is said to have been necessitated by the need to increase more service providers as currently the services are being offered only by Quality Inspection Services Japan.

In this regard, copies of the following documents were submitted by KEBS:

- i) Certificate of Resolution on Pre-Qualification of Additional Partners in the Motor Vehicle Inspection Segment whereby the National Standards Council of the KEBS at a meeting held on the 8th November 2019 resolved to review the existing contract, open up inspection of motor vehicles and introduce other players through a competitive process;
- ii) Certificate of Resolution on Additional Partners for the PVOC Programme whereby the National Standards Council of KEBS at a meeting held on the 13th November 2019 resolved to introduce additional partners in the PVOC program through a competitive process;

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- iii) Evaluation Report for the International Tender Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services: Used Motor Vehicle, Mobile Equipment and Spare Parts in which the Tender Evaluation Committee recommended the award of the tender to EAA Company Ltd and Auto Terminal Japan Ltd.;
- iv) Due Diligence Report on EAA Company Ltd and Auto Terminal Japan Ltd where it was established that the information provided by the two companies in the tender document was verifiable and that the companies had the physical and technical infrastructure to undertake inspection services;
- v) Professional Opinion dated the 16th March 2020 by the Ag. Head of Procurement;
- vi) Decision of the Public Procurement Administrative Review Board (PPARB) Application No. 18/2020 dated the 26th February 2020 in which the application by Niavana Agencies Limited was struck out;
- vii) Letter Ref: KEBS/T010/2019-2021 dated 2020-03-16 from KEBS to EAA Company Ltd informing the company that it had been awarded the contract to inspect used motor vehicles, mobile equipment and spare parts imported into Kenya from Japan, Thailand, UAE, United Kingdom, Singapore and South Africa for a period of one year;
- viii) Letter Ref: EAA/OTO/2019-2021/6 dated March 18, 2020 from EAA Company Ltd to KEBS explaining that the company reviewed and accepted the terms of the contract it received by email. Further, that it signed five copies of the contract and was awaiting the execution of the same by KEBS and commencement of work on the 19th March as stipulated;
- ix) Letter Ref: KEBS/T010/2019-2021 dated 2020-03-16 from KEBS to Auto Terminal Japan Ltd informing the company that it had been awarded the contract to inspect used motor vehicles, mobile equipment and spare parts imported into Kenya from Japan, Thailand, UAE, United Kingdom, Singapore and South Africa for a period of one year; and
- x) Letter dated the 16th March 2020 from Auto Terminal Japan Ltd to KEBS communicating its acceptance of the award of contract.

Background

1. KEBS in the letter Ref: KEBS/ T012/ 2017 dated the 2nd January, 2020 forwarded to this Office various draft addenda for contracts for the International Tender for Provision of Pre-Export Verification of Conformity to Standards Services. In this letter, KEBS stated that the services for the provision for pre-export verification of

conformity are currently being offered by five firms as stipulated in the executed contracts.

2. This Office responded on the 3rd February, 2020 advising KEBS to:

- i) Clarify whether the proposed expansion of the zones is in line with the bid documents;
- ii) Clarify whether it ascertained that the contractors have the requisite technical and financial capability to operate in all the zones without hampering service delivery;
- iii) Take note of section 139 of the Public Procurement and Asset Disposal Act, 2015 which guides on contract variation; and
- iv) To forward to this Office the approval of the tender awarding authority for our review and records.

3. KEBS in its letters Ref: KEBS/LEG/21/1 dated the 21st February, 2020 and 3rd March, 2020 forwarded the following additional information with regard to the earlier request:

- i) Extracts of a Board approval dated 19th November, 2019 by the National Standards Council on additional partners for the PVOC tender;
- ii) Extracts of minutes of a meeting held on 29th November, 2019 at the Ministry of Industry, Trade and Cooperatives at NSSF Building between the National Standards Council and the Cabinet Secretary;
- iii) Procurement plan for 2019-2020;
- iv) Proposed annual budget for 2019/2020 financial year;
- v) Contract between Kenya Bureau of Standards and Quality Inspection Services Inc. Japan for provision of pre-export verification of conformity (PVoC) to standards services in Japan, United Arab Emirates, United Kingdom, Thailand and South Africa;
- vi) Contract between Kenya Bureau of Standards and Société Générale de Surveillance S.A. for provision of pre-export verification of conformity (PVoC) to standards services in zones 1-19; and
- vii) Tender documents for Tender Nos. KEBS/T009/2019 – 2021, KEBS/T010/2019 – 2021; KEBS/T012/2017 – 2020 and KEBS/T019/2017 – 2020.

4. As explained above, KEBS has in its current letter indicated that it is in the process of engaging EAA Company Ltd and Auto Terminal Japan Ltd.

Having considered the letter and supporting documents from KEBS, we hereby issue our preliminary advice as follows:

Variation of Scope of Services

5. This Office had noted in our letter dated the 3rd February, 2020, that the import of the addenda to the above contracts is to widen the scope of services for the Provision of Pre-Export Verification of Conformity to Standards Services. Consequently, each Contractor will provide services in all zones, that is, zones 1 to 19.
6. KEBS in its letter Ref. No. KEBS/LEG 21/1 dated the 21st February, 2020 responded to our aforesaid letter and stated that on the 3rd December, 2019 it advertised a tender for the enlargement of provision of pre-export verification of conformity to standards services and used motor vehicles, mobile equipment and spare parts.
7. Whereas KEBS in its earlier letter dated the 2nd January, 2020 expressed its intention to enter into addenda to amend the earlier contracts, the correspondence from KEBS dated the 21st February, 2020 alludes to a fresh tender process for the enlargement of these services. KEBS in its current letter dated the 18th March, 2020 indeed confirmed that it undertook the procurement process and awarded contracts to EAA Company Ltd and Auto Terminal Japan Ltd.
8. Further, KEBS in its letter has stated that the fresh procurement was necessitated by the need to increase more service providers because the services are currently being offered only by M/s Quality Inspection Services Japan. It is unclear whether the fresh procurement process is related to the draft addenda to the five executed contracts, forwarded by KEBS in its letter dated the 2nd January, 2020.
9. Section 139 of PPADA, 2015 guides on variation of contracts. However, it does not anticipate the floating of a new tender to amend existing contracts. It is our view that any tender process should culminate in the signing of a contract, and not the variation of an existing contract. KEBS should clarify whether its intention is either to amend the existing contracts or to enter into new contracts, noting that tender documents for the enlargement of services state that:

"Companies with existing contracts with KEBS for the provision of the above services are EXEMPTED from participating in this tender and shall continue rendering the services as per the provisions of the said contract."
10. KEBS ought to take note of the above statutory provision and clarify the relationship if any, between the current procurement and the draft addenda.

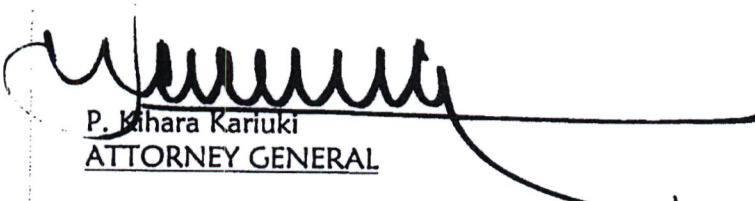
Judicial and Parliamentary Processes

11. From the letter dated the 21st February, 2020 it is noted that the tender process for the enlargement of services, was challenged at the PPARB and through a petition filed in the High Court. In addition, KEBS was summoned by the Public Investment Committee (PIC) of the National Assembly to field questions on the same matter and directed to seek guidance from this Office.
12. We note from the documents forwarded by KEBS that PPARB heard and dismissed on the 26th February, 2020 the application for review No. 18/2020 filed by Niavana Agencies Limited.
13. However, KEBS has not submitted any documents to this Office, with regard to the petition said to have been filed in the High Court. KEBS ought to confirm the status of the said suit. KEBS should also forward to this Office a copy of the PIC report as well as the status of the implementation of the said report with regard to the above matter.

Conclusion

14. It is unfortunate that KEBS forwarded draft addenda to the contracts, to this Office for review and legal clearance, without disclosing that there was a fresh tender for enlargement of services and that the same tender had been challenged at PPARB and the High Court. Further, that the matter was the subject of an inquiry by PIC.
15. KEBS ought to have informed this Office that the tender process had been challenged. This Office requires full disclosure on this tender and information on the litigation and PIC processes. In addition, the relationship between the fresh procurement and the five addenda ought to be clarified.

Kindly be advised accordingly.



P. Kihara Kariuki
ATTORNEY GENERAL

Copy to: Mr. Kennedy Ogeto, CBS
SOLICITOR GENERAL



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL
&
DEPARTMENT OF JUSTICE

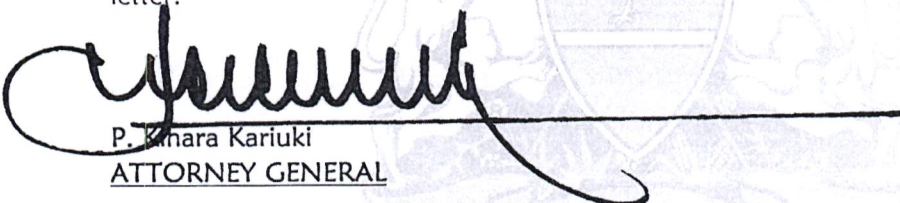
Our Ref: AG/CONF/2/C/78 VOL.I (75)
Your Ref: NA/DCS/JLAC/2020/03

28th April 2020

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE PROCUREMENT
OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD
SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE
PARTS

We write in response to your letter dated the 23rd April 2020, under Reference No. NA/DCS/PIC/2020/022, received on the 28th April 2020, wherein you requested that we confirm the authenticity, which we hereby do, of our letter addressed to the Managing Director of the Kenya Bureau of Standards dated the 26th March 2020, under Ref AG/CONF/2/C/78 VOL.I (75), a copy of which was enclosed in your aforesaid letter.



P. Kimara Kariuki
ATTORNEY GENERAL

Copy to: Hon. Abdulswamad Sheriff Nassir
Chairperson
Public Investments Committee
The National Assembly
NAIROBI

Mr. Kennedy Ogeto CBS
SOLICITOR GENERAL

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Annex 5.

PPRA LETTER TO
THE COMMITTEE &
PPRA REPORT TO

A xaxx .2

969A letter to

the community and

969A letter to the

Ref: PPRA/CIED/4/30/65 VOL. IV (72)

30th April, 2020

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O Box 41842-00100
NAIROBI.

Dear *Michael,*

**CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE
PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY
(PVOC) TO STANDARD SERVICES - USED MOTOR VEHICLES, MOBILE
EQUIPMENT AND USED SPARE PARTS**

Please refer to your letter Ref: NA/DCS/PIC/2020/023 dated 23rd April, 2020 on the above subject matter.

On 20th December, 2019 and 2nd March, 2020 the Authority received complaint letters from a whistle blower and Niavana Agencies Limited respectively regarding the subject tender. In line with Section 34 of the Public Procurement and Asset Disposal Act, 2015 (the Act), the Authority initiated a procurement review on subject tender. Pursuant to Section 38 (2) (a) of the Act, the Authority vide letter Ref: PPRA/CIED/4/30/65 VOL. IV (65) shared the preliminary review report with Kenya Bureau of Standards to respond to the issues raised therein, after which we will prepare the final review report.

We therefore clarify that the Authority has neither prepared its final report nor forwarded the said report to the National Assembly.

We hope that the above explanation has offered adequate information on the subject matter.

Yours *Sincerely,*


M. J. O. JUMA, MBS
DIRECTOR GENERAL

Ref: PPRA/CIED/4/30/65 VOL. IV (65)

21st April, 2020

The Managing Director
Kenya Bureau Standards
P.O Box 54974-00200
NAIROBI

**REPORT ON CORRUPTION AND IRREGULARITIES IN TENDER NO: KEBS
/T010/2019-2020 FOR PROVISION OF PRE-EXPORT VERIFICATION OF
CONFORMITY(FVOC) TO STANDARDS FOR MOTOR VEHICLES, MOBILE
EQUIPMENT AND SPARE PARTS**

1.0 Background

This report is in relation to the complaint to the Authority received from a whistle blower dated 20th December, 2019 and Niavana Agencies Limited dated 2nd March 2020 concerning the above subject matter.

The complainants alleged that:

1. You advertised for the above two tenders on 5th December, 2020
2. Kenya Bureau of Standards has two running contracts for the same services which have not expired
3. The two service providers have so far been doing a good job to date
4. The intent of the procurement is to enlarge the contracts with new service providers for kickbacks.

The Authority engaged Kenya Bureau Standards (KEBS), the Procuring Entity (PE) vide a letters Ref: PPRA/CIED/4/30/65 VOL. IV (49) dated 13th January, 2020, Ref: PPRA/CIED/4/30/65 VOL. IV (56) dated 13th February, 2020 and Ref: PPRA/CIED/4/30/65 VOL. IV (61) dated 24th March, 2020.

The Procuring Entity (PE) responded and submitted the documents vide letters Ref: KEBS/T009 & T010/2019-2020 dated 18th February, 2020, KEBS /T009/2019-2020 dated 5th March 2020, Ref: KEBS /T010/2019-2020 dated 30th March 2020.

The PE submitted the following documents:

1. Consolidated Procurement Plan for Fiscal Year (FY) 2019/2020
2. Annual Budget for FY 2019/2020
3. Tender Invitation Notice
4. Blank Tender Document that was issued to bidders
5. Appointment letter of the Tender Opening Committee
6. Tender opening register
7. Minutes of tender opening
8. Original tender documents submitted by bidders
9. Appointment letters of tender evaluation committee
10. Technical evaluation report

11. Letters inviting successful bidder for financial opening
12. Financial opening register
13. Financial Opening Minutes
14. Financial Evaluation report
15. Due diligence report
16. Professional opinion
17. Notification letters of award
18. ISO/IEC 17020:2012 Standard
19. Current contracts of the subject tender

The Authority reviewed the documentations and the response that were submitted by the PE in regard to the subject tender. The following are the findings and observations that were made during the review of the subject procurement.

2.0 Findings

2.1 Procurement Plan

The procurement of enlargement of provision of pre export verification of conformity (PVeC) standards for motor vehicles, mobile equipment and spare parts was not in the Annual Procurement Plan 2019-2020.

2.2 Procurement Requisition

The procurement of the required services by the PE was initiated without a procurement requisition by the User Department to indicate estimated cost; brief description of the standards services being procured, the countries where the services were needed by the PE and the terms of reference of the services.

2.3 Procurement Method

The PE used a combination of international tendering and Request for Proposal (RFP) as the choice of procurement method which was not proposed in the procurement plan.

2.4 Preparation of Tender Document

The PE prepared the bidding document using a Standard Tender Document for services. The document had the preliminary, quantifiable technical and financial evaluation criteria, schedule of requirements and the award criteria.

Preliminary examination was specified on clause 2.20, evaluation and comparison of tenders was on clause 2.22 and award criteria specified on clause 2.24 of the tender document. These were used for the determination of successful tenders by awarding the tender to the tenderers who had the highest Financial Score up to a maximum of 4 tenderers who met the minimum Technical Score of 65 points

Amendment of the tender document was done using Addendum No. 1 dated 12/12/2019 which amended clause 1.5 on tender submission date from Tuesday 24th December to 7th January 2020, Addendum No.2 dated 18/12/2019 which clarified that sub-contractors were also required to submit a sworn statement on conflict of interest and Addendum No 3 dated 03/01/2020 which amended

Technical proposal criteria No. 2.22.1, motor vehicle inspection centers in Japan from twenty-one (21) to fourteen (14) stations.

Clarifications were made by Addendum No.1 on Clauses Nos 2.1 (i), (ii) & (iii) on the eligibility of tenderers, 2.11.2(a) 10 & 11 of Preliminary Evaluation and 2.11.2(b)1 (ii) & 4(ii) of Technical Evaluation.

2.5 Invitation to Tender

Invitation to Tender Notice for Tender No. KEBS/010/2019-2020: Provision of Pre-Export Verification of Conformity (PVoC) to Standards for Motor Vehicles, Equipment and Spare Parts was advertised in *mygov Newspaper* of Tuesday 03/12/2019. The deadline for the submission of tender documents by the bidders was Tuesday 24/12/2019. Tender documents detailing the requirements were to be got from the Procurement Office KEBS Centre or downloaded from KEBS website www.kebs.org upon payment of a non-refundable fee of Ksh. 10,000.00.

The invitation to tender indicated the name and address of the procuring entity, the tender number assigned to the procurement proceedings, a brief description of the services being procured, explanation of when the tenders shall be opened, a statement that those submitting tenders or their representatives may attend the opening of tenders and the time provided for submission of tender which was exclusive of the day of the tender notice was from 3rd December 2019 to 7th January 2020.

2.6 Opening of Tenders

Tender Opening Committee consisting of the following persons was appointed vide a letter Ref No KEBS /T009 & T010/2019-2020, dated 06/01/2020 signed by the Managing Director, Lt. Col. (Rtd) Bernard N. Njiraini.

Name	Role
1. Mr. Ahmed Antar	Chairperson
2. Mr Hesnon Ouma	Member
3. Mr. John Kabue	Member
4. Ms Elizabeth Etsabo	Member
5. Mr Kevin Kinoti	Assistant Secretary
6. Mr. John Nzembi	Secretary

The technical proposals for Tender No. KEBS/010/2019-2020: Provision of Pre-Export Verification of Conformity (PVoC) to Standards for Motor Vehicles, Equipment and Spare Parts was closed and opened on Tuesday 7th January, 2020 at 12.00 p.m.

During the opening the following were recorded in the Tender Opening Register and Minutes indicating that three (3) bidders responded to the tender as shown in Table 1 below:

Table 1: The name of the bidders who submitted Technical Proposals

Bid Number	Name of Bidder	Address	Bid Security
B1	EAA Company Limited	P.O. Box 1-2-5 Rinkan Yamao-Shi Kanagawa-Ken Japan 242-003	USD 200,000 from MUFG Bank Ltd
B2	Nippon Inspection Centre Limited	P.O. Box 374-0035, AOG CHO Japan	USD 200,000 From African Banking Corporation Ltd
B3	Auto Terminal Japan Limited	P.O. Box 1-17-69 Shiohama Kisarazu, Japan	USD 200 0000 from MUFG Bank Ltd

The tender documents were serialized and coded as No 1, 2 & 3. The tender opening minutes were signed by all members of the tender opening committee members.

2.7.0 Evaluation of Tenders

Tender Evaluation Committee consisting of the following persons was appointed vide a letter Ref No KEBS /T010/2019-2020 dated 07/01/2020 signed by the Managing Director, Lt. Col. (Rtd) Benard N. Njiraini

Name	Role
1. Mr. Bernard Ngunyo	Chairperson
2. Mr Zachary Lukorito	Member
3. Mr. Charles Mugambi	Member
4. Ms Francis Marwa	Member
5. Mr John Karimi-	Member
6. Mr. Justus Muindi	Secretary

Evaluation of the Technical and Financial proposals were done immediately after opening the tender using the Preliminary, Technical and Financial Evaluation criteria set forth in the tender document

2.7.1 Preliminary Evaluation

The criteria for preliminary evaluation was contained under clause 2.11.2 (page 18-20) of the tender document.

The comparison of the PE'S preliminary evaluation results against the authority's review and comments was done as indicated in Table 2 below:

Table 2: Preliminary Evaluation

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N	Evaluation Criteria	B1	B2	B3	B1	B2	B3
1	Copy of Cert of Incorporation for the tenderer certified by a Notary public	√	x	√	√	X	x -Attached three (3) certificates for incorporation for Japan, United Arabs Emirates and United Kingdom. However, the nature of business in United Kingdom amounted to conflict of interest ie the certificate indicated that the business deals in motor vehicle repairs, contrary to clause 2.11.2 of the tender document.
2	A list of Directors giving full name, passport number, nationality, email address and daytime telephone numbers for each director	√	x	√	√	X	√
3	Copy of passport or identification for each of the listed directors	√	x	√	√	X	√
4	Copy of current Tax Compliance Certificate or equivalent document issued by the competent authority in the country where the company is registered. The	√	x	√	√	X	√

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N	Evaluation Criteria	B1	B2	B3	B1	B2	B3
	certificate must be certified by a notary public.						
5	Organizational chart: the chart should clearly identify the persons responsible for ✓ inspection management ✓ ICT services ✓ Quality assurance/ risk management ✓ Monitoring of sub-contractors where applicable in provision of the tendered services.	√	x	√	√	X	√
6	Copy/ies of certified by a notary public of licenses issued by the relevant government authority to do business in Japan	√	x	√	√	X	x -The Bidder attached Certificate No.7073 dated 31/3/2008 for Japan which deals with motor vehicle resolutions maintenance business instead of motor vehicle inspection license, this amounted to conflict of interest contrary to clause NO.2.11.2
7	Copies of licenses issued by a	√	x	√	UK-the certificate	X	x- In United Arabs

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N o	Evaluation Criteria	B 1	B2	B 3	B1	B2	B3
	relevant Government authority issued either to the tenderer or in case of subcontracting to the subcontractor to do business in United Arabs Emirates, United Kingdom, Singapore, Thailand and South Africa				attached for EAA UK inspection company no 11808561 (nature of business/activity not shown) • Dry Docks Auto company certificate No 100538 31 nature of business (maintenance & repair of motor vehicle) • Legget Engineering Company certificate No.020208 44, no sub-contract agreement submitted and nature of business was repair of other equipment. These two amounted to conflict of interest contrary to clause NO. 2.11.2 In South Africa-the attached registration certificate no.2019/228336/07 issued by the companies and property commission to Automotive Consultants SA (PTY) , but there		Emirates the bidder attached certificate for Pal Auto Garage for motor vehicle repairs, this amounted to conflict of interest contrary to clause NO 2.11.2 In Thailand the bidder attached certificate of incorporation for W Smart Co Ltd, but there was no legal binding relationship between ATJ and W Smart Co Ltd. In United Kingdom-the bidder attached license for motor vehicle repairs this amounted to conflict of interest contrary to clause NO.2.11.2 The bidder also attached copies of registration of incorporation instead of licenses in the following inspection centers;

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N	Evaluation Criteria	B1	B2	B3	B1	B2	B3
					was no legal binding relationship document between the bidder and the sub-contractor. (No sub contract agreement attached) In Thailand there was no certificate of registration or license attached, but the bidder attached subcontract agreement whose contract dates were conflicting i.e the preparation date was shown as 01/12/2020 while contract signing was done on 19/12/2019.		i) Initial Trade Name Reservation Certificate No 2213125 for Auto Terminal Japan in United Arabs Emirates. ii) Agreement between Roads and Transport Authority (Dubai) and Pal Auto Garage made on 13/8/2012 for Pal Auto Garage to provide inspection services for vehicles repair workshops as partners of technical inspection United Arabs Emirates instead of a license
8	Duly completed, signed and stamped Confidential Business Questionnaire	√	x	√	The bidder attached a Confidential Business Questionnaire signed on 24/12/19, but not stamped	X	x-The bidder Attached a Confidential Business Questionnaire signed on 20/12/19, but not stamped as per the requirement. Noted: The names of Directors in the list of

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N	Evaluation Criteria	B1	B2	B3	B1	B2	B3
							directors attached is not the same as the ones contained in the Confidential Business Questionnaire.
9	Evidence of current accreditation to ISO/IEC 17020:2012- Conformity assessment- Requirements for the operation of various types of bodies performing inspection (Type A accreditation) The scope of the accreditation must cover motor vehicle inspection requirements.	√	x	√	√	X	√
10	Verifiable proof that the company has financial strength to perform the contract. For the purpose of this tender the company must have handled roadworthiness inspection of vehicles with a minimum annual turnover of USD seven (7) million for the last three (3) years. Approved audited accounts for the last three years certified by a notary public	√	x	√	√	X	x- the bidder attached a table showing its annual Turnover as follows; 2017- 4 million USD 2018 -6.9 million USD 2019 - 10 million USD This is an indication that the bidder has not handled roadworthiness inspection of vehicles business with a minimum of annual turnover of USD seven (7) million in each

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N	Evaluation Criteria	B1	B2	B3	B1	B2	B3
							year for the last 3 years.
11	The tender shall include a sworn statement made before a commissioner for oaths for the following: i. That the company has not filed for bankruptcy or is not receivership ii. That the company has not had any contract with KEBs terminated because of deficiencies in similar conformity assessment services wrong doing by the company or other similar deprecating causes in the last 9 years. iii. That except for client-provider relationships the tenderer or its directors or associated companies is not associated with any business that may lead to a conflict of interest and with another company proposing in this tender. Note: For purposes of this tender, business that may lead to conflict of interest include but not limited to repair works, exportation, importation, shipping and freight logistics	✓	✗	✓	Addendum NO 2 dated 18/12/2019 clarified that the sub-contractors were also required to attach a sworn statement on conflict of interest.	Addendum NO.2 dated 18/12/2019 clarified that the sub-contractors were also required to submit sworn statements on conflict of interest. The bidder did not attach any evidence of a sworn statement on conflict of interest submitted by any of its subcontractors	Addendum No. 2 dated 18/12/2019 clarified that the sub-contractors were also required to submit sworn statements on conflict of interest.

Comparison		PE's Evaluation			PPRA Review and Comments		
S/N	Evaluation Criteria	B1	B2	B3	B1	B2	B3
	business. iv. That both the tender and its legal representatives are free of any impediment to contract with Kenya Bureau of Standards or the Government of Kenya and are not in any material legal dispute v. That the tenderer has given full disclosure of its directors and associated companies for purposes of (iii) above.						
12	The tender must attach a copy of the receipt for purchase of this tender document	√	√	√	√	√	√
13	Tender security	√	√	√	√	√	√
Responsive(R) or Non Responsive(NR)		R	NR	R	NR	NR	NR

Key

- √ - Responsive (R) to the preliminary requirement
X- Non Responsive (NR) to the preliminary requirement

Observations

Based on the PPRA's analysis on table 2 above non-of the bidders passed the preliminary evaluation stage to proceed to the technical evaluation stage.

However the Evaluation Committee evaluated B1 and B3 as responsive at preliminary evaluation to proceed to the technical evaluation stage.

2.7.2 Technical Evaluation

Tender Evaluation Committee prepared Evaluation Report on Technical Proposals and signed on 11/01/2020 which indicated that B1 and B3 were responsive and proceeded to the financial evaluation stage. Individual evaluators conducted independent evaluation of the tenders as indicated in the individual scores.

Table 3: Findings of Technical Evaluation

Comparison		PE's Observations			PPRA Comments	
S/No	Evaluation Criteria	Evidence	B1	E3	B1	B3
1	Tenderer's Presence and Location, to provide inspection services United Kingdom two (2) centers Japan fourteen (14) centers United Arabs Emirates one (1) center Thailand one (1) center South Africa (1) center Singapore one (1) center	a) Copies of Title/lease/tenancy for inspection center certified by an attorney for each center	The bidder did not provide physical presence of the subcontractors in United Kingdom, Thailand, South Africa, United Arabs Emirates and Singapore	The lease agreement provided for centers in United Kingdom are self-contradictory. To be varied during due diligence. Agreement with LV shipping expired in 2019 and has not provided title, lease and tenancy agreement for Singapore and South Africa	1. The bidder did not provide physical presence of the subcontractors in United Kingdom, Thailand, S. Africa, and UAE. 2. Only eleven (11) out of the required fourteen (14) inspection centers in Japan had ongoing lease contracts certified. The remaining eleven (11) centers had expired lease contracts. The lease agreements that were not legally binding because they were not signed by both parties are; 1. Kawasaki from 01/10/2015 to 30/9/2020 2. Osaka KLC from 01/02/2019 to 31/3/2020 3. Hakata Koun from 01/4/2019 to 01/3/2020. The following centers had indefinite renewable contracts	The lease agreement provided for centers in United Kingdom are contradictory. No evidence of title/ lease / tenancy by ATJ Auto Service in the following three (3) inspection centers: 1. PAL Auto Garage Compound Al Khabeesi in United Arabs Emirates 2. Vehicle Road Worthy Centre Durban, trading as Road Worth Test Centre in 131 Moore Road Durban in South Africa 3. STA Inspection Pte Ltd 302 Sin Ming Road in Singapore 4. Thailand attached office lease agreement instead of inspection center and there was no evidence of legal binding agreement between the Bidder and the sub-contractor

Comparison		Evidence	PE's Observations		PPRA Comments	
S/No	Evaluation Criteria		B1	B3	B1	B3
					4. Baraki 10/7/2019	
					5. Noda Aquos 01/4/2019	
					6. Nagoya Nagse 15/5/2014 to 30/5/2019	
					7 Nagoya Meiko 01/5/2011 to 01/5/2013	
					8. Kobe Sannomiya 01/5/2011 to 01/5/2013	
					9 Maebashi 10/7/2012 renewable indefinitely	
					10. Nagoya PL 01/5/2011 to 01/5/2013	
					11 Hitachinaka 05/4/2010	
					The following leases had expired, 1. Yokohama centre 01/7/2008 for 5 years expired in 2013	
					2. Kisrazu 01/12/2016 to 30/11/17 extended to 01/12/2015 to 30/11/17	

Comparison		Evidence	PE's B1	Observations E3	PP's - Comments	
S/No	Evaluation Criteria				B1	E3
					3.Kobe 01/12/2016 to 30/11/17	Rokko to
					4. Kobe Port Island 01/12/2016 to 30/11/17	to
					5. Kanda 01/12/2016 to 30/11/17	
					6. Nagoya 01/12/2016 to 30/11/17	
					7. Shin Moji 01/12/2016 to 30/11/17	
					8. Hakata 01/12/2016 to 30/11/17	
					9. Keihin Kobe 25/01/2016 to 24/01/2017	
					10. Hakata ATL 01/12/2016 to 30/11/2017	
					11. Kobe Sumita 30/9/2016 was a MoU.	
					Lease agreements for Auto Motive Consultants SA (PTY) Ltd and Legget Engineering Limited one of the inspection center in United Kingdom provided only cover	

Comparison		PE's Observations		PPRA Comments	
S/No	Evaluation Criteria	Evidence	B1	B3	B1 B3
					page Lease agreement for Daw automobile assembly inspection center in UAE not signed and expired on 29/11/2019, provided only form of contract. Lease agreement for STA Inspection Pte Ltd in Singapore provided only the cover page.
	b) Availability of inspection equipment to test all parameters specified in in KS 1515 and radiation. Bidder to score only where equipment in the center cover all requirements				Inspection equipment in Japan had no sound meter tester United Kingdom had no sound meter tester, side slip tester & jack/ pit United Arabs Emirates no sound meter tester, Thailand no brake tester, emission tester and side slip tester South Africa had no emission tester and Singapore had no sound meter tester
	c) Evidence(purchase documents or lease contracts) of ownership or lease of the inspection Equipment for each center	The bidder did not provide evidence of ownership/lease of the inspection equipment in United Kingdom, South Thailand, South Africa, United Arabs Emirates	Responsive	The bidder did not attach any evidence of ownership/lease of inspection equipment in Japan in terms of purchase documents or lease contracts, the Bidder attached calibration certificates for Tokyo Bay Shiohama, Tokyo Bay Mokoziminato, Kobe, Tokai and Nagoya inspection centers.	

Comparison		PE's Observations		PE's Comments	
S/No	Evaluation Criteria	Evidence	PE's B1	PE's B1	Comments B3
2	Additional Accreditation of scope of ISO 17020:2012 - Machinery and Mobile equipment Radiation detection Covers inspection centers	Responsive	Responsive	Accreditation did not cover machinery & equipment and radiation inspection	South Africa, Thailand and Singapore inspection centers. ISO 17020:2012 No. RIB0013 which was issued on 26/3/2019 by Japan Accreditation Board covered the following fourteen 14 centers in three (3) inspection sites in Japan Yokohama Inspection site covering; 1. Mitsusoko J gouch 2. Daikokufuto 3. Tsurumi-ku 4. Yokohama shi 5. Kanagawa-ken Kawasaki Inspection Site covering; 6. Nippon Express Kawasaki yard 7. Higashinojms8. Kawasaki-ku 9. Kawasaki shi, 10. Kangawa Kisarazu Inspections 2 The bidder did not attach any evidence of ownership or lease of the inspection equipment in terms of purchase documents or lease contracts in South Africa ISO 17020:2012 Certificate No. 109 issued on 16/7/2019 by International Accreditation New Zealand is not for machinery, mobile equipment and radiation detection and covered only eleven (11) inspection centers in four areas in instead fourteen (14) centers that were required in Japan and also did not cover other inspection centers in United Kingdom, Arabs Emirates, Thailand South Africa and Singapore

Comparison		PE's Observations		PPRA Comments	
S/No	Evaluation Criteria	Evidence	B1	B3	B1 B3
3	The tenderer's experience in providing worthiness inspection for vehicles in similar magnitude on behalf of regulatory authorities.	a) Certified copies of letters of award, testimonials or certificates of completion of road worthiness inspection contract with information from regulatory authorities			site covering; 11. ECI Yard 12. Shinmundo 13. Kisarazu shi 14. Chiba Further, the certificate did not cover other inspection centers in United Kingdom, United Arabs Emirates, Thailand South Africa and Singapore a) Responsive a) The bidder attached a pre-shipment agreement with New Zealand Ministry for Primary Industry dated 18/01/2011, letter of award by KEBs dated 20/12/2011, notice of Trade Board of Jamaica, Zambia Bureau of Standards and a testimonial by Tanzania Bureau of Standard. But all the documents were not certified. b) No evidence of having done 60,000 units per year for the last three (3) years But, attached Motor vehicle worthiness inspection for KEBs of 14,826 units during a contract that commenced from
		b) Total number of vehicles inspected for roadworthiness under the contracts per year in all the contracts if more than 60,000 units	Responsive	Responsive	b) The attached sample of report Ref EAA/TBS/19/01 8 of inspected 3291 number of vehicles for Tanzania dated

Comparison		PE's Observations		PE's Comments	
S/No	Evaluation Criteria	Evidence	B1	B3	B1
4	Qualification and the experience of the company's personnel to be utilized in inspection services 15 marks	a) Evidence of Diploma in automotive engineering (or its equivalent) and driving license for inspectors per center(10marks)	Responsive	Responsive	B3 16/01/2012 for three (3) years. Attached a combination of motor vehicles inspected from 2009 to 2019 a) The bidder attached list of Diploma holders in Automotive Engineering for the following persons, Osamu Nishirara, Hiroki Tsuruguchi, Ryosuke Kurosaki and Noriyuki Kuwajima, But the documents/certificates attached were mechanic licenses.
		b) Evidence of five-year experience for at least 20 inspectors-5 subject to centers per country as provided in 1 above(3marks)	Responsive	Responsive	b) Responsive
		C) Evidence of qualification competence and experience of personnel performing supervisory tasks	Responsive	Responsive	Responsive

Comparison		PE's Observations		PPRA Comments	
S/No	Evaluation Criteria	Evidence	PE's	Observations	PPRA Comments
		(2marks)	B1	B3	B3
5	The tenderer shall describe information technology resources and demonstrate how it will deploy the resources to achieve the following objectives: i). storage of records and documents from resulting conformity assessment activities, ii). Process inspections and retrieve for transmission COR/COC data in text, Excel and XML format iii). Enable the client's designated personnel to view records of inspection/certification. A reference site should be provided for verification of the ICT system. (The tenderer to provide any access credentials and password required for verification)	• Evidence of database capable of storage of records and documents resulting from inspection activities. Tenderer to provide graphical representation of the system architecture and the name of the database management system (1 mark) • Evidence of ability to retrieve and transmit data (Tenderer to provide workflow diagram/s, with instructions for screenshots for application for inspection, of processing of inspection and generating COC/COR data in text, Excel and XML format (5marks) • Enable the client's designated personnel to view and download records of inspection/certification (2 marks)	Responsive	Responsive	Responsive
6	A detailed description/demonstration of the Risk Management system employed by the	Brief explanation supported by copies of roadworthiness inspection documents	Bidder has not information cases on successfully	The bidder did not provide copies of road worthiness assessment.	The bidder attached a brief explanation on an intervention arising from predetermined risk profile that they successfully

Comparison		PE's Observations		PE's Comments	
S/No	Evaluation Criteria	Evidence	PE's	Observations	Comments
	company in conformity assessment and how the system will be used to assist inspection services proposed. A reference site should be provided for the verification of the Risk Management System capacity (The tenderer to provide any access credentials and passwords required for verification	for consignment whose shipment was prevented following successful profiling in the last 3 years	B1	B3	B1
7	Professional Membership	Attach copy of a membership certificate to a professional body/association regulating the conduct of inspection	Responsive	The bidder did attach a certified copy to a profession body/association regulating conduct of inspections bodies	Responsive The bidder did not attached a certificate of membership of professional body/association regulating the conduct of inspection as indicated in membership certificate Number 7073 from Hyogo Automobile Service Promotion Association as from 31/3/2008 translated on 09/12/2019
				inspection documents for consignments whose shipment was prevented following successful profiling in the last 3 years	Roadworthiness for used vehicles inspection dated 15/4/2019. prevented shipment of non-conforming vehicles without evidence of the number of years.

In view of our findings shown in Table 3 above, it is not clear how the bidders were scored by the evaluators to the extent that they (B1 & B3) met the pass marks yet they did not qualify in respect to the parameters highlighted in Table 3 above to proceed to financial evaluation.

2.8 Opening of Financial Proposals

The Financial Proposals for B1 and B3 were opened on 15/01/2020 by the Evaluation Committee who recorded the financial proposals in the opening minutes as indicated in Table 4 below;

Table 4: Vehicle Inspection Fee

	B1	B3	Local Currency for Conversion
Country	USD Fee		
Japan	155.00	155.00	JYP
United Kingdom	225.00	225.00	GBP
United Arabs Emirates	192.00	192.00	AED
South Africa	225	225	ZAR
Thailand	250.00	250.00	THB
Singapore	250.00	220.00	SPD

Table 5: Inspection Charged to the Exporter (Used Motor Vehicle and Spares)

Bid No	Percentage of FoB	Minimum	Maximum	Royalty Fee of the Income	Royalty to KERS Monthly Basis
B1	0.50	265	2,700	31	45
B2	0.70	265	2,700	32	45

2.9.0 Evaluation of Financial Proposals

Financial Evaluation was done using formulas to determine the financial scores. Any fee above the maximum percentage of Free on Board (FoB) allowable was deemed to be non-responsive. Any non-responsiveness in either verification fees or royalties should have render the entire financial bid non-responsive.

Tender Evaluation Committee prepared and signed Financial Evaluation Report on 14/01/2020 as shown in Table 6 below:

Table 6: Evaluation of Financial Proposal

Bidder No.		B1	B3																								
FR 1	Inspection of spare parts	100%	100%																								
FR 2	Inspection of Used Motor Vehicles score	<table><tr><td>Japan</td><td>100%</td></tr><tr><td>UK</td><td>100%</td></tr><tr><td>UAE</td><td>100%</td></tr><tr><td>Thailand</td><td>100%</td></tr><tr><td>South Africa</td><td>100%</td></tr><tr><td>Singapore</td><td>88%</td></tr></table>	Japan	100%	UK	100%	UAE	100%	Thailand	100%	South Africa	100%	Singapore	88%	<table><tr><td>Japan</td><td>100%</td></tr><tr><td>UK</td><td>100%</td></tr><tr><td>UAE</td><td>100%</td></tr><tr><td>Thailand</td><td>100%</td></tr><tr><td>South Africa</td><td>100%</td></tr><tr><td>Singapore</td><td>100%</td></tr></table>	Japan	100%	UK	100%	UAE	100%	Thailand	100%	South Africa	100%	Singapore	100%
Japan	100%																										
UK	100%																										
UAE	100%																										
Thailand	100%																										
South Africa	100%																										
Singapore	88%																										
Japan	100%																										
UK	100%																										
UAE	100%																										
Thailand	100%																										
South Africa	100%																										
Singapore	100%																										
	Total score for inspection fee	9.7	9.9																								
FR 3	Royalties spare parts	97%	96.9%																								

	Royalties Used Motor Vehicles and other Equipment	100%	100%
	Total score for royalties' fee	10	9.8
Financial Scores		19.7	19.7
Technical score		71.0	70.9
Financial score		19.7	20.0
Total Scores		90.7	90.9

The successful tenders were determined by awarding the tender to the tenderers with the highest Financial Score who met the minimum Technical Score of 65 points. Individual evaluators conducted independent evaluation of the tenders as indicated in the individual scores.

Observations

The PE should clearly explain the minimum allowable percentage royalty fee used to determine responsiveness of the financial proposals especially for Bidder No. 1.

It is also noted that the evaluation committee in their financial evaluation report dated 15/01/2020 observed that '...Singapore was not mentioned in the tender document and the committee evaluated Singapore differently.' The PE should clearly explain whether this was taken into consideration or not when calculating the final financial scores to determine the winning bidder.

Recommendations by the Evaluation Committee

The Committee recommended tender award for Tender No. KEBS/010/2019-2020 For Provision of Pre-Export Verification of Conformity (PVoC) Auto Terminal Japan Limited to Standards for Motor Vehicles, Equipment and Spare Parts to B1 EAA Company Limited and B3 Auto Terminal Japan Limited who scored overall of 90.7 and 90.9 respectively out of a maximum of 100 points subject to due diligence.

2.10 Notification of Bidders on Technical Results

Notification letters of technical evaluation results Ref: KEBS/T010/2019-2021 dated 13/01/2020 were simultaneously issued to successful bidders, B1- EAA Company Limited, B3- Autoterminal Japan Ltd and unsuccessful bidder B2- Nippon Inspection Center Limited was signed by Lt. Col. (Rtd) Bernard Njiraini. The unsuccessful bidder was given reasons for the rejection of their tender.

2.11 Due Diligence

Due diligence was done by the Evaluation Committee on B1 and B3 in Japan from 8/02/2020 to 27/02/2020. The Committee prepared and signed a due diligence report on 26/02/2020.

The Committee recommended tender award for Tender No. KEBS/010/2019-2020 for Provision of Pre-Export Verification of Conformity (PVoC) to Standards for Motor Vehicles, Mobile Equipment and Spare Parts to B1- EAA Company Limited and B3- Autoterminal Japan Limited

2.12 Professional Opinion

Secretariat comment and professional opinion was prepared and signed on 16/03/2020 by Josphine Mwakathi, the Acting Head of Procurement, whose opinion was in agreement with the Evaluation Committee recommendation that contract for *Enlargement for Provision of Pre-Export Verification of Conformity (PVoC) to Standards for Motor Vehicles, Mobile Equipment and Spare Parts* to be awarded to B1- M/s EAA Company Limited and B3- M/s Autoterminal Japan Limited.

2.13 Notifications of Award

Notification letters of award Ref: KEBS/T010/2019-2021 dated 16/3/2020 were simultaneously issued to successful bidders, B1- EAA Company Limited, B3- Autoterminal Japan Ltd and unsuccessful bidder B2- Nippon Inspection Center Limited was signed by Lt. Col. (Rtd) Bernard Njiraini. The unsuccessful bidder was given reasons for the rejection of their tender.

3.0 SUMMARY OF FINDINGS AND OBSERVATIONS

The following were the observations that were made after the procurement review:

1. The Procurement Plan 2019/2020 was prepared on 02/01/2020 by Ms Josphine Mwakathi and approved on 02/01/2020 by Mr B. N Njiraini after the invitation to tender on 03, 12, 2019 contrary Section 69 (2) of the Act and was not approved by the National Standard Council (NSC) as a requirement in the procurement planning process. This contrary to Regulations 20 (5) of Public Procurement and Disposal Regulations 2006 (PPDR 2006).
2. The approved procurement plan did not have an estimated value and an indication of the budget available and sources of funding and the choice of procurement method for enlargement of provision of pre- export verification of conformity (PVoC) to standards for motor vehicles, mobile equipment and spare parts as provided in Section 53(10) of the Act as required by Regulations 21 (1) (f) and (g) of PPDR 2006.
3. The procurement of the required services was not based on indicative or approved budgets contrary to section 53(5) (8) of the Act and Regulation 3 of the Public Procurement and Disposal (Amendment) Regulations, 2013.
4. Procurement of enlargement of provision of conformity (PVOC) to standards for motor vehicles, mobile equipment and spare parts was done without a purchase requisition contrary to Section 73 of the Act and Regulations 22 of Public Procurement and Disposal Regulations, 2006.
5. The standard tender document contained information that did not allow competition among potential bidders who may have wished to submit their applications as the PE disclosed the required rates to bidders in the Financial Evaluation Criteria. This led the bidders to quote exactly the same rates as indicated in the Financial Opening Minutes and this contravened Section 70(6) of the Act.
6. Addendum No 1 & 2 were signed for the Managing Director by unnamed staff without evidence of written letter to delegate the authority contrary to Section 69(4) of the Act.
7. The PE did not state the selection procedure in the Request for Proposals and as such this was contrary to Section 124(1) of the Act.

8. There was no declaration in the invitation to tender that the tender is only open to those who meet the requirements for eligibility and requirement of serialization of pages by the bidder for each bid submitted this was contrary to Section 74(1)(h) and (i) of the Act
9. The PE charged non - refundable fees of KES. 10,000.00 instead of KES. 1,000.00 for obtaining tender documents. In your letter Ref: KEBS/TO19/2017-2020(1) dated 17/04/2020, you tried to justify the same, however this is still contrary to Regulation 11(1) of the Public Procurement and Disposal (Amendment) Regulations, 2013.
10. During the tender opening, the committee members did not Record:
 - a) The number of pages of the bidding documents as provided in Section 78(5) of the Act.
 - b) The total tender prices of USD 38,307,150.00 by B1 EAA Company Limited and USD 17, 382,048.00 by Autoterminal Japan Limited which were in the Form of Tender were not recorded during the opening of Financial Proposals as required in Section 78(6)(b) of the Act
 - c) Initialize each page of the opening minutes as required in Section 78(11) (a) of the Act.
11. Based on the analysis as shown in Table 2, all the bidders were non-responsive as per the criteria set forth in the tender document and addendum issued of 18/12/2019 contrary to Section 79(3)(b) of the Act. However, the Evaluation committee recommended that B1 and B3 proceed to technical evaluations stage contrary to clause 2.22.2 of the tender document and Section 79(1) of the Act
12. In view of the findings as shown in Table 3 above, B1 and B3 did not meet most of the technical parameters which were set forth in the tender document. However, the Evaluation Committee recommended the bidders to proceed to financial evaluation stage contrary to clause 2.22.1 of the tender document which stated that *"Tenderers who do not receive at least 65 points out of a maximum 80 points in the evaluation of their technical proposals shall be disqualified and their proposals returned unopened"* This was also contrary to Section 79(1) of the Act.
13. Financial Proposals were opened by the Evaluation Committee instead of the Tender Opening Committee contravening sections 46 and 78 of the Act
14. The tender was not evaluated as per the clarification on Question 6 of Addendum No. 2 dated 18/12/2019 which clarified that the sub- contractors were also required to submit sworn statements made before a commissioner of oaths as per clause 2.11.2 of the tender document on Preliminary Evaluation Criteria No. eleven (11).
15. PAL Auto Garage as an inspection center for B3 in United Arabs Emirates provided a registration certificate for motor vehicle repair works which amounted to a conflict of interest as stated in clause 2.11.2 of the tender document on Preliminary Evaluation Criteria No. eleven (11) (iii) (page 19) which stated that *"That except for client-provider relationships the tenderer or its directors or associated companies is not associated with any business that may lead to a conflict of interest or with another company proposing in this tender."*
16. Financial Evaluation Criteria required that the form of tender be completed and must be duly signed and stamped. However, B1 Form of Tender OF USD 38,307,150.00 signed by Toyohiko Hashino on 24/12/2019 and B3 Form of Tender of USD 17, 382,048.00 was signed by Mamoru Fujie, the Chief Executive Officer were not stamped

17. The Committee recommended tender award for Tender No. KEBS/010/2019-2020: Provision of Pre-Export Verification of Conformity (PVoC) to Standards for Motor Vehicles, Equipment and Spare Parts to M/s EAA Company Limited. However, M/s EAA Company Limited scored 97% (the percentage of the royalty fee on spare parts) which was not clear whether it met the minimum allowable percentage or not.
18. The notifications of letter to the unsuccessful bidder did not disclose the names of the successful bidders and the charges for inspection contrary to Sections 87(3) and 126(4) of the Act.

Taking cognizance of the above findings and observations, it is in the opinion of the Authority that the subject procurement did not meet the requirements set forth in the tender document, Public Procurement and Asset Disposal Act, 2015 and the Regulations issued under the repealed Public Procurement and Disposal Act 2005 pursuant to Section 24 of the Interpretation and General Provisions Act, Cap 2 of Laws of Kenya.

In view of the foregoing you are required to respond to the issues raised in this letter not later seven (7) days from the date of this letter, failure to which the Authority will finalize this report without your input and submitted it to other relevant government agencies for further action as per the provisions of Section 38 (1) (c) of the Act.


Thomas Otieno
For DIRECTOR GENERAL

Copy to:

1. The Attorney General
Office of the Attorney General
Sheria House, Harambee Avenue
NAIROBI
2. The Secretary/Chief Executive
Ethics and Anti-Corruption Commission
Integrity Centre
P.O. Box 61130 – 00200
NAIROBI
3. The Director of Public Prosecutions
Office of the Director of Public Prosecutions
NSSF Building, Block 'A' 19th Floor
P. O. Box 30701 – 00100
NAIROBI
4. The Director
Criminal Investigations
Mazingira House, Kiambu Road
NAIROBI

5. The Principal Secretary

Ministry of Industrialization, Trade & Enterprise Development

NSSF Building Block 'A'

P. O. Box 30418 -00100

NAIROBI

ANNEX 6:

BUNDLE OF DOCUMENTS

PRESENTED BY DR. ISAC KALU

Annex 6:

Balance of documents

Presented by Dr. J. K. K.

APPENDIX 5



08 February 2019

The Visa Officer
British High Commissioner
Nairobi,
Kenya

Dear Sir;

Re: Invitation for Kenya Government officials.

Mr. Fredrick Odhiambo Passport No C039697
Ms. Catherine Mwasho Passport No A2038976
Mr Brian Thuku Passport No A2456081
Mr Ngeno John Kibyegon Passport No BK043151

We are an international vehicle inspection company and contracted by the Kenya Bureau of Standards to carry out pre shipment inspections on all vehicles and machineries that are exported from the United Kingdom to Kenya.

Kenya Bureau of Standards (KEBS) would like to send their officials to visit our UK facilities to carry out some audits and due diligence checks.

We do request for you to Issue entry Visas Mr Odhiambo, Ms Mwasho, Mr Thuku and Mr Kibyegon.

Attached are copies of their passports and hotel reservations for the duration of their stay.

Any assistance rendered shall be highly appreciated.

Please do contact me for any more information that you may need.

Yours Faithfully

Jaffar Hassan
Manager
QISJ - UK Branch

APPENDIX 2

APPENDIX C

From: Catherine Nafula Mwasho [mailto:Catherine.Mwasho@oagkenya.go.ke]

Sent: Saturday, February 9, 2019 1:07 PM

To: Dr. John Ngeno <ngenoj@kebs.org>; ASA <mio@qisjp.com>

Subject: Re: Re- Invitation

Well received, thank you

Get Outlook for Android

From: ASA <mio@qisjp.com>

Sent: Saturday, February 9, 2019 9:43:11 AM

To: Catherine Nafula Mwasho; ngenoj@kebs.org

Subject: Fwd: Re- Invitation

Dear Dr. John Ngeno, Catherine Mwasho

The Japan Invitation Letter has been sent through DHL today with the tracking number: 8337831902

Please find enclosed scanned copy of the Invitation Letter for Japan and hotel bookings.

Attached also Invitation letters and hotel bookings for UK (for UK you can use the copy attached no

need originals. But for Japan you have to get the originals and go with it to embassy.

We will send the invitation letters for South Africa once we receive from our partners.

As for Dubai we will apply and send you the visas

If there are anything else we need to provide, please do not hesitate to contact us back.

Please for the purpose of coordination on this trip send mails directly to this mail

Please confirm receipt of the mail and the contents.

Please don't hesitate to ask for any clarification

Kind Regards

JSJ Admin

2 X 10M34914

Quality Inspection Services Inc. Japan
YCC 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.
Tel: +81-45-500-6033 Fax: +81-45-500-6034
URL www.qisjp.com

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Kind Regards

QISJ Admin

Quality Inspection Services Inc. Japan
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APPENDIX 7

From: Maiyo Andrew <Maiyoa@kebs.org> on behalf of Maiyo Andrew
Sent on: Monday, February 11, 2019 9:41:44 AM
To: Dr. John Ngeno <ngenoj@kebs.org>
Subject: RE: ITINERARY FOR PVOC SPECIAL AUDIT

This is well noted

From: Dr. John Ngeno <ngenoj@kebs.org>
Sent: Wednesday, February 6, 2019 9:32 AM
To: mio@qisjp.com
cc: info@qisjp.com; Catherine Mwasho <Catherine.Mwasho@oagkenya.go.ke>; Nguyo Bernard <Nguyob@kebs.org>; Maiyo Andrew <Maiyoa@kebs.org>; DIR Fredrick Oluoch Odhiambo <Fredrick.Odhiambo@oagkenya.go.ke>; Sammy Kimunguyi <Sammy.Kimunguyi@oagkenya.go.ke>
Subject: ITINERARY FOR PVOC SPECIAL AUDIT

Dear QIS,

We have received Kenya National Audit officers who are here to conduct special audits on PVOC. They have identified zones to be visited in UK, RSA, UAE and JAPAN as per the attached schedule. The KEBS officers to accompany the team to UK and JAPAN will be Dr John Ngeno and the team to UAE and RSA will be Andrew Maiyo. We kindly request you to organize for us the invitation for purposes of visa acquisition. We will also be pleased to receive a revised favourable itinerary on your side on the attached dates with the contact persons and any necessary arrangements to enable the exercise to be successful. We will forward copies of passports for all officers travelling.

Regards

Dr John Ngeno
Head Of Procurement
KEBS



APPENDIX 8

From: Dr. John Ngeno<ngenoj@kebs.org> on behalf of Dr. John Ngeno
Sent on: Monday, February 11, 2019 7:43:27 AM
To: info@eaa-s.jp; mfujie@autoterminal.co.jp
CC: Catherine Nafula Mwasho<Catherine.Mwasho@oagkenya.go.ke>; Nguyo Bernard<Nguyob@kebs.org>; Maiyo Andrew<Maiyao@kebs.org>
Subject: Itinerary
Attachments: KEBS ITINERARY FOR PVOC PROGRAM.docx (14.23 KB), UK and JAPAN.pdf (1.42 MB)

Dear Auto Terminal and EAA,

We have received Auditors from Kenya National Audit office, who are currently conducting audit in regard to Motor vehicle inspections. Your firm participated in the last tender, and the auditors would like to have a discussion with your firm in regard to the last PVOC Motor Vehicle tender. They will be visiting as per the attached itinerary herein attached.

It is to kindly request that you create time to discuss with the auditors and forward to us contact persons for UAE, UK, PSA and Japan from 24th February 2019.

Kind Regards

Dr John Ngeno

18 XIONEAAA

From: Dr. John Ngeno<ngenoj@kebs.org> on behalf of Dr. John Ngeno

Sent on: Friday, February 22, 2019 6:17:29 AM

To: ASA<mio@qisjp.com>

CC: Catherine Nafula Mwasho<Catherine.Mwasho@oagkenya.go.ke>

Subject: VISA FOR CATHERINE AND BRIAN

Dear Sirs,

Due to complications in getting visa for UK, Catherine Mwasho and Brian Thuku will be joining the UAE Team after visit to Japan with the team going to UAE. Kindly process visas for the two using the passports that were earlier sent.

Dr Ngeno

Head of Procurement

KEBS

APPENDIX 9

Booking reference:
AOSR523401

London Enfield

innova Park, Enfield, EN3 7XY

Tel. 0333 777 7927

Arriving: Friday, 1 Mar 2019 Check in after 2 pm

Leaving: Thursday, 7 Mar 2019 Check out before 12 pm

Nights: 6

Rate: Flex

Booked by: Mr JAFFAR HASSAN

Payment status: Thank you, your payment will be taken on arrival

Room 1

FREDRICK ODHIAMBO

1 Adult

Room composition

£325.00

Extras

£57.00

Room 2

CATHERINE MWASHO

1 Adult

Room composition

£325.00

Extras

£57.00

Room 3

BRIAN THUKU

1 Adult

Room composition

£325.00

Extras

£57.00

Room 4

NGENO JOHN KIBYEGON

1 Adult

Room composition

£325.00

Extras

£57.00

9 21012299A

APPETIX 10

From: ASA<mio@qisjp.com>
Sent on: Tuesday, February 12, 2019 10:48:56 AM
To: Catherine.Mwasho@oagkenya.go.ke; Dr. John Ngeno<ngenoj@kebs.org>
Subject: South Africa invitation
Attachments: SA LETTERS.pdf (1.29 MB)

Dear Catherine/Dr Ngeno

Please do find the revised invitation letter for SouthAfrica,

Please also note for your information in South Africa theirs power rationing/ outages between 8am to 12pm and 4pm to 8pm

Kind Regards

QISJ Admin

.....
Quality Inspection Services Inc. Japan
YCC 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.
Tel: +81-45-500-6033 Fax: +81-45-500-6034
URL www.qisjp.com
.....

SAVE PAPER - THINK BEFORE YOU PRINT!

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1. AOTBQAA

From: ASA<mio@qisjp.com>
Sent on: Tuesday, February 19, 2019 9:13:17 AM
To: Catherine Nafula Mwasho<Catherine.Mwasho@oagkenya.go.ke>; Dr. John Ngeno<ngenoj@kebs.org>; Maiyo Andrew<Maiyao@kebs.org>
Subject: Re South Africa
Attachments: LATEST SA.pdf (134.03 KB)

Dear Catherine

Please find amended letter which states the purpose of your visit to South Africa is for Audits.

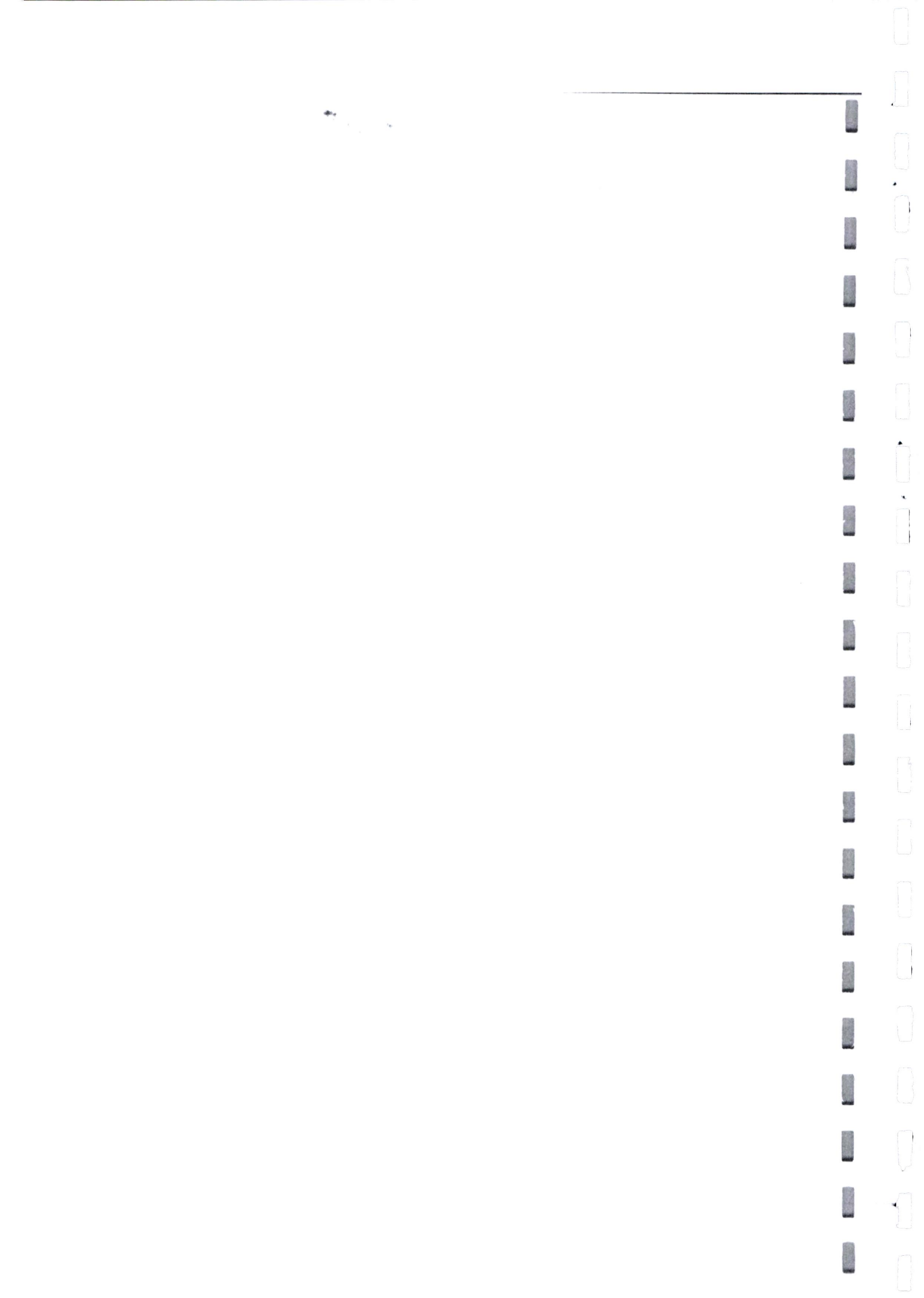
Kind Regards

QISJ Admin

.....
Quality Inspection Services Inc. Japan
P.O. Box 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.
Tel: +81-45-500-6033 Fax: +81-45-500-6034
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Please don't keep us a secret - the kindest compliment we can receive is the referral of your friends, family and colleagues. Please forward our contact information on to anyone you feel may benefit from our services.



From: Catherine Nafula Mwasho<Catherine.Mwasho@oagkenya.go.ke>
Sent on: Friday, February 15, 2019 12:51:45 PM
To: ASA<mio@qisjp.com>; Dr. John Ngeno<ngenoj@kebs.org>; Maiyo Andrew<Maiyoa@kebs.org>
Subject: Re: RE:South Africa revised

Dear ASA
Well received, thank you.

Warm regards
Forensic Audit Division
Catherine Mwasho
Manager - Audit

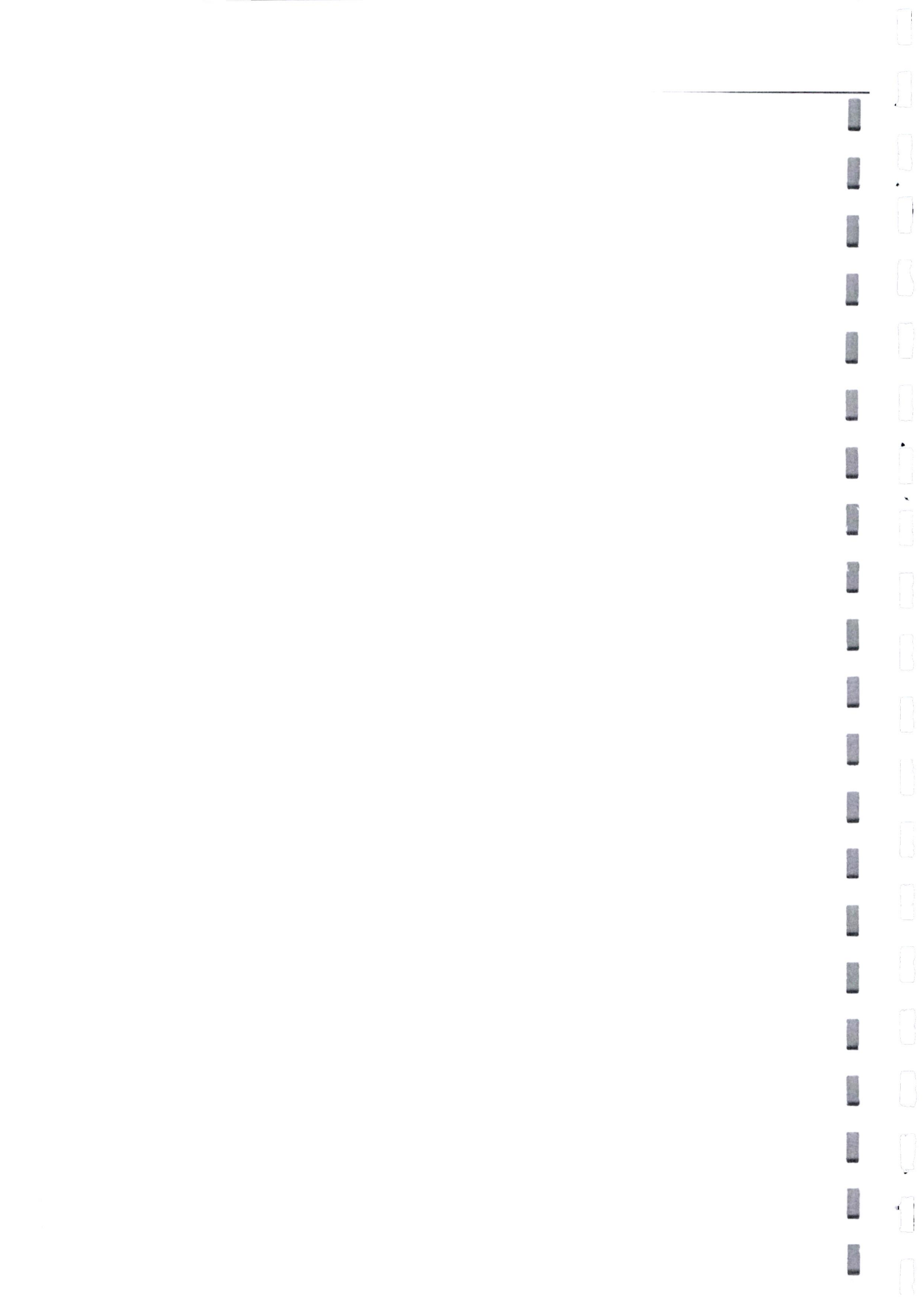
From: ASA <mio@qisjp.com>
Sent: 12 February 2019 13:26:47
To: Catherine Nafula Mwasho; ngenoj@kebs.org; Maiyo Andrew
Subject: RE:South Africa revised
Dear Catherine/Dr Ngeno/Maiyo
Please do receive the revised hotel bookings and invitation letter

--
Kind Regards
QISJ Admin

.....
Quality Inspection Services Inc. Japan
YCC 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.
Tel: +81-45-500-6033 Fax: +81-45-500-6034
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APPENDIX 11

(Invitation Letter)

招へい理由書

平成 31 年 2 月 8 日

ケニア 日本国 大使 殿

招へい人は次のとおり査証申請人を招へい致します。

査証申請人

「別添リストの通り」

目的・滞在期間

招へい目的 商用 : ケニアにおける当社検査事業展開調査の為の訪問

招へい期間 2019年2月24日 ~ 2019年3月1日 (6日間)

招へい経緯 現在、ケニアに日本から中古自動車を輸出する際の検査業務をケニア政府

(KENYA BUREAU OF STANDARDS) から委託されおり、弊社の検査業務についてKenya National Audit Officeの監査を受ける為。

招へい人

氏 名 株式会社 クオリティーインスペクションサービス 代表取締役 波田野 清昭

住 所 〒230-0054 神奈川県横浜市鶴見区大黒ふ頭22 YCC1608

電話番号 自宅 (090) 7732-7601 勤務先 (045) 500-6033

担当者氏名 宮川 信也 (ミヤガワ シンヤ)

電話番号 (080) 9548-9591

(Invitation Letter)

招 へ い 理 由 書

平成 31 年 2 月 8 日

ケニア 日本国 大使 殿

招へい人様次のとおり査証申請人を招へい致します。

査証申請人

「別添リストの通り」

目的・滞在期間

招へい目的 商用 : ケニア政府(KENYA BUREAU OF STANDARDS)による公認訪問

招へい期間 2019年2月24日 ~ 2019年3月1日 (6日間)

招へい経緯 現在、ケニアに日本から中古自動車を輸出する際の検査業務をケニア政府

(KENYA BUREAU OF STANDARDS)から委託されており、今後の取引及び業務を円滑に行えるよう、日本での視察及びミーティングを希望している為。

招 へ い 人

氏 名 株式会社 クオリティーインスペクションサービス 代表取締役 波田野 清昭

住 所 〒230-0054 神奈川県横浜市鶴見区大黒ふ頭22 YCC1608

電話番号 自宅 (090)7732-7601 勤務先 (045)500-6033

担当者氏名 宮川 信也 (ミヤガワ シンヤ)

電話番号 (080)9548-9591

2/8/2019

滞在予定表

ITINERARY

滞日要員: Mr. Frederic Oludch Odhiambo, Mr. Brian Ndung'u Thuku, Ms./Mrs. Catherine Nafula Mwasho, Mr. John Kibyegeon Ngeno の滞在于
 神奈川県横浜市の予定。

Date	Schedule	Address at the meeting	Residence
2/24/2019	Arrival Arrival in Japan		ホテルメッツ横浜鶴見 〒神奈川県横浜市鶴見区鶴見中央1-31-2 電話番号 (45) 500-5011 Hotel Mets Yokohama Tsurumi 1-31-2 Tsurumi-cho, Tsurumi, Yokohama, Kanagawa Tel (45) 500-5011
2/25/2019	Meeting 検査業務の打ち合わせ	横浜市鶴見区大黒ふ頭22, YCC1608 YCC 1608, 22, Daikoku-futo, Tsurumi, Yokohama	
2/26/2019	Visit to inspection facilities 検査施設訪問	大阪 Osaka	
2/27/2019	Visit to inspection facilities 検査施設訪問	名古屋市 Nagoya	
2/28/2019	Meeting 検査業務の打ち合わせ	横浜市鶴見区大黒ふ頭22, YCC1608 YCC 1608, 22, Daikoku-futo, Tsurumi, Yokohama	
3/1/2019	Departure from Japan 日本出国		

Guarantee letter)

平成 31 年 2 月 8 日

身 元 保 証 書

ケニア日本国大使 殿

査証申請人

氏名 BRIAN NDUNG'U THUKU 性別 男性
国籍 ケニア 職業 MEMBER OF KENYA NATIONAL AUDIT OFFICE
生年月日 (西暦) 1992 年 2 月 8 日 年齢 27 才
滞在期間 2019 年 2 月 24 日 ~ 2019 年 3 月 1 日 (6 日間)

上記の者の本邦入国に関し、下記の事項について保証します。

1. 滞在費
2. 帰国旅費
3. 日本国法令の遵守

上記の通り相違ありません。

身元保証人

氏名 株式会社 クオリティーインスペクションサービス
代表取締役 波田野 清昭
住所 神奈川県横浜市鶴見区大黒ふ頭 22 YCC1608
生年月日 西暦 1974 年 7 月 18 日 年齢 44 才
電話番号 (自宅) 090-7732-7601 (勤務先) 045-500-6033
職業 輸出検査業 申請人との関係 取引先

担当者所属先名: 株式会社クオリティーインスペクションサービス

担当者: 宮川 信也 (ミヤガワ シンヤ)

電話番号: 080-9548-9591

(Guarantee letter)

平成 31 年 2 月 8 日

身元保証書

在 ケニア日本国大使 殿

査証申請人

氏名 JOHN KIBYEGON NGENO 性別 男性
国籍 ケニア 職業 ケニア政府 (KENYA BUREAU OF STANDARDS)
生年月日 (西暦) 1980 年 9 月 18 日 年齢 38 才
滞在期間 2019 年 2 月 24 日 ~ 2019 年 3 月 1 日 (6 日間)

上記の者の本邦入国に関し、下記の事項について保証します。

1. 滞在費
2. 帰国旅費
3. 日本国法令の遵守

上記の通り相違ありません。

身元保証人

氏名 株式会社 クオリティーインスペクションサービス
代表取締役 波田野 清昭
住所 神奈川県横浜市鶴見区大黒ふ頭 22 YCC1608
生年月日 西暦 1974 年 7 月 18 日 年齢 44 才
電話番号 (自宅) 090-7732-7601 (勤務先) 045-500-6033
職業 輸出検査業 申請人との関係 取引先

担当者所属先名: 株式会社クオリティーインスペクションサービス

担当者: 宮川 信也 (ミヤガワ シンヤ)

電話番号: 080-9548-9591

2019/02/08

CONFIRMATION

Date : 2019/02/08
Attn : Quality Inspection Services Inc. Japan
伏木様

Thank you very much for your reservation at the JR-EAST HOTEL METS YOKOHAMA TSURUMI.
We are pleased to confirm your reservation as follows:

Guest Name : Mrs. Catherine Nafula Mwasho
Confirmation No : 120087135
Arr. - Dep. : 2019/02/24 - 2019/03/01

Date	Room Type	Rooms	Guests	Charge (JPY)
2019/02/24	Single Non Smoking	1	1	9,000
2019/02/25	Single Non Smoking	1	1	9,000
* 2019/02/26	Single Non Smoking	1	1	11,650
* 2019/02/27	Single Non Smoking	1	1	9,000
* 2019/02/28	Single Non Smoking	1	1	10,150
Total				48,800

The above rate includes tax.

Remarks : Including Breakfast

<Cancellation Policy>

1 day prior of the arrival	20%
Day of the arrival	80%
No show	100%

Should you have any further questions, please do not hesitate to contact us.
Thank you again and we look forward to welcoming you to the JR-EAST HOTEL METS YOKOHAMA TSURUMI.

Clerk:Riko Rokuhara

JR-EAST HOTEL METS YOKOHAMA TSURUMI
1-31-2 Tsurumichuo, Tsurumi-ku, Yokohama, Kanagawa 230-0051, Japan
Phone:+81-45-500-5011 Fax:+81-45-500-5011 E mail:y tsurumi@hotelmets.jp

JR-EAST
HOTEL
METS

2019/02/08

CONFIRMATION

Date : 2019/02/08
Attn : Quality Inspection Services Inc. Japan
伏木様

Thank you very much for your reservation at the JR-EAST HOTEL METS YOKOHAMA TSURUMI.
We are pleased to confirm your reservation as follows:

Guest Name : Mr. John Kibyegeon Ngeno
Confirmation No. : 120087135
Arr. - Dep. : 2019/02/24 - 2019/03/01

Date	Room Type	Rooms	Guests	charge (JPY)
2019/02/24	Single Non Smoking	1	1	9,000
2019/02/25	Single Non Smoking	1	1	9,000
* 2019/02/26	Single Non Smoking	1	1	11,650
* 2019/02/27	Single Non Smoking	1	1	9,000
* 2019/02/28	Single Non Smoking	1	1	10,150
Total				48,800

The above rate includes tax.

Remarks : Including Breakfast

<Cancellation Policy>

1 day prior of the arrival	20%
Day of the arrival	80%
No show	100%

Should you have any further questions, please do not hesitate to contact us.
Thank you again and we look forward to welcoming you to the JR-EAST HOTEL METS YOKOHAMA TSURUMI.

Clerk:Riko Kokuwara

JR-EAST HOTEL METS YOKOHAMA TSURUMI
1-31-2 Tsurumichuo, Tsurumi-ku, Yokohama, Kanagawa 230-0051, Japan
Phone: +81-45-500-5011 Fax: +81-45-500-5014 E-mail: y-tsurumi@hotelmets.jp

横浜市鶴見区大黒ふ頭22番YCC1608
株式会社クオリティーインスペクションサービス

役員に関する事項	取締役	波 田 野 清 昭
	横浜市鶴見区梶山二丁目25番24号 代表取締役 波 田 野 清 昭	
		平成24年12月 1日住所 移転 平成25年 8月 6日登記
支 店	1	平成26年11月11日移転
	英国ロンドン市IG117BG、ユニット10、 ミューアヘッド、クエイ、フレッシュワーフ、 ハイブリッジロード	平成26年11月11日登記
	2	平成25年 2月21日設置
	アラブ酋長国連邦ドバイ市ラス・アル・ホール、 アル・アウィール、P.O. Box 99325	平成26年 2月 3日登記

これは登記簿に記録されている現に効力を有する事項の全部であることを証明
した書面である。

(横浜地方法務局管轄)

平成30年12月28日

横浜地方法務局神奈川出張所

登記官

樋 口 富 美 枝



APPENDIX II

Letter of Reason for Invitation

February 8th 2019

To: **Japan Embassy in Kenya** (Ambassador/Consul-General of Japan)

We are inviting visa applicants below.

Visa Applicant

(According to the attachment list)

The purpose of inviting, term of their stay

Purpose of the invitation Business : Official visit from Kenya government (Kenya Bureau of Standards)

Term of invitation 2019 February 24th ~ 2019 March 1st (6 days)

Background to the invitation

We are currently contracted with KEBS(Kenya Bureau of Standards) for inspecting used vehicles from Japan exported into Kenya. Therefore we need to invite people from this organization for auditing and holding meetings to ensure our business is operating smoothly and accurately.

Inviting Person

Full name Quality Inspection Service Co.,Ltd Director Kiyoaki Hatano

Address YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City, Kanagawa Pref.
Japan 230-0054

Telephone number Home (090)7732-7601 Office (045)500-6033

Contact person's full name Shinya Miyagawa (Miyagawa Shinya)

Contact person's telephone number (080)9548-9591

11 401399A

Visa Applicant

Full name	John Kibyegeon Ngeno (Male · Female)
Nationality	Kenyan
Date of birth	1980 September 18 th 38years
Occupation:	Kenya Government (Kenya Bureau of Standards)
Telephone number:	(Office) 254 (0) 20 694 8000

Letter of Guarantee

2019 February 8th

To: **Ambassador of Japanese Embassy in Kenya**

Visa Applicant

Full name	<u>John Kibyegon Ngeno</u>	Sex	<u>Male</u>
Nationality	<u>Kenyan</u>	Occupation	<u>Kenya Government (Kenya Bureau of Standards)</u>
Date of birth	<u>1980 September 18th</u>	Age	<u>38years</u>
Term of stay	<u>2019 February 24th~2019 March 1st (6 days)</u>		

I will guarantee the following items regarding the above-mentioned applicant's entry into Japan:

1. Expenses for the applicant's stay in Japan
2. Return travel expenses
3. Compliance of Japanese laws and regulations

I hereby declare that the above is true.

Guarantor

Full name	<u>Quality Inspection Service Co.,Ltd</u>		
	<u>Director Kiyoaki Hatano</u>	<u>(seal)</u>	
Address	<u>YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City, Kanagawa Pref. Japan</u>		
Date of birth	<u>1974 July 18th</u>	Age	<u>44years</u>
Telephone number	<u>(Home) 090-7732-7601</u>	<u>(Office) 045-500-6033</u>	
Occupation	<u>Export Inspection</u>	Term of the applicant	<u>Contract partner</u>

Contact person's company : Quality Inspection Service

Contact person's full name : Shinya Miyagawa (Miyagawa Shinya) (seal)

Telephone number : (080)9548-9591

Letter of Reason for Invitation

February 8th 2019

To: Ambassador of Japanese Embassy in Kenya

We are inviting visa applicants below.

Visa Applicant

(According to the attachment list)

The purpose of inviting, term of their stay

Purpose of the invitation Business : Visit for auditing our inspection business in Kenya

Term of invitation 2019 February 24th ~ 2019 March 1st (6 days)

Background to the invitation

We are currently contracted with KEBS(Kenya Bureau of Standards) for inspecting used vehicles from Japan exported into Kenya, therefore we need to get audited by Kenya National Audit Office.

Inviting Person

Full name Quality Inspection Service Co.,Ltd Director Kiyooki Hatano

Address YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City, Kanagawa Pref.
Japan 230-0054

Telephone number Home (090)7732-7601 Office (045)500-6033

Contact person's full name Shinya Miyagawa (Miyagawa Shinya)

Contact person's telephone number (080)9548-9591

Visa Applicant

Full name Fredrick Oluoch Odhiambo (Male · Female)
Nationality Kenyan
Date of birth 1982 March 11th 36 years
Occupation: Member of Kenya National Audit Office
Telephone number: 254-20-342330

Full name Brian Ndung'u Thuku (Male · Female)
Nationality Kenyan
Date of birth 1992 February 8th 27 years
Occupation: Member of Kenya National Audit Office
Telephone number: 254-20-342330

Full name Catherine Nafula Mwasho (Male · Female)
Nationality Kenyan
Date of birth 1967 January 11th 52 years
Occupation: Member of Kenya National Audit Office
Telephone number: 254-20-342330

Letter of Guarantee

2019 February 8th

To: **Japan Embassy in Kenya** (Ambassador/Consul-General of Japan)

Visa Applicant

Full name	<u>Fredrick Oluoch Odhinambo</u>	Sex	<u>Male</u>
Nationality	<u>Kenyan</u>	Occupation	<u>Member of Kenya National Audit Office</u>
Date of birth	<u>1982 March 11th</u>	Age	<u>36 years</u>
Term of stay	<u>2019 February 24th ~ 2019 March 1st (6 days)</u>		

I will guarantee the following items regarding the above-mentioned applicant's entry into Japan:

1. Expenses for the applicant's stay in Japan
2. Return travel expenses
3. Compliance of Japanese laws and regulations

I hereby declare that the above is true.

Guarantor

Full name	<u>Quality Inspection Service Co.,Ltd</u>		
	<u>Director Kiyoaki Hatano</u> (seal)		
Address	<u>YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City, Kanagawa Pref. Japan</u>		
Date of birth	<u>1974 July 18th</u>	Age	<u>44years</u>
Telephone number	(Home) <u>090-7732-7601</u>	(Office) <u>045-500-6033</u>	
Occupation	<u>Export Inspection</u>	Term of the applicant	<u>Contract partner</u>

Contact person's company : Quality Inspection Service

Contact person's full name : Shinya Miyagawa (Miyagawa Shinya) (seal)

Telephone number : (080)9548-9591

Letter of Guarantee

2019 February 8th

To: **Ambassador of Japanese Embassy in Kenya**

Visa Applicant

Full name	<u>Brian Ndung'u Thuku</u>	Sex	<u>Male</u>
Nationality	<u>Kenyan</u>	Occupation	<u>Member of Kenya national audit office</u>
Date of birth	<u>1992 February 8th</u>	Age	<u>27years</u>
Term of stay	<u>2019 February 24th~2019 March 1st (6 days)</u>		

I will guarantee the following items regarding the above-mentioned applicant's entry into Japan:

1. Expenses for the applicant's stay in Japan
2. Return travel expenses
3. Compliance of Japanese laws and regulations

I hereby declare that the above is true.

Guarantor

Full name	<u>Quality Inspection Service Co.,Ltd</u>		
	<u>Director Kiyooki Hatano (seal)</u>		
Address	<u>YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City, Kanagawa Pref. Japan</u>		
Date of birth	<u>1974 July 18th</u>	Age	<u>44years</u>
Telephone number	<u>(Home) 090-7732-7601</u>	<u>(Office) 045-500-6033</u>	
Occupation	<u>Export Inspection</u>	Term of the applicant	<u>Contract partner</u>

Contact person's company : Quality Inspection Service

Contact person's full name : Shinya Miyagawa (Miyagawa Shinya) (seal)

Telephone number : (080)9548-9591

Letter of Guarantee

2019 February 8th

To: **Ambassador of Japanese Embassy in Kenya**

Visa Applicant

Full name	<u>Catherine Nafula Mwasho</u>	Sex	<u>Female</u>
Nationality	<u>Kenyan</u>	Occupation	<u>Member of Kenya National Audit Office</u>
Date of birth	<u>1967 January 11th</u>	Age	<u>52years</u>
Term of stay	<u>2019 February 24th~2019 March 1st (6 days)</u>		

I will guarantee the following items regarding the above-mentioned applicant's entry into Japan:

1. Expenses for the applicant's stay in Japan
2. Return travel expenses
3. Compliance of Japanese laws and regulations

I hereby declare that the above is true.

Guarantor

Full name	<u>Quality Inspection Service Co.,Ltd</u>		
	<u>Director Kiyoaki Hatano (seal)</u>		
Address	<u>YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City, Kanagawa Pref. Japan</u>		
Date of birth	<u>1974 July 18th</u>	Age	<u>44years</u>
Telephone number	<u>(Home) 090-7732-7601</u>	(Office)	<u>045-500-6033</u>
Occupation	<u>Export Inspection</u>	Term of the applicant	<u>Contract partner</u>

Contact person's company : Quality Inspection Service

Contact person's full name : Shinya Miyagawa (Miyagawa Shinya) (seal)

Telephone number : (080)9548-9591

ITINERARY

Visa Applicants: Mr Fredrick Oluoch Odhiambo, Mr Brian Ndung'u Thuku, Ms/Mrs Catherine Nafula Mwasho, Mr John Kibyegeon Ngeno. Planned schedule below:

Date		Schedule	Address at the meeting	Residence
2/24/2019	Sun	Entry to Japan		Hotel Mets Yokohama Tsurumi 1-31-2 Tsurumi- chuo, Tsurumi, Yokohama, Kanagawa Tel (45) 500-5011
2/25/2019	Mon	Meeting	YCC 1608, 22 Daikokufuto, Tsurumi Yokohama	
2/26/2019	Tue	Visit to Inspection facilities	Osaka	
2/27/2019	Wed	Visit to Inspection facilities	Nagoya	
2/28/2019	Thu	Meeting	YCC 1608, 22 Daikokufuto, Tsurumi Yokohama	
3/1/2019	Fri	Departure from Japan		

Company certificate of all current matters

YCC1608, Daikokufuto22, Tsurumi Ward, Yokohama City
Quality Inspection Company Limited

Company registration number	0200-01-062427	
Trading as name	Quality Inspection service	
Main office	8-12, Komaoka1-chome, Tsurumi Ward, Yokohama City	
	YCC1608, 22 Daikokufuto Tsurumi Ward, Yokohama City	2011 March 13 th moved 2011 March 24 th registered
Method of announcement	Report in the official gazette	
Company formed date	2009 July 22 nd	
Purpose	1. Inspection, Survey, Calibration, Assessment of Motor Vehicles, Electronic products, Industrial products, Ships, Chemical products, Petroleum, Mineral products, Plastic, Metal, Textile, Agricultural products, Food, Medical products. 2. Quality inspection of above products includes scientific analysis and physical test 3. Commerce mediation and consulting between domestic companies and foreign governments and companies 4. Matters for quality and assessment of compatibility 5. Planning, development, Producing and sales of software products 6. Consulting and management of overseas economic cooperation · project assistance and financing 7. Contract security 8. Labor dispatch 9. Systems approval for quality, environment, security and related training work 10. Any incidental or related business of above items 2016 December 12th changed 2016 December 14th registered	
Possible volume of stocks issues	1600 stocks	
Issued number of shares	Issued number of shares 400 stocks	
Financial Value	20,000,000 Yen	
Regulation about stock restriction of transfer	The transfer of shares issued by the Company must be approved by the Board of Directors. However, if it is transferred to the shareholders of the Company, it shall be deemed to have been approved.	

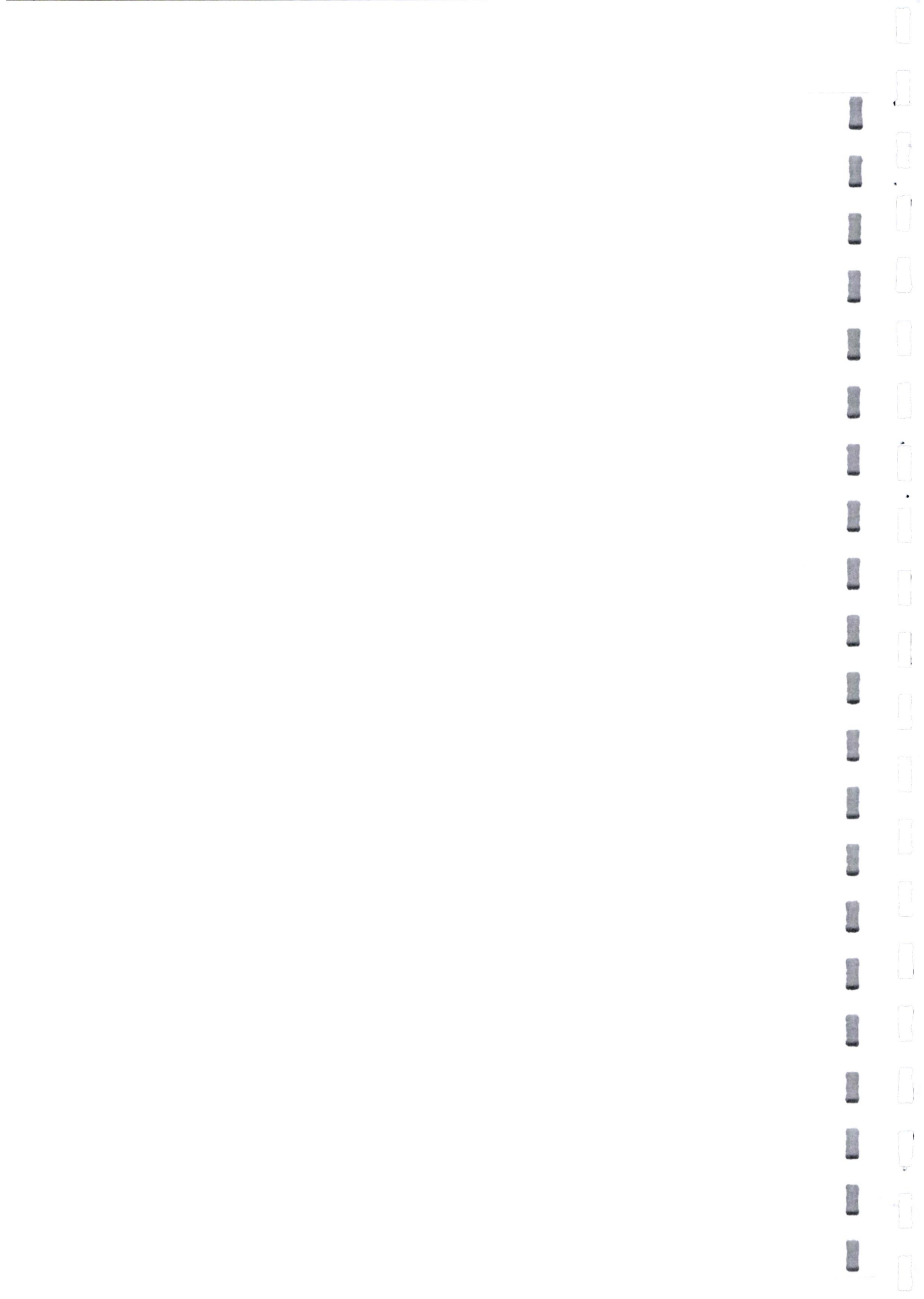
YCC1608, Daikokufuto22, Tsurumi Ward, Yokohama City
Quality Inspection Company Limited

Matters concerning Officers	Director Kiyooki Hatano	
	25-24, Kajiyama 2-chome, Tsurumi Ward, Yokohama City Director Kiyooki Hatano	2012 December 1 st address changed 2013 August 6 th registered
Branch	1	2014 November 11 th moved
	Unit10, Muirhead, Quay, Fresh Wharf Highbridge, London England 1G117BG	2014 November 11 th registered
	2	2013 February 21 st established
	Ras Al Khoor, Al-Aweer, Dubai UAE PO.Box 99325	2014 February 3 rd registered

This is the document that proves all of the matters currently in effect recorded in the resister.
(Yokohama District Legal Affairs Bureau jurisdiction)

2018 December 28th

Yokohama District Legal Affairs Bureau Branch Office
Registrar Tomie Higuchi (seal)



1-1-1 Minatomirai Nishi-ku Yokohama 220-8522 JAPAN Tel: +81(45)223 2222 FAX: +81(45)221 0650
www.japan.intercontinental.com Toll-free 0120-455-655

INFORMATION INVOICE

Fredrick Odhiambo
Ke
Kenya

-/Page No. 1 of 2
ご到着/Arrival 03-02-19
ご出発/Departure 03-03-19
Room No. 2512
担当者/User Name MOTOYOJ
担当ID/Cashier No. 404
明細番号/Folio No. 1933129
発行日/Issued on 03-13-20

Date	Description	Reference	Amount
02-24-19	Accommodation		21,400
02-25-19	Accommodation		21,400
02-26-19	Accommodation		21,400
02-27-19	Laundry		4,760
	02271920		
02-27-19	Dry Cleaning		4,500
	02271921		
02-27-19	In Room Bar Bevarage		400
	Room# 2512 : CHECK# 3017681		
02-27-19	Accommodation		21,400
02-28-19	Laundry		3,150
	02281917		
02-28-19	Dry Cleaning		8,550
	02281918		
02-28-19	Accommodation		21,400
03-01-19	Laundry		1,350
	03011916		
03-01-19	Dry Cleaning		2,950
	03011917		
03-01-19	In Room Bar Bevarage		400
	Room# 2512 : CHECK# 3017778		
03-01-19	Accommodation		25,400
03-02-19	In Room Dining Food Dinner		3,564
	Room# 2512 : CHECK# 3048165		
03-02-19	-Accommodation		28,000
03-02-19	Cash		-90,000
03-02-19	Visa/Master Card		-100,024

Approved by:

Company

Street

City

Postal Code

"I agree that I am personally liable for the payment of the foregoing statement and if the person, company or association indicated by me as being responsible for payment of the same does not do so.

Signature

That my liability for such payment shall be joint and several with such person, company or association."

1-1-1 Minatomirai Nishi-ku Yokohama 220-8522 JAPAN Tel: +81(45)223 2222 FAX: +81(45)221 0650
www.japan.intercontinental.com Toll-free 0120-455-655

INFORMATION INVOICE

Fredrick Odhiambo
Ke
Kenya

Page No. 2 of 2
到着 / Arrival 03-02-19
出発 / Departure 03-03-19
Room No. 2512
担当者 / User Name MOTOYUJ
担当ID / Cashier No. 404
明細番号 / Folio No. 1933129
発行日 / Issued on 03-13-20

Date	Description	Reference	Amount
------	-------------	-----------	--------

残高 / Balance	0 JPY
ご利用額 / Total	190,024 JPY
10%対象 / Subject to 10%	190,024 JPY
8%対象 / Subject to 8%	0 JPY

(*) 軽減税率 8% 対象品目 / (*) Items subject to reduced tax (8%)

Approved by:

Company

Street

City

Postal Code

Signature

"I agree that I am personally liable for the payment of the foregoing statement and if the person, company or association indicated by me as being responsible for payment of the same does not do so.
That my liability for such payment shall be joint and several with such person, company or association."

ANNEX 7

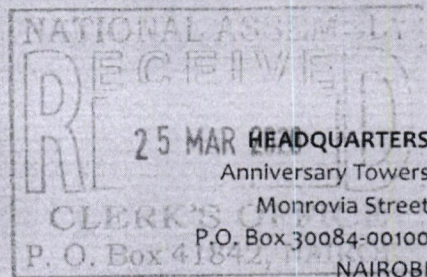
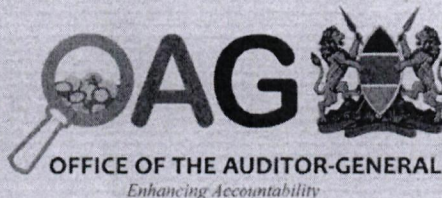
BUNDLE OF DOCUMENTS
PRESENTED BY OAG IN
RESPONSE TO DR.
ALLEGATIONS

FX EXU

LETTERS TO SIGN
PRESENTED BY OAD
REPORTS TO DR. KENNEDY
MONTANA

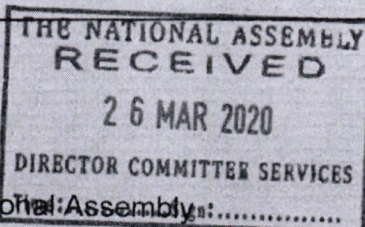
REPUBLIC OF KENYA

Telephone: +254-(20) 3214000
E-mail: info@oagkenya.go.ke
Website: www.oagkenya.go.ke



Ref: C.868Z2/(9)

The Clerk of the National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI



24 March, 2020

Dear Clerk,

RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS

Reference is made to your letter Ref.NA/DCS/PIC/2020/020 concerning the above subject matter and issues raised by Autoterminal Japan Ltd (ATJ) during the Public Investment Committee (PIC) meeting on 17 March 2020.

The Special Audit was conducted pursuant to Articles 252 1 (a), (d) and 229 (6) of the Constitution of Kenya (CoK) and Section 38 of the Public Audit Act, 2015 as follows:

Legal provision	Mandate
1 Article 252 (1)(a) and (d) of the CoK	Auditor-General to carry out investigations on financial mis/management either on receipt of a complaint or at his own initiative in view of probable risks in entity's operations that may lead to occurrence of fraud.
2 Article 229(6) of the CoK	Auditor-General to confirm and report to the public whether public funds were used in a lawful and effective manner
3 Section 38 of the Public Audit Act, 2015	Auditor-General to examine Public Procurement and Disposal Processes with a view to confirm whether public funds were used in a lawful and effective manner
4 Section 38 of the Public Audit Act, 2015	Auditor-General to conduct periodic audits that are proactive, preventive and deterrent to fraud and corrupt practice, systematic and be determined with a view to evaluating the effectiveness of risk management, control and governance in public entities.

In the submission made by Mr. Isaac Kalua of ATJ, he asked the Chairperson of PIC to guide the Office of the Auditor General (OAG) in future to adhere to issues below to avoid situations that may lead to suspicion that their reports are prejudiced:

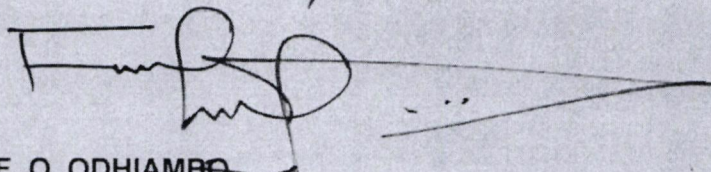
1. To request for visa applications through our Kenyan Embassies in the countries that any audit process is to be undertaken;
2. Hotel bookings to be made directly; and
3. Logistical and transport arrangements be made through the Kenyan Embassy in

We wish to respond as follows:

1. Visa applications for Japan, South Africa and United Kingdom are made directly to the respective Embassies locally before travel. The application guidelines specify the documents to be attached which include invitation letters from the entity/institution being visited (**Annexure I**);
2. OAG wrote to the Ministry of Foreign Affairs and respective Embassies to enable the audit team process their visas. Ministry of Foreign Affairs also wrote to the respective Embassies concerning the special audit (**Annexure II**);
3. KEBS obtained invitation letters from the entity which was in the original plan and hotel reservations for Japan, South Africa and United Kingdom for visa application/processing (**Annexure III & IV**);
4. The above documentation was presented by the audit team to the respective Embassies where visas were required;
5. KEBS made logistical arrangements on how the audit team will visit the sampled sites since we did not know the location of the places. We used transport provided by each of the entities to visit their respective offices and sites; and
6. Attached is **Appendix I** with a detailed response to issues raised by Mr. Isaac Kalua numbered (a) to (h).

Yours

Sincerely,



F. O. ODHIAMBO
DEPUTY AUDITOR-GENERAL

Encl.

APPENDIX I: OAG RESPONSE TO PIC ON ALLEGATIONS RAISED BY ATJ

S/No	Issue raised by ATJ	Response	Annexure
a	The 8 th February, 2019 invitation letter addressed to the British High Commissioner Nairobi to grant visas to Mr. Fredrick Odhiambo, Ms. Catherine Mwasho, Mr. Brian Thuku and Mr. Ng'eno Kipyegon all being identified as KEBS officials who went to visit the QISJ facilities to carry out some audits and due diligence checks. (See Appendix 5 of ATJ allegations)	• The initial scope of work was to focus on the successful bidder QISJ who had a running contract with KEBS. OAG wrote to KEBS requesting the later to make administrative arrangements to facilitate travel of OAG staff -VISA processing based on the initial plan. (Copy of email and initial itinerary as drawn by OAG attached as annexure III respectively). • KEBS wrote to QISJ requesting for invitation letters to UK, South Africa, UAE and Japan. (Email correspondences attached as annexure IV). • OAG was advised by KEBS that an original copy of Invitation letter from the institution/entity being visited and hotel reservation are requirements for VISA application and processing for Japan however in UK copies could be used (Copy of email from KEBS attached as annexure IV). • This letter dated 8th February 2019 to the British High Commissioner Nairobi was part of the documents sent for visa processing via email on 9th February 2019 (Copy of email attached as annexure IV). • OAG wrote to Ministry of Foreign Affairs and British High Commission for visa processing for its officers Mr. Fredrick Odhiambo, Ms. Catherine Mwasho, Mr. Brian Thuku. (Copy of OAG letter to British High Commissioner attached as annexure II). • Ms Catherine Mwasho and Mr. Brian Thuku neither applied for British Visas nor travelled to United Kingdom due to changes in the itinerary that resulted in delayed application of United Kingdom VISA. • Mr. Fredrick Odhiambo travelled to United Kingdom since he already had his valid travel documents to the United Kingdom.	II, III, IV

S/No	Issue raised by ATJ	Response	Annexure
b	The email extract from one person identified as "QISJ Admin" sent on February 9 th 2020 to Dr. John Ng'eno and Ms. Catherine Mwasho confirming that QISJ have invited the whole team to Japan (the original documents being sent through DHL Airway bill number 8337831902 and received in Nairobi on 11 th February 2019 by one person identified as ABIGAEL). In the same Extract the "QISJ Admin" is promising to apply for the Dubai visa (eventually make payments) and send visas to the team. (See Appendix 6 of ATJ allegations)	- OAG was advised by KEBS that an original copy of Invitation letter from the institution/entity being visited and hotel reservation are requirements for VISA application and processing for Japan however in UK copies could be used (Copy of email from KEBS attached as annexure IV). - We paid for visa processing fee to Dubai and Japan (Receipts attached as annexure V).	IV, V
c	An Email extract dated February 6 th 2019 from Dr. John Ng'eno (Head of Procurement at KEBS) addressed to QISJ of the intended Audit requesting for the firm to send the invitation letter and a "revised and favorable itinerary from QISJ side. (See Appendix 7 of ATJ allegations)	The initial plan/ scope of work had focused on the winning bidder QISJ. The itinerary was drawn by OAG. (Email and initial itinerary attached as annexure III).	III
d	Unlike QISJ, the other interested party (ATJ and EAA) were notified on Email on 11 th February 20119 (5 days later). The author Dr. John Ng'eno is notifying EAA and ATJ that the Auditors "Would like to have a discussion with your firm in regards to the last PVOC Motor Vehicle tender). This is a different	- The initial scope of work was to focus on the successful bidder QISJ who had a running contract with KEBS (Copy of email and initial itinerary as drawn by OAG attached as annexures III). - OAG expanded the scope of work to include all bidders i.e. QISJ, EAA, ATJ and Nippon. However, Nippon provided scanty information which was not verifiable and therefore were not included in the audit. (Email attached and revised itinerary as annexure VI).	III, VI, VII. VIII

S/No	Issue raised by ATJ	Response	Annexure
	notification from QISJ's. (See Appendix 8 of ATJ allegations)	- EAA confirmed availability to KEBS vide an email on 12 February 2019.-1 day later. (Attached as annexure VII). - ATJ confirmed availability to KEBS vide an email on 15 February 2019. -4 days later. In the email ATJ offered to make hotel bookings and transport arrangements to visit their offices (Copy of email attached as annexure VIII). - Email correspondences to ATJ /EAA indicated that Auditors wanted to have discussions with the two institutions while that to QISJ indicated that Auditors were conducting a special audit. This was so because ATJ and EAA didn't have a running contract with KEBS and our work was limited to corroborating information provided in the bidding documents with actual situation on the ground through discussions. Since QISJ had a running agreement with KEBS then it was a subject of audit by OAG pursuant to Article 229 (6) of the Constitution of Kenya.	
e	The Hotel Booking with reference AOSR523401 to Innova Park, Enfield London done by one Mr. JAFFAR HASSAN who is identified as QISJ Manager in UK (For the KEBS 2017 Tender documents from QISJ) for Mr. Fredrick Odhiambo, Ms. Catherine Mwasho, Mr. Brian Thuku and Dr. John Ng'eno. (See Appendix 9 of ATJ allegations)	- The initial scope of work was to focus on the successful bidder QISJ who had a running contract with KEBS. - OAG was advised by KEBS that an original copy of Invitation letter from the institution/entity being visited and hotel reservation are requirements for VISA application and processing. KEBS arranged for the invitation letters from QISJ. Later on, the scope of work was expanded to include ATJ and EAA. - Ms Catherine Mwasho and Mr. Brian Thuku neither applied for British Visas nor travelled to United Kingdom due to changes in the itinerary that resulted in delayed application of United Kingdom VISA. - Only Mr. Fredrick Odhiambo travelled to United Kingdom since he already had a valid United Kingdom VISA.	
f	An invitation letter to South Africa addressed to Catherine Mwasho and Dr. John Ng'eno from "QISJ Admin".	The initial scope of work was to focus on the successful bidder QISJ who had a running contract with KEBS.	

S/No	Issue raised by ATJ	Response	Annexure
	In their report the Audit team confirmed that due to limited time they were not able to visit AutoTerminal Japan's subcontractor in South Africa but they confirmed to visit QISJ's subcontractor in South Africa and yet made recommendation of positive capacity to QISJ and negative to AutoTerminal Japan's. (See Appendix 10 of ATJ allegations)	- OAG was advised by KEBS that an original copy of Invitation letter from the institution/entity being visited and hotel reservation are requirements for VISA application and processing. KEBS arranged for the invitation letters from QISJ. Later on, the scope of work was expanded to include ATJ and EAA. - As indicated in the report, due to limitation of time and resources, we only had 2 days in South Africa which could not enable us visit QISJ in Johannesburg and again visit ATJ in Durban. OAG focused on QISJ Agency in Johannesburg as it was deemed more riskier due to existence of a running contract. - The special audit did not make any observations on ATJ in South Africa as alluded by ATJ. This is so because we didn't visit the site. The observations made on ATJ in the report related to Japan, UAE and United Kingdom.	
g	An invitation letter to Japan addressed to the entire team, Mr. Fredrick Odhiambo, Ms Catherine Mwasho and Mr. Brian Thuku. An original and translated copy. (See Appendix 11 of ATJ allegations)	Invitation letters from the institution/entity being visited and staying programs and schedules were requirements for VISA processing.	I
h	A receipt for the stay of Mr. Fredrick Odhiambo at Intercontinental Hotel Yokohama. (See Appendix 12 of ATJ allegations)	- Original booking made by Mr. Fredrick Odhiambo using his personal Credit Card via www.booking.com, a third-party hotel service provider for his hotel stay at Intercontinental Yokohama Grand, JAPAN is attached. - Excerpt of Mr. Fredrick Odhiambo's bank statement from STANDARD CHARTERED BANK showing deduction /charge for his hotel stay on his Visa Card is also attached. - A receipt issued upon payment and direct charges to his Visa Card is also attached. - All evidence provided indicate that; booking, billing/invoicing and payment for the accommodation at Intercontinental Hotel Yokohama was done directly by Mr. Fredrick Odhiambo.	V

LIST OF ANNEXURES

ANNEXURE	DESCRIPTION
Annexure I	VISA application guidelines for Japan, United Kingdom and South Africa
Annexure II	Correspondence between: OAG and Ministry of Foreign Affairs and British High Commission; Ministry of Foreign Affairs and British High Commission & South Africa High Commission
Annexure III	Correspondence between OAG and KEBS on the initial itinerary
Annexure IV	• Correspondence between KEBS and QISJ on the audit and request for invitation letter as per the itinerary. • Response from QISJ attaching invitation letters and hotel bookings from Japan. United Kingdom and South Africa.
Annexure V	Copy of receipts for VISA payment for Dubai and Japan
Annexure VI	Correspondence between OAG and KEBS on the revised itinerary
Annexure VII	Correspondence between KEBS and EAA on the audit and acknowledgement from EAA on their availability
Annexure VIII	Correspondence between KEBS and ATJ on the audit and acknowledgement from ATJ on their availability

Annex I/1

Guide to supporting documents: visiting the UK

Updated 6 June 2019

Contents

1. 1. Documents you must provide – all visitors
2. 2. Other documents you may want to provide – all visitors
3. 3. Additional documents for specific types of visitors
4. 4. Documents you should not send unless specifically requested

This guidance explains the documents you may need to provide in support of your application to visit the UK.

All documents must be originals and not photocopies. Submission of these documents does not guarantee that your application will be successful and you should bear this in mind when making any bookings.

If you submit a document that is not in English or Welsh, it must be accompanied by a full translation that can be independently verified by the Home Office. Each translated document must contain:

- confirmation from the translator that it is an accurate translation of the original document
- the date of the translation
- the translator's full name and signature
- the translator's contact details

1. Documents you must provide – all visitors

Valid travel document (national passport or other document that allows the holder to travel internationally).

2. Other documents you may want to provide – all visitors

This section provides guidance on the types of documents that you may want to provide to help us consider your application against the Immigration Rules.

- previous travel documents/passports, which show previous travel.
- financial documents showing that you have sufficient funds available. These must clearly show that you have access to the funds, such as:
 - bank statements
 - building society book

- a letter from your current employer on official headed paper, detailing the period of your sabbatical, exchange or outlining the research to be undertaken
- letter from UK host organisation confirming the arrangements for your research or exchange

If you are from a country listed in Paragraph 39 of part 1 of the Immigration Rules, you must provide a valid medical certificate issued by a medical practitioner listed in Appendix T of the Immigration Rules.

3.2 Family accompanying academics coming to undertake research (12 month visa)

If you are from a country listed in Paragraph 39 of part 1 of the Immigration Rules, you must provide a valid medical certificate issued by a medical practitioner listed in Appendix T of the Immigration Rules.

3.3 Private Medical Treatment (6 and 11 month visa)

You must provide a letter from your doctor or consultant in the UK, which includes:

- details of the condition requiring treatment or consultation
- estimated cost and duration of treatment
- details of where treatment or consultation will take place

If you are applying for an 11 month visa and are from a country listed in Paragraph 39 of part 1 of the Immigration Rules, you must provide a valid medical certificate issued by a medical practitioner listed in Appendix T of the Immigration Rules.

Where you are applying for an extension of stay as a visitor for private medical treatment you must provide the following documents:

- a letter from a registered medical practitioner at a private practice or NHS hospital, who holds an NHS consultant post or who appears in the Specialist Register of the General Medical Council, detailing the medical condition requiring further treatment documents to show that you have met the costs of any treatment already receive

Organ donors

In addition, organ donors must provide a letter confirming:

- that you genuinely intend on donating an organ to a named individual who you have a genetic or personal relationship with, and that you are either a confirmed match to the identified recipient or are undergoing further tests to establish this
- details of when and where the planned transplant or tests will take place

The letter must be from one of the following:

I₁₃

• [Embassy of Japan in Kenya](#)

[在ケニア日本国大使館](#)

[Skip to main content](#)

[Japanese](#)

Font Size

[S](#)

[M](#)

[L](#)

• Embassy of Japan in Kenya also has been accredited to

- [Eritrea](#)
- [Somalia](#)
- [Seychelles](#)

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- [About Us](#)
- [Visa](#)
- [Bilateral Relations](#)
- [Economic Cooperation \(Assistance\)](#)
- [UN Affairs](#)
- [Japan Information and Culture Centre](#)
- [Eritrea](#)
- [Somalia](#)
- [Seychelles](#)

VISA GUIDELINE

2016/1/14

WORKING HOURS :

Monday — Friday

8:30 a.m. — 12:20 p. m. (Submission of Application) 1:30 p.m. — 4:00 p. m.
(Collection only) •

Saturdays / Sundays / [Public Holidays](#) : Closed

I/4

VISA FEE: 2,800 Kenya Shillings, payable in cash only at the time of collection (From 1 April 2019 to 31 March 2020)

※The above fee does not apply to citizens of countries with which Japan has bilateral agreements.

PROCESSING TIME: 4 to 5 working days

※Please note that some visa applications require consultation with our headquarters in Tokyo and may take up to one month to issue.

JAPAN VISA INFORMATION HOTLINE TEL:(020) 7640130 (General information / English only)

NON KENYANS (Except the nationals of Eritrea and Somalia) : An original and copy of the work permit or any other document as a proof of legal residential status in Kenya must be submitted at the time of application.

REQUIREMENTS TO OBTAIN A JAPANESE VISA

CATEGORIES:-

1. SHORT-TERM BUSINESS AFFAIRS, etc (Participation in meetings, Business affairs (business consultation, contract signing, after-sales service, market research), Cultural exchange, Sports exchange, etc)
2. VISITING ACQUAINTANCES / FRIENDS
3. VISITING RELATIVES
4. TOURISM
5. APPLICANT WITH CERTIFICATE OF ELIGIBILITY

Visa Application Documents Download

Note for Japanese Entry Visa Application

Note for documents to be prepared in Japan

Click [here](#) to Japanese site 日本語

のサイトは[こちら](#)

ABOUT VISA:-

Points to Note and Application Procedures

Validity of a Visa

Criteria of visa Issuance

Visas and Landing Permission

Visa / Residing in Japan (MOFA site)

The Countries and Region That Have Visa Exemption Arrangements With Japan
Application Procedures for Multiple Visa for Nationals of India

I/5

Visa Fee Exemption for Foreigners Visiting Three Tohoku Prefectures (Extension)

※Be aware of fraudulent website, social media, emails in an attempt to extract payments from visa applicants (July 5, 2017)

SHORT-TERM BUSSINESS AFFAIRS, etc

(A-1) DOCUMENTS FROM THE GUARANTOR / HOST

1. Letter of reason for invitation with an official stamp of the company / organization.
2. Staying programmes and schedule in detail, covering the period of stay.

(A-2) DOCUMENTS FROM GUARANTOR WHO PAYS FOR THE APPLICANT'S TRAVEL EXPENSES

1. Letter of reason for invitation.
2. Letter of guarantee with an official stamp of the company / organization.
3. Staying programmes and schedule in detail, covering the period of stay.
4. A certified copy of the incorporation register or an overview of company / organization.

In specific cases, additional document/s may be requested.

E-mails and / or telephone calls, except specific cases, will not be accepted and may result in rejection of application/s.

(B) DOCUMENTS FROM THE APPLICANT

1. One recent photograph, a visa form duly completed.
2. Valid passport with at least two blank visa pages, Copy of bio-data page of the passport.
3. Introductory letter from employer explaining in detail, the purpose, duration and the party responsible for applicant's expenses on genuine company's letterhead.
4. Company registration certificate and Business permit (original and copy), (Proprietors / Directors to provide proof of directorship).
5. Flight booking print-out or air-ticket copy.
6. Officially certified bank statement for the past six months.

※PLEASE DO NOT STAPLE THE DOCUMENTS

In specific cases, additional document/s may be requested.

All applications must be submitted by the applicant in person.

Visa Application Documents Download

VISITING ACQUAINTANCES/FRIENDS

1/6

(A-1) DOCUMENTS FROM THE GUARANTOR / HOST

1. Letter of reason for invitation duly signed / stamp by the host (when the host is a foreign national, a copy of bio-data page of his / her passport with signature).
2. Staying schedule converging the period of stay.

(A-2) DOCUMENTS FROM GUARANTOR WHO PAYS FOR THE APPLICANT'S TRAVEL EXPENSES

1. Letter of reason for invitation.
2. Letter of guarantee duly signed / stamp by the host.
3. Either one of the following documents concerning the guarantor.
 - a) A certificate of income or taxation (issued by municipal office).
 - b) A certificate of deposit balance.
 - c) A copy of the counterfoil of final tax return with the seal of reception of the Tax Office (E-Tax: submit Receipt Notification and Final Tax Return)
 - d) A certificate of tax payment (Form 2)
4. Staying programmes and schedule in detail, covering the period of stay.
5. Certificate of Residence (with description of his/her family relationship with all family members).
6. (When the guarantor is a foreign national) A copy of both sides of the valid Residence Card(the Alien Registration), A Certificate of Residence (with all matters listed except Resident Record Code), and A copy of his/her passport (including the pages of status items, records of entry/departure, and permission of residence).

In specific cases, additional document/s may be requested.

E-mails and / or telephone calls, except specific cases, will not be accepted and may result in rejection of application/s.

(B) DOCUMENTS FROM THE APPLICANT

1. One recent photograph, a visa form duly completed.
2. Valid passport with at least two blank visa pages, A copy of bio-data page of the passport.
3. Flight booking print-out or air-ticket copy.
4. Officially certified bank statement for the past six months.
5. Introductory letter from the employer (Proprietors / Directors to provide original and copy of Business permit, Company registration certificate and proof of directorship) .
6. Documents to prove kinship(photos, letters, e-mails, bills for international phone calls, etc)

※PLEASE DO NOT STAPLE THE DOCUMENTS

In specific cases, additional document/s may be requested.

All applications must be submitted by the applicant in person.

Visa Application Documents Download

I
1/7

VISITING RELATIVES

(A-1) DOCUMENTS FROM THE GUARANTOR / HOST

1. Letter of reason for invitation duly signed / stamp by the host (when the host is a foreign national, a copy of bio-data page of his / her passport with signature)..
2. Certified copy of family register.
3. Staying programmes and schedule in detail, covering the period of stay.

(A-2) DOCUMENTS FROM GUARANTOR WHO PAYS FOR THE APPLICANT'S TRAVEL EXPENSES

1. Letter of reason for invitation.
2. Letter of guarantee duly signed / stamp by the host.
3. Either one of the following documents concerning the guarantor.
 - a) A certificate of income or taxation (issued by municipal office).
 - b) A certificate of deposit balance.
 - c) A copy of the counterfoil of final tax return with the seal of reception of the Tax Office (E-Tax: submit Receipt Notification and Final Tax Return)
 - d) A certificate of tax payment (Form 2)
4. Staying programmes and schedule in detail, covering the period of stay.
5. Certificate of Residence (with description of his/her family relationship with all family members).
6. (When the guarantor is a foreign national) A copy of both sides of the valid Residence Card (the Alien Registration), A Certificate of Residence (with all matters listed except Resident Record Code), and A copy of his/her passport (including the pages of status items, records of entry/departure, and permission of residence.

In specific cases, additional document/s may be requested.

E-mails and / or telephone calls, except specific cases, will not be accepted and may result in rejection of application/s.

(B) DOCUMENTS FROM THE APPLICANT

1. One recent photograph, a visa form duly completed.
2. Valid passport with at least two blank visa pages, A copy of bio-data page of the passport.
3. Flight booking print-out or air-ticket copy.
4. Officially certified bank statement for the past six months.
5. Introductory letter from the employer (Proprietors / Directors to provide original and copy of Business permit, Company registration certificate and proof of directorship) .
6. Documents to prove kinship (Birth certificate, Marriage certificate, Certified copy of the family register, etc)

All applications must be submitted by the applicant in person.

Visa Application Documents Download

TOURISM / SIGHT SEEING

DOCUMENTS FROM THE APPLICANTS

1. One recent photograph, a visa form duly completed.
2. Valid passport with at least two blank visa pages, A copy of bio-data page of the passport.
3. Flight booking print-out or air-ticket copy.
4. Officially certified bank statement for the past six months.
5. Introductory letter from the employer. (Proprietors / Directors to provide original and copy of Business permit, Company registration certificate and proof of directorship) .
6. Daily schedule with quotation for the tour package.
7. Hotel booking voucher / confirmation.

※PLEASE DO NOT STAPLE THE DOCUMENTS

In specific cases, additional document/s may be requested.

All applications must be submitted by the applicant in person

Visa Application Documents Download

APPLICANTS WITH CERTIFICATE OF ELIGIBILITY

DOCUMENTS FROM THE APPLICANTS

1. One recent photograph, a visa form duly completed.
2. Valid passport with at least two blank visa pages, A copy of bio-data page of the passport.
3. Original and copy of the Certificate of Eligibility.
4. Flight booking print-out or air-ticket copy.

※PLEASE DO NOT STAPLE THE DOCUMENTS

In specific cases, additional document/s may be requested.

All applications must be submitted by the applicant in person

Visa Application Documents Download

I/9

NOTE FOR JAPANESE ENTRY VISA APPLICATION

1. An inviting person/guarantor needs to prepare the documents listed above "A. Prepared by inviting person/guarantor in Japan", prior to a visa application.
2. When the documents are ready, an inviter/guarantor shall send them to a visa applicant, **NOT** to the Embassy of Japan. The Embassy will not make copies. Please make a copy before submitting them if the inviting person/guarantor needs to keep copies of all documents.
3. Please inquire directly to the embassy/consulate-general with jurisdiction over the place of residence of the visa applicant well in advance as identification documents and supporting documents may vary on case by basis.
4. When all these documents are ready, a visa applicant can apply for a visa at the embassy of Japan with jurisdiction over the place of his/her residence by submitting all documents (The application cannot be accepted in Japan). The required documents must be valid and issued within the last three months of the date of submission. Documents, except for passport, submitted for application will not be returned.
5. It takes approximately one week to examine the application after the embassy of Japan receives it. Please note that the processing period may vary depending on each case. The applicant may need to submit additional documents upon request. And also, it may take extra time for a decision on a visa in case the embassy of Japan need to make inquiries to the Ministry of Foreign Affairs in Tokyo.
6. The validity of a visa is three months. The period of validity cannot be extended.
7. The decision will be notified to the visa applicant by the embassy of Japan.

NOTE FOR DOCUMENTS TO BE PREPARED IN JAPAN

The documents must be valid and issued within three months of the date of submission.

1. Invitation Letter (The form of the "Invitation Letter (A4 size)")

- (a) The letter should be addressed to the Japanese ambassador.
- (b) Explain details of activities planned in Japan related to the purpose of visit to Japan. (Specify the background and purpose of the invitation - do not use obscure reasons such as "tourism," "visiting friends" or "visiting relatives.")
- (c) Indicate the address, name, and telephone number in the column for an inviting person, and put your company seal or representative's seal on this form. Private seals are unacceptable. A signature of person in charge would be acceptable if the company/organization does not have a seal

(d) Write full name of the visa applicant in alphabet on the letter. If there are more than one applicant, specify the number of applicants ("Number of additional applicants") on the letter and fill in "List of Visa Applicants" form including the applicant information provided on the letter (this applicant's information should be written at "Applicant 1" on the list).

2. Documents as certificates that indicate a kinship or acquaintance relationship between inviting person and visa applicant.

For "visiting relatives": Certified copy of the family register, etc.

For "visiting acquaintances": letters/e-mails, bills for international phone calls, photos of the visa applicants and inviting person taken together, etc.

3. Itinerary in Japan(The form of " Itinerary in Japan (A4 size)).

(a) Specify the date of arrival and departure, as well as the flight numbers and airports / ports of entry for arrival and departure, if already fixed.

(b) Write the place of stay in detail (in case of a hotel: its name, address and the phone number).

(c) The itinerary needs to be written on daily basis. When similar activities continue on consecutive days, it may be written as "(date) - (date)."

4. Certificate of residence (including all family members' information and issued within the three months. Full details are required for foreign nationals except for Individual Number ("My Number") and Resident Register Code.)

5. Letter of Guarantee (The form of the "Letter of Guarantee (A4 size)"

(a) Complete all items in the Letter of Guarantee, as the omission of even a single item renders it incomplete (includes for an omission of a seal).

(b) Complete the form in the same manner as the Invitation Letter.

6. Documents for the Guarantor: more than one of the following documents

(a) The latest Certificate of Income / Taxation issued by the head of administration of the place of residence, or certificate of tax payment (Form 2) issued by the director of the tax office.

(Note 1) Each certificate should indicate the gross income for the previous year.

(Note 2) Statement of Tax Withholding is not acceptable.

(b) A copy of the counterfoil of final tax return

Submit a copy of the counterfoil of final tax return with the seal of reception of the Tax Office.

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(e-Tax: please submit "Receipt notification" and "Final tax return")

(c) A certificate of deposit balance

7. Documents for an Inviting Organization in case of the purpose of "Short-Term Business Affairs, etc."

(a) The inviting organization should be a corporate body, an organization, or the state/local government. However, for example, the professor/associate professor can be recognized as the inviting organization if a university extends an invitation for the purpose of exchanges under his/her name.

(b) Registered corporations should use an original certified copy of the corporate register that has been issued within the last three months (not required for the national or regional governments). For the company listed on a stock exchange in Japan, it may alternatively submit a copy of the latest 'Kaisha Shikiho' (Japanese Company Handbook).

(c) Unregistered corporations should prepare a "Summary of the Company/Organization" instead of a corporate register. The form "Details of the Company/Organization" (A4 size).

(d) Submit the Certificate of Employment of a university professor/associate professor if he/she invites the visa applicant. .

VISA APPLICATION DOCUMENTS DOWNLOAD

Forms for the list of visa applicants, detail of company / organization etc. download this [site](#)

[Application form \(with QR code\)](#)

[Application form \(without QR code for handwriting\)](#)

[Invitation letter](#)

[Letter of guarantee](#)

[Invitation letter \(Japanese\)](#)

[Letter of guarantee \(Japanese\)](#)

[List of applicants](#)

[Itinerary in Japan](#)

A DAILY LIFE SUPPORT PORTAL FOR FOREIGN NATIONALS

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ADAILY LIFE SUPPORT PORTAL FOR FOREIGN NATIONALS

生活・仕事ガイドブック（やさしい日本語版）

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Applying for a South African Visa

General information about South African Visas

Visitors' visas are for international travellers (citizens of other countries) who have permanent residence outside South Africa and who wish to visit the country on a temporary basis for tourism or business purposes for a period of 90 days or less.

A visa simply indicates that your application has been reviewed at a South African embassy, mission or consulate and that the consular officer has determined you are eligible to enter the country for a specific purpose.

The visa will allow you to travel to a South African port of entry where an immigration official will then determine if you are allowed to enter South Africa and for how long you can stay for that particular visit. Visitors are restricted to the activity or reason for which their visas were issued.

On entry to South Africa, a visa is considered to be a visitor's permit. The permit's period of validity is calculated from the date of entry into the country and will be set out under the heading "conditions" on the visa label. You must ensure that you apply for the correct visa/permit. Entry in the country may be refused if the purpose of visit was not correctly stated.

Requirements for visitor's visas differ from country to country ([click here to see which countries are currently exempt](#)), and the requirements are subject to change. As each application is treated as an individual case and you should make enquiries with your nearest South African mission or consulate abroad or any office of the Department of Home Affairs to see whether or not you are required to apply for a visa.

Remember that there is a fee charged for issuing a visa, and you should check the cost with the office as well as this is updated annually. The fee is payable in different currencies in different countries.

Visas are not issued at South African ports of entry, and airline officials are obliged to insist on visas before allowing passengers to board. If you arrive without a visa, immigration officials are obliged to put you onto a flight back to your home country.

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Requirements for entering South Africa

You will need the following if you wish to visit South Africa:

- A valid and acceptable passport or travel document for your intended stay
- At least one blank page in your passport for endorsements
- A valid visa, if required
- Sufficient funds to pay for your day-to-day expenses during your stay
- A return or onward ticket
- Yellow fever certificates if your journey starts or entails passing through the yellow fever belt of Africa or South America.

Don't forget that there are certain goods that you cannot bring into South Africa and other goods on which duties need to be paid.

For **Customs** requirements, click here: <http://www.sars.gov.za/ClientSegments/Customs-Excise/Travellers/Pages/Arrival-in-SA.aspx>

For **Agricultural** requirements, click here: <http://www.daff.gov.za/daffweb3/Services/Imports>

ORDINARY PASSPORT / TRAVEL DOCUMENT HOLDERS WHO ARE SUBJECT TO SOUTH AFRICAN VISA FEES

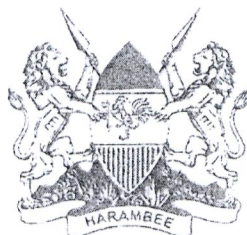
SUBJECT TO CHANGE WITHOUT NOTICE

Fees for the issuance of a visitor's visa in terms of section 11(1) of the Immigration Act shall be collected in respect of passport / travel document holders of the following foreign countries when travelling on an ordinary passport (visa fees are not levied for diplomatic and official/service passport holders). Please note that countries marked with an asterisk are only subject to visa fees if the intended visit exceeds thirty (30) days:

ANNEXURE 02

Annex II /

Telephone: +254 20 318888
Fax: +254 20 2240066/34195/344333
Email: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date



HARAMBEE AVENUE
P.O. Box 30551 - 00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

MFA.PRO 7/15/27/VOL.XV/(26)

Ref. No.

NOTE NO.148/2018/2019

The Ministry of Foreign Affairs of the Republic of Kenya presents its compliments to the South Africa High Commission in Nairobi and has the honour to inform that the under-listed Officers from the Office of the Auditor-General are scheduled to **Carry out Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards** to be held at ICAS Offices in Johannesburg, South Africa from 28th February to 2nd March, 2019.

S/No.	Name	Title/Designation	Passport Number
1.	Sammy Kimunguyi	Deputy Director - Audit	A2038923
2.	Rose Ayuma Nandwa	Supervisor - Audit	A2471890
3.	Tom Mboya Ouma	Audit Assistant I	BK045122
4.	Felix Okumu Obala	Audit Assistant I	A2373421

The Office of the Auditor-General will cater for all expenses pertaining to the trip.

The Ministry of Foreign Affairs of the Republic of Kenya avails itself of this opportunity to renew to the South Africa High Commission the assurances of its highest consideration.

Nairobi, 26th February, 2019

**The South Africa High Commission
NAIROBI**

**Copy: The High Commissioner
Kenya High Commission
PRETORIA**

REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: oag@oagkenya.go.ke
Website: www.kenao.go.ke



P.O. Box 30084-00100
NAIROBI

OFFICE OF THE AUDITOR-GENERAL

C.228/Vol.XVIII/ (38)

13 February, 2019

The Principal Secretary
Ministry of Foreign Affairs and
International Trade
P.O. Box 30551
NAIROBI.

REQUEST FOR VISA

The following officers have been mandated to carry out Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards in South Africa between 28 February - 9 March, 2019.

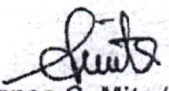
No.	Name	Designation	Passport No.
1.	Kimunguyi Sammy	Deputy Director Audit	A2038923
2.	Nandwa Rose Ayuma	Supervisor	A2472890
3.	Ouma Tom Mboya	Audit associate I	BK045122
4.	Obala Felix Okumu	Audit associate I	A2373421

All costs in relation to their travel, hotel accommodation and stay will be borne by this office.

The purpose of this letter is to kindly request you to issue the officers with visas to enable them travel to South Africa.

The Officers' passport, application forms and other relevant documents are attached.

Thank you.


Agnes C. Mita (M/s)
For: AUDITOR - GENERAL

Encl.

REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: oag@oagkenya.go.ke
Website: www.kenao.go.ke



P.O. Box 30084-00100
NAIROBI

OFFICE OF THE AUDITOR-GENERAL

C.228/Vol.XVIII/ (39)

13 February, 2019

Embassy of the United Arab Emirates
Nyerere Road
P.O. Box 42222
NAIROBI.

REQUEST FOR VISA

The following officers have been mandated to carry out Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards in United Arab Emirates, Dubai between 2 - 13 March, 2019.

No.	Name	Designation	Passport No.
1.	Odhiambo Fredrick Oluoch	Deputy Auditor General	C039697
2.	Kimunguyi Sammy	Deputy Director Audit	A2038923
3.	Nandwa Rose Ayuma	Supervisor	A2472890
4.	Ouma Tom Mboya	Audit associate I	BK045122
5.	Obala Felix Okumu	Audit associate I	A2373421

All costs in relation to their travel, hotel accommodation and stay will be borne by this office.

The purpose of this letter is to kindly request you to issue the officers with visas to enable them travel to Dubai.

The Officers' passport, application forms and other relevant documents are attached.

Thank you.


Agnes C. Mita (M/s)
For: AUDITOR - GENERAL

Encl.

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: oag@oagkenya.go.ke
Website: www.kenao.go.ke



P.O. Box 30084-00100
NAIROBI

OFFICE OF THE AUDITOR-GENERAL**C.228/Vol.XVIII/ (33)****13 February, 2019**

The Principal Secretary
Ministry of Foreign Affairs and
International Trade
P.O. Box 30551
NAIROBI.

REQUEST FOR VISA

The following officers have been mandated to carry out Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards in Japan between 23 February - 8 March, 2019.

No. Name	Designation	Passport No.
1. Odhiambo Fredrick Oluoch	Deputy Auditor General	C039697
2. Mwasho Catherine Nafula	Manager	A2038923
3. Thuku Brian Ndung'u	Audit associate II	A2456081

The purpose of this letter is to kindly request you to assist the officers be issued with visas to enable them travel to Japan.

All costs related to their travel, hotel accommodation and allowances will be borne by this Office.

The officers' passports, application forms and other relevant documents are attached.

Thank you.


Agnes C. Mita (M/s)
For: AUDITOR - GENERAL

Encl.

REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: oag@oagkenya.go.ke
Website: www.kenao.go.ke



P.O. Box 30084-00100
NAIROBI

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OFFICE OF THE AUDITOR-GENERAL

C.228/Vol.XVIII/ (36)

13 February, 2019

British High Commission
Upper Hill Road
P.O. Box 30465 - 00100
NAIROBI.

REQUEST FOR VISA

The following officers have been mandated to carry out Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards in the UK between 6 - 16 March, 2019.

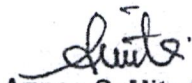
No.	Name	Designation	Passport No.
1.	Odhiambo Fredrick Oluoch	Deputy Auditor General	C039697
2.	Mwasho Catherine Nafula	Manager	A2038923
3.	Thuku Brian Ndung'u	Audit associate II	A2456081

The purpose of this letter is to kindly request you to assist the officers be issued with visas to enable them travel to Japan.

All costs related to their travel, hotel accommodation and allowances will be borne by this Office.

The officers' passports, application forms and other relevant documents are attached.

Thank you.


Agnes C. Mita (M/s)
For: AUDITOR - GENERAL

Encl.

Telephone: +254 20 318888
Fax: +254 20 2240066/34195/344333
Email: communication@mfa.go.ke
Website: www.mfa.go.ke
When replying please quote Ref. No. and date



II/6
HARAMBEE AVENUE
P.O. Box 30551 - 00100
NAIROBI, KENYA

MINISTRY OF FOREIGN AFFAIRS

MFA.PRO 7/15/25/VOL.IX/(36)

Ref. No.

The Ministry of Foreign Affairs of the Republic of Kenya presents its compliments to the British High Commission in Nairobi and has the honour to request for the latter's assistance in facilitating issuance of Entry Visas to:

S/No.	Name	Title/Designation	Passport Number
1.	Fredrick Oluoch Odhiambo	Deputy Auditor-General	C039697
2.	Catherine Nafula Mwasho	Manager - Audit	A2038976
3.	Brian Ndung'u Thuku	Audit Associate II	A2456081

The above named Officers from the Office of the Auditor-General are scheduled to carry out **Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards** to be held in the United Kingdom from 6th to 16th March, 2019.

The Office of the Auditor-General will cater for all expenses pertaining to the trip.

The Ministry of Foreign Affairs of the Republic of Kenya avails itself of this opportunity to renew to the British High Commission the assurances of its highest consideration.

Nairobi, 18th February, 2019

**British High Commission
NAIROBI**

~~ANNEXURE 1~~

Annex III ⁽¹⁷⁾
/1

Catherine Nafula Mwasho

From: Catherine Nafula Mwasho
Sent: Monday, February 4, 2019 2:53 PM
To: Sammy Kimunguyi
Subject: KEBS ITINERARY
Attachments: KEBS ITINERARY FOR PVOC PROGRAM.docx

Dr Sammy
Please see the attached for your action.
I will email you the sample criteria and check list in due course.

Warm regards

Catherine Mwasho

Manager - Audit

Forensic Audit Division

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/2

ITINERARY FOR PVOC PROGRAM

TEAM ONE - JAPAN AND UK

1. Mr. Fredrick Odhiambo
2. Mrs. Catherine Mwasho
3. Mr. Brian Thuku

Date	Activity
16/2/19	Departure from Kenya to Japan
17/2/19	Arrival and settling
18/2/19	Entry meeting at QISJ offices in Yokohama
19/2/19	Field visit to Osaka
20/2/19	Field visit to Nagoya
21/2/19	Field visit to Nagoya
22/2/19	Departure from Japan to UK
23/2/19	Entry meeting at QISJ offices in Tilbury
24/2/19	Field visit to inspection centres
25/2/19	Field visit to inspection centres
26/2/19	Departure from UK to Kenya

TEAM TWO RSA AND UAE

1. Dr. Sammy Kimunguyi
2. Ms. Rose Nandwa
3. Mr. Tom Mboya
4. Mr. Felix Obala

Date	Activity
17/2/19	Departure from Kenya to RSA
18/2/19	Entry meeting at QISJ offices in Johannesburg
19/2/19	Field visit to inspection centers
20/2/19	Departure from RSA to UAE
21/2/19	Entry meeting at QISJ offices in Dubai
22/2/19	Field visit to inspection centers
23/2/19	Departure from Dubai to Kenya

III / 3

Catherine Nafula Mwasho

From: Catherine Nafula Mwasho
Sent: Tuesday, February 5, 2019 8:24 AM
To: ngenoj@kebs.org
Cc: nguyob@kebs.org; DIR Fredrick Oluoch Odhiambo; Sammy Kimunguyi
Subject: ITINERARY FOR PVOC SPECIAL AUDIT
Attachments: KEBS ITINERARY FOR PVOC PROGRAM.docx

Dear Dr Ngeno

Please refer to the entry meeting held on 28/2/2019. As agreed the special audit commenced and we have identified zones and inspection centres that we intend to visit as detailed in the attached itinerary.

Kindly arrange for logistics to enable the team make travel arrangements in a timely manner. You may wish to assign two officers to accompany the teams at your own cost to assist in clarification.

Warm regards

Catherine Mwasho

Manager - Audit

Forensic Audit Division

ITINERARY FOR PVOC PROGRAM

TEAM ONE - JAPAN AND UK

1. Mr. Fredrick Odhiambo
2. Mrs. Catherine Mwasho
3. Mr. Brian Thuku

Date	Activity
16/2/19	Departure from Kenya to Japan
17/2/19	Arrival and settling
18/2/19	Entry meeting at QISJ offices in Yokohama
19/2/19	Field visit to Osaka
20/2/19	Field visit to Nagoya
21/2/19	Field visit to Nagoya
22/2/19	Departure from Japan to UK
23/2/19	Entry meeting at QISJ offices in Tilbury
24/2/19	Field visit to inspection centres
25/2/19	Field visit to inspection centres
26/2/19	Departure from UK to Kenya

TEAM TWO RSA AND UAE

1. Dr. Sammy Kimunguyi
2. Ms. Rose Nandwa
3. Mr. Tom Mboya
4. Mr. Felix Obala

Date	Activity
17/2/19	Departure from Kenya to RSA
18/2/19	Entry meeting at QISJ offices in Johannesburg
19/2/19	Field visit to inspection centers
20/2/19	Departure from RSA to UAE
21/2/19	Entry meeting at QISJ offices in Dubai
22/2/19	Field visit to inspection centers
23/2/19	Departure from Dubai to Kenya

Annex IV ~~R/S~~
1

Catherine Nafula Mwasho

From: Dr. John Ngeno <ngenoj@kebs.org>
Sent: Wednesday, February 6, 2019 9:34 AM
To: mio@qisjp.com
Cc: info@qisjp.com; Catherine Nafula Mwasho; Nguyo Bernard; Maiyo Andrew; DIR Fredrick Oluoch Odhiambo; Sammy Kimunguyi
Subject: RE: ITINERARY FOR PVOC SPECIAL AUDIT

From: Dr. John Ngeno
Sent: Wednesday, February 6, 2019 9:32 AM
To: mio@qisjp.com
Cc: info@qisjp.com; Catherine Nafula Mwasho <Catherine.Mwasho@oagkenya.go.ke>; Nguyo Bernard <Nguyob@kebs.org>; Maiyo Andrew <Maiyoa@kebs.org>; DIR Fredrick Oluoch Odhiambo <Fredrick.Odhiambo@oagkenya.go.ke>; Sammy Kimunguyi <Sammy.Kimunguyi@oagkenya.go.ke>
Subject: ITINERARY FOR PVOC SPECIAL AUDIT

Dear QISJ,

We have received Kenya National Audit officers who are here to conduct special audits on PVOC. They have identified zones to be visited in UK, RSA, UAE and JAPAN as per the attached schedule. The KEBS officers to accompany the team to UK and JAPAN will be Dr John Ngeno and the team to UAE and RSA will be Andrew Maiyo. We kindly request you to organize for us the invitation for purposes of visa acquisition. We will also be pleased to receive a revised favourable itinerary on your side on the attached dates with the contact persons and any necessary arrangements to enable the exercise to be successful. We will forward copies of passports for all officers travelling.

Regards

Dr John Ngeno

Head Of Procurement

KEBS

IV/2

Catherine Nafula Mwasho

From: Sammy Kimunguyi
Sent: Saturday, February 9, 2019 1:33 PM
To: Catherine Nafula Mwasho
Subject: Re: Re- Invitation

Well received thanks

Get [Outlook for Android](#)

From: Catherine Nafula Mwasho
Sent: Saturday, February 9, 2019 1:06:29 PM
To: DIR Fredrick Oluoch Odhiambo; Sammy Kimunguyi
Subject: Fwd: Re- Invitation

Good afternoon all

Kindly refer to the email from QISJ and attached invitation letters for the team to Japan and UK.
As indicated, invitation letters for RSA will follow.

Get [Outlook for Android](#)

From: ASA <mio@qisjp.com>
Sent: Saturday, February 9, 2019 9:43:11 AM
To: Catherine Nafula Mwasho; ngenoj@kebs.org
Subject: Fwd: Re- Invitation

Dear Dr. John Ngeno, Catherine Mwasho

The Japan Invitation Letter has been sent through DHL today with the tracking number: 8337831902
Please find enclosed scanned copy of the Invitation Letter for Japan and hotel bookings.
Attached also Invitation letters and hotel bookings for UK (for UK you can use the copy attached no need originals. But for Japan you have to get the originals and go with it to embassy.
We will send the invitation letters for South Africa once we receive from our partners.
As for Dubai we will apply and send you the visas
If there are anything else we need to provide, please do not hesitate to contact us back.
Please for the purpose of coordination on this trip send mails directly to this mail

Please confirm receipt of the mail and the contents.

Please don't hesitate to ask for any clarification

--
Kind Regards

QISJ Admin

Tel:+81-45-500-6033 Fax:+81-45-500-6034

URL www.qisjp.com

IV / 3

SAVE PAPER - THINK BEFORE YOU PRINT!

This E-mail is confidential, It may also be legally privileged. If you are not the addressee you may not copy, forward, disclose or use any part of it. If you have received this message in error, please delete it and all copies from your system and notify the sender immediately by return E-mail. Internet communications cannot be guaranteed to be timely secure, error or virus-free. The sender does not accept liability for any errors or omissions. Please don't keep us a secret - the kindest compliment we can receive is the referral of your friends, family and colleagues. Please forward our contact information on to anyone you feel may benefit from our services.

--
Kind Regards

QISJ Admin

Quality Inspection Services Inc. Japan

YCC 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.

Tel:+81-45-500-6033 Fax:+81-45-500-6034

URL www.qisjp.com

SAVE PAPER - THINK BEFORE YOU PRINT!

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(Invitation Letter)

招 へ い 理 由 書

平成 31 年 2 月 8 日

在 ケニア 日本国 大使 殿

招へい人は次のとおり査証申請人を招へい致します。

査証申請人

「別添リストの通り」

目的・滞在期間

招へい目的 商用 : ケニアにおける当社検査事業展開調査の為の訪問

招へい期間 2019年2月24日 ~ 2019年3月1日 (6日間)

招へい経緯 現在、ケニアに日本から中古自動車を輸出する際の検査業務をケニア政府

(KENYA BUREAU OF STANDARDS)から委託されており、弊社の検査業務についてKenya National Audit Officeの監査を受ける為。

招 へ い 人

氏 名 株式会社 クオリティーインスペクションサービス 代表取締役 波田野 清昭

住 所 〒230-0054 神奈川県横浜市鶴見区大黒ふ頭22 YCC1608

電話番号 自宅 (090)7732-7601 勤務先 (045)500-6033

担当者氏名 宮川 信也 (ミヤガワ シンヤ)

電話番号 (080)9548-9591

(Invitation Letter)

招 へ い 理 由 書

平成 31 年 2 月 8 日

在 ケニア 日本国 大使 殿

招へい人は次のとおり査証申請人を招へい致します。

査証申請人

「別添リストの通り」

目的・滞在期間

招へい目的 商用 : ケニア政府 (KENYA BUREAU OF STANDARDS) による公認訪問

招へい期間 2019年2月24日 ~ 2019年3月1日 (6日間)

招へい経緯 現在、ケニアに日本から中古自動車を輸出する際の検査業務をケニア政府 (KENYA BUREAU OF STANDARDS) から委託されおり、今後の取引及び業務を円滑に行えるよう、日本での視察及びミーティングを希望している為。

招 へ い 人

氏 名 株式会社 クオリティーインスペクションサービス 代表取締役 波田野 清昭

住 所 〒230-0054 神奈川県横浜市鶴見区大黒ふ頭22 YCC1608

電話番号 自宅 (090) 7732-7601 勤務先 (045) 500-6033

担当者氏名 宮川 信也 (ミヤガワ シンヤ)

電話番号 (080) 9548-9591

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2/8/2019

滞在予定表

ITINERARY

査証申請人 Mr. Fredrick Oluoch Odhiambo, Mr. Brian Ndung'u Thuku, Ms./Mrs. Catherine Nafula Mwasho, Mr. John Kibyegon Ngeno の滞在予定は次のとおりです。

Date		Schedule	Address at the meeting	Residence
2/24/2019	Sun	日本入国 Entry to Japan		ホテルメッツ横浜鶴見 神奈川県横浜市鶴見区鶴見中央1-31-2 電話番号 (45) 500-5011 Hotel Mets Yokohama Tsurumi 1-31-2 Tsurumi-chuo, Tsurumi, Yokohama, Kanagawa Tel (45) 500-5011
2/25/2019	Mon	検査業務の打ち合わせ Meeting	横浜市鶴見区大黒ふ頭22, YCC1608 YCC 1608, 22, Daikokufuto, Tsurumi, Yokohama	
2/26/2019	Tue	検査施設訪問 Visit to inspection facilities	大阪 Osaka	
2/27/2019	Wed	検査施設訪問 Visit to inspection facilities	名古屋 Nagoya	
2/28/2019	Thu	検査業務の打ち合わせ Meeting	横浜市鶴見区大黒ふ頭22, YCC1608 YCC 1608, 22, Daikokufuto, Tsurumi, Yokohama	
3/1/2019	Fri	日本出国 Departure from Japan		

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17

(Guarantee letter)

平成 31 年 2 月 8 日

身 元 保 証 書

在 ケニア日本国大使 殿

査証申請人

氏名 BRIAN NDUNG'U THUKU 性別 男性
国籍 ケニア 職業 MEMBER OF KENYA NATIONAL AUDIT OFFICE
生年月日(西暦) 1992 年 2 月 8 日 年齢 27 才
滞在期間 2019 年 2 月 24 日 ~ 2019 年 3 月 1 日 (6 日間)

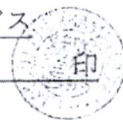
上記の者の本邦入国に関し、下記の事項について保証します。

1. 滞在費
2. 帰国旅費
3. 日本国法令の遵守

上記の通り相違ありません。

身元保証人

氏名 株式会社 クオリティーインスペクションサービス
代表取締役 波田野 清昭
住所 神奈川県横浜市鶴見区大黒ふ頭 22 YCC1608
生年月日 西暦 1974 年 7 月 18 日 年齢 44 才
電話番号(自宅) 090-7732-7601 (勤務先) 045-500-6033
職業 輸出検査業 申請人との関係 取引先



担当者所属先名: 株式会社クオリティーインスペクションサービス

担当者: 宮川 信也 (ミヤガワ シンヤ)



電話番号: 080-9548-9591

2019/02/08

CONFIRMATION

Date : 2019/02/08
Attn : Quality Inspection Services Inc. Japan
伏木様

Thank you very much for your reservation at the JR-EAST HOTEL METS YOKOHAMA TSURUMI.
We are pleased to confirm your reservation as follows:

Guest Name : Mrs. Catherine Nafula Mwasho
Confirmation No : 120087135
Arr. - Dep. : 2019/02/24 - 2019/03/01

Date	Room Type	Rooms	Guests	charge(JPY)
2019/02/24	Single Non Smoking	1	1	9,000
2019/02/25	Single Non Smoking	1	1	9,000
* 2019/02/26	Single Non Smoking	1	1	11,650
* 2019/02/27	Single Non Smoking	1	1	9,000
* 2019/02/28	Single Non Smoking	1	1	10,150
Total				48,800

The above rate includes tax.

Remarks : Including Breakfast

<Cancellation Policy>

1 day prior of the arrival	20%
Day of the arrival	80%
No show	100%

Should you have any further questions, please do not hesitate to contact us.
Thank you again and we look forward to welcoming you to the JR-EAST HOTEL METS YOKOHAMA TSURUMI.

Clerk:Riko Rokuhara

JR-EAST HOTEL METS YOKOHAMA TSURUMI
1-31-2 Tsurumichuo, Tsurumi-ku, Yokohama, Kanagawa 230-0051, Japan
Phone:+81-45-500-5011 Fax:+81-45-500-5014 E-mail:y-tsurumi@hotelmets.jp

IV
/10

横浜市鶴見区大黒ふ頭22番YCC1608
株式会社クオリティーインスペクションサービス

役員に関する事項	取締役	波 田 野 清 昭	
	横浜市鶴見区梶山二丁目25番24号 代表取締役	波 田 野 清 昭	
			平成24年12月 1日住所 移転
			平成25年 8月 6日登記
	英国ロンドン市1G1,173G、ユニット10、 ミューアヘッド、クエイ、フレッシュワーフ、 ハイブリッジロード		平成26年11月11日登記
	2 アラブ酋長国連邦ドバイ市ラス・アル・ホール、 アル・アウィール、PO. Box99325		平成25年 2月21日設置
			平成26年 2月 3日登記

これは登記簿に記録されている現に効力を有する事項の全部であることを証明
した書面である。

(横浜地方法務局管轄)

平成30年12月28日
横浜地方法務局神奈川出張所
登記官

樋 口 富 美 枝



整理番号 ホ071069

* 下線のあるものは抹消事項であることを示す。

2/2

2019/02/08

CONFIRMATION

Date : 2019/02/08
Attn : Quality Inspection Services Inc. Japan
伏木様

Thank you very much for your reservation at the JR-EAST HOTEL METS YOKOHAMA TSURUMI.
We are pleased to confirm your reservation as follows:

Guest Name : Mrs. Catherine Nafula Mwasho
Confirmation No. : 120087135
Arr. - Dep. : 2019/02/24 - 2019/03/01

Date	Room Type	Rooms	Guests	charge(JPY)
2019/02/24	Single Non Smoking	1	1	9,000
2019/02/25	Single Non Smoking	1	1	9,000
* 2019/02/26	Single Non Smoking	1	1	11,650
* 2019/02/27	Single Non Smoking	1	1	9,000
* 2019/02/28	Single Non Smoking	1	1	10,150
Total				48,800

The above rate includes tax.

Remarks : Including Breakfast

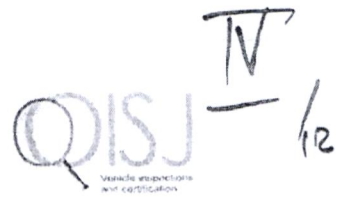
<Cancellation Policy>

1 day prior of the arrival	20%
Day of the arrival	80%
No show	100%

Should you have any further questions, please do not hesitate to contact us.
Thank you again and we look forward to welcoming you to the JR-EAST HOTEL METS YOKOHAMA TSURUMI.

Clerk:Riko Rokuhara

JR-EAST HOTEL METS YOKOHAMA TSURUMI
1-31-2 Tsurumichuo, Tsurumi-ku, Yokohama, Kanagawa 230-0051, Japan
Phone:+81-45-500-5011 Fax:+81-45-500-5014 E-mail:y-tsurumi@hotelmets.jp



08 February 2019

The Visa Officer
British High Commissioner
Nairobi
Kenya

Dear Sir;

Re: Invitation for Kenya Government officials.

Mr. Fredrick Odhiambo Passport No C039697
Ms. Catherine Mwasho Passport No A2038976
Mr Brian Thuku Passport No A2456081
Mr Ngeno John Kibyegon Passport No BK043151

We are an international vehicle inspection company and contracted by the Kenya Bureau of Standards to carry out pre shipment inspections on all vehicles and machineries that are exported from the United Kingdom to Kenya.

Kenya Bureau of Standards (KEBS) would like to send their officials to visit our UK facilities to carry out some audits and due diligence checks.

We do request for you to Issue entry Visas Mr Odhiambo, Ms Mwasho, Mr Thuku and Mr Kibyegon.

Attached are copies of their passports and hotel reservations for the duration of their stay.

Any assistance rendered shall be highly appreciated.

Please do contact me for any more information that you may need.

Yours Faithfully

Jaffar Hassan
Manager
QISJ - UK Branch

IV / 13

Booking reference:

AOSR523401

London Enfield

Innova Park, Enfield, EN3 7XY

Tel. 0333 777 7927

Arriving: **Friday, 1 Mar 2019** Check in after 2 pm

Leaving: **Thursday, 7 Mar 2019** Check out before 12 pm

Nights: 6

Rate: **Flex**

Booked by: **Mr JAFFAR HASSAN**

Payment status: **Thank you, your payment will be taken on arrival**

Room 1

FREDRICK ODHIAMBO

1 Adult

Room composition

£325.00

Extras

£57.00

Room 2

CATHERINE MWASHO

1 Adult

Room composition

£325.00

Extras

£57.00

Room 3

BRIAN THUKU

1 Adult

Room composition

£325.00

Extras

£57.00

Room 4

NGENO JOHN KIBYEGON

1 Adult

Room composition

£325.00

Extras

£57.00

TV
/ 14

Catherine Nafula Mwasho

From: Dr. John Ngeno <ngenoj@kebs.org>
Sent: Thursday, February 14, 2019 9:35 AM
To: ASA
Cc: Catherine Nafula Mwasho
Subject: FW: Re Invitation of Auditors for South Africa
Attachments: Proforma120BF26J2.pdf; VISA Letters OAG.pdf

Dear Qisj,

Kindly note that the itinerary for team 2 changed as per our telecom yesterday. They are to travel to SA on 28th and travel to Dubai from SA on 2nd. Please kindly change the invitation letter to factor the same.

Dr. John Ngeno KEBS

From: Dr. John Ngeno
Sent: Tuesday, February 12, 2019 8:50 AM
To: 'Catherine Nafula Mwasho' <Catherine.Mwasho@oagkenya.go.ke>
Subject: FW: Re Invitation of Auditors for South Africa

FYA

From: ASA [mailto:mio@qisjp.com]
Sent: Tuesday, February 12, 2019 8:47 AM
To: Catherine.Mwasho@oagkenya.go.ke; Dr. John Ngeno <ngenoj@kebs.org>
Subject: Fwd: Re Invitation of Auditors for South Africa

Dear Catherine/Dr Ngeno

Please find the attached Invitation letters and hotel bookings for Visa application of the auditors to South Africa.

--

Kind Regards

QISJ Admin

TV
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Quality Inspection Services Inc. Japan
YCC 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.
Tel: +81-45-500-6033 Fax: +81-45-500-6034
URL www.qisjp.com

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Please don't keep us a secret - the kindest compliment we can receive is the referral of your friends, family and colleagues. Please forward our contact information on to anyone you feel may benefit from our services.

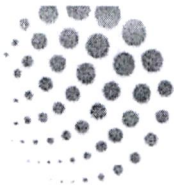
Kind Regards

QISJ Admin

Quality Inspection Services Inc. Japan
YCC 1608 22 Daikoku-Futou, Tsurumi, Yokohama, Kanagawa, Japan.
Tel: +81-45-500-6033 Fax: +81-45-500-6034
URL www.qisjp.com

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Please don't keep us a secret - the kindest compliment we can receive is the referral of your friends, family and colleagues. Please forward our contact information on to anyone you feel may benefit from our services.



icas

International Conformity
Assessment Solutions

IV
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14th February 2019

TO: Head, Consular Section
South African High Commission
5th Floor Roshanmaer Place
Lenana Rd, Kilimani
Nairobi, Kenya

Dear Sir,

REF: VISA APPLICATION - Tom Mboya Ouma – Passport No. BK045122

We International Conformity Assessment Solutions (Pty) Ltd (ICAS) do hereby kindly request you to accord the above-mentioned person from the Office of the Auditor General the relevant visa in order for them to audit ICAS in Johannesburg and Durban from 28th February 2019 to 2nd March 2019.

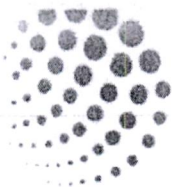
Find below herewith his details:

Tom Mboya Ouma
Passport Nr. BK045122

I remain at your disposal for any further information you may require.

Respectfully Yours

Charles Karobia
Technical Manager
Cell: +27 72 345 9005



icas

International Conformity
Assessment Solutions

IV
17

14th February 2019

TO: Head, Consular Section
South African High Commission
5th Floor Roshanmaer Place
Lenana Rd, Kilimani
Nairobi, Kenya

Dear Sir,

REF: VISA APPLICATION - Sammy Kimunguyi – Passport No. A2038923

We International Conformity Assessment Solutions (Pty) Ltd (ICAS) do hereby kindly request you to accord the above-mentioned person from the Office of the Auditor General the relevant visa in order for them to audit ICAS in Johannesburg and Durban from 28th February 2019 to 2nd March 2019.

Find below herewith his details:

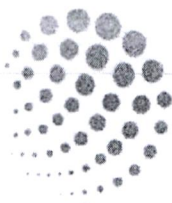
Sammy Kimunguyi
Passport Nr. A2038923

I remain at your disposal for any further information you may require.

Respectfully Yours

Charles Karobia
Technical Manager
Cell: +27 72 345 9005

UNIT 101B, 1ST FLOOR, PROCESS HOUSE, EPSOM DOWNS OFFICE PARK, 13 SLOANE STREET, BRYANSTON.
Tel: + 27 (0) 11 026 1600 Cell: + 27 72 345 9005



icas

International Conformity
Assessment Solutions

TV
/18

14th February 2019

TO: Head, Consular Section
South African High Commission
5th Floor Roshanmaer Place
Lenana Rd, Kilimani
Nairobi, Kenya

Dear Sir,

REF: VISA APPLICATION - Rose Ayuma Nandwa – Passport No. A2471890

We International Conformity Assessment Solutions (Pty) Ltd (ICAS) do hereby kindly request you to accord the above-mentioned person from the Office of the Auditor General the relevant visa in order for them to audit ICAS in Johannesburg and Durban from 28th February 2019 to 2nd March 2019.

Find below herewith her details:

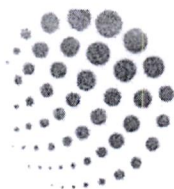
Rose Ayuma Nandwa
Passport Nr. A2471890

I remain at your disposal for any further information you may require.

Respectfully Yours

Charles Karobia
Technical Manager
Cell: +27 72 345 9005

IV
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ICAS

International Conformity
Assessment Solutions

14th February 2019

**TO: Head, Consular Section
South African High Commission
5th Floor Roshanmaer Place
Lenana Rd, Kilimani
Nairobi, Kenya**

Dear Sir,

REF: VISA APPLICATION - Felix Okumu Obala – Passport No. A2373421

We International Conformity Assessment Solutions (Pty) Ltd (ICAS) do hereby kindly request you to accord the above-mentioned person from the Office of the Auditor General the relevant visa in order for them to audit ICAS in Johannesburg and Durban from 28th February 2019 to 2nd March 2019.

Find below herewith his details:

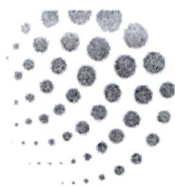
Felix Okumu Obala
Passport Nr. A2373421

I remain at your disposal for any further information you may require.

Respectfully Yours

Charles Karobia
Technical Manager
Cell: +27 72 345 9005

UNIT 101B, 1ST FLOOR, PROCESS HOUSE, EPSOM DOWNS OFFICE PARK, 13 SLOANE STREET, BRYANSTON.
Tel: + 27 (0) 11 026 1600 Cell: + 27 72 345 9005



icas

International Conformity
Assessment Solutions

14/20

14th February 2019

TO: Head, Consular Section
South African High Commission
5th Floor Roshanmaer Place
Lenana Rd, Kilimani
Nairobi, Kenya

Dear Sir,

REF: VISA APPLICATION - Andrew Kipruto Maiyo – Passport No. D000379

We International Conformity Assessment Solutions (Pty) Ltd (ICAS) do hereby kindly request you to accord the above-mentioned person from the Office of the Auditor General the relevant visa in order for them to audit ICAS in Johannesburg and Durban from 28th February 2019 to 2nd March 2019.

Find below herewith his details:

Andrew Kipruto Maiyo
Passport Nr. D000379

I remain at your disposal for any further information you may require.

Respectfully Yours

Charles Karobia
Technical Manager
Cell: +27 72 345 9005



City Lodge Hotel Fourways
PO Box 2512, Witkoppen, 2068
Tel: +2711 244 6000 Fax: +2711 244 6050 - clfourways.acc@clhg.com

PRO FORMA INVOICE

VAT No : 4360101101

Thank you for choosing City Lodge Hotel Fourways for your upcoming stay. Please find below details of your reservation as requested:

Icas
Private Bag X22
Posnet Suit 25
Benmore
Gauteng
South Africa
2012

Date: 11/02/2019
Pro Forma Invoice Number: 120BF26J2
Account Number: 1083782

Accommodation							
Arrival	Departure	No. of Nights	Quantity	Description	Total (excl. VAT)	VAT	Total (incl. VAT)
24/02/2019	26/02/2019	2	5 rooms	Accommodation @ avg. 1,500.00 PD	13,043.48	1,956.52	15,000.00
				Tourism Levy	130.43	19.57	150.00
				SUB TOTAL	13,173.91	1,976.09	15,150.00
Extras							
Description		Guests	No of Days	Cost per Person per Day	Total (excl. VAT)	VAT	Total (incl. VAT)
Breakfast		5	2	165.00	1,434.78	215.22	1,650.00
				SUB TOTAL	1,434.78	215.22	1,650.00
TOTAL							16,800.00 ZAR
PAID							0.00 ZAR
DUE							16,800.00 ZAR

Non - VAT items
PD - per day

Kindly note that check-in commences from 2PM on your date of arrival and that we will hold your un-guaranteed reservation until 4PM on that day, following which we may release your reservation and resell the room.

Pre-paying this reservation prior to your arrival will guarantee your reservation. This may be done by depositing the total amount due into the account below within 48 hours of this pro forma invoice.



IV 22

City Lodge Hotel Fourways
PO Box 2512, Witkoppen, 2068
Tel: +2711 244 6000 Fax: +2711 244 6050 - clfourways.acc@clhg.com

PRO FORMA INVOICE

VAT No : 4360101101

Banking details:

Bank name	Standard Bank
Account number	201 367 084
Branch name	Fourways Crossing
Branch code	009 953
Swift code	SBZAJJ
Reference	120BF26J2

Please forward your proof of payment to email clfourways.acc@clhg.com or fax +2711 244 6050. Should pre-payment not be received prior to your arrival, this reservation will unfortunately not be guaranteed.

N.B. Please note that during peak periods, reservations must be guaranteed failing which they will be released. Kindly refer to our website www.clhg.com for our terms and conditions, including those pertaining to peak periods.

Breakfast will be an additional charge if not included in the accommodation rate.

Please do not hesitate contacting us should you require any further assistance or information.

Wishing you safe travels and we look forward to welcoming you to our hotel.

Kind Regards,
Rahab Sethekge



IV
1/23

City Lodge Hotel Fourways
PO Box 2512, Witkoppen, 2068
Tel: +2711 244 6000 Fax: +2711 244 6050 - clfourways.acc@clhg.com

PRO FORMA INVOICE

VAT No : 4360101101

Guest Names			
Arrival	Departure	Room Category	Names
24/02/19	26/02/19	QNSB	Andrew Maiyo
24/02/19	26/02/19	QNSB	Felix Obala
24/02/19	26/02/19	QNSB	Rose Nandwa
24/02/19	26/02/19	QNSB	Sammy Kimunguyi
24/02/19	26/02/19	QNSB	Tomy Mboya

~~ANNEX 3~~

Annex V

52919380

52919381

52919382

VISA SECTION

EMBASSY OF JAPAN
P.O.BOX 60202-00200
NAIROBI
visa@nb.mofa.go.jp



NAME OF APPLICANT /S Office of the Auditor General

NATIONALITY KENYAN

NO. OF PASSPORTS 3
(To be confirmed.)

AMOUNT TO BE PAID ON COLLECTION 8250/- @ 2750/- KES
(Please ensure that you bring exact amount)

GUIDELINE FOR COLLECTION

3:30 p.m

PLEASE CALL US BETWEEN 11:00~12:30 HRS ON 22nd, Feb, 2019
TO CONFIRM BEFORE COMING FOR COLLECTION.
THE PASSPORT CAN BE RELEASED ONLY ON PRESENTATION OF THIS SLIP
BY THE APPLICANT OR ANY OTHER PERSON.
KINDLY FILL IN YOUR DETAILS BELOW BEFORE SUBMITTING THIS SLIP
TOGETHER WITH AN EXACT AMOUNT OF VISA FEE.

COLLECTED BY: NAME IN FULL K. J. G. Glad.

SIGNATURE HA DATE 22 / 02 / 19

COLLECTION HOURS: 11:30 ~ 12:20 / 13:30 ~ 15:30
TELEPHONE NO: 020-2898000 VISA SECTION

~~ANNEXURE 4~~

V
1/2

SUPER JET WORLDWIDE TOURS L L C

RECEIPT



P.O. BOX 123260
DUBAI, U.A.E
TEL: +97143939805, FAX: +97143939806

Name Mr. John Ngeno
Kenya

RECEIPT NUMBER A0081
DATE February 28, 2019

S- No.	DESCRIPTION	visa cost	AMOUNT
1	FREDRICK OLUOCH ODHIAMBO		AED 350.00
2	SAMMY KIMUNGUYI		AED 350.00
3	ROSE AYUMA NANDWA		AED 350.00
4	FELIX OKUMU OBALA		AED 350.00
5	TOM MBOYA OUMA		AED 350.00
6	ANDREW KIPRUTO MAIYO		AED 350.00
7	BRIAN NDUNGU THUKU		AED 350.00
8	CATHERINE NAFULA MWASHO		AED 350.00
9	JOHN KIBYEGON NGENO		AED 350.00
		SUBTOTAL	AED 3,150.00
			AED 3,150.00

PER JET WORLDWIDE TOURS LLC

P.O. BOX 123260
DUBAI, U.A.E

THANK YOU FOR YOUR BUSINESS!

STATEMENT OF ACCOUNT
FOR ACCOUNT NUMBER 0100276081800
ONE FEE TARIFF CURRENT ACCOUNT
From 01-03-2019 To 31-03-2019

Standard Chartered
 In account with
 Standard Chartered Bank Kenya Limited

13

Branch Code : 04100 Branch Name : MOI AVENUE BRANCH

Statement No./Page No. -/1

FREDRICK OLUOCH ODHIAMBO
 P.O.BOX 19574
 KISUMU
 KENYA
 Kisumu

	BOOK	CLEARED
OPENING BALANCE	1,095,150.75	1,356,947.20
CLOSING BALANCE	17,427.60	17,427.60
AVERAGE BALANCE	330,112.26	297,220.94
TOTAL DEBITS	41	
TOTAL CREDITS	1	

CURRENCY KENYAN SHILLING

ENTRY DATE	VALUE DATE	DESCRIPTION	DEBITS	CREDITS	BALANCE
				Balance Brought Forward	1,095,150.75
01-03-2019	01-03-2019	OFFICE OF THE AUDITOR GE MR. ODHIAMBO OLUOCH.-		261,796.45	
					1,356,947.20
04-03-2019	04-03-2019	DEBIT CARD TXN AT YOKOHAMA GRAND YOKOHAMA 02-03-2019 / 14:39:58 47-83-9425 00097207 4783942500097207	94,935.80		
	04-03-2019	IBANKING CREDIT CARD PAYMENT PAYMENT OF 4476630001515825	332,000.00		
05-03-2019	05-03-2019	DEBIT CARD TXN AT LIWA TRADING EN ABU DHABI 04-03-2019 / 17:21:15 47-83-9425 00097207 4783942500097207	40,503.30		930,011.40
	05-03-2019	DEBIT CARD TXN AT ZORION TRADING DUBAI 04-03-2019 / 17:58:02 47-83-9425 00097207 4783942500097207	53,309.05		836,199.05
06-03-2019	06-03-2019	MOBILE BANKING MPESA CHARGE	70.00		
	06-03-2019	EXCISE DUTY	14.00		
	06-03-2019	ACC TO MPESA TRANSFER FOR MOBILE NO:254706449479 FROM 0100276081800 KE-CKL-06032019:145146-254706449479	30,000.00		
				Balance Carried Forward	806,115.05

STANDARD CHARTERED BANK KENYA LTD.
 NAIROBI BRANCH, NAIROBI
 SERVICE MANAGER

Please be advised that effective 21st September 2018, excise duty of 20% shall be levied on all banking fees and charges in accordance with the Finance Act 2018 No. 10. Please contact us on 254-20-3293900 for assistance at any time. It is always a pleasure serving you.

1. Please remember to examine this statement and inform us of any discrepancy within 30 days from the statement date, otherwise it will be considered as correct.
2. For fees and charges, please click through to <https://www.sc.com/global/av/ke-stanchart-tariff-guide.pdf>
3. Client Terms and Conditions - <https://www.sc.com/global/av/ke-client-terms-and-conditions.pdf>

MOI AVENUE BRANCH
 P.O BOX 30003-00100, NAIROBI

TEL2540203293000

Fax:254 (0) 20 229745

Standard Chartered Bank Kenya Limited is regulated by the Central Bank of Kenya

1-1-1 Minatomirai Nishi-ku Yokohama 220-8522 JAPAN Tel: +81(45)223 2222 FAX: +81(45)221 0650
www.japan.intercontinental.com Toll-free 0120-455-655

Fredrick Odhiambo
Ke
Kenya

INFORMATION INVOICE

ページ/Page No. 1 of 1
ご到着/Arrival 03-02-19
ご出発/Departure 03-03-19
Room No. 2512
担当者/User Name ONAGANA
担当ID/Cashier No. 276
明細番号/Folio No. 1933129
発行日/Issued on 03-03-19

11/31

Date	Description	Reference	Amount
02-24-19	Accommodation		21,400
02-25-19	Accommodation		21,400
02-26-19	Accommodation		21,400
02-27-19	Laundry		4,760
	2271920		
02-27-19	Dry Cleaning		4,500
	2271921		
02-27-19	In Room Bar Beverage		400
	Room# 2512 : CHECK# 3017681		
02-27-19	Accommodation		21,400
02-28-19	Laundry		3,150
	2281917		
02-28-19	Dry Cleaning		8,550
	2281918		
02-28-19	Accommodation		21,400
03-01-19	Laundry		1,350
	3011916		
03-01-19	Dry Cleaning		2,950
	3011917		
03-01-19	In Room Bar Beverage		400
	Room# 2512 : CHECK# 3017778		
03-01-19	Accommodation		25,400
03-02-19	In Room Dining Food Dinner		3,564
	Room# 2512 : CHECK# 3048165		
03-02-20	Accommodation		28,000
03-02-19	Cash		-90,000
03-02-19	Visa/Master Card		-100,024

Per Card

Res. 94,935.80 X 1.053 = -100,024

残高 / Balance 0 JPY
ご利用額 /total 190,024 JPY

Approved by:

Company

Street

City

Signature

"I agree that I am personally liable for the payment of the foregoing statement and if the person, company or association indicated by me as being responsible for payment of the same does not do so.

That my liability for such payment shall be joint and several with such person, company or association."

CREDIT CARD	
YOKOHAMA GRAND	THANK YOU



Kazee Oludhe <wazualink@gmail.com>

4



Thanks! Your booking is confirmed at InterContinental Yokohama Grand

1 message

InterContinental Yokohama Grand <customer.service@booking.com>
Reply-To: InterContinental Yokohama Grand <cs-noreply@booking.com>
To: wazualink@gmail.com

Fri, Feb 22, 2019 at 9:16 PM

.com

Confirmation number: 1992814262

PIN code: 6620



Thanks Fredrick!

Your booking in Yokohama is confirmed.



InterContinental Yokohama Grand is expecting you on **24 February**



Your **payment** will be handled by InterContinental Yokohama Grand. The '**Payment**' section below has more details



Make changes to your booking or ask the property a question in just a few clicks

Easily make changes online to all your bookings by creating a password.

[Make changes to your booking](#)

[Manage your booking in the app](#)

InterContinental Yokohama Grand Business trip 5-star hotel

ヨコハマ グランド インターコンチネンタル ホテル

220-8522, Yokohama, Nishi Ward, Nishi-ku Minatomirai 1-1-1 - [Show directions](#)

220-8522, 横浜市, 西区, 西区みなとみらい1-1-1

Phone: +81452232222

[Email property](#)



[Get the print version](#)

Your reservation

6 nights, 1 room

Check-in

Sunday 24 February 2019 (from 15:00)

Check-out

Saturday 2 March 2019 (until 11:00)

Prepayment

You don't need to prepay. However, the property may take a deposit from the card you booked with. This is a routine procedure to verify that it is valid and hasn't been lost or stolen. The hold is temporary and the amount will be returned to you in full.

Cancellation cost

- From now on: ¥21,400

Cancel your booking

This booking is non-refundable. Changing the dates of your stay is not possible.

1 Standard Room

8 % VAT is included.

10 % service charge is included.

Total price

¥132,400

 We Price Match

You'll pay when you stay at InterContinental Yokohama Grand

As a routine procedure, the property may take a temporary deposit to check the card you booked with isn't lost or stolen and to guarantee your booking.

Please note: additional supplements (e.g. extra bed) are not added to this total.

The total price shown is the amount you will pay to the property. Booking.com does not charge any reservation, administration or other fees.

If you don't show up or if you cancel applicable taxes may still be charged by the property.

Stay connected with high speed internet in Japan!

Coupon Code: BKGC3LFD

Special offer for travellers using Booking.com! Enter this coupon code when you purchase Japan Welcome SIM online and you will get an extra 300 MB with high speed connection! Find out more.



Refer your friends and earn US\$15

For each friend who books with your referral link you get US\$15 on your credit card and your friends get US\$15! Learn more

J
1/6

Share this link with your friends:

https://www.booking.com/s/32_8/wazual19

Is everything correct?

You can always view or change your booking online - no registration required.

- Request early check-in or late check-out
- Edit guest details
- Update credit card
- Contact the property

Room details

Guest name	Fredrick Odhiambo Edit guest name
Number of guests	max. 2 people.
Room size	27 m ²
Breakfast	Breakfast is included in the final price.

Special Requests

This guest has requested a receipt for their stay.

Important information

Spa Bay Window operating hours: 11:00-19:00 (closed Tuesdays)

Private Health & Fitness Club operating hours:

Weekdays: 09:00-22:00

Saturdays: 08:00-22:00

Sundays and holidays: 08:00-20:00

Use of the Private Health & Fitness Club requires payment of an additional fee.

Guests must be at least 18 years old to enter the fitness club.

Please note that additional charges apply to children 5 years and older, if they wish to have breakfast.

V
1/2

Payment

You have now confirmed and guaranteed your reservation by credit card.

All payments are to be made at the property during your stay, unless otherwise stated in the policies.

Please note that your credit card may be pre-authorised prior to your arrival.

This accommodation provider accepts the following forms of payment:

American Express, Visa, Euro/Mastercard, Diners Club, JCB, NICOS, UC

[Change credit card details](#)

Booking conditions

Cancellation policy

You will be charged the first night if you cancel your booking.

Any cancellation or modification fees are determined by the property. You will pay any additional costs to the property.

Guest parking

Public parking is possible on site (reservation is not needed) and costs JPY 1800 per day.

Internet

WiFi is available in the hotel rooms and is free of charge.

[See all booking conditions](#)

Need help with your reservation?

Contact the property

Phone: +81452232222

Manage your booking

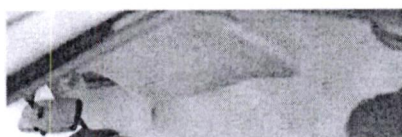
You can view your reservation or make changes online anytime.

Keep this confirmation in your pocket

No data, WiFi or printer needed with the FREE app.

[Download our app](#)

Available for iPhone, iPad and Android



**Book. Go. Straightforward car rental
from Booking.com**



Travel farther, travel better! Booking a rental car with us is quick and easy, and we even offer free cancellation.

V
1/8

[Find your rental car »](#)

A taxi direct to your stay

Cut out any post-flight hassle with a taxi straight to **InterContinental Yokohama Grand**. It'll be waiting for you when you land.

[See deals](#)



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When communicating with your booked accommodation via Booking.com you agree with the processing of the communications as set out in our [Privacy Policy](#).

Annex VI,

Ref: C.868Z 2/(5)

14 February, 2019

The Ag. Managing Director
Kenya Bureau of Standards
P. O. Box 54974-00200
NAIROBI

Dear Ag. MD,

RE: SPECIAL AUDIT ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARDS SERVICES

We refer to the above mentioned on-going special audit which required site visits to selected PVOC service providers in Japan, United Kingdom (UK), United Arabs Emirates (UAE) and Republic of South Africa (RSA).

Enclosed is our itinerary for travels to the aforementioned destinations together with a copy of a letter from our Office to facilitate processing of VISA to the United Arab Emirates (Multiple Entry Visa for Mr. Odhiambo Fredrick Oluoch).

Kindly communicate the same to selected service providers to avail themselves for the scheduled meetings.

For further clarification, please contact the undersigned.

Yours

Sincerely,



F. O. Odhiambo
Deputy Auditor-General
For: AUDITOR-GENERAL

Copy I

Encl.

PROPOSED TRAVEL ITINERARY

TEAM ONE – JAPAN AND UK

1. Mr. Fredrick Odhiambo
2. Mrs. Catherine Mwasho
3. Mr. Brian Thuku

Date	Activity
23/2/19	Departure from Kenya to Japan
24/2/19	Arrival and settling
25/2/19	Meeting with QISJ in Yokohama and field visit
26/2/19	Meeting with EAA in Yokohama and field visit
27/2/19	Meeting with ATJ in Yokohama and field visit
28/2/19	Field visit
1/3/19	Departure from Japan to Kenya (Ms. Catherine Mwasho & Mr. Brian Thuku)
1/3/19	Departure from Japan to UAE (Mr. Fredrick Odhiambo))
6/3/19	Departure from Kenya to UK
7/3/19	Meeting with QISJ in Tilbury and field visit
8/3/19	Meeting with ATJ in Tilbury and field visit
9/3/19	Meeting with EAA in Tilbury and field visit
10/3/19	Departure from UK to Kenya

TEAM TWO RSA AND UAE

1. Mr. Fredrick Odhiambo
2. Dr. Sammy Kimunguyi
3. Ms. Rose Nandwa
4. Mr. Tom Mboya
5. Mr. Felix Obala

Date	Activity
28/2/19	Departure from Kenya to RSA
1/3/19	Meeting with QISJ and ATJ agents in Johannesburg
2/3/19	Departure from RSA to UAE
3/3/19	Meeting with QISJ in Dubai and field visit
4/3/19	Meeting with ATJ in Dubai and field visit
5/3/19	Meeting with EAA in Dubai and field visit
6/3/19	Departure from Dubai to Kenya

REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: oag@oagkenya.go.ke
Website: www.kenya.go.ke



P.O. Box 30084-00100
NAIROBI

OFFICE OF THE AUDITOR-GENERAL

C.228/Vol.XVIII/ (39)

13 February, 2019

Embassy of the United Arab Emirates
Nyerere Road
P.O. Box 42222
NAIROBI.

REQUEST FOR VISA

The following officers have been mandated to carry out Special Audit on Procurement of Pre-Shipment Inspection Services by Kenya Bureau of Standards in United Arab Emirates. Dubai between 2 - 13 March, 2019.

No.	Name	Designation	Passport No.
1.	Odhiambo Fredrick Oluoch	Deputy Auditor General	C039697
2.	Kimunguyi Sammy	Deputy Director Audit	A2038923
3.	Nandwa Rose Ayuma	Supervisor	A2472890
4.	Ouma Tom Mboya	Audit associate I	BK045122
5.	Obala Felix Okumu	Audit associate I	A2373421

All costs in relation to their travel, hotel accommodation and stay will be borne by this office.

The purpose of this letter is to kindly request you to issue the officers with visas to enable them travel to Dubai.

The Officers' passport, application forms and other relevant documents are attached.

Thank you.


Agnes C. Mita (M/s)
For: AUDITOR - GENERAL

Encl

Catherine Nafula Mwasho

Handwritten signature and initials, possibly "C. Nafula Mwasho", with a large "4" written below it.

From: Catherine Nafula Mwasho
Sent: Thursday, February 7, 2019 9:25 AM
To: DIR Fredrick Oluoch Odhiambo
Cc: Sammy Kimunguyi
Subject: KEBS revised itinerary
Attachments: KEBS ITINERARY FOR PVOC PROGRAM.docx; PVOC TENDERS.docx

Dear Fred

Attached is the revised KEBS itinerary as discussed for your action.
Also see a list of the bidders and their locations in Japan, UAE and RSA. The location for M/s Nippon is yet to be provided.

Warm regards

Catherine Mwasho

Manager - Audit

Forensic Audit Division

ITINERARY FOR PVOC PROGRAM

TEAM ONE - JAPAN AND UK

1. Mr. Fredrick Odhiambo
2. Mrs. Catherine Mwasho
3. Mr. Brian Thuku

Date	Activity
23/2/19	Departure from Kenya to Japan
24/2/19	Arrival and settling
25/2/19	Entry meeting at QISJ offices in Yokohama
26/2/19	Field visit to Osaka
27/2/19	Field visit to Nagoya
28/2/19	Field visit to Nagoya
1/3/19	Departure from Japan to Kenya
3/3/19	Departure from Kenya to UK
4/3/19	Meeting with QISJ in Tilbury and field visit
5/3/19	Meeting with ATJ in Tilbury and field visit
6/3/19	Meeting with EAA in Tilbury and field visit
7/3/19	Departure from UK to Kenya

TEAM TWO RSA AND UAE

1. Mr. Fredrick Odhiambo (UAE ONLY)
2. Dr. Sammy Kimung'yi
3. Ms. Rose Nandwa
4. Mr. Tom Mboya
5. Mr. Felix Obala

Date	Activity
24/2/19	Departure from Kenya to RSA
25/2/19	Meeting with QISJ in Johannesburg and field inspection
26/2/19	Meeting with ATJ in Durban
27/2/19	Departure from RSA to UAE
28/2/19	Meeting with QISJ in Dubai and field inspection
1/3/19	Meeting with ATJ in Dubai and field inspection
2/3/19	Departure from Dubai to Kenya

1/5



Tender No. KEBS/TO19/2017-2020 for Provision of Pre-Export Verification of Conformity (PVOC) to standard services: Used motor vehicles, mobile equipment and used spare parts.

S/No	Supplier Name	Location in Japan	Location in UK	Location in UAE	Location in RSA	Contact
1	Nippon Inspection Centre Corporation					
2	Auto Terminal Japan Ltd	1-17-69 Shiohama Kisarazu-shi Chiba 292-0838 Tokai, Nagoya, Kobe	32 Norfolk Road. Dagenham East RM10 8EX <u>Essex</u>	128 Community, 20th Street, Kangaroo Plastics Compound, Al Khabeesi, <u>Deira,</u> <u>Dubai</u> (Pal Auto Garage)	131 Moore Road, <u>Durban</u> 4001 (Vehicle Roadworthy Centre)	Jackson Musili 0721581673
3	Quality Inspection Services Inc. Japan	YCC 1608, 22 Daikoku Futou Tsurumi, <u>Yokohama</u> 230- 0054	Unit 9A / 10B Tilbury docks industrial complex <u>Tilbury</u> RM18 7HB	RAS AL KHOR AL- AWER 2 Industrial Area P.O. Box 99325, <u>Dubai</u>	Unit 101B, 1st Floor, Process House Epsom Downs Office Park, 13 Sloan Street Bryanston 2021, <u>Johannesburg</u>	
4	EEA Company Limited	1 Chome-20-5 Rinkan, Yamato- shi, Kanagawa-ken 242-0003	Capstan House <u>Tilbury, Essex</u> RM18 7HL	Level 14, Boulevard Plaza Tower 1 <u>Dubai</u> Sharja	97 Willem Cruywagen Avenue, <u>Rossllyn</u> RSA (Dekra Automotive)	

Annex VII (9/10)

Catherine Nafula Mwasho

From: Lee Sayer [EAA-S] <Sayer@eaa-s.jp>
Sent: Tuesday, February 12, 2019 1:14 PM
To: Dr. John Ngeno
Cc: Info [EAA-S]; Catherine Nafula Mwasho; Nguyo Bernard; Maiyo Andrew
Subject: Re: Itinerary

Dear Dr Ngeno

We are in receipt of your email advising of an impending visit by the Kenya National Audit Office.

EAA will be pleased to engage with the team in Japan, UK and UAE. Our presence in South Africa is currently undergoing a change of Representative Office, and will not be available for the planned visit by the Kenya delegation.

Within the next few days I will provide you with the requested contact persons and address details for visits to Japan, UK and UAE.

Regards

Lee Sayer
Director
EAA Company Ltd
Mob: +81 80 7727 2131

On Feb 11, 2019, at 16:43, Dr. John Ngeno <ngenoj@kebs.org> wrote:

Dear Auto Terminal and EAA,

We have received Auditors from Kenya National Audit office , who are currently conducting audit in regard to Motor vehicle inspections. Your firm participated in the last tender, and the auditors would loike to have a discussion with your firm in regard to the last PVOC Motor Vehicle tender. They will be visiting as per the attached itinerary herein attached. This is to kindly request that you create time to discuss with the auditors and forward to us contact persons for UAE, UK,RSA and Japan from 24th February 2019.

Kind Regards

Dr John Ngeno

<KEBS ITINERARY FOR PVOC PROGRAM.docx>

<UK and JAPAN.pdf>

Catherine Nafula Mwasho

Handwritten signature
2

From: Lee Sayer [EAA-S] <Sayer@eaa-s.jp>
Sent: Thursday, February 14, 2019 12:21 PM
To: Dr. John Ngeno
Cc: Catherine Nafula Mwasho; Nguyo Bernard; Maiyo Andrew; Info [EAA-S]
Subject: RE: Itinerary

Dear Dr John

Further to my previous confirmation of availability, please be guided as follows:

1. EAA is available in Japan on the 28th of February (am) to meet the Audit team in Yokohama. (Yokohama Office, YCC1411, 22 Daikoku-futo,, Tsurumi-ku, Yokohama-shi, Kanagawa-ken, Japan 230-0054)
2. We are available on the 1st of March to meet the team in Dubai. (<https://www.eaa-s.jp/eaa-global/>)
3. EAA will be available on the 6th of March (am) to meet the team in the UK (Port of Tilbury). (<https://www.eaa-s.jp/eaa-global/>)

In all cases your EAA contact will be (I will be in attendance in each country visited):

Lee Sayer
Mob: +81 80 7727 2131
Email: sayer@eaa-s.jp
Skype: lee.sayer
WhatsApp: My Mobile Number

Please confirm the travel and appointment schedule as soon as possible thanks.

Regards

Lee Sayer | Director
EAA Company Limited
1-20-5-101 Rinkan, Yamato-shi, Kanagawa-ken, JAPAN 242-0003.
TEL: +81 46 205 7611 MOB: +81 80 7727 2131



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From: Dr. John Ngeno <ngenoj@kebs.org>
Sent: Monday, February 11, 2019 4:43 PM
To: Info [EAA-S] <info@eaa-s.jp>; mfujie@autoterminal.co.jp
Cc: Catherine Nafula Mwasho <Catherine.Mwasho@oagkenya.go.ke>; Nguyo Bernard <Nguyob@kebs.org>; Maiyo Andrew <Maiyoa@kebs.org>
Subject: Itinerary

VT

3

Catherine Nafula Mwasho

From: Catherine Nafula Mwasho
Sent: Friday, February 28, 2020 6:29 PM
To: DIR Fredrick Oluoch Odhiambo
Cc: Sammy Kimunguyi
Subject: FW: EAA to KEBS

Dear Fred
Forwarded is another email from EAA to KEBS.

Regards
Catherine

From: Dr. John Ngeno <ngenoj@kebs.org>
Sent: Thursday, February 14, 2019 2:50 PM
To: Catherine Nafula Mwasho <Catherine.Mwasho@oagkenya.go.ke>
Cc: Nguyo Bernard <Nguyob@kebs.org>; Maiyo Andrew <Maiyoa@kebs.org>; Info [EAA-S] <info@eaa-s.jp>; Lee Sayer [EAA-S] <Sayer@eaa-s.jp>
Subject: RE: Itinerary

Dear Catherine,

Kindly advice if you are okey with the dates.

Dr Ngeno

From: Lee Sayer [EAA-S] [mailto:Sayer@eaa-s.jp]
Sent: Thursday, February 14, 2019 12:21 PM
To: Dr. John Ngeno <ngenoj@kebs.org>
Cc: Catherine Nafula Mwasho <Catherine.Mwasho@oagkenya.go.ke>; Nguyo Bernard <Nguyob@kebs.org>; Maiyo Andrew <Maiyoa@kebs.org>; Info [EAA-S] <info@eaa-s.jp>
Subject: RE: Itinerary

Dear Dr John

Further to my previous confirmation of availability, please be guided as follows:

1. EAA is available in Japan on the 28th of February (am) to meet the Audit team in Yokohama. (Yokohama Office, YCC1411, 22 Daikoku-futo,, Tsurumi-ku, Yokohama-shi, Kanagawa-ken, Japan 230-0054)
2. We are available on the 1st of March to meet the team in Dubai. (<https://www.eaa-s.jp/eaa-global/>)
3. EAA will be available on the 6th of March (am) to meet the team in the UK (Port of Tilbury). (<https://www.eaa-s.jp/eaa-global/>)

In all cases your EAA contact will be (I will be in attendance in each country visited):

Lee Sayer
Mob: +81 80 7727 2131

Catherine Nafula Mwasho

From: Catherine Nafula Mwasho
Sent: Thursday, February 14, 2019 12:32 PM
To: DIR Fredrick Oluoch Odhiambo; Sammy Kimunguyi
Subject: Fw: Itinerary

Dear All

Kindly refer to the email from EAA on the schedule of meetings. ATJ has not yet responded.

Warm regards

Catherine Mwasho

Manager - Audit

Forensic Audit Division

From: Lee Sayer [EAA-S] <Sayer@eaa-s.jp>
Sent: 14 February 2019 12:21
To: Dr. John Ngeno
Cc: Catherine Nafula Mwasho; Nguyo Bernard; Maiyo Andrew; Info [EAA-S]
Subject: RE: Itinerary

Dear Dr John

Further to my previous confirmation of availability, please be guided as follows:

1. EAA is available in Japan on the 28th of February (am) to meet the Audit team in Yokohama. (Yokohama Office, YCC1411, 22 Daikoku-futo,, Tsurumi-ku, Yokohama-shi, Kanagawa-ken, Japan 230-0054)
2. We are available on the 1st of March to meet the team in Dubai. (<https://www.eaa-s.jp/eaa-global/>)
3. EAA will be available on the 6th of March (am) to meet the team in the UK (Port of Tilbury). (<https://www.eaa-s.jp/eaa-global/>)

In all cases your EAA contact will be (I will be in attendance in each country visited):

Lee Sayer
Mob: +81 80 7727 2131
Email: sayer@eaa-s.jp
Skype: lee.sayer
WhatsApp: My Mobile Number

Please confirm the travel and appointment schedule as soon as possible thanks.

Regards

Lee Sayer | Director
EAA Company Limited

1-20-5-101 Rinkan, Yamato-shi, Kanagawa-ken, JAPAN 242-0003.
TEL: +81 46 205 7611 MOB: +81 80 7727 2131



This email message and any attachment(s) is intended solely for the addressee(s) named above. The information it contains may be classified and may be legally privileged. Unauthorised use of the message, or the information it contains, may be unlawful. If you have received this message by mistake please call the sender immediately on +81 (0)80 77272131 or notify us by return email and erase the original message and attachments. Thank you.

From: Dr. John Ngeno <ngenoj@kebs.org>

Sent: Monday, February 11, 2019 4:43 PM

To: Info [EAA-S] <info@eaa-s.jp>; mfujie@autoterminal.co.jp

Cc: Catherine Nafula Mwasho <Catherine.Mwasho@oagkenya.go.ke>; Nguyo Bernard <Nguyob@kebs.org>; Maiyo Andrew <Maiyoo@kebs.org>

Subject: Itinerary

Dear Auto Terminal and EAA,

We have received Auditors from Kenya National Audit office , who are currently conducting audit in regard to Motor vehicle inspections. Your firm participated in the last tender, and the auditors would loike to have a discussion with your firm in regard to the last PVOC Motor Vehicle tender. They will be visiting as per the attached itinerary herein attached. This is to kindly request that you create time to discuss with the auditors and forward to us contact persons for UAE, UK,RSA and Japan from 24th February 2019.

Kind Regards

Dr John Ngeno

Catherine Nafula Mwasho

Annex VIII / 1

From: Sammy Kimunguyi
Sent: Saturday, February 16, 2019 5:31 PM
To: Catherine Nafula Mwasho
Subject: Re: ACKNOWLEDGEMENT FROM ATJ

Well received and noted. thanks

Get Outlook for Android

From: Catherine Nafula Mwasho
Sent: Friday, February 15, 2019 5:18:31 PM
To: DIR Fredrick Oluoch Odhiambo; Sammy Kimunguyi
Subject: ACKNOWLEDGEMENT FROM ATJ

Dear All

Please refer to the email from ATJ in response to KEBS concerning our field visit.

They are proposing we visit their Partners in Durban on 8 March and on 11 March in UAE. These dates are not in line with our itinerary. I have requested Dr Ngeno to discuss with ATJ and align the meeting with our schedule. Dr Ngeno will do the same with EAA.

Warm regards

Catherine Mwasho

Manager - Audit

Forensic Audit Division

From: Mamoru Fujie <MFujie@autoterminal.co.jp>
Sent: 15 February 2019 16:42
To: Dr. John Ngeno
Cc: Catherine Nafula Mwasho; Nguyo Bernard; Maiyo Andrew; Kaluagreen; Mirane Borres-Nakata
Subject: RE: Itinerary

Dear Dr. John Ngeno and Team,

We are delighted to receive your Audit team from the Kenya National Audit Offices as indicated in your email.

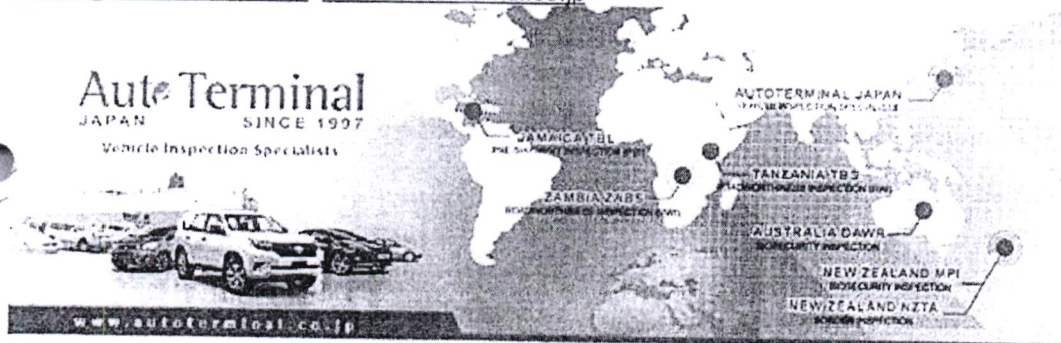
The first itinerary indicated "TEAM ONE - JAPAN AND UK" that will visit our offices on 28/2/19 works well with our team and therefore we shall plan accordingly to receive you. Kindly plan to visit our offices as from 9 am. For a valuable visit you will need a minimum of three and a half hours with us. We will arrange to pick you up from your hotel in Tokyo or Yokohama. Please advise where you intend to stay. Kindly note that we can also make hotel bookings for your convenience.

We humbly request for a slight adjustment for the date as scheduled for "TEAM TWO – RSA AND UAE". We suggest that your team visits our Partners in Durban on 8th March and on 11th March in UAE. This request for date adjustment is due to an already set systems upgrade happening in one of our centers.

Please consider and urgently advice.

Best Regards,
Mamoru Fujie
Chief Executive Officer
Autoterminal Japan Ltd.

accredited to ISO/IEC 17020:2012
East (Main) T +81-438-30-7488 F +81-438-30-7489
Central T +81-594-41-2558 F +81-594-41-2559
West T +81-78-805-2550 F +81-78-805-2750
Mobile +81-80-1458-8320 Skype mamorufujie
mfujie@autoterminal.co.jp www.autoterminal.co.jp



From: Dr. John Ngeno [<mailto:ngenoj@kebs.org>]
Sent: Monday, February 11, 2019 4:43 PM
To: info@eaa-s.jp; Mamoru Fujie
Cc: Catherine Nafula Mwasho; Nguyo Bernard; Maiyo Andrew
Subject: Itinerary

Dear Auto Terminal and EAA,

We have received Auditors from Kenya National Audit office, who are currently conducting audit in regard to Motor vehicle inspections. Your firm participated in the last tender, and the auditors would like to have a discussion with your firm in regard to the last PVOC Motor Vehicle tender. They will be visiting as per the attached itinerary herein attached. This is to kindly request that you create time to discuss with the auditors and forward to us contact persons for UAE, UK, RSA and Japan from 24th February 2019.

Kind Regards

Dr John Ngeno

X

ANNEX 8:

LEHAR OPERATIONS BY
1 KM TO IZBS

X

XHX 8:

1 km to 1500 ft
1500 ft to 1500 ft

Your Ref: KEBS/LEG/1/2
Our Ref: KEN-013-0003
Date: 19th February 2020

Managing Director
Kenya Bureau of Standards
Popo Road
Kebs Building
P.O. Box 54972-00200
NAIROBI.

By Acknowledged Delivery
Advance copy by Email

Iseme Kamau & Maema Advocates
IKM Place, Tower A, 1st Floor,
5th Ngong Avenue,
Off Bishops Road,
P.O. Box 11866-00400,
Nairobi Kenya

Dropping Zone no. 85
Embassy House, Basement
Harambee Avenue

T +254 20 2773000
M +254 0722 898393
+254 0733 843162
E info@ikm.co.ke
W www.ikm.co.ke

Dear Sirs,

**RE: LEGAL OPINION ON PROCUREMENT OF ADDITIONAL KEBS
PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC)
PARTNERS (BOTH GOODS AND MOTOR VEHICLES)**

We refer to the above matter.

By your letter dated 3rd February, 2020 and through further consultations, KEBS sought a legal opinion on the procurement of additional PVOC partners.

1. Issues

KEBS requested us to advise on the following issues:

- 1.1. whether KEBS is entitled to proceed with procurement of additional PVOC partners; and
- 1.2. whether there are any legal impediments to such procurement particularly in light of the provisions of the Public Procurement and Asset Disposal Act, 2015 ("PPAD Act")

2. Documents Examined

For the purposes of giving this opinion, we have examined the following documents:

- 2.1. Contract for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services- Used Motor vehicles, Mobile Equipment and used Spare Parts in Japan, United Arab Emirates, United Kingdom, Thailand and South Africa between KEBS and Quality Inspection Services Inc. Japan dated 3rd April 2018 ("the Existing Contract");
- 2.2. PPAD Act; and,

James Kamau
William Maema
Kamau Karori, MBS
Martin Muriyu
Anne Kinyanjui
Beatrice Nyabira
Amrit Soar
Norah Mutuku
David Lekeral
Milly Jalega
Caleb Langat

Iseme Kamau & Maema Advocates ("IKM Advocates") is a partnership registered in Kenya (with Certificate of Registration Number 314076) under the Registration of Business Names Act (Chapter 499, Laws of Kenya). Its place of business is at IKM Place, Tower A, 5th Ngong Avenue, Off Bishops Road, P.O. Box 11866-00400, Nairobi, Kenya. The firm is regulated by the Law Society of Kenya (www.lsk.or.ke).

IKM Advocates is a member of DLA Piper Africa, a Swiss Verein whose members are comprised of independent law firms in Africa working with DLA Piper.

Further information on DLA Piper Africa can be found at www.dlapiper.com/africa.

 1

- 2.3. Review applications filed at the Public Procurement Administrative Review Board by TUV Austria TURK and Niavana Agencies Limited.

3. Documents yet to be Examined/reviewed

As at the time of this opinion, we were yet to be supplied with and neither had we examined and reviewed the following:

- 3.1. the tender documents that gave rise to the Existing Contract;
- 3.2. the considerations made in awarding the Existing Contract; and,
- 3.3. the details of procurement and asset disposal planning for the additional tendered services as envisaged under Section 53 of the PPAD Act;

4. Status of Opinion

- 4.1. This opinion relates to Kenyan law ("**Kenyan Law**") as it exists and is interpreted at the date of this letter. We express no opinion as to the laws of any other jurisdiction and none is to be implied.
- 4.2. This opinion is governed by and shall be construed in accordance with Kenyan Law.

5. Assumptions

For purposes of this opinion and in light of the documents yet to be examined, we have made the following assumptions (the "**Assumptions**"):

- 5.1. that the Existing Contract was validly issued having followed all the requisite procurement steps;
- 5.2. that the Accounting Officer had prior to issuing the Existing Contract prepared the necessary procurement plans as required;
- 5.3. that the Accounting Officer had prior to issuance of the Existing Contract satisfied himself of existence of necessary budget for the performance of the contract; and,
- 5.4. that a detailed procurement and asset disposal planning for the additional tendered services (Enlargement tender) has been undertaken.

6. Opinion

Whether KEBS is entitled to proceed with procurement of additional PVOC partners under the provisions of the PPAD Act

6.1. The Existing Contract

- a) the Existing Contract is dated 3rd April 2018;
- b) the Existing Contract was procured following what is referred to in the contract as a KEBS "*Tender Reference No. KEB/T019/2017-2020 and dated 21st November 2017...*";
- c) the Existing Contract was to commence on 15th April 2018 with a tenure of 36 months; and,

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- k) Section 71 of the PPAD Act envisages procurement as a continuous process based on need. KEBS has clearly demonstrated a need to expand the Service Providers.

6.4. **Public Interest Considerations**

- a) Article 10 of the Constitution provides for national values that bind all State organs, public officers and all persons when making or implementing public policy decisions. The national values and principles of governance include good governance, integrity, transparency, accountability and sustainable development;
- b) When considering a justification for the proposed tender for additional partners, it should therefore be considered whether the same is in fulfillment of these national values and whether it is intended for public good and benefit;
- c) Chapter Twelve (12) of the Constitution, the Public Finance and the PPAD Act and Asset Disposal Act and the Regulations made thereunder all have one overriding objective:- promotion of the greatest Public good regarding use of public funds. Article 201(d) provides that:-

"public money shall be used in a prudent and responsible way"

- d) This is the theme running throughout Chapter 12, Public Finance and indeed the PPAD Act operationalizing the Public Finance Chapter in the Constitution. Public interest is therefore a fundamental consideration when interpreting and/or applying the letter and the Spirit in the PPAD Act.
- e) Article 201 of the Constitution requires that principles of public finance are strictly guarded included the requirement that public money is used in a prudent and responsible way. Every tender by a public entity must therefore take into account the requirement to adhere to a prudent utilization of resources.
- f) The justifications provided by KEBS particularly with regard to preservation of the Existing Contract and intention to increase efficiency in pre-import verification adds to improving and enhancing ease of doing business in Kenya and protecting the importing public;





- g) In seeking to expand the number of Service Providers (PVOC), we understand that KEBS is implementing Government of Kenya (GoK) policy. With over twenty (20) Agencies previously inspecting goods at the point of entry, delay in clearing resulted in public outcries. At the same time, GoK has the obligation to protect consumers from sub-standard and/or harmful goods and substances finding their way into the Kenyan market and consumers.
- h) We understand that KEBS overall intention is to protect the Kenyan public against importation of dangerous, hazardous or substandard goods getting into the country from any jurisdiction across the world.
- i) We also understand KEBS challenge in reliance with one contractor performing pre import inspection from every conceivable port in the world and at the same time maintaining integrity and efficiency. The exposure to KEBS with the said arrangement is obvious considering the spectrum of goods involved and jurisdictions exporting goods to Kenya.
- j) We understand the GoK policy decision to exit most of the inspecting Agencies at the port of entry and transferring most of those Agencies mandates to KEBS thus greatly widening KEBS responsibilities. To cope with this expanded mandate, KEBS had to widen the pool of Service Providers to ensure all goods are inspected at the points of export and PVOC issued at the points of export. In Kenya's Public Interest, it is untenable for example to have only one Service Provider pre-inspecting vehicles in all the countries in the world. A monopoly is not in Kenya's Public Interest. Further, given the wide variety of goods to be inspected, the different expertise required for different items, medicine as an example, cannot be domiciled in the one Service Provider.
- k) In our opinion therefore, the decision to expand Service Providers (PVOC) from the existing number is both rational, necessary and in Kenya's Public Interest.

6.5. We have considered the following Board decisions in support of this opinion:-

- (i) The decision in Public Procurement Administrative Review Board (PPARB) Application No. 14 of 2020, TUV Austria Turk -vs- KEBS (KEN-013-005) in which the Board declined a

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request to suspend the current tender and directed that the Procurement should proceed.

- (ii) Public Procurement Administrative Review Board (PPARB)
Application No. 43 of 2018, Britam General Insurance
Company (K) Limited -vs- County Government of Mandera -
Procuring Entity

7. Conclusion

Having reviewed the matter, our conclusion is that the proposed tender for additional partners is justifiable and entitled to proceed to its lawful conclusion unless barred by the Board or any other lawful process on the following basis:-

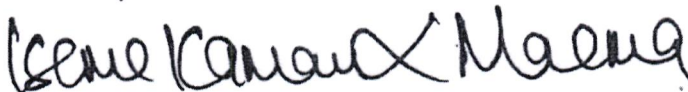
- 7.1. That the Existing Contract continuous running its term without interference;
- 7.2. That the term of the Existing Contract remains as contracted unless validly and legally terminated as provided in the Contract and applicable law;
- 7.3. That the Additional partners are justified in the public interest, in pursuit of government policy and to increase efficiency;
- 7.4. That KEBS should demonstrate succinct procurement-planning for the additional partners;
- 7.5. That the decision to expand Service Providers (PVOC) from the existing number is both rational, necessary and in Kenya's Public Interest.

8. Benefit

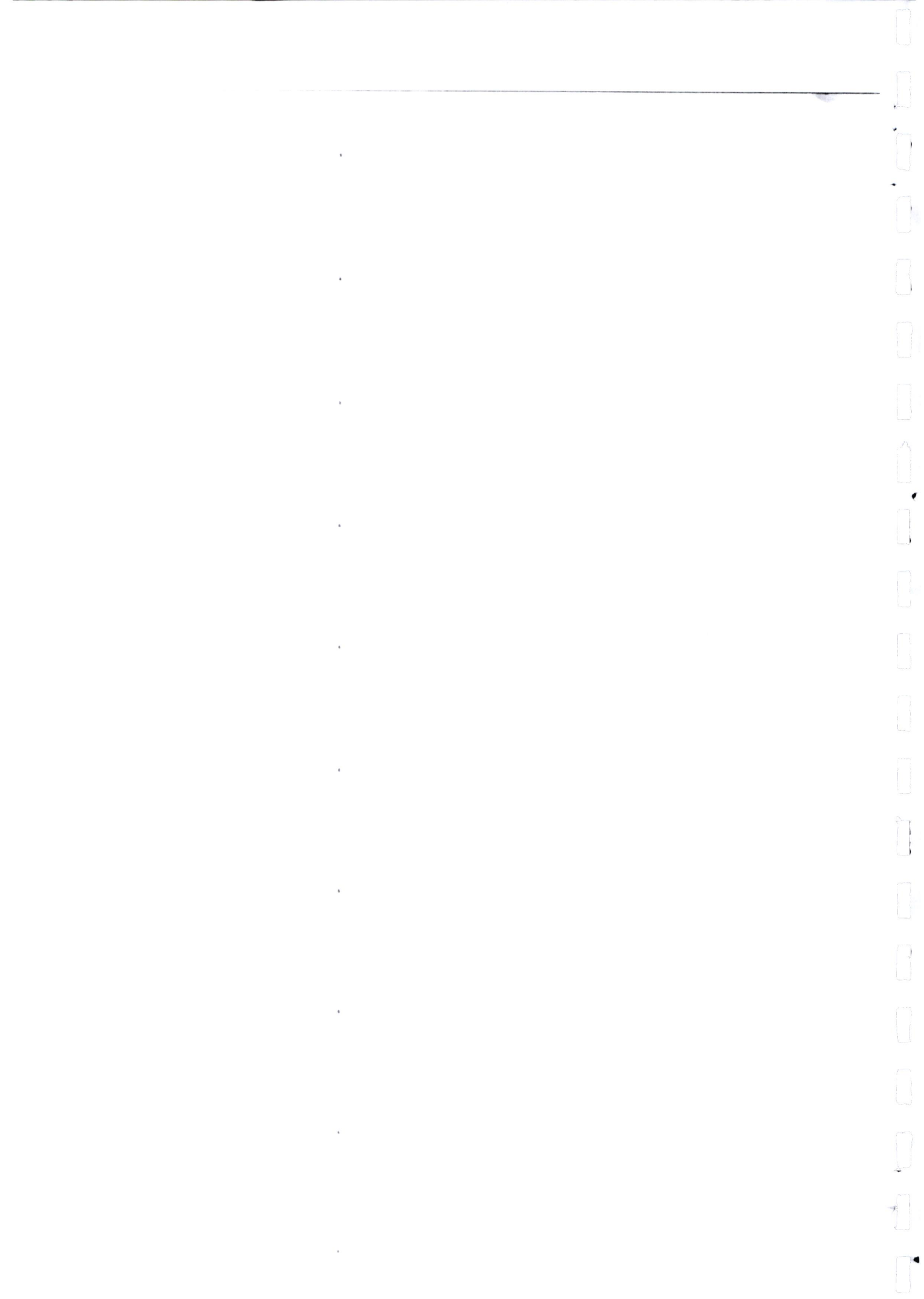
This opinion is given solely for the benefit of KEBS and may not, without our consent, be disclosed to or relied upon by any other person except KEBS' relevant staff. It is based on the facts and documents presented to us and may not be applied to any different set of facts or circumstances. The opinion is limited to the matters set out herein and does not extend to and is not to be taken as extended by implication to any other matter. It speaks only as of its date.

We trust that the foregoing is clear, but if you require further information /clarification, please do not hesitate to contact us.

Yours faithfully



ISEME, KAMAU & MAEMA ADVOCATES



Your Ref: KEBS/LEG/1/2

Our Ref: STA-005-0184

Date: 20th June 2017

Managing Director
Kenya Bureau of Standards
Popo Road
Kebs Building
P.O. Box 54972-00200
NAIROBI.

**By Acknowledged Delivery
Advance copy by Email**

Dear Sirs,

**RE: LEGAL OPINION ON PROCUREMENT OF ADDITIONAL KEBS
PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC)
PARTNERS (BOTH GOODS AND MOTOR VEHICLES)**

We refer to the above matter.

By your letter dated 3rd February, 2020 and further telephone clarifications, KEBS has sought a legal opinion on the procurement of additional PVOC partners.

1. Issues

KEBS requested us to advise on the following issues:

- 1.1. whether KEBS is entitled to proceed with procurement of additional PVOC partners; and
- 1.2. whether there are any legal impediments to such procurement particularly in light of the provisions of the Public Procurement and Asset Disposal Act, 2015 ("PPAD Act")

2. Documents Examined

For the purposes of giving this opinion, we have examined the following documents:

- 2.1. Contract for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services- Used Motor vehicles, Mobile Equipment and used Spare Parts in Japan, United Arab Emirates, United Kingdom, Thailand and South Africa between KEBS and Quality Inspection Services Inc. Japan dated 3rd April 2018 ("the Existing Contract"); and
- 2.2. PPAD Act.

3. Documents yet to be Examined/reviewed

As at the time of this opinion, we were yet to be supplied with and neither had we examined and reviewed the following:

- 3.1. the tender documents that gave rise to the Existing Contract;
- 3.2. the considerations made in awarding the Existing Contract; and,
- 3.3. the details of procurement and asset disposal planning for the additional tendered services as envisaged under Section 53 of the PPAD Act;

4. Status of Opinion

- 4.1. This opinion relates to Kenyan law ("**Kenyan Law**") as it exists and is interpreted at the date of this letter. We express no opinion as to the laws of any other jurisdiction and none is to be implied.
- 4.2. This opinion is governed by and shall be construed in accordance with Kenyan Law.

5. Assumptions

For purposes of this opinion and in light of the documents yet to be examined, we have made the following assumptions (the "**Assumptions**"):

- 5.1. that the Existing Contract was validly issued having followed all the requisite procurement steps;
- 5.2. that the Accounting Officer had prior to issuing the Existing Contract prepared the necessary procurement plans as required;
- 5.3. that Accounting Officer had prior to issuance of the Existing Contract satisfied himself of existence of necessary budget for the performance of the contract; and,
- 5.4. that a detailed procurement and asset disposal planning for the additional tendered services has been undertaken.

6. Opinion

Whether KEBS is entitled to proceed with procurement of additional PVOC partners under the provisions of the PPAD Act

6.1.1. The Existing Contract

- a) the Existing Contract is dated 3rd April 2018;
- b) the Existing Contract was procured following what is referred to in the contract as a KEBS "*Tender Reference No. KEB/T019/2017-2020 and dated 21st November 2017...*";
- c) the Existing Contract was to commence on 15th April 2018 with a tenure of 36 months; and,
- d) that in effect, the existing Contract is valid upto 14th April 2021.

6.1.2. Justification for Additional PVOC Partners

- a) We understand that KEBS proposes to and has tendered for additional partners to supplement the Existing Contract; and,
- b) KEBS has provided rationale for seeking additional partners including reducing the risk of relying on one partner and the likely exposure in the event of disputes or other challenges involving performance by the existing contractor.

6.1.3. Is KEBS entitled to proceed with procurement of Additional partners

- a) The PPAD Act provides for procurement through open tenders by all state bodies unless where exemptions are provided for under the Act.
- b) We note that the Existing Contract is silent with regard to exclusivity of the contract with the contracted Partner. In

entity within the meaning of the PPAD Act would validly entitle the procuring entity to engage other providers;

- c) In the case of a public entity subject of the PPAD Act, the mere fact of non-exclusivity of the contract would not of itself entitle procurement of additional Partners; the procuring entity, KEBS in this case, has to ensure full compliance with the PPAD Act to avoid challenges by the existing contractor;
- d) We have reviewed the PPAD Act and noted various provisions that impose obligations on the procuring entity as discussed below;
- e) Section 53 provides for procurement and asset disposal planning with obligations on the Accounting Officer to make elaborate procurement plans within approved budgets before procurement. The implication here is that before the tender for the Existing Contract, such procurement plans were provided for and that the Accounting officer was satisfied that there was sufficient budget for the services to be contracted;
- f) Section 54(1) prohibits splitting of contracts for the same service as follows–

“No procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure except where prescribed.”

- g) The proposed additional Partners will invariably provide the same services as those provided for under the Existing Contract which is for the period 2017-2020 and indicated to run upto April 2021. This may amount to splitting the existing contract through the new tender and under the new contracts to be entered into.
- h) The Act under Section 130 also prohibits subsequent contracts related to original contracts where the original contract resulted from procurement by a request for proposals. Whereas the particular tender in this case was not procured through request for proposals, we note the Act's restriction on the issue of procurement for related services to those already contracted;
- i) Section 139 provides for variations and amendments to the issued contract. This section would not be applicable since the intention is to contract with additional Partners. Nonetheless, we note that Section 139(6) provides for fresh tendering where a variation is envisaged to raise the contract price by more than 25%. We understand that the Existing Contract will continue running as contracted. This clause may not therefore be called upon in the current instance since the intended additional Partners will not amount to variation of the Existing Contract.

6.1.4. To the extent that the tender for additional Partners has been issued in the pendency of the Existing Contract and for provision of similar services, challenges arise within the Act with regard to compliance with section 53.

6.1.5. Accordingly, in our opinion, the proposed tender for Additional Partners will be subject to challenge unless KEBS can demonstrate succinct procurement planning that justify the splitting of the provision of the services under the Existing Contract to be undertaking by more than one supplier.

7. **Benefit**

This opinion is given solely for the benefit of KEBS and may not, without our consent, be disclosed to or relied upon by any other person except KEBS' relevant staff. It is based on the facts and documents presented to us and may not be applied to any different set of facts or circumstances. The opinion is limited to the matters set out herein and does not extend to and is not to be taken as extended by implication to any other matter. It speaks only as of its date.

We trust that the foregoing is clear, but if you require further information/clarification, please do not hesitate to contact us.

Yours faithfully

MARTIN MUNYU
ISEME, KAMAU & MAEMA ADVOCATES
mmunvu@ikm.co.ke

MM/HNO/ew

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ANNEX 9

COMMITTEE LETTERS

INVITING KGBS, ATJS
FOR MEETINGS

YHMEX 7

COMMITTEE

For MESTIM 2017
with 2017

REPUBLIC OF KENYA

Telegraphic Address:
"Bunge", Nairobi
Telephone: +254 20 221291
Fax: +254 20 243694
E-mail: clerk@parliament.go.ke
When replying please quote



NATIONAL ASSEMBLY

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box: 41842-00100
NAIROBI, Kenya

Ref:NA/DCS/PIC/2020/022

23rd April, 2020

Justice (Rtd) Paul Kihara Kariuki
Attorney General of the Republic of Kenya
Office of the Attorney General and Department of Justice
State Law Office
Sheria House
NAIROBI

Dear *Justice,*

RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS

As you may be aware, the Public Investments Committee has been considering the above referenced Special Audit Report by the Auditor General and in the final stages of compiling its report.

At its sitting held on 23rd April 2020, a letter Ref: AG/CONF/2/C/78 VOL.1(75) and dated 26th March, 2020 alleged to have originated from the Office of the Attorney General was tabled by one of the Members of the Committee. In the said letter, the Attorney General was advising the Kenya Bureau of Standards on the very matters under the Committee's consideration.

This is therefore to request you to confirm the authenticity of the said letter before the Committee proceeds to use the contents therein in its report (copy attached hereto for ease of reference). The Committee will appreciate to receive your response by Tuesday, 28th April 2020.

The officers responsible for facilitating this Committee are Mr. Evans Oanda, Tel. No. 0720264642 or email address evansoanda@gmail.com and Mr. Mohamed Boru, Tel. No. 0726476687 or email address mnboru@gmail.com.

Yours *Sincerely*

A handwritten signature in black ink, appearing to read 'Michael R. Sialai'.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address

'Bunge', Nairobi

Telephone 221291

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote



Clerk's Chambers

National Assembly

Parliament Buildings

P. O. Box 41842, 00100

NAIROBI, Kenya

Ref.NA/DCS/PIC/2020/020

March 18, 2020

Mr. Fredrick O. Odhiambo

Deputy Auditor General

Anniversary Towers

NAIROBI

Dear Mr. Odhiambo

**RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE
PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO
STANDARD SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED
SPARE PARTS**

Reference is made to a meeting between Dr. Isaac Kalua, Director of ATJ Africa and the Public Investments Committee on 17th March, 2020 on the above subject.

You will recall that Dr. Kalua raised a myriad of issues touching on the impropriety of the officers from the Office of the Auditor-General that conducted the Special Audit. In the spirit of natural justice, the Committee resolved that you be given an opportunity to respond to the alleged impropriety to enable the Committee make an informed decision.

The Committee will appreciate receiving the requested information by 26th March, 2020.

The officers responsible for facilitating this Committee are **Mr. Evans Oanda**, Tel. No. 0720264642 or email address evansoanda@gmail.com and **Mr. Mohamed Boru**, Tel. No. 0726476687 or email address mnboru@gmail.com.

Yours

JEREMIAH W. NDOMBI

FOR: CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address:
"Bunge", Nairobi
Telephone: +254 20 221291
Fax: +254 20 243694
E-mail: clerk@parliament.go.ke
When replying please quote



NATIONAL ASSEMBLY

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box: 41842-00100
NAIROBI, Kenya

Ref:NA/DCS/PIC/2020/022

23rd April, 2020

Justice (Rtd) Paul Kihara Kariuki
Attorney General of the Republic of Kenya
Office of the Attorney General and Department of Justice
State Law Office
Sheria House
NAIROBI

Dear *Justice,*

RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS

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The officers responsible for facilitating this Committee are Mr. Evans Oanda, Tel. No. 0720264642 or email address evansoanda@gmail.com and Mr. Mohamed Boru, Tel. No. 0726476687 or email address mnboru@gmail.com.

Yours *Sincerely*

A handwritten signature in black ink, appearing to read 'Michael R. Sialai'.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842, 00100
NAIROBI, Kenya

Ref.NA/DCS/PIC/2020/021

March 18, 2020

Mr. Kiyoaki Hatano
Director, Quality Inspection Service Co., Ltd
YCC 1608, 22 Daikokufuto Tsurumi Ward,
Yokohama City, Kanagagwa
JAPAN

Attention: Shinya Miyagagwa

Dear Mr. Hatano

**RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR-GENERAL ON THE
PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO
STANDARD SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED
SPARE PARTS**

Reference is made to a meeting between Dr. Isaac Kalua, Director of ATJ Africa and the Public Investments Committee on 17th March, 2020 on the above subject.

In the said meeting, Dr. Kalua raised a myriad of issues (*as attached*), touching on the impropriety of the officers from the Office of the Auditor-General that conducted the Special Audit in their interactions with QISJ. In the spirit of natural justice, the Committee resolved that you be given an opportunity to respond to the alleged impropriety to enable the Committee make an informed decision.

The Committee will appreciate receiving the requested information by 26th March, 2020.

The officers responsible for facilitating this Committee are **Mr. Evans Oanda**, Tel. No. 0720264642 or email address evansoanda@gmail.com and **Mr. Mohamed Boru**, Tel. No. 0726476687 or email address mnboru@gmail.com.

Yours

JEREMIAH W. NDOMBI
FOR: CLERK OF THE NATIONAL ASSEMBLY

Encls.

Copies to: **Auditor-General**
Anniversary Towers
NAIROBI

Ms. Theodora Gichana
Ag. Inspector General
Inspectorate of State Corporations
NAIROBI

REPUBLIC OF KENYA

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NAIROBI, Kenya

Ref.NA/DCS/PIC/2020/019

March 18, 2020

Lt. Col (Rtd.) Bernard Njiraini

Managing Director

Kenya Bureau of Standards

Popo Road, South C, Off Mombasa Road

NAIROBI

Dear *Lt Col (Rtd) Njiraini*

**RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR-GENERAL
ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY
(PVOC) TO STANDARD SERVICES - USED MOTOR VEHICLES, MOBILE
EQUIPMENT AND USED SPARE PARTS**

Reference is made our letter dated 10th March 2020 and your subsequent response letter dated 13th March, 2020 indicating your willingness to appear before the Public Investments Committee on 19th March, 2020 to conclude giving evidence on the above subject matter.

As you may be aware, sittings of Committees the National Assembly were suspended effective Wednesday, 18th March, 2020 in an effort to mitigate the spread of Coronavirus. It is on this basis that the Committee will not be able to meet you on 19th March, 2020 as earlier eschdeuled. In the meantime, the Committee would like to get a comprehensive report from you on the following:

- (1) whether KEBS conducted due diligence on the M/S. EAA Services Co. Ltd prior to Tender Number: KEBS/T067/2014/2015. If yes, provide the findings of the said due diligence;
- (2) whether the alleged forged documents submitted by M/S. EAA Services Co. Ltd submitted under Tender Number: KEBS/T067/2014/2015 were submitted in the subsequent tenders advertised by KEBS;
- (3) provide any new due diligence report done by KEBS on M/S. EAA Services Co. Ltd since 2015;
- (4) provide your comments on every audit observation in the Special Audit report;
- (5) whether tender documents on Tender Number: KEBS/T019/2017-2020 were explicit that bidders should own inspection facilities in UAE, UK and Japan to be eligible for award of the tender;
- (6) whether ownership of inspection facilities in UK, UAE and Japan was a requirement for bidders prior to Tender Number: KEBS/T019/2017-2020;

- (7) whether it was explicit in the tender documents under Tender Number: KEBS/T019/2017-2020 that the bidders were to have permanent staff working for them in their inspection facilities. If not, could contractual staff suffice?
- (8) Whether tender documents under Tender Number: KEBS/T019/2017-2020 was explicit on disclosure of conflict of interest. If yes, KEBS' take on audit observations on the alleged conflict of interest on M/S. EAA Services Company Ltd and ATJ;
- (9) Whether the KEBS sought for the Attorney General's opinion prior to advertising for the Tender Number: KEBS/T010/2019-2021; and
- (10) Provide technical proposals under Tender Number: KEBS/T019/2017-2020 and Tender Number KEBS/T010/2019-2021.

The Committee will appreciate receiving the requested information by 26th March 2020.

The officers responsible for facilitating this Committee are **Mr. Evans Oanda**, Tel. No. 0720264642 or email address evansoanda@gmail.com and **Mr. Mohamed Boru**, Tel. No. 0726476687 or email address mnboru@gmail.com.

Yours



JEREMIAH W. NDOMBI
FOR: CLERK OF THE NATIONAL ASSEMBLY

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NAIROBI, Kenya

NATIONAL ASSEMBLY

Ref:NA/DCS/PIC/2019/163

15th November, 2019

Mr. Benard N. Njiraini
Managing Director,
Kenya Bureau of Standards,
Popo Road, South C, Off Mombasa Road,
NAIROBI

Dear Mr Njiraini

RE: CONSIDERATION OF THE SPECIAL AUDIT REPORT OF THE AUDITOR GENERAL ON THE PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES – USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS BY KENYA BUREAU OF STANDARDS

The Public Investments Committee is established pursuant to Standing Order 206 of the National Assembly and is mandated to among others, examine the reports and accounts of public investments as submitted by the Auditor-General and also examine whether the affairs of public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

Pursuant to its mandate, the Committee resolved to request you to prepare responses to all audit reservations raised by the Auditor General in the Special Audit Report on the Procurement of Pre-Export Verification of Conformity (PVOC) To Standard Services – Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards.

You are advised to liaise with the Office of the Auditor General for guidance as you prepare your responses. The Committee will advise you on the date of your appearance in due course.

The officers responsible for facilitating this Committee are Mr. Evans Oanda, Tel. No. 0720264642 or email address evansoanda@gmail.com and Mr. Mohamed Boru, Tel. No. 0726476687 or email address mnboru@gmail.com.

Yours

JEREMIAH W. NDOMBI

For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:-

