



REPUBLIC OF KENYA



**SPECIAL AUDIT REPORT
OF THE
AUDITOR-GENERAL
ON ALLEGATIONS OF CORRUPT PRACTICES AT THE
RURAL ELECTRIFICATION AUTHORITY**

MINISTRY OF ENERGY AND PETROLEUM

JANUARY 2015

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Abbreviations

| Abbreviation | Full Description |
|--------------|-----------------------------------|
| CEO | Chief Executive Officer |
| CID | Criminal Investigation Department |
| CPC | Criminal Procedure Code |
| EAC | East African Community |
| ERP | Enterprise Resources planning |
| FY | Financial Year |
| GOK | Government of Kenya |
| GRN | Goods Received Note |
| HOD | Head of Department |
| KMS | Kilometers |
| KPLC | Kenya Power and Lighting Company |
| LPO | Local Purchase Order |
| REA | Rural Electrification Authority |

1. EXECUTIVE SUMMARY

1.1 Introduction

1.1.1 This special audit was carried out following allegations of corrupt practices by the Rural Electrification Authority (REA) officers holding the post of General Manager, Procurement Manager, Legal Manager and Store Keeper. These allegations were communicated via two email correspondence dated 15 February 2013 and 2 April 2013 to the Auditor-General and other watchdog institutions. It was also alleged that REA was supplied with substandard goods such as cables, conductors, transformers or nonexistent deliveries by suppliers such as Kenelic Supplies, Adra Supplies and Patmose Technical Services Ltd. There were also allegations that the legal fees, transport costs, public relations and marketing fees were inflated.

The special audit was conducted between August and October 2014. This summary of our findings should be read in conjunction with the detailed findings section in order to comprehend fully the approach to, and findings of our work.

1.1.2 Our report which should be read in its entirety comprises of the following sections:

1. Executive Summary

Detailed Report

2. Introduction and background
3. Detailed Findings
4. Conclusions and Recommendations
5. Appendices

1.2 Summary of Audit Findings

1.2.1 Budgetary allocation for procurement of goods at REA

1.2.1.1 Our TORs touched on the procurement of cables, conductors, transformers and poles. These materials were budgeted for under development vote.

1.2.1.2 We therefore confirmed that procurement of the above materials was in line with REA procurement plans and approved budgets.

1.2.2 Procurement process – for cables, conductors, transformers and poles

- 1.2.2.1 REA is a public entity whose activities are provided for in the Energy Act, 2006. Its procurement process should therefore comply with the Public Procurement and Disposal Act, 2005 and its Regulations of 2006.
- 1.2.2.2 We noted that the procurement was done through recommendations by the various evaluation committees to the tender committee and contracts awarded after the approval by the tender committee. Further, before the materials were accepted for use by REA, they were inspected by the inspection and acceptance committees in compliance with the Public Procurement and Disposal Act, 2005 and Regulation 2006.

1.2.3 Fraud Cases

- 1.2.3.1 We noted that there were several cases of theft by employees with a possible collusion with outsiders. We verified three cases as summarized in the table below and detailed in the subsequent paragraphs.

Table 1: Fraud Case that have taken place in REA

| | Date | Description | Amount involved in KShs. |
|--------------|----------------------------|---|--------------------------|
| 1 | Between 6 and 29 July 2011 | Unused cheque leaves were stolen from REA offices and used to withdraw cash on various dates in July 2014 from the REA bank account number 01136125016300 in Co-operative Bank. | 1,672,429.00 |
| 2 | 3 October 2012 | Cash was paid to a ghost supplier. The genuine supplier was Geowan Investments whose bank account number was 01148420887300 at Co-operative Bank, Co-op House but the money was paid to Geowani Investments with bank account number 0320299761767 at Equity bank, Kariobangi Branch. | 5,502,420.00 |
| 3 | 14 August 2013 | Money was paid a non-existing supplier M/S Supreme Retread. Collusion between outsiders and REA employees facilitated these payments by forging documents including; LPO, GRN, Delivery Notes, Tender Committee Minutes. | 4,140,000.00 |
| Total | | | 11,240,000.00 |

1.2.3.2 The following are details of how the fraudulent activities took place and the possible perpetrators. These three cases are as a result of professionally drawn schemes that were executed and the culprits benefited from them.

a) The Fraud Case 1

1.2.3.3 REA employees' stole blank cheques leaves and passed them to third parties who cashed them at later dates. All the payments were paid from REA account in Co-operative Bank of Kenya.

1.2.3.4 REA officers confirmed that the two employees who were involved were; Mr. Governor Musili and Mr. Raymond B. Kiambati were employed on contract and were less than two months old in the organization at the time. Their contracts expired and terminated on 31 August 2011 and 23 October 2011, respectively.

1.2.3.5 The REA security report indicated that the case was reported at Kilimani Police Station and the two officers handed over to Kilimani Criminal Investigation Department (CID), taken to court and charged with the offence of Theft by Servant.

1.2.3.6 The REA security report also indicated that the signature appended to the cheques belonged to Mr. Enoch N. Onchwari, Chief Manager Finance and Mr. David Rogoncho, Chief Manager Design and were therefore allegedly forged. We did not conduct an independent signature analysis since we did not have that expertise but the signatures appeared forged.

1.2.3.7 The stolen cheques were cashed on 06 July 2011 and 29 July 2011 without detection. This is a period of more than three weeks without any system of control to detect missing blank cheques.

1.2.3.8 The amount involved in this case of Kshs. 1,672,429.00 was refunded by the Co-operative Bank of Kenya on 4 August 2011 in REA account number 01136125016300.

1.2.3.9 Our document reviews revealed that this scheme could not have succeeded if Mr. Enoch N. Onchwari - Chief Manager Finance had taken due diligence in his work. We noted that he had a delegated responsibility by the CEO of *"Formulating and implementing sound financial policies, procedures, strategies and systems that ensure effective controls and accountability of company resources"*

b) Fraud Case 2

1.2.3.10 We noted that REA has a database for all their suppliers who are shortlisted at the beginning of the year. This database is linked to the Enterprise Resource Planning (ERP) based SAP system.

1.2.3.11 One of the suppliers in the database, Geowan Investments was awarded Kshs.23,514,800.00 tender to supply poles in Kisumu and an LPO was issued on the same day.

- 1.2.3.12 On 4 September 2012, Geowan Investments partly supplied to REA Kisumu quantities requisitioned in the LPO amounts totaling Ksh 5,502,420 as part fulfillment of the above tender.
- 1.2.3.13 An invoice number 005 dated 4 September 2012 amounting to Ksh 5,502,420 was issued to REA by Geowan Investments seeking payment for the above delivery. However, according to REA security report, Geowan Investment had earlier raised an invoice number 004 dated 28 August 2012 that later disappeared. This invoice was dated earlier than the delivery note which was dated 4 September 2012.
- 1.2.3.14 A second payment voucher to replace the aforementioned was raised and paid to the Equity bank account.
- 1.2.3.15 REA security report indicated that the bank account in Equity bank had the name Geowani Investment and not Geowan Investments as indicated in the unreferenced letter dated 30 August. 2012.
- 1.2.3.16 Geowan Investments wrote to REA Chief Manager Finance notifying him that the money was sent to a wrong account which was not theirs. In the same letter they cited other previous cases where they supplied poles to REA and payments were channeled to the correct bank account.
- 1.2.3.17 In this letter they gave reference to invoice number 004 dated 28 August 2012 mentioned earlier which later disappeared and which made Mr. Zachary Ayieko, the CEO reject the payment in the first payment voucher. Geowan Investments raised a second invoice dated 4 September 2012 which supported the payment that was made to the wrong account in Equity Bank.
- 1.2.3.18 It is evident that Geowan Investments raised two invoices for the same delivery note. Therefore, Geowan Investment could be culpable or be party/privy to the scheme that made REA make the payment of Kshs.5,502,420.00 to the Equity Bank account.
- 1.2.3.19 By the time of this audit, REA had not recovered the money paid to the wrong account and Geowan Investments was claiming payments for the same since the money was not paid to their account which could imply that REA and indeed public funds is in the verge of being lost due to fraudulent activities. The dispute was reported to Milimani Law Courts and the matter was still pending in court waiting the affirmation of a hearing date.

c) Fraud Case 3

- 1.2.3.20 An amount of Kshs.4,140,000.00 was paid to a company by the name Supreme Retread Co. Ltd that was not in the REA's list of pre-qualified suppliers for poles purported to have been delivered to Eldoret.

- 1.2.3.21 This payment was made through a series of the following forged document including, Tender Committee Minutes, an LPO, Treatment Certificate, Good Received Note (GRN) and Inspection and Acceptance Report.
- 1.2.3.22 This amount was returned by the Co-operative Bank and credited back to REA account on 12 August 2013. This may have been occasioned by the fact that the Co-operative Bank account did not exist when the payment was made. The account was opened on 8 August 2013 and the payment was made on 7 August 2013, as mentioned earlier.
- 1.2.3.23 REA made the payment again on 14 August 2013 and the amount was credited in the Co-operative Bank account on the same day. The amount was subsequently withdrawn in six tranches in intervals of 2 to 6 days to a zero balance.
- 1.2.3.24 By the time of this audit we noted the account had a balance of Kshs.137,066.75 which is almost equal to the Kshs.140,000.00 that was seemingly reversed by the Bank on 3 September 2013 because of queries.
- 1.2.3.25 The original payment voucher warranting the payments was said to have disappeared on discovery of the irregular payment. The matter was taken to Kibera Law Courts and 4 REA officers and a representative of Supreme Retread Ltd were charged with a criminal offence on 14 October 2013.
- 1.2.3.26 The accused were however, discharged under Section 87 (a) CPC. It was explained to us that the discharge of the case was due to the missing original payment voucher and the related supporting documents. The REA legal section interpreted the discharge and advised that “*...the police are at liberty to continue the investigation and receive new/further evidence into the subject of the trial and if need be, can at his own choosing, later re- institute charges against the accused*”
- 1.2.3.27 The money had therefore not been recovered by the time of this special audit implying that REA and public funds were lost due to fraudulent activities.

1.2.4 Other Procurements and Court Cases

a) *Prefabricated Offices Constructed by REA in Mariakani at a cost of Kshs.12 million.*

- 1.2.4.1 We noted that the tender committee of 12 March 2010 approved a list of five (5) bidders for construction of fabricated offices in Mombasa/ Mariakani through restrictive tender.

- 1.2.4.2 On 1 April 2012, the tender committee awarded this contract to the second lowest bidder M/S Rodmik Enterprise Ltd at a cost of Kshs. 5,189,400.00. The tender committee noted that the lowest bidder M/S Eco Homes Ltd “...only operates within Nairobi and environs and its cost was Kshs. 25,500.00 per square metre and hence will not serve the objective of this assignment” a rationale which seemed vague and unjustifiable.
- 1.2.4.3 We did not get any other documentation related to the above construction. Mr. Wilfred Odour - Procurement Manager informed us that “...after the award, all the documents were taken to our Mombasa road store for safe keeping, and I have been unable to trace the file because initially we were not archiving our documents properly though we are still trying to locate the documents”.
- 1.2.4.4 We visited Mariakani stores between 22 September 2014 and 26 September 2014 and confirmed the existence of the prefabricated offices. However, due to the above limitation, we could not confirm the construction cost of these offices as alleged.

b) Legal Fees

- 1.2.4.5 We noted that REA hired external lawyers twenty three times (23) in three (3) financial years from 2010/2011 to 2012/2013. A summary of these cases is in **Appendix III**. Payments for legal services are governed by the Advocates Remuneration (Amendment) Order and Advocates Act Cap 16 of the Laws of Kenya. We analyzed the schedule of payments to these lawyers and confirmed that they were in accordance with these legal provisions. However, we did not perform a similar test on transport costs, public relations and marketing fee mentioned in the allegation since there were no such legal and/or other provisions to use as our criteria for objective comments.

c) Court Cases between REA and Patmose Technical Services (K) Ltd

- 1.2.4.6 There seems to be a trend of disputes between REA and one of the suppliers mentioned in the allegations M/S Patmose Technical Services (K) Ltd. These disputes so far are amounting to Kshs.82 million. We noted that all these cases are in court and it is only prudent to wait for the court’s decision on the way forward.

1.2.5 Storage, usage and movements of material between yards.

- 1.2.5.1 During this special audit, we visited five (5) store out of the seven (7) REA stores countrywide. These were Mombasa road stores, Transami stores, Kisumu stores, Awasi yard and Mariakani.
- 1.2.5.2 The various sections (receiving, recording, storage and dispatch sections) in the stores were connected to the SAP system and the in charge of each section could be able to detect any material that had not passed through the preceding sections.

1.2.5.3 We noted that inter store transfer of material was acceptable and was provided for by the REA Stores Operations Manual Section 6.5. However, we noted the following irregularities in store management:

a) *Fictitious receipt of 1000Kms of Conductor 75mm² ACSR Conductor Bare*

1.2.5.4 An entry of 1000 Kms of conductor 75mm² ACSR worth USD 905,170.00 was recorded in the SAP system by the Store in Charge of Mariakani, purporting to have received these materials. The conductor was purported to have been supplied by Diesel Care Ltd who had been awarded an LPO to supply 4500Km of the above mentioned conductor. The delivery address (point of delivery) was REA- Embakasi (Mombasa road stores) and not Mariakani where Ms. Sophie Wali Kabai, the Store in Charge was stationed.

1.2.5.5 The above entry was reversed by the Officer in Charge of all the REA stores, Ms. Justine Musau. She explained to us that she noted the entry in the SAP system but she was not aware of any supply of the conductor pertaining to the entry. On inquiry, Ms. Justine Musau said she noted that there was no corresponding delivery of the conductor and that was why she reversed the entry. The amount of USD 905,170 being the worth of this conductor was therefore not paid.

1.2.5.6 Ms. Sophie Wali Kabai was found guilty by the REA Advisory Committee and was dismissed from REA with effect from 15 February 2013 for recording a fictitious delivery.

b) *Theft of 36 drums of 75mm Aluminum Conductors in Mariakani stores worth Kshs.10,349,120.00.*

1.2.5.7 This was a theft case of the above materials on 29 January 2011 at Mariakani stores. According to the REA security report, the suspects gained access to the yard by use of duplicate keys and loaded these materials into four trucks. However, the trucks were arrested by REA security officers and handed over to Mariakani Police Station.

1.2.5.8 Nine suspects were arrested and arraigned in Mariakani Court on 31 January 2011 and charged with stealing the drums of aluminum conductors worth Kshs.10,349,120.00 under case number CR.314/25/2011.

1.2.5.9 According to the REA Senior Security Officer, Mr. Lindsay Kipkemoi, the vehicles were later released and the suspects acquitted by Mariakani law courts. Further, the Court also ruled that the materials be forfeited to the State and sold in a public auction. REA appealed at the High Court in Mombasa under MISCELLANEOUS CIVIL APPL. NO. 102 OF 2012. The High Court on 21 December 2013 ordered that the 36 drums of 75 mm² aluminum conductors be released to REA.

1.2.5.10 During our visit at Mariakani, we noted that the above conductors worth Ksh 10,349,120.00 were still lying at the Mariakani Police Station, almost one year after the above

High Court verdict which could highlight a case of negligence on current REA Senior Officers.

c) Movement of rejected poles from other Stores to Mariakani store by a Supplier.

- 1.2.5.11 The then CEO, Mr. Zachary O. Ayieko wrote an internal memo on 17 August 2012 to Mr. Michael Apundo, Ms. Sophie Wali and Mr. Edward Mwamugunda concerning the quality of poles received from Shelton Trading Co. Ltd, Gigi International and Shark Investment on diverse dates between the month of June 2012 and August 2012. The CEO cited various anomalies in the procurement of poles.
- 1.2.5.12 The REA security section conducted an investigation on the above anomalies and in their conclusion, the security report noted that *"Shelton Trading Company Ltd. made delivery of bad poles to Mariakani and the inspection team rejected over 80% of their deliveries. The origins of these poles were suspect and it confirmed the security suspicions that they were rejects from our previous rejected stocks."*
- 1.2.5.13 We visited Mariakani stores and noted that these poles are kept by REA in a separate place from the accepted ones though they are not marked rejected.
- 1.2.5.14 Apart from the above cases we confirmed that other transfers of poles from Kisumu to Mariakani were authorized and supported by inter store transfer, stores transaction forms (GRN). We also confirmed that these poles were received in Mariakani.

d) Sharing of REA's Awasi poles yard with contractors

- 1.2.5.15 Wood Treatment Technology Ltd, a suppliers had a pole yard that was partly leased out to REA for a five years term commencing from 1 January 2013.
- 1.2.5.16 We visited the yard and noted that it was shared between REA and Wood Treatment Technology Ltd who are the owners of the yard. The REA section was clearly separated from the rest of the yard by a fence. REA had employed security guards from M/S BM Security Firm, who were on patrol every day. Interviews indicated no reported cases of theft or losses. We further noted that REA had one logger to offload and load poles at the yard. Sometimes they sought assistance from Wood Treatment Technology Ltd when their logger had a problem, to assist in loading over lunch hour.
- 1.2.5.17 REA security section had also carried out an investigation on the same allegation and noted in their report that the allegation of misuse of REA loggers was not true and that sharing of poles yards between REA and suppliers was a common practice even in other areas.
- 1.2.5.18 From the issues that formed our TORs we have been able to confirm/dispel them as detailed below:

| | ISSUES RAISED IN THE ALLEGATION | FINDINGS |
|---|--|--|
| 1 | <p>Corrupt practices by the following REA officers:</p> <ul style="list-style-type: none"> • Mr. Ng'ang'a Munyu-General Manager; • Ms. Rose N. Mkalama - Legal Manager; • Mr. Wilfred Oduor - Procurement Manager; • Ms. Sophie Wali Kabia - Store Keeper. | <p>We confirmed corrupt practices on Ms. Sophie Wali Kabia. There was no conclusive evidence to support the cases for the other officers mentioned.</p> |
| 2 | <p>REA being supplied with substandard goods such as cables, conductors, transformers or nonexistent deliveries by suppliers such as Kenelic Supplies, Adra Supplies and Patmose Technical Services (K) Ltd.</p> | <p>We confirmed fraudulent cases from M/S Supreme Retread Company Ltd, M/S Geowani Investments and M/S Diesel Care Ltd. And we noted that REA's management had taken action by way of court cases and dismissal/disciplinary action of involved officers. There was no conclusive evidence for case of substandard goods that was accepted by REA.</p> |
| 3 | <p>Failure by REA to test cables and transformers sourced from China.</p> | <p>We did not get evidence to support this allegation.</p> |
| 4 | <p>Inflation of legal fees, transport costs, public relations and marketing fees by REA.</p> | <p>We did not get evidence to support this allegation.</p> |
| 5 | <p>Irregular inter- store movement of materials between Kisumu and Mombasa stores.</p> | <p>We did not confirm irregular inter- store movement of poles from Eldoret and Makuyu to Mariakani.</p> <p>We confirmed a case where a supplier – Shelton Trading Company Ltd. attempted to move rejected poles from other stores to Mariakani but REA rejected and confiscated them in Mariakani.</p> |
| 6 | <p>Sharing of yard space by REA and contractors, at identified location in Awasi.</p> | <p>REA and Wood Treatment Technology Ltd. share a yard in Awasi and there is a lease agreement to guide them.</p> |
| 7 | <p>Cases of REA buying poles that have been rejected by KPLC.</p> | <p>We did not get evidence to support this allegation</p> |
| 8 | <p>Construction of prefabricated offices in Mariakani for Kshs.12 million.</p> | <p>We did not conclude on this allegation due to insufficient documents availed to us and we reported this as a limitation of scope.</p> |

1.4 Irregularities and culpability

| | Position and Organization | Irregularity | Amount of possible claim in Kshs. | Conclusion and next step |
|---|--|---|--|--|
| 1 | Mr. Enoch Onchwari - Chief Manager Finance, REA | <p>For not formulating and implementing sound financial policies, procedures, strategies and systems to ensure effective systems of control and accountability of REA's financial resources</p> <p>The cheques were stolen without detection and cashed in a period lasting three weeks without any system of control to detect the irregularity</p> | Kshs.1, 672,429.00 This was however refunded back to REA by the responsible Bank. | Formulate and implement systems of controls to prevent/ detect such fraudulent activities. |
| 2 | Mr. Nelson Gitonga, Mr. Robert Gesanda, Mr. Stephen Marasa, Mr. Caren Oduor, Mr. Emanuel Lelgo, Ms. Margaret Gichana (Accountants) | <p>Approving payment based on forged documents and thus exposing REA to a loose of Kshs. 5,502,420.00</p> <p>A forgery case where money was paid to ghost supplier. The genuine supplier was Geowan Investments whose bank account number was 01148420887300 at Co-operative Bank, Co-op House but the money was instead paid to Geowani Investments with bank account number 0320299761767 at Equity bank, Kariobangi Branch</p> | Kshs.5,502,420.00 | The case is in Court and our findings on the matter should not be interpreted as a guilty verdict as this is the mandate of the Kenyan Courts. |
| 3 | Directors of Geowan Investments Ltd | Raised two invoices for the same delivery note. There was a possibility that Geowan Investment was party/privy to the scheme that made REA make the payment of Kshs. | Kshs.5,502,420.00 | The case is in Court and our findings on the matter should not be interpreted as a guilty verdict as this is the mandate of |

| | | | | |
|---|--|--|---|--|
| | | 5,502,420.00 to the Equity account The first invoice was raised on 28 August 2012 before the delivery was made on 4 September 2013 | | the Kenyan Courts. |
| 4 | Mr. Ken Tarus, Mr. Harrison Githinji, Mr. James Amadi, Ms. Margaret Gichana, Mr. Daniel Mutongi, Ms. Teressa Kanini Muasya | For making payments based on forged documents making REA to loose Kshs. 4,140,000.00 | Kshs.4,140,000.00 | The case is in Court and our findings on the matter should not be interpreted as a guilty verdict as this is the mandate of the Kenyan Courts. |
| 5 | Ms. Sophie Wali Kabia | Purporting to have received the 1000Kms 75mm ² ACSR conductors that were not delivered. Further, the said conductors should have been delivered to Mombasa road stores and not Mariakani | None since the matter was discovered before any payment | Ms. Sophie Wali Kabia has since been dismissed from REA effective 15 Feb 2013. |
| 6 | Directors Shelton Trading Company Ltd. | Delivering rejected poles from other stores to Mariakani store. | None since the poles were rejected at Mariakani and they were confiscated by REA to prevent them from been re supplied. | All poles should be serialized with unique numbers for ease of identification. |
| 7 | Current REA Senior Officers | For not establishing and implementing procedures to protect REAs assets from deterioration, especially, inventory of aluminum conductors (current assets) that have been left unattended to at Mariakani Police Station for over a year. | Kshs.10,349,120.00 could be written off is the inventory become obsolete | These aluminum conductor should be salvaged as they are the property of REA. |

1.5 Conclusions and recommendations

- 1.5.1 REA has taken various measures to address the allegations of corrupt practice. We agree with the written testimonial from the then CEO, Mr. Zachary Ayieko that the allegation letter highlighted issues which had already been noted by management and were either being addressing or pending court cases. However, we may not concur with the appropriateness of all the actions taken by management. The Auditor-General had also reported on some of the issues raised in the annual report and financial statements of REA.
- 1.5.2 The aforementioned notwithstanding, there have been areas identified in this special audit report that highlights weaknesses in controls and systems, which should be promptly addressed so as to safeguard REA's resources. We therefore recommend the following:
- 1.5.3 REA should formulate and implement sound financial policies, procedures, strategies and systems that ensure effective controls and accountability of its resources. This will ensure that any missing document, irregular/forged transactions are detected or prevented before the fraudulent activity is realized.
- 1.5.4 Officers on contracts and new employees should not be allowed to deal with sensitive financial and other significant transactions without supervision from a senior officer.
- 1.5.5 Geowan Investments should be suspended from the list of REA supplier for raising two invoices for the same delivery note. There was a possibility that it was party/privy to the scheme that made REA lose Kshs.5,502,420.00.
- 1.5.6 Diesel Care Ltd should be suspended from the list of REA supplier until investigation on the source of a delivery note number 001 dated 27 June 2012 is established. This is the delivery note that was used in a failed attempt to make a nonexistence delivery of 1000Km 75mm2 ACSR conductor to Mariakani Stores.
- 1.5.7 REA should consider suspending further dealings with Patmose Technical Services (K) Ltd until these cases are heard and determined. This will save on time and cost which may arise if more disputes arose from new dealings.
- 1.5.8 REA should pursue the release of the 36 drums of 75mm2 Aluminum conductors valued at Kshs.10,349,120.00 by the Mariakani Police Station as ordered by the High Court. The conductors should be put in good use in line with the REA's mandate.

- 1.5.9 REA should formulate and implement a robust inventory management and control systems to mitigate circumstances where used or rejected poles are not recycled back to inventory.
- 1.5.10 Appropriate legal and administrative actions should be taken against all officers identified as culpable or caused an irregularity and/or found guilty by a court of law of offences mentioned.



Edward R.O. Ouko, CBS
AUDITOR-GENERAL

31 January 2015

2 INTRODUCTION AND BACKGROUND

2.1 Introduction

- 2.1.1 There were allegations of corrupt practices by Mr. Ng'ang'a Munyu – General Manager, Mr. Wilfred Oduor - Procurement Manager, Ms. Rose N. Mkalama - Legal Manager and the Ms. Sophie Wali - Store Keeper, which were communicated via two email correspondence dated 15 February 2013 and 2 April 2013 to the Auditor-General and other watchdog agencies.
- 2.1.2 It was also alleged that REA was supplied with substandard goods such as cables, conductors, transformers or nonexistent deliveries by suppliers such as Kenelic Supplies, Adra Supplies and Patmose Technical Services (K) Ltd. There were also allegations that the legal fees, transport costs, public relations and marketing fees were inflated.

2.2 Background

- 2.2.1 The Rural Electrification Authority (REA) was established under Section 66 of the Energy Act, 2006 as a body corporate. The Authority has the following mandate:
- Manage the Rural Electrification Programme Fund;
 - Develop and update the rural electrification master plan;
 - Implement and source additional funds for the rural electrification programme;
 - Promote use of renewable energy sources including but not limited to small hydros, wind, solar, biomass, geothermal, hybrid systems and oil fired components taking into account specific needs of certain areas including potential for using electricity for irrigation and in support of off-farm income generating activities;
 - Manage the delineation, tendering and award of contracts for licenses and permits for rural electrification; and
 - Perform such other functions as the Board of Directors may direct.
- 2.2.2 The mandate is actualized through the following activities;
- 2.2.3 **Project Identification/Initiation:** REA uses a participatory approach in identifying the priority public facility projects to implement out of the master plan list in each constituency in the country. Project identification is undertaken by involving the local communities through their leaders.
- 2.2.4 **Background Preliminary Data Gathering:** After project identification, site visits are undertaken by REA personnel for purposes of coming up with necessary data to raise

preliminary cost estimates. The cost estimates assist in determining how many of the proposed projects can be implemented in various constituencies given available funds in that financial year's allocation.

- 2.2.5 **Survey:** After selecting the projects to be implemented for each constituency in the financial year; REA surveyors are then assigned the projects and dispatched for survey works. Necessary support, understanding and cooperation is required from the beneficiaries and the general public to hasten this particular exercise as the survey work requires a lot of data and ground measurements which may involve entering parcels of land belonging to various individuals.
- 2.2.6 **Way leaves Consent:** The power lines must be planted on the ground and will involve crossing parcels of land belonging to GOK, County councils/Town councils and privately owned land. Even though design try to avoid unnecessary interference with existing developments, right of passage will be required from the various owners of the involved parcels and their prompt agreements will assist in reducing the project lead times. The general public assists REA personnel in identifying the land owners and be granted the necessary consent for the construction of the power lines to begin.
- 2.2.7 **Construction of the Power Lines:** REA power lines are a designed to target the rural population and due to this fact their construction involves construction in as many parcels of land as need dictates. REA strives to tap existing labour potential in the project areas during construction. Cutting of trees along the proposed power lines and bush clearing will be mandatory and understanding of this is necessary from all the stakeholders.
- 2.2.8 **Ownership of the Constructed Power Lines:** The power lines are to serve the rural citizenry and they should treat them as their property and protect them against vandalism or any destruction.
- 2.2.9 **Types of materials used:** REA procures the following materials for use in rural electrification; Treated poles, electric cables (insulated and non-insulated) and transformers.
- 2.2.10 **Relationship between REA and KPLC:** REA does the electricity connection infrastructure (cabling and poles) after which KPLC does the connection to the national grid. REA hands over the infrastructure to KPLC who in exchange pay REA a 5% levy on all the electricity consumed in the country to finance rural electrification.

2.3 Terms of Reference

- i) To carry out a special audit to establish the veracity of the allegations of corrupt practices by officers of REA officers. The issues reviewed related to budgets, procurement of substandard goods such as cables, conductors, transformers and nonexistent deliveries by

suppliers such as Kenelic Supplies, Adra Supplies and Patmos Technical Services Ltd., and inflates legal fees, transport costs, public relations and marketing fees. Details of these allegations are in **Appendix I**.

- ii) To confirm whether the procurement process of materials by REA conforms to the Public Procurement and Disposal Act, 2005 and Regulations 2006.

2.3.1 The outcome of this audit is a special audit report on allegations of corrupt practices as leveled against REA officers, and confirm or dispel them. Also highlighted in this report are irregularities noted and culpable and/or responsible individuals and recommendations thereof.

2.4 Scope and Limitations of Scope

2.4.1 The special audit covered the allegations of corrupt practices as per email correspondence dated 15 February 2013 and 2 April 2013, and a letter from the former Chief Executive Officer (CEO) dated 12 April 2013 ref: REA/CEO/8/NM/iko addressed to the Auditor-General.

2.4.2 The special audit also involved review of the procurement process and store records for the three (3) financial years (2010/2011, 2011/2012 and 2012/2013) and applied relevant methodology to assist us gather relevant evidence.

2.4.3 The special audit also reviewed transactions in the financial year 2013/2014 in areas where cases of fraud had been reported to confirm the nature, the amount involved and the culpable or responsible persons.

2.4.4 The special audit was carried out at the REA head office, the Mariakani stores in Mombasa, and the storage facilities at Embakasi, Mombasa road, Awasi and Kisumu.

2.4.5 Our findings in this special audit should be considered in light of various constraints and limitations faced in conducting this audit.

2.4.6 These constraints had an implication on the ability to finalize the review on time and on the quality of evidence gathered in those areas:

- The special audit covered financial years 2010/2011 to 2012/2013. Some documents relating to these periods had been moved to the storage facility in Mombasa road and it took more time to retrieve them than had been anticipated.
- Two REA officers identified for interview had already left REA at the time of this special audit as detailed in section 2.5.2 of this report.

- Tender registers were poorly maintained and could not be relied on in terms of completeness of all the tenders for cables, conductors, transformers and poles which were a focus area of this special audit.
- There was lack of cooperation from REA officers as documents detailed in **Appendix II** were not availed as and when requested for verification.
- We did not have an expert in handwriting analysis to advise us on cases of forged documents/signatures. We therefore relied on our own analytical expertise.

2.5 Approach/Methodology

2.5.1 The following methods were applied to gather audit evidence and information.

i) Analytical and document reviews

Documents reviewed included: Tender Registers, Tender files, Contracts, payment Voucher Registers, Payment vouchers, Cashbooks, Internal Audit reports, REA Security Reported Case Register, REA Security Reports, and Store Management Procedures.

ii) Physical verification

Five (5) stores were visited and these were; Mombasa road stores, Transami stores, Kisumu stores, Awasi yard and Mariakani. Eleven (11) projects under Kisumu stores (3 in Bondo, 5 Vihiga and 3 Kisumu rural), and 4 under Mariakani stores (2 in Kwale County and 2 Kilifi County) were also visited.

iii) Interviewing

2.5.2 We planned to interview 15 staff but we only interviewed 13 as detailed in table 1 below: The two who we did not interview had already left REA and we did not contact them for interview.

Table 2: Person to be interviewed

| | Name | Designation | Date | Remarks |
|---|--------------------|-------------------------------------|---|----------------|
| 1 | Mr. Joel Omusebe | Assistant Procurement Officer | 13 August 2014 at 10am 22 August 2014 at 10am | Attended both |
| 2 | Mr. Edward Gakunju | In- charge of Donor Funded Projects | 14 August 2014 at 10 am | Attended |
| 3 | Emmanuel Lelgo | Senior Accountant | 15 August 2014 at 10 am and 22 August 2014 at 10am | Attended |
| 4 | Mr. Ken Tarus | Current Chief Finance | 18 August 2014 at | Attended |

| | | | | |
|----|----------------------|---|-----------------------------------|--------------------------|
| | | Manager and current chairman of Tender Committee. | 10am and 27 August 2014 at 2.00pm | both |
| 5 | Mr. Lindsay Kipkemoi | Officer in charge of security | 19 August 2014 at 10.15 am | Attended |
| 6 | Ms. Justin Musau | Current Chief Store Officer | 20 August 2014 at 10 am | Attended |
| 7 | Mr. Peter Mbugua | Chief Accountant | 21 August 2014 at 12.30 pm | Attended |
| 8 | Ms. Elizabeth Onoka | Human Resource Manager | 21 August 2014 1.30 pm | Attended |
| 9 | Ms. Rose N. Mkalama | Legal Manager | 26 August 2014 at 10.30 am | Attended |
| 10 | Mr. Wilfred Odour | Procurement Manager | 27 August 2014 at 10.30 am | Attended |
| 11 | Mr. Ng'ang'a Munyu | Former General Manager and former Chair of the tender Committee | 28 August 2014 at 10am | Attended |
| 12 | Mr. Joshua Mutiso | Store Keeper - Kisumu | 8 Sept 2014 at 10 am | Attended |
| 13 | Ms. Judy Kiragu | Assistance Supplies Officer- Mariakani | 22 Sept 2014 at 9.30 am | Attended |
| 14 | Mr. Enock Onchwari | Former Chief Finance Manager | 19 August 2014 at 10 am | Not Contacted - Left REA |
| 15 | Ms. Sophie Wali | Former Store Manager- Mombasa Road | 22 August 2014 at 10 am | Not Contacted - Left REA |

2.6 Detailed Report structure

2.6.1 Our report which should be read in its entirety comprises of the following sections:

- i) Introduction and background
- ii) Budgetary allocation for procurement of goods at REA
- iii) Procurement process – for cables/conductors, transformers & poles
- iv) Storage, usage and movements of material between yards.
- v) Irregularities and culpability
- vi) Reporting

2.6.2 The rest of the sections are the detailed findings of our report.

3 DETAILED FINDINGS

3.1 Overview

- 3.1.1 This section of the report provides detailed findings arising from the audit, which aimed to confirm or dispel the allegations mention in earlier sections and summarized below and the cost implication to REA and citizens.
- 3.1.2 Summary of the allegations
- i) Corrupt practices by the Officers of REA; Mr. Ng'ang'a Munyu - General Manager, Mr. Wilfred Oduor - Procurement Manager, Ms. Rose N. Mkalama - Legal Manager, and Sophie Wali - Store Keeper.
 - ii) REA being supplied with substandard goods such as cables, conductors, transformers or nonexistent deliveries by suppliers such as Kenelic Supplies, Adra Supplies and Patmose Technical Services (K) Ltd.
 - iii) Failure by REA to test cables and transformers sourced from China.
 - iv) Inflation of legal fees, transport costs, public relations and marketing fees by REA.
 - v) Irregular inter- store movement of materials between Kisumu and Mombasa stores.
 - vi) Sharing of yard space by REA and contractors, at identified location like Awasi.
 - vii) Cases of REA buying poles that have been rejected by KPLC.
 - viii) Construction of a Prefab in Mariakani for Kshs.12 million.
- 3.1.3 We noted that some of the above issues had been mentioned in our past Financial Audit Reports of the Auditor-General as summarized below:

Table 3: Areas covered by our past Financial Audit Reports

| ISSUES ALLEGED | PAST AUDIT REPORT REFERENCE |
|--|--|
| Awasi pole yard shared by REA and contractors. | Systems audit report FY 2012/13 page 3 |
| Failure to test transformers. | System audit report FY 2012/13 page 4 |

3.2 Budgetary allocation for procurement of goods at REA

- 3.2.1 We confirmed that the procurement budget in REA is determined by the procurement plan prepared at the beginning of each financial year.
- 3.2.2 We confirmed that REA is a government funded body and has to submit its proposed budget to the National Treasury for approval. The following were the approved budgets for the three financial years under review.

Table 4: REA Approved Budgets for Financial Years 2010-2013

| Period | Approved Budget In Million Kshs. | | Total Budget |
|---------------|---|------------------|---------------------|
| | Development | Recurrent | TOTAL |
| 2010/2011 | 3,811 | 700 | 4,511 |
| 2011/2012 | 4,086 | 849 | 4,935 |
| 2012/2013 | 9,131 | 665 | 9,796 |

- 3.2.3 Our TORs touched on the procurement of cables, conductors, transformers and poles. These materials were budgeted for under the Development Vote. We therefore confirmed that procurement of the above materials was in line with REA's procurement plans and approved budgets.

3.3 Procurement process – for cables, conductors, transformers & poles

3.3.1 Preview

- 3.3.1.1 REA is a public entity whose activities are provided for in the Energy Act, 2006. Its procurement process should therefore comply with the Public Procurement and Disposal Act, 2005 and Regulations 2006.
- 3.3.1.2 We observed that REA's procurements were guided by the procurements plans developed at the beginning of each financial year.
- 3.3.1.3 We reviewed documents relating to the procurement of cables/conductors, poles and transformers from the tender registers to the time these materials are booked in the store

and issued to the ultimate users. We also verified if these materials were used as initially intended. This verification was done on sampling basis in their stores in Mombasa road, Transami, Awasi and Mariakani.

- 3.3.1.4 We noted that actual purchases are done on need basis, where either open tendering or quotations are used depending on the threshold.
- 3.3.1.5 We noted that the procurement was done through a recommendation by the various evaluation committees to the tender committee. Contracts were awarded after the approval by the tender committee. Further, before the materials were accepted for use by REA, they were inspected by the inspection and acceptance committees in compliance with the Public Procurement and Disposal Act, 2005 and Regulation 2006.
- 3.3.1.6 However, not all documents were availed to assist us to confirm if procurement for these materials were done as per the law and put to the intended use. Eleven (11) contracts and 2 original bids as detailed in **Appendix II** were not availed for audit verification which could have given additional evidence. This special audit report can therefore only attest to the findings based on the information obtained from the availed documents.

3.3.2 Fraud Cases

- 3.3.2.1 We noted that there were several cases of theft by employees with a possible collusion with outsiders. We verified three cases as summarized in the table below and detailed in the next paragraphs.

Table 5: Fraud Case that have taken place in REA

| | Date | Description | Amount involved in KShs. |
|--------|----------------------------|---|--------------------------|
| Case 1 | Between 6 and 29 July 2011 | This was a case where unused cheque leaves were stolen from the REA offices and used to withdraw cash on various dates in July 2014 from the REA bank account number 01136125016300 in Co-operative Bank. | 1,672,429.00 |
| Case 2 | 3 October 2012 | This was a case of forgery where the money was paid to a ghost supplier. The genuine supplier was Geowan Investments whose bank account number was 01148420887300 at Co-operative Bank, Co-op House but the money was paid to Geowani Investments with bank account number 0320299761767 at Equity Bank, Kariobangi Branch. | 5,502,420.00 |
| Case | 14 August | This was a case of forgery where the money was paid a non-existing supplier by the name Supreme | 4,140,000.00 |

| | | | |
|--------------|------|---|----------------------|
| 3 | 2013 | Retread. Collusion between outsiders and REA employees facilitated these payments by forging documents including; LPO, GRN, Delivery Notes, Tender Committee Minutes. | |
| Total | | | 11,240,000.00 |

3.3.2.2 We observed that the three cases were as a result of professionally drawn schemes that were executed and the culprits benefited from them. The following are the details of how the fraudulent activities took place and the possible perpetrators.

Fraud Case 1

3.3.2.3 This was a case where REA employees' stole blank cheques leaves and passed them to third parties who cashed them later. All the payments were paid from REA account number 01136125016300 in Co-operative Bank of Kenya. Details of these cheques are as shown below:

Table 6: Details of Cheque used to withdraw Kshs.1,672,429.00 from REA accounts.

| | Payee | Amount in Ksh | Cheque number | Cheque Date | Date Cashed | Similar names |
|----|----------------------|---------------|---------------|--------------|--------------|---------------|
| 1 | James Mwangi Mwaura | 95,270.00 | 003491 | 08 July 2011 | 15 July 2011 | 1 |
| 2 | Kelin Mutuma Mbogori | 91,732.50 | 003492 | 29 June 2011 | 06 July 2011 | 2 |
| 3 | James Mwenda Murerwa | 98,905.00 | 003596 | 13 July 2011 | 15 July 2011 | 3 |
| 4 | Alex Mwenda Kibui | 98,950.00 | 003597 | 17 July 2011 | 19 July 2011 | 4 |
| 5 | James Mwangi Mwaura | 98,220.00 | 003598 | 17 July 2011 | 20 July 2011 | 1 |
| 6 | David Salau Somian | 99,450.00 | 003599 | 18 July 2011 | 20 July 2011 | 5 |
| 7 | Brian Munene Laimaru | 99,895.00 | 003769 | 27 July 2011 | 29 July 2011 | 6 |
| 8 | David Salau Somian | 96,755.50 | 003799 | 11 July 2011 | 12 July 2011 | 5 |
| 9 | Kelin Mutuma Mbogori | 97,644.00 | 003800 | 11 July 2011 | 12 July 2011 | 2 |
| 10 | Jimmy James Wanyoike | 99,682.00 | 003971 | 27 July 2011 | 29 July 2011 | 7 |
| 11 | James Mwangi Mwaura | 99,790.00 | 003978 | 26 July 2011 | 29 July 2011 | 1 |
| 12 | Kelin Mutuma Mbogori | 99,255.00 | 003991 | 25 July 2011 | 27 July 2011 | 2 |
| 13 | James Murerwa Mwenda | 99,220.00 | 003994 | 25 July 2011 | 27 July 2011 | 3 |
| 14 | Brian Munene Laimaru | 99,420.00 | 003997 | 20 July 2011 | 22 July 2011 | 6 |
| 15 | David Somian Salau | 99,120.00 | 003998 | 22 July 2011 | 25 July 2011 | 5 |

| | | | | | | |
|----|-------------------------|---------------------|--------|--------------|--------------|---|
| 16 | Alex Mwenda Kibui | 99,630.00 | 003999 | 22 July 2011 | 25 July 2011 | 4 |
| 17 | Jimmy James Wanyoike | 99,490.00 | 004000 | 22 July 2011 | 25 July 2011 | 7 |
| | Total | 1,672,429.00 | | | | |

- 3.3.2.4 We were informed that the two employees who were involved were; Mr. Governor Musili and Mr. Raymond B. Kiambati. Both of them were on contract and were less than two months old in the organization. Mr. Musili's contract expired on 31 August 2011 and Mr. Kiambati's expired on 23 October 2011. The Manager, Human Resource/Administration wrote two letters both dated 25 July 2011 reference number RT2010/2062 and RT2010/2020 to Mr. Musili and Mr. Kiambati respectively. The letters were to inform them of the expiry dates of their contracts and requested them to liaise with their Head of Departments to find out if their services are still needed. If their services were not needed they were advised to apply for 30 days annual leave each and prepare for clearance. Their contracts were however not renewed and were terminated on the respective expiry dates.
- 3.3.2.5 The REA security report indicated that the case was reported to the Kilimani Police Station under OB number 20/6/9/2011. It further said that the two officers were handed over to Kilimani Criminal Investigation Department (CID) and taken to court and charged with the offence of Theft by Servant.
- 3.3.2.6 The above REA security report indicated that the signature appended to the cheques purported belong to Mr. Enoch N. Onchwari - Chief Manager Finance and Mr. David Rogoncho - Chief Manager Design were allegedly forged. We did not conduct an independent signature analysis since we did not have that expertise but the signatures appeared forged.
- 3.3.2.7 The stolen cheques were cashed between 06 July 2011 and 29 July 2011 without detection. This is a period of three weeks without any system of control to detect missing blank cheques.
- 3.3.2.8 However, we confirmed that this amount of Ksh 1,672,429.00 was refunded by the Co-operative Bank of Kenya on 4 August 2011 in REA account number 01136125016300.
- 3.3.2.9 Our document reviews revealed that this scheme could not have succeeded if the Chief Manager Finance had taken due diligence in his work. We noted that the then Chief Manager Finance had a delegated responsibility by the CEO of *".....formulating and implementing sound financial policies, procedures, strategies and systems that ensure effective controls and accountability of company resources"*

Fraud Case 2

- 3.3.2.10 We noted that REA has a database for their entire suppliers who are shortlisted at the beginning of the year. This database is linked to an Enterprise Resources Planning (ERP) based SAP system.
- 3.3.2.11 One of the suppliers in the database was Geowan Investments whose unique code was 100730. In a tender committee meeting held on 24 August 2012, this supplier was awarded a tender to supply the following poles in Kisumu:

Table 7: Tender number REA/12- 13/OT/021 awarded to Geowan Investments on 24 August 2012

| | Pole size | Quantity | Unit Price in Ksh |
|---|------------------|-----------------|--------------------------|
| 1 | 11 M | 940 | 13,495 |
| 2 | 12 M | 450 | 14,510 |
| 3 | 14 M | 250 | 17,200 |

- 3.3.2.12 Geowan Investments was issued with a Local Purchase Order (LPO) number 10001225 of Kshs. 23,514,800 on 24 August 2012.
- 3.3.2.13 We reviewed documents and noted that on 30 August 2012, two unreferenced letters in the letterhead of Geowan Investment were written to Chief Manager Finance of REA giving two different bank details of Geowan Investments as follows:
- Account Name – Geowan Investments; Equity Bank of Kenya; Kariobangi Branch, Account Number: 0320299761767; and
 - Account Name – Geowan Investments; Co-operative Bank of Kenya, Co-op House Branch, Account Number: 01148420887300.
- 3.3.2.14 The same document had another undated and unreferenced letter but with the same details as the second scenario detailed above and both letters were signed by a Mr. George Liewa as the Director of Geowan Investments but the two signatures appeared different.
- 3.3.2.15 On 4 September, 2012 Geowan Investments supplied the following quantities in part fulfillment of the above tender. These poles were received in REA Kisumu on 5 September, 2012 through a Good Received Note (GRN) number 0123138.

Table 8: Amount Supplied by Geowan Investment on 4 September 2012

| | Pole size | Quantity | Unit Price in Ksh | Total Cost Kshs. |
|--------------|------------------|-----------------|--------------------------|-------------------------|
| 1 | 11 M | 112 | 13,495 | 1,511,440.00 |
| 2 | 12 M | 198 | 14,510 | 2,872,980.00 |
| 3 | 14 M | 65 | 17,200 | 1,118,000.00 |
| Total | | | | 5,502,420.00 |

3.3.2.16 An invoice number 005 dated 4 September, 2012 amounting to Kshs.5,502,420 was issued to REA by Geowan Investments seeking payment for the above delivery. However, according to REA security report dated 26 April 2013, Geowan Investment had earlier raised an invoice number 004 dated 28 August 2012 that later disappeared. This invoice was dated earlier than the delivery note which was dated 4 September, 2012. The Finance Department prepared a Payment Voucher (PV) based on this invoice but it was not paid since the CEO, Mr. Zachary Ayieko queried the discrepancies in the date between the invoice and the delivery note. This first PV was signed by the following officers:

Table 9: Officers who confirmed the first Payment Voucher to Geowan Investments

| | Name | Designation | Date | Role | Remarks |
|---|-------------------------|----------------------|-------------------|-------------|----------------|
| 1 | Mr. Nelson Gitonga | Assistant Accountant | 24 September 2012 | Prepared | Still in REA |
| 2 | Mr. Robert Gesanda | Accountant | 25 May 2012 | Checked | Still in REA |
| 3 | Ms. Margaret A. Gichana | Senior Accountant | 26 May 2012 | Authorized | Still in REA |

3.3.2.17 A second PV was prepared to replace the aforementioned. The supporting documents were the same except the invoice number 004 dated 28 August 2012 that was replaced by invoice number 005 dated 4 September, 2012. This PV was signed by the following officers:

Table 10: Officers who confirmed the second PV to Geowan Investments

| | Name | Designation | Date | Role | Remarks |
|---|-----------------------|----------------------|-------------|---------------|-----------------------|
| 1 | Mr. Nelson Gitonga | Assistant Accountant | 3 Oct 2012 | Prepared | Still in REA |
| 2 | Mr. Stephen K. Marasa | Accountant | 03 Oct 2012 | Checked | Still in REA |
| 3 | Mr. Caren Odour | Senior Accountant | 3 Oct 2012 | Authorized | Resigned in May 2013 |
| 4 | Mr. Emanuel Lelgo | Senior Accountant | 03 Oct 2012 | Not indicated | Still in REA |
| 5 | Mr. Zakary O. Ayieko | CEO | 03 Oct 2012 | Approved | Left REA in July 2013 |

- 3.3.2.18 On 10 October 2012, Kshs.5,502,420.00 was paid to Equity Bank account number 0320299761767 mentioned above from REA bank account number 0106004955900 in Standard Chartered Bank at Kenyatta Avenue. We did not contact Equity Bank for the details of this account number that received the money and no other information on the same is known to us about the account. However, the REA security report indicated that the bank account in Equity Bank had the name Geowani Investment and not Geowan Investments as indicated in the unreferenced letter dated 30 August 2012 mentioned in section 3.3.2.13 of this report.
- 3.3.2.19 On 16 October 2012, Geowan Investments wrote an unreferenced letter to the REA Chief Manager Finance notifying him that as they were following the payment for the above mentioned poles they supplied, they realized that it was sent to a wrong account which was not theirs. In the same letter they cited other previous cases where they supplied poles to REA and payments were channeled to the correct bank account.
- 3.3.2.20 In this letter they gave reference to invoice number 004 dated 28 August 2012 mentioned earlier which later disappeared and which made Mr. Zachary Ayieko, CEO reject the payment in the first PV. Geowan Investments raised a second invoice dated 4 September 2012 which supported the payment that was made to the wrong account in Equity Bank. As indicated in the REA security report dated 26 April 2012, Geowan Investments therefore raised two invoices for the same delivery note. Therefore, Geowan Investment could be culpable or be party/privy to the scheme that made REA make the payment of Kshs.5,502,420.00 to the Equity Bank account.

3.3.2.21 By the time of this audit, REA had not recovered the money paid to the wrong account and Geowan Investments was claiming payments for the same since the money was not paid to their account. The dispute was reported to Milimani Law Courts under civil case number 726 of 2013. The matter was still pending in court waiting the affirmation of a hearing date.

Case 3

3.3.2.22 This was paid out in August 2013 to a company by the name Supreme Retread Co. Ltd that was not in the REA’s list of pre-qualified suppliers and therefore not in the SAP system database.

3.3.2.23 The payment was made on the basis of an invoice number 97 dated 25 July 2013 and a delivery note dated 09 July 2013 from Supreme Retread Co. Ltd. This invoice was for the following poles purported to have been delivered to Eldoret:

Table 11: Content of the invoice from Supreme Retread Co. Ltd.

| Quantity | size | Unit prize (Not indicated in the invoice) | Total in Kshs. |
|--------------|------|---|---------------------|
| 95 | 11M | 13,500 | 1,282,500.00 |
| 197 | 12M | 14,505.08 | 2,857,500.00 |
| Total | | | 4,140,000.00 |

3.3.2.24 We reviewed various documents and noted that this payment was made through a series of the following forged document:

The Tender Committee Minutes

3.3.2.25 We noted that procedures require that for any payment to be made for the supply of poles, it must be supported by a copy of the tender committee minutes awarding that tender to the supplier being paid. This was to inform the officers making the payment that the supplier was indeed awarded that tender and the terms of the award. Supreme Retread Co. Ltd was not in the list of REA’s pre-qualified suppliers and was never awarded any tender by the tender committee.

3.3.2.26 The original tender committee minutes dated 19 December 2012 that was used to support this payment was forged to include Supreme Retread Co. Ltd. This was achieved after

replacing the name of Prosup Limited in the original tender committee minutes with Supreme Retread Co. Ltd in the altered minutes. The original tender committee minutes were still in REA and it was not clear to us why the payment went through undetected by the Finance Department.

The LPO number 10001520

3.3.2.27 We noted that the LPO number 10001520 was used to support the fictitious supply was also forged. The original LPO was meant for Pasifique Investment and was dated 08 January 2013. It was for the supply of 15,000 “**Stay Block ¾” Concrete**” at a total cost of. Kshs.6,000,042. This amount had been paid in full to Pasifique Investment by the time of this special audit. The forged LPO was dated 21 December 2012 and was for the supply of various sizes of wooden poles at various prices totaling Kshs.35,320,000. The Kshs. 4,140,000 was therefore part payment and there is possibility that the entire amount of Kshs.35,320,000 could have been paid if the scheme was not detected.

Treatment Certificate, Good Received note (GRN) and Inspection an Acceptance Report.

3.3.2.28 As a consequence, the above documents must have also been forged since there were no poles that were delivered.

3.3.2.29 As a result of this forgery, Ksh 4,140,000 was paid to Supreme Retread Co. Ltd on 7 August 2013 from REA Standard Chartered Bank account number 0106004955900 at Kenyatta Avenue Branch. The amount was paid to Co-operative Bank account number 01148530240400 at Kimathi Street Branch. This account was opened on 8 August 2013. This was after the above payment was made to this account on 7 August 2013. According to documents used to open this account, the following were the details of the signatory to this bank account.

Table 12: Details of the Signatories to the Supreme Retread Co. Ltd bank account

| | Name | Designation | ID Number | Mobile Telephone contact |
|---|-----------------------|--------------------|------------------|---------------------------------|
| 1 | James Gichuki Wambugu | Director | 6830903 | 0722514585 |
| 2 | Joseph Muhia Gichuki | Director | 24067059 | 0722917432 |

3.3.2.30 According to the Standard Chartered Bank statement from REA, the amount was paid on 7 August 2013. The amount was returned by the Co-operative Bank and credited back to REA account on 12 August 2013. This may have been occasioned by the fact that the Co-operative Bank account did not exist when the payment was made. The account was opened on 8 August 2013 and the payment was made on 7 August 2013, as mentioned earlier.

3.3.2.31 REA made the payment again on 14 August 2013 and the amount was credited in the Co-operative Bank account on the same day. We noted the following withdrawal from this account after this credit:

Table 13: Withdrawals from Supreme Retread bank account number 01148530240400

| | Date | Amount in Kshs. | Remarks |
|--|------------------|---------------------|--------------------------|
| | 15 August 2013 | 2,300,000.00 | |
| | 17 August 2013 | 650,000.00 | |
| | 20 August 2013 | 800,000.00 | |
| | 24 August 2013 | 200,000.00 | |
| | 3 September 2013 | 140,000.00 | Reversed on the same day |
| | 9 September 2013 | 60,000.00 | |
| | Total | 4,150,000.00 | |

3.3.2.32 By the time of this audit the account had a balance of Kshs. 137,066.75 which is almost equal to the Kshs.140,000.00 reversed on 3 September 2013.

3.3.2.33 The original PV was said to have disappeared on discovery of the irregular payment. We therefore relied on a copy of the same obtained from the REA security section. According to this PVs, the following officers from Finance Department had appended their signatures as a confirmation that the payment was authentic. This was however, contrary to our finding as detailed above since the supporting documents were forged and could therefore not be authentic.

Table 14: Signatory to the payment voucher which paid supreme Retread Co. Ltd

| | Name | Designation | Date | Role |
|---|-----------------------|-----------------------|--------------|---------------|
| 1 | Mr. Ken Tarus | Chief Manager Finance | 6 Aug 2013 | Not indicated |
| 2 | Mr. Harrison Githinji | <not provided> | 31 July 2013 | Prepared |
| 3 | Mr. James Amadi | Accountant | 31 July 2013 | Checked |
| 4 | Ms. Margaret. Gichana | Senior Account | 6 Aug 2013 | Authorized |

3.3.2.34 The matter was taken to Kibera Law Courts and the following REA officers charged with a criminal offence on 14 October 2013.

- Mr. Daniel Mutongi Amuyunzu
- Mr. Harrison Githinji
- Mr. James Amadi
- Ms. Teresa Kanini Muasya

Mr. James Gichuki Wambugu who was one of the account signatory was also charged together with the above REA officers.

3.3.2.35 The accused were however, discharged under Section 87 (a) CPC. It was explained to us that the discharge of the case was due to the missing original payment voucher and the attached supporting documents. The REA Legal Department interpreted the discharge and advised that *".....the police are at liberty to continue the investigation and receive new/further evidence into the subject of the trial and if need be, can at his own choosing, later re- institute charges against the accused"*

3.3.2.36 The money had therefore not been recovered by the time of this special audit, implying that REA and the public in general did not get value for them.

3.3.3 Other Procurements and Court Cases

- a) *Prefabricated Offices Constructed by REA in Mariakani at a cost of Kshs.12 million.***

3.3.3.1 We noted that the tender committee of 12 March 2010 approved a list of five (5) bidders for construction of fabricated offices in Mombasa/ Mariakani through restrictive tender as follows:

Table 15: Bidders for the Prefabricated Offices in Mariakani.

| | Name | Cost per Square Meter in Kshs. | Total Cost for 186 Square Meter in Kshs. |
|---|------------------------------|--------------------------------|--|
| 1 | Eco Homes Ltd | 25,500.00 | 4,743,000.00 |
| 2 | Rodmik Enterprises Ltd | 27,900.00 | 5,189,400.00 |
| 3 | East African Metal Works Ltd | 28,858.00 | 5,367,588.00 |
| 4 | Timsales Ltd | 30,000.00 | 5,580,000.00 |
| 5 | Economics Housing Group | 30,340.00 | 5,643,407.00 |

3.3.3.2 Another tender committee meeting on 1 April 2012 awarded this contract to the seconded lowest bidder Rodmik Enterprise ltd at a cost of Ksh 5,189,400.00. The committee noted that the lowest bidder Eco Homes Ltd *"...only operates within Nairobi and environs and its cost was Kshs 25,500.00 per square metre and hence will not serve the objective of this assignment"*, a rationale which seemed vague and unjustifiable.

3.3.3.3 Apart from the above two tender committee minutes, we did not get any other document related to the above construction. Mr. Wilfred Odour - Procurement Manager informed us that *"After the award all the documents were taken to our Mombasa road store for safe keeping. We have been unable to trace the file because initially we were not archiving our documents properly though we are still trying to locate the documents"*.

3.3.3.4 We visited Mariakani stores between 22 sept and 26 September 2014 and confirmed the existence of the prefabricated offices. However, due to the above limitation, we could not confirm the construction cost of these offices.

b) Legal Fees

3.3.3.5 We noted that REA hired external lawyers twenty three times (23) in three (3) financial years from 2010/2011 to 2012/2013. A summary of these cases is in **Appendix III**. Payments for legal services are governed by the Advocates Remuneration (Amendment) Order and Advocates Act Cap 16 Laws of Kenya. We analyzed the schedule of payments to these lawyers and confirmed that they were in accordance with these legal provisions.

However, we did not perform a similar test on transport costs, public relations and marketing fee mentioned in the allegation since there were no such legal and/or other provisions to use as our criteria for objective comments.

c) Court Cases between REA and Patmose Technical Services (K) Ltd

3.3.3.6 The following was the summary of active court cases between REA and Patmose Technical Services (K) Ltd.

Table 16: Court Cases Between REA and Patmose Technical Services (K) Ltd

| Case number | Description | Amount involved | Current Status |
|--|---|--------------------|---|
| 1 Nairobi Milimani CMCC No. 475 of 2012 | Patmose Technical Services (K) Ltd is claiming USD 199,172.87 of Conductors Steel Reinforced Conductors which it alleges were delivered to REA, a claim REA has disputed. | USD 199,172.87 | The hearing has begun and next hearing was scheduled to be on 28 and 30 October 2014. |
| 2 Nairobi Milimani CMCC No. 541 of 2012 | REA awarded to various suppliers contracts during financial year 2010/2011 for the supply and delivery of ACSR conductors when the prevailing duty was 10%. On 22 March 2011 the duty was raised from 10% to 25% under EAC common tariffs through a Legal Notice No. EACC/07/2011. KRA applied the new duty retrospective from the beginning of the financial year 2010/2011 making Patmose Technical Services (K) Ltd incur an addition cost of Kshs.30,477,023.00 which it is claiming from REA, the amount REA has disputed | Kshs.30,477,023.00 | It is ongoing. Defense hearing was scheduled to be on 16 October 2014. |
| 3 Nairobi Milimani CMCC No. 698 of 2012 | REA awarded to various suppliers contracts during financial year 2010/2011 for the supply and delivery of ACSR conductors when the prevailing duty was 10%. On 22 March 2011 the duty was raised from 10% to 25% under | Kshs.19,892,633.00 | The case is in court but the hearing has not started. |

| | | | | |
|---|---|--|--------------------|---|
| | | EAC common tariffs through a legal notice No. EACC/07/2011. KRA applied the new duty retrospective from the beginning of the financial year 2010/2011 making Patmose Technical Services (K) Ltd incur an addition cost of Kshs.19,892,633.00 which it is claiming from REA, the amount REA has disputed | | |
| 4 | Nairobi Milimani CMCC No. 699 of 2012 | <p>On May 2008, REA invited bids for the supply of various items upon which Patmose Technical Services (K) Ltd delivered its quotation which REA accepted.</p> <p>On May 2009 REA ordered various materials at the quoted price and Patmose Technical Services (K) Ltd supplied them at a total cost of Kshs.14,640,000.00</p> <p>REA utilized the materials on diverse dates but refused to pay the above amount arguing that Patmose Technical Services (K) Ltd had overcharged them.</p> <p>Patmose Technical Services (K) Ltd went to court claiming the above cost together with 18% interest per year from 2009.</p> | Kshs.14,640,000.00 | <p>There was an out of court settlement where REA paid the principle amount of Kshs. 14,640,000.00 on 17 March 2014.</p> <p>The parties are still pursuing the issue of interest payable and the court directed that the matter be mentioned on 16 September 2014.</p> <p>The matter was still in court on 19 September 2014 and was scheduled for mention on 3 October 2014.</p> |

3.3.3.7 There seems to be a clear trend of disputes between REA and Patmose Technical Services (K) Ltd. We noted that all the above cases are in court and it is only prudent to wait for the court's decision on the way forward.

3.4 Storage, usage and movements of material between yards.

3.4.1.1 Currently, REA has stores in the following locations:

- Mombasa Road Stores
- Kisumu Stores
- Awasi yard
- Eldoret Stores
- Mariakani Stores
- Makuyu Stores
- Transami Stores- For Donor Funded Projects

There was another store in Gilgil but it was closed in early 2012

3.4.1.2 We visited 5 stores out of 7 shown above. These were Mombasa road stores, Transami stores, Kisumu stores, Awasi yard and Mariakani. We noted that each of these stores had four distinct sections in terms of functionalities. These were:

- Receiving section where all deliveries were made and general inspection done. Materials received are kept separately and labelled "Not inspected" awaiting inspection by the inspection and acceptance committee. At this stage, the received materials are blocked in the SAP system so that they cannot be issued out until inspection is done.
- Recording section where copies of the documents accompanying the deliveries are kept.
- The storage section where all the materials are kept. Within this sections there was a space dedicated for testing (test bench) of transformers at Mombasa road stores.
- The dispatch section where all the dispatch to contractors are made.

3.4.1.3 We noted these various sections were connected to the SAP system and the in charge of each section could be able to detect any material that had not passed through the previous sections.

3.4.1.4 We noted that inter- transfer of material from one store to another was acceptable and was provided for by the REA Stores Operations Manual section 6.5. However, we noted the following irregularities in store management:

a) Fictitious receipt of 1000Kms of Conductor 75mm² ACSR Conductor Bare

3.4.1.5 On 20 July 2012 an entry of 1000Kms of Conductor 75mm² ACSR worth USD 905,170 was recorded in the SAP system by the store in charge of Mariakani M/s. Sophie Wali Kibai purporting to have received these materials. The entry was supported by a GRN number 034861 dated 27 June 2012, a delivery note number 001 from Diesel Care Ltd also dated 27

June 2012 and an inspection and acceptance committee report dated 20 July 2012. The Conductor was purported to have been supplied by Diesel Care Ltd who had been awarded an LPO number 10001184 dated 17 July 2012 to supply 4500Km of the above mentioned conductor. The delivery address (point of delivery) was REA- Embakasi (Mombasa road stores) and not Mariakani where Ms. Sophie Wali Kabai was stationed.

- 3.4.1.6 On 9 August 2012 the above entry was reversed by the officer in charge of all the REA stores, Ms. Justine Musau. She explained to us that she noted the entry in the SAP system but she was not aware of any supply of the conductor pertaining to the entry. On inquiry, Ms. Justine Musau said she noted that there was no corresponding delivery of the conductor and that was why she reversed the entry. The amount of USD 905,170 being the worth of this conductor was therefore not paid.
- 3.4.1.7 The issue was brought to the attention of the REA management and on 24 September 2012, the CEO, Mr. Zachary O. Ayieko directed that Ms. Sophie Wali Kabai to show cause why disciplinary action should not be taken against her for the offence of purporting to have received the conductors that were not delivered. Further, the said conductors should have been delivered to Mombasa road stores and not Mariakani.
- 3.4.1.8 We noted that Ms. Sophie Wali Kabai was found guilty of the above offence by the REA Advisory Committee and was dismissed from the services of REA with effect from 15 February 2013.
- 3.4.1.9 If this irregularity was not detected, REA would have incurred a loss of USD 905,170 due to nonexistent deliveries.

b) Theft of 36 drums of 75mm Aluminum Conductors in Mariakani stores worth 10,349,120.00.

- 3.4.1.10 We also noted that there was a theft case of the above materials on 29 January 2011 in Mariakani Stores. According to the REA security report, the thieves gained access to the yard by use of duplicate keys and loaded these materials into four trucks. However, the trucks were arrested by REA security officers and handed over to Mariakani Police Station. These trucks were and were:

Table 17: Vehicle used in 36 drums of 75mm Conductor theft in Mariakani

| Vehicle Registration number | Make | Number of drums |
|-----------------------------|-------------------|-----------------|
| KBJ 420N | Mitsubishi Canter | 6 |
| KAX 734J | Mitsubishi FH | 8 |
| KAX 958G | Mitsubishi | 11 |

| | | | |
|--------------|----------|------------|-----------|
| | KAX 962G | Mitsubishi | 11 |
| Total | | | 36 |

- 3.4.1.11 In addition, nine suspects were also arrested and arraigned in Mariakani Court on 31 January 2011 and charged with stealing the drums of conductors worth Kshs.10,349,120.00 under case number CR.314/25/2011.
- 3.4.1.12 According to the REA Senior Security Officer, Mr. Lindsay Kipkemoi, the vehicles were later released and the suspect acquitted by Mariakani Law Courts. Further, the court also ruled that the materials be forfeited to the State and sold in a Public Auction. However, we did not get a copy of the above ruling. Mr. Lindsay explained that to us that REA did not have a copy of the ruling.
- 3.4.1.13 REA appealed to the High Court in Mombasa under MISCELLANEOUS CIVIL APPL. NO. 102 OF 2012. The High Court on 21 December 2013 ordered that the 36 drums of 75 mm² conductors be released to REA.
- 3.4.1.14 During our visit to Mariakani, we noted that the above conductors worth Kshs.10,349,120.00 were still lying at the Mariakani Police Station almost one year after the High Court ruling which highlighted a case of negligence of the part of current REA Senior Officers.

c) Movement of Rejected poles from other Stores to Mariakani store by a Supplier.

- 3.4.1.15 On 17 August 2012, the CEO Mr. Zachary O. Ayieko wrote an internal memo to Mr. Michael Apundo, Ms. Sophie Wali Kabai and Mr. Edward Mwamugunda concerning the quality of poles received from Shelton Trading Co. Ltd, Gigi International and Shark Investment on diverse dates between the month of June and August 2012. The CEO cited the following anomalies in the poles:
- *“There were 10m poles totaling to twenty three (23) in number, which had been received, inspected and accepted as 11m poles.”*
 - *“The 11m poles received, had clear markings REA – 1004, which indicated that the poles had been part of the REA stock in Eldoret and could not therefore not be part of a fresh supply from a supplier”*
 - *“The poles received at Mariakani, from this consignment looked outright rejected with very poor quality and indeed had actually been rejected in Eldoret and Makuyu and as such could not have been accepted as good poles”.*

- *"It is surprising that despite all the above anomalies all the poles were accepted without any rejection!"*

3.4.1.16 On 24 October 2012, the REA security section conducted an investigation on the above anomalies. In their conclusion, the security report noted that *"Shelton trading company made delivery of bad poles to Mariakani and the inspection team rejected over 80% of their deliveries. The origins of these poles were suspect and it confirmed the security suspicions that they were rejects from our previous rejected stocks."*

3.4.1.17 We visited Mariakani stores and noted that these poles are kept by REA in a separate place from the accepted ones though they are not marked rejected. However, rejected poles from different suppliers are kept together without a unique identifying mark. It is therefore difficult to later know which one came from which supplier. Further, we could not confirm whether these poles came from other stores in REA, KPLC or new supplies from the supplier since they did not have any unique identifier such as serial number for unique identification.

3.4.1.18 Apart from the above cases we confirmed that other transfers of poles from Kisumu to Mariakani were authorized and supported by inter store transfer, stores transaction forms (GRN). We also confirmed that these poles were received in Mariakani.

d) *Sharing of REA's Awasi poles yard with contractors*

3.4.1.19 We noted that Wood Treatment Technology Ltd which is one of the REA suppliers had a pole yard in Awasi. Part of this yard is leased out to REA. The current lease agreement is for five years term commencing from 1 January 2013 and ending on 31 December 2017.

3.4.1.20 We visited the yard on 9 September 2014 and noted that it was managed by Ms. Lilian Akoth - Stores Clerk. It is shared between REA and Wood treatment Technology Ltd who are the owners of the yard. The REA section was clearly separated from the rest of the yard by a fence. REA had employed security guards from M/S BM Security Firm who were on patrol every day. An interview with the security guards Mr. Paul Yegon indicated no cases of theft or losses have ever occurred at the yard for the time they have been there. We further noted that REA had one logger to offload and load poles at the yard. Sometimes they seek assistance from Wood Treatment Technology Ltd when their logger had a problem, to assist in loading over lunch hour.

3.4.1.21 REA security section had also carried out an investigation on the same allegation on 1 May 2013 and noted in their report that the allegation of misuse of REA loggers was not true.

3.4.1.22 Sharing of poles yards between REA and suppliers was a common practice even in other areas as detailed below:

Table 18: Other Cases of Shared Poles Yard between REA and Suppliers

| | Area | Name of the supplier |
|---|-------------|--------------------------------------|
| 1 | Makuyu | Tri- Star Plantation Ltd |
| 2 | Eldoret | Timber Treatment International (TTI) |
| 3 | Gilgil | Gilgil Telecoms Industries Ltd (GTI) |

APPENDICES

APPENDIX I

ISSUES FROM THE EMAIL DATED 15 FEBRUARY 2013 AND 2 APRIL 2013

ISSUES FROM THE EMAIL DATED 15 FEBRUARY 2013

Areas: Mariakani/Kisumu/Embakasi

| | ISSUES | AUDIT AREA TO ADDRESS THIS |
|---|---|---|
| | Mr. Wilfred Oduor – Procurement Manager meet suppliers, make deals then introduces the suppliers to Ms. Rose N. Mkalama - Legal Manager. The scam is also known by the Mr. Ng'ang'a Munyu - General Manager. | Procurement Process – How suppliers are identified |
| | The store keeper in Mariakani. Ms. Sophie Wali Kabai was running for Governorship in Coast after working for 4 years and then resigned. | Not to be addressed |
| | Ms. Sophie Wali Kabai has an expensive lifestyle out of funds looted from REA out of ghost suppliers. Supply of cables/conductors that are shorter in length and width and thinner. | For lifestyle we will not address. Ghost suppliers and substandard materials – Procurement Process – Delivery of goods in the right specifications |
| | Examples of ghost suppliers Kenelic Suppliers – Mariakani Adra Suppliers – Kisumu Patmose Technical Services Ltd. – Kisumu | Physical verification |
| | Single church donation of Kshs.2 million by unmentioned top management staff. | Not to be address |
| | Cables and transformers from China were not tested. | Procurement Process – Inspection and Acceptance committee reports |
| | Super inflated legal fees, transport cost, PR and marketing fees. | Budgets |
| | Under capacity transformer with 11 kv, 50 kva but supplied with 11 kv, 42 kva. | Procurement Process – Delivery of goods in the right specifications |
| | Period in question in 2010, 2011 and 2012. | Period of Coverage |
| | Irregular movement of materials in Kisumu stores and Mariakani compared to usage for two years. | Storage, Usage and Movements of Material from one yard to the next |
| ISSUES FROM THE EMAIL DATED 2 APRIL 2013 | | |
| | Awasi pole yard shared by REA and contractors. Poles rejected by KPLC are sold to REA. | Procurement Process – Delivery of goods in the right specifications |
| | Thin poles moved from Kisumu store to Mariakani to evade inspection | Movement of materials from one yard to the next |
| | A prefab constructed in Mariakani for Kshs.12 million. | Procurement process |

APPENDIX II

MISSING DOCUMENTS

| List of Tenders with missing contract files | |
|--|--|
| 1 | REA 2010/2011/OT/002 TREATED WOOD POLES |
| 2 | REA 2010/2011/OT/009 TRANSFORMERS |
| 3 | REA2010/2011/OT/10 CONDUCTORS, STAYWIRE & BINDING WIRES |
| 4 | REA/2011/2012/OT/014 INSTALLATION AND COMMISSIONING OF 2.5 MVA 11/33KV SET UP DISTRIBUTION TRANSFORMERS & 33KV AUTO-RECLOSER TOGETHER WITH ASSOCIATED CIVIL WORKS IN WAJIR POWER STATION |
| 5 | REA/2011-2012/OT/015 SUPPLY, INSTALLATION AND COMMISSIONING OF 1 MVA 0.415/33KV STEP UP DISTRIBUTION & 33KV AUTO-ECLOSER TOGETHER WITH ASSOCIATED CIVIL WORKS IN WAJIR POWER STATION |
| 6 | REA/2012-13/OT/026 SUPPLY OF MATERIALS FOR CONSTRUCTION OF 66/33KV LINE CL-DT 12-10-2012 12.10.12 CL-DT |
| 7 | REA 2012-2013/OT/027 SUPPLY OF CONCRETE POLES |
| 8 | REA/2012-2013/058 SUPPLY OF 10M POLES |
| 9 | REA 2010-2011/OT/015 SUPPLY OF TREATED POLES |
| 10 | WE/REA/2010-11/25 SUPPLY OF CONDUCTORS, CABLES STAY WIRE AND BINDING |
| 11 | REA BID 2010/2011 50KVA 11/0.433, 100KVA,4,33/0.433 DISTRIBUTION TRANSFORMER |
| | |
| List off Tenders With Missing Original Bids | |
| 1 | REA/12-13/OT/001 SUPPLY OF DISTRIBUTION TRANSFORMERS |
| 2 | REA/2011-12/OT/002 SUPPLY OF CONDUCTORS CABLES STAYWIRES AND BINDING WIRES |

APPENDIX III

SUMMARY OF LEGAL FEES FOR COURT CASES (2010/11 TO 2012/13 FINANCIAL YEARS)

1. The legal fees payable to a lawyer are guided by the provisions of the Advocates Remuneration (Amendment) Order. We noted that the Advocates Remuneration (Amendment) Order sets out the minimum charges that an Advocate may charge for services. Clause 3 provides that "No Advocate may agree or accept his remuneration at less than that provided by this Order."
2. Under Section 5 of the Advocates Act, Cap 16 Laws of Kenya , in computing the instruction fees payable to a lawyer, the complexity and novelty of the matter, responsibility, time taken, documentation, research involved and skills engaged are the core factors which should be considered in determining the fees payable and or enhancing the fee from the aforementioned minimum.

| | | | | | |
|----|---|--|--|---------------------|---|
| 1. | The Public Procurement Review Board Case No. 14 of 2010 between Socabelec E.A. Ltd Vs REA | Prof. Albert Mumma and Company Advocates | There matter was heard before the Procurement Review Board where the applicant's application was allowed and the award of tenders nullified. The contract price for the implementation of the substation was approximately Kshs.253 million. | 1.5 million. | The Advocates were entitled to an instruction fee of Kshs. 4.9 million in accordance to Schedule VI (1) (b) of the Advocates Remuneration Order. |
| 2. | Nairobi (Milimani) CMCC No. 987 of 2010 Evans Walubuka Wepukhulu vs REA | Wamalwa and Co Advocates | The dispute arose as a result of alleged damage to property and trespass. The claimant's complaint was that REA had trespassed and destroyed his property during construction of a power lines. The claim, if successful would have attracted an award of Kshs. 400,000.00-Kshs | 125,160.00. | The claimed fees by the advocates are as per the Advocates Remuneration Order Schedule VII (A). The fees submitted 2 invoices, one of Kshs. 105,160.00 and |

| | | | | | |
|----|--|-------------------------------------|---|---------------------|---|
| | | | 800,000.00. | | another for Kshs. 20,000.00. |
| 3. | Busia SPMC Civil Case No. 111 of 2009 – Tobias Ndombi Odhiambo Aringo Vs REA | Wamalwa and Co Advocates | <p>The dispute arose as a result of a way leave issue; damage to property and trespass during construction of power line. The matter is defended in Court.</p> <p>The matter was instituted in 2009 and the same is still pending in court.</p> | 164,860. 00. | <p>The advocate was entitled to be paid Kshs. 210,000.00 but was paid Kshs. 164,860.00,</p> <p>The claimed fees by the advocates are as per the Advocates Remuneration Order Schedule VII (A). The Advocate submitted two invoices one for Kshs. 38,860 and another for Kshs.126, 000.00.</p> |
| 4. | Mombasa High Court Civil Case No. 224 of 2010 D.Chandulal K. Vora VS REA | Musyoka Wambua and Katiku Advocates | The dispute arose out of a claim of breach of contract worth Kshs. 49, 546,552.00 for supply of poles. | 1,253,267.00 | <p>Under accordance to Schedule VI (1) (b) of the Advocates Remuneration Order, the advocates was supposed to be paid an instruction fee of Kshs. 1,272,516.85 but was paid an all-inclusive sum of Kshs. 1,253,267.00</p> <p>The claimed fees by the advocates are as per the Advocates Remuneration Order Schedule VI (1) (a).</p> |

| | | | | | |
|----|---|--|---|---------------------|--|
| 5. | High Court Civil Case No. 207 of 2010 D.Chandulal K. Vora VS REA | Musyoka Wambua and Katiku Advocates | The dispute arose out of a claim of breach of contract worth Kshs.45, 553,387.00 for supply of insulators. | 1,171,785.51 | Under accordance to Schedule VI (1) (b) of the Advocates Remuneration Order, the advocate was supposed to be paid an instruction fee of Kshs. 1,184,505.00 . The claimed fees by the advocates are as per the Advocates Remuneration Order Schedule VI. |
| 6. | The Public Procurement Review Board Case No. 17 of 2010 between Socabelec E.A. Ltd vs REA | Prof. Albert Mumma and Company Advocates | Matter fully heard before the Procurement Review Board where the applicant's application was dismissed. The contract price for the implementation of the substation was Kshs.57million . | 900,000.00 | The Advocates were entitled to an instruction fee of Kshs. 1.4 million in accordance to Schedule VI (1) (b) of the Advocates Remuneration Order. The claimed fees by the advocates are as per the Advocates Remuneration Order Schedule VI (1) (b) |
| 7. | Nkubu PMCC No. 3 of 2010 Simon Kiogora Kiambati vs REA | Wamalwa and Company Advocates | This is a way leaves dispute and alleged damage to property and trespass during project implementation of electricity lines. The amount claimed for was Kshs. 379, 317.55 and in addition thereto was a claim for general damages for trespass | 130,000. 00. | Under accordance to Schedule VII of the Advocates Remuneration Order, the advocates was supposed to be paid Kshs. 133,000.00 but was paid Kshs. 130,000 . The claimed fees by the advocates are as per the Advocates Remuneration Order |

| | | | | | |
|-----|---|-------------------------------|--|-----------------------|---|
| | | | | | scale schedule VII (A). |
| 8. | Nkubu PMCC No. 22 of 2011 Joseph Kirea Kirigia i vs REA | Wamalwa and Company Advocates | The matter was filed under certificate of urgency. The same arose from a way leaves dispute for damage to property and trespass during the construction of electricity supply lines. | 175,995.00.00. | The advocate claimed Kshs 260,000.00 which sum was negotiated by the authority and subsequently settled at Kshs. 175,995.00 The fees paid are as per the Advocates Remuneration Order scale schedule VII (A). |
| 9. | Baricho HCCC No. 60 OF 2011 Edward Mwangi Kamau -VS- REA | Wamalwa and Company Advocates | This was a way leaves dispute for damage to property and trespass. The plaintiff sought permanent injunctive orders as against the authority, special damages, general damages The project was undertaken by REA and sought to have the dispute amicably settled. Parties agreed to compensate at Kshs. 350,000 to avoid further escalation of costs since REA had a weak case. | 140,000.00 | Amount Claimed was Ksh 321,075.00 The claimed fees by the advocates are as per the Advocates Remuneration Order scale schedule VII (A). |
| 10. | Eldoret HCCC No. 8 OF 2012 Joseph Mung'aya Makotsi -VS- KPLC & REA | Kayla and Company Advocates | This is a way leaves dispute for damage to property and trespass. The plaintiff is seeking injunctive orders against the authority, special damages to the tune of Kshs 5,627,700.00 general damages for trespass as well as costs of the suit and interest thereon. | 174,841.98. | Amount Claimed was Ksh 5,627,700.00 The fees paid to the advocates are as per the Advocates Remuneration Order scale schedule VII. |
| 11. | Nairobi (Milimani) HCCC | Nyaberi and Company | The Authority moved to court for injunctive orders against the Landlord for evicting the | 371,200.00 | Amount Claimed was Ksh 360 |

| | | | | | |
|-----|--|---|---|--------------------|--|
| | NO.122 OF 2012 REA VS Equip Agencies | Advocates | Authority from the Gigil Yard which housed the Authority's poles estimated at a value of Kshs. 360 Million . The notice period given by the landlord was 24hrs and in view of the eminent danger and massive loss associated with the said eviction the suit was filed under certificate of urgency. | | Million The claimed fees by the advocates are as per the Advocates Remuneration Order scale schedule VI. |
| 12. | HCCC NO. 541 OF 2012 Patmose Technical Services VS REA | Kipkorir Titoo and Kiarie Advocates | The plaintiff instituted the matter claiming Kshs.30 million being the additional duty paid by the plaintiff for goods supplied and delivered to the Authority. The suit is still pending in court. | 431,051.00. | Amount Claimed was Ksh 30 Million The claimed fees by the advocates are in accordance with the remuneration Order schedule VI. |
| 13. | HCCC NO. 475 OF 2012 Patmose Technical Services VS REA | Kipkorir Titoo and Kiarie Advocates | The plaintiff instituted the matter claiming USD 199,172.87 (Kshs. 16,807,640.81) being the value of ACSR Conductors supplied to the Authority together with interest. The suit is still pending in court. | 273,248.39. | Amount Claimed was Ksh 16,807,640.00 The claimed fees by the advocates are in accordance with the remuneration Order schedule VI. |
| 14. | HCCC NO. 698 OF 2012 Patmose Technical Services VS REA | Kipkorir Titoo and Kiarie Advocates | The plaintiff claim against the Authority is Kshs. 19, 892,633 million being the additional duty paid by the plaintiff for goods supplied and delivered to the Authority arising from supply of aluminum conductor's steel. The suit is still pending in court. | 173,065.91 | Amount Claimed was Ksh 19,892,633.00 The claimed fees by the advocates are in accordance with the remuneration Order schedule VI. |
| 15. | HCCC NO. 699 OF 2012 | Kipkorir Titoo and Kiarie | Patmose Technical Services Limited (hereinafter 'the plaintiff) sued the Authority | 200,857.76 | Amount Claimed was Ksh 14,640,012.00 |

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|-----|--|-------------------------------------|---|----------------------|---|
| | Patmose Technical Services VS REA | Advocates | seeking Kshs. 14,640,012.00 being the total value of goods to the Authority. The suit is still pending in court. | | The claimed fees by the advocates are in accordance with the remuneration Order schedule VI. |
| 16. | Nairobi (Milimani) HCC No 328 of 2009, Gichuki ventures Limited -Vs- REA (Garnishee) & others (OS) | Okwach and Company Advocates | REA was enjoined as a garnishee in these proceedings requiring it to pay Kshs. 15,355,993.55 held on behalf of the judgement debtor. The dispute arose as a result of breach of contract by MOE and REA. The plaintiff had obtained an award against MOE and REA for Kshs. 15,355,993.55 . | 384,737.00 | Amount Claimed was Ksh 15,355,993.55 The claimed fees by the advocates are as per the Advocates Remuneration Order scale schedule VII (A). |
| 17. | REA VS Limelight Creations, Global Trade Market Place and Allayas Southern Corporations Limited | Kipkorir Titoo and Kiarie Advocates | Due diligence and proposed termination on the contract agreements entered in respect of various Diesel Generators all valued at Kshs. 312,541,035.82 . The advocate dealt on the issues of the meaning and tenor of the said contracts, and on their termination and effect, extension of the contracts, procuring of the contract materials directly from the manufacturers and effect of contracting third parties and potential litigation. | 1,540,236.40. | Amount Claimed was Ksh 321,075.00 The claimed fees by the advocates are in accordance to Schedule V, Part II, Paragraph 1, 2 and 6 of the remuneration Order. The advocates demanded a payment of Kshs. 5,538,214.01 . |
| 18. | In the matter of Arbitration between Landmark General Works Ltd vs REA | Nyaberi and Company Advocates | Matter arose out of alleged breach of contract for the implementation of construction works to supply Aram Borehole located in Kasipul Kabondo. The claimant is praying for judgment against the Authority for Kshs. 6,060,308.00 interest thereon, costs of the suit and any other order that the court might give. | 394,400.00 | Amount Claimed was Ksh 6,060,308.00 The claimed fees by the advocates are in accordance with the remuneration Order schedule VI. |

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| | | | The suit is still pending in court. | | |
| 19. | Development of regulations' and instrument for REA | Prof. Albert Mumma and Company | An open tender was floated wherein Messers. Prof. Albert Mumma and Company won the bid for the Development of regulations and instruments of REA. The Advocates remuneration Order was not applicable. | 486,560.00 | Amount Claimed was Ksh 486,560.00 The fee paid was 20% of the professional fees payable as per the contract. The total contract price is Kshs.2, 432,800.00 as per the contract. |
| 20. | Legal opinion | Prof. Albert Mumma and Company | Legal opinion on the payment of VAT to the Authority as well as drafting appropriate amendments to the Finance Bill 2011 on VAT. | 116,000.00 | Amount Claimed was Ksh 116,000.00 The amount paid is as per professional fees payable as Schedule V (6) of the Remuneration Order. |
| 21. | Due diligence | Nyaberi and Company Advocates | Due diligence on the nine (9) land parcels in Nairobi where the Authority intended to purchase. The lawyers were entitled to charge their legal fees based on the value of the land which would have been high but upon negotiations agreed to charge Kshs.90,000 per parcel of land. The said parcels of land were offered vide bids and their values ranged from Kshs. 40,000,000.00 to Kshs.160, 000,000 for the requested five (5) acres. | 939,600.00 | Amount Claimed was Ksh 939,600.00 The professional fees is in accordance to the remuneration order Schedule 1, First scale 1(a) and Schedule V Part II. |
| 22. | Migori PMCC No. 89 of 2011 George Ochieng | Wasunna and Company | The dispute arose from alleged negligence resulting from fatal electrocution of the plaintiff minor by REA power lines. If | 38,630.00 | Amount Claimed was Ksh 38,630.00 |

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| | Otieno vs REA | Advocates | successful, the same may attract a court award of at least Kshs. 700,000.00 . (This approximation is based on recent court precedents on wards on claims of a similar nature)The suit is still pending in court | | The claimed fees by the advocates are in accordance with the remuneration Order schedule VI. |
| 23. | Meru CMCC No. 130 of 2011, Edward Kiriimi - Vs- REA | Wamalwa and Company Advocates | This was a way leaves dispute for damage to property and trespass. The plaintiff sought special damagesof Kshs 144,600.00, general damages The project was undertaken by REA and sought to have the dispute amicably settled since REA had a weak case. | 100,000.00 | The amount paid is as per professional fees payable as Schedule VII of the Remuneration Order and considering the urgency of the matter and potential risk of execution. |