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TWELFTH PARLIAMENT – SIXTH SESSION

THE NATIONAL ASSEMBLY:

08 JUN 2022

Wed.

SELECT COMMITTEE ON IMPLEMENTATION

THE NATIONAL ASSEMBLY
TABLED BY: Hon. J. Okello MP
Member, COI
CENSAL OF THE TABLE: Mainah W. Mwan

REPORT ON

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

Directorate of Audit, Appropriations & Other Select Committees
Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

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JUNE, 2022

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ABBREVIATIONS

AG	Attorney General
EAA	East Africa Automobile Services Company Ltd
ATJ	Auto Terminal Japan Limited
DCI	Directorate of Criminal Investigations
EACC	Ethics and Anti-Corruption Commission
KEBS	Kenya Bureau of Standards
MD	Managing Director
PIC	Public Investments Committee
PPAD	Public Procurement and Asset Disposal Act
PPRA	Public Procurement Regulatory Authority
PVoC	Pre-Export Verification of Conformity

CHAIRPERSON'S FOREWORD

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), petitions and the undertakings given by the National Executive and examines whether such decisions and undertakings have been implemented within sixty (60) days as provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary.

The report of the Public Investments Committee was tabled on 29th May 2020 and adopted by the House on 13th October 2020. The Select Committee on Implementation sought to follow up on the implementation status of the aforementioned report and subsequently held meetings with the Directorate of Criminal Investigations (DCI), and the Public Procurement Regulatory Authority (PPRA). The Committee also received written submissions from the Ministry of Industry, Trade and Enterprise Development.

The Committee registers its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for facilitation and support in the production of this report.

Pursuant to Standing Order 199(6), it is, therefore, my pleasant duty and privilege, on behalf of the Committee on Implementation, to lay this report on the Table of the House.

Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

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The Committee having reviewed the implementation status on the Report of the Public Investments Committee on Consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity (PVoC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards and having considered the evidence received observed that: -

- 1) MD KEBS, Lt. Col (Rtd.) Bernard Njiraini obtained orders staying implementation of the PIC recommendations against himself as a person and is still in office;
- 2) PPRA established that there was a prima facie case for debarment of M/S EAA Company Limited and M/S Auto Terminal Japan Limited in accordance with regulation 22(5) (a) of the Public Procurement and Asset Disposal Regulations, 2020 and the Debarment Committee had already issued a Notice of Intended Debarment for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015; and
- 3) The Directorate of Criminal Investigations has carried out investigations and forwarded the file to the Office of the Director of Public Prosecution recommending action against M/S EAA Company Limited and M/S Auto Terminal Japan Limited.

The Committee having reviewed the implementation status on the Report of the Public Investments Committee on Consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity (PVoC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by the Kenya Bureau of Standards and following the observations made above recommends that the Office of the Director of Public Prosecution expedites the process on preferring charges against both EAA Company Limited and Auto Terminal Japan.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Implementation is established under Standing Order 209 of the National Assembly Standing Orders.
2. The Committee is charged with scrutinizing the resolutions of the House (*including adopted committee reports*), petitions and the undertakings given by the National Executive and examines whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and whether or not legislation passed by the House has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary. The Committee may propose to the House, sanctions against any Cabinet Secretary who fails to report to the relevant select Committee on implementation status without justifiable reasons.
3. Standing Order 201 further provides that within sixty days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House.
4. The mandate of the Committee is further enhanced by the provisions of Article 153(4) (b) of the Constitution which requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

1.2 Committee Membership

5. The Committee membership comprises -

Chairperson

Hon. Moitalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Movement

Vice-Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

Hon. Joash Nyamache Nyamoko, MP
North Mugirang'o Constituency

Jubilee Party

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Movement

Hon. Alois Lentoimaga, MP
Samburu North Constituency

Jubilee Party

Hon. Benjamin Tayari, MP
Kinango Constituency

Orange Democratic Movement

Hon. (Dr.) James Murgor, MP
Keiyo North Constituency

Jubilee Party

Hon. Johnson Many Naicca, MP
Mumias West Constituency

Orange Democratic Party

Hon. John Muchiri Nyagah, MP
Manyatta Constituency

Jubilee Party

Hon. Moses Kuria, M.P
Gatundu South Constituency

Jubilee Party

Hon. Feisal Abdalla, MP
Msambweni Constituency

Independent

Hon. Paul Odalo Abuor, MP
Rongo Constituency

Orange Democratic Movement

Hon. Hassan Oda Hulufu, MP
Isiolo North Constituency

Kenya Patriots Party

Hon. Nelson Koech, MP
Belgut Constituency

Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency

Wiper Democratic Movement-Kenya

Hon. Mukuha Gabriel Kago, M.P
Githunguri Constituency

Jubilee Party

Hon. Silvanus Onyiego Osoro, MP
South Mugirang'o Constituency

Kenya National Congress

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. John Wanjiku, MP
Kiambaa Constituency

United Democratic Alliance

Hon. Michael Thoya Kingi, MP
Magarini Constituency

Orange Democratic Movement

Hon. Kihara Peter Kimari, MP
Mathioya Constituency

Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

Wiper Democratic Movement

Hon. Jared Okello, MP
Nyando Constituency

Orange Democratic Movement

1.3 Committee Secretariat

6. The Secretariat facilitating the Committee in executing its mandate comprise of: –

Ms. Tracy Chebet Koskei
Senior Clerk Assistant / Team Leader

Mr. Abdirahman Hassan
Clerk Assistant II

Dr. Donald Manyala
Research Officer II

Ms. Mercy Wanyonyi
Legal Counsel

Ms. Winnie Kizia
Media Relations Officer

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

2.1 Background

7. Pursuant to the provisions of Article 252 (1) and Article 229 (6) of the Constitution of Kenya and Section 38 of the Public Audit Act, the Office of the Auditor-General conducted a special audit at the Kenya Bureau of Standards (KEBS) with a focus on the procurement of Pre-Export Verification of Conformity (PVOC) to Standards Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS under Tender Number: KEBS/T019/2017-2020. The Special Audit Report was tabled in the National Assembly and referred to the Public Investments Committee on 21st November 2019.
8. The Special Audit Report served as a follow-up on the previous tender and special audit report dated 16th January 2016, tabled by the Public Investments Committee and adopted by the House on 30th November 2016. The Office of the Auditor-General sought to identify factors that triggered the need for the procurement of Pre-Verification of Conformity (PVOC) Services and review the procurement process for the service by the Kenya Bureau of Standards.
9. In its consideration of the Report, the Public Investments Committee (PIC) sought to ascertain the findings by the Office of the Auditor-General on the current and past bidders for the Pre-Export Verification of Conformity (PVOC) to Standards Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS.
10. The Public Investments Committee further sought to establish if KEBS has implemented the recommendations of the National Assembly on the Special Report on the Inquiry into the Allegations of Procurement Irregularities in the Award of the Kenya Bureau of Standards Tender NO. KEBS/T057/2014-2015 for the Provision of Pre-Export Inspection Services for Used Motor Vehicles adopted by the House on 30th November 2016.

11. After its sittings, PIC was able to verify most of the Auditor General's observations in his Special Audit report. Such observations included misrepresentations by M/S EAA and M/S ATJ on ownership of inspection facilities abroad contrary to the reality on the ground; conflict of interest and forgery/falsification of documents.
12. It further emerged that the KEBS had initiated a new tender No. KEBS/T010-2019-2021 and awarded it both to M/S EAA & M/S ATJ. The effect of the new tender was similar in scope to Tender No. KEBS/T019/2017-2020 that was ongoing between KEBS and M/S QSIJ. Despite PIC's advice to KEBS to consult the Attorney General (AG) on the matter, KEBS procrastinated and eventually awarded the contract against the belated advice of the AG. The effect of that award potentially exposes KEBS to litigations due to contractual breaches. Tender No. KEBS/T019/2017-2020 was running to 15th April 2021. The Directorate of Criminal Investigations (DCI), Ethics and Anti-Corruption Commission (EACC) and the Public Procurement Regulatory Authority (PPRA) had seized on the matter with the PPRA returning its interim findings against the continuation of the tendering process.
13. The Committee further found out that the debarment regulations contemplated under Section 41 of the Public Procurement and Disposal (PPDA) Act, 2015 had not been gazetted and therefore there was no legal framework to use in debarment proceedings, a possible explanation as to why nothing had happened to M/S EAA who had been recommended for debarment in as early as 2016.
14. Having proved the audit observation in the Special Audit and also having looked at the tendering process in tender No. KEBS/T019/2017-2020, PIC was in concurrence with the Auditor General that debarment proceedings should be instituted against M/S EAA and M/S ATJ for flouting procurement law; the KEBS Managing Director, Mr. Bernard Njiraini to be held personally responsible for any losses that may arise out of litigation from awarding tender NO. KEBS/T010- 2019-2021 against the advice of the AG; and the Cabinet Secretary for the National Treasury & Planning to expedite processing of the debarment regulations contemplated in Section 41(1)(h) of the PPAD Act, 2015.

2.2 Recommendations by the Public Investments Committee

15. The Public Investments Committee tabled its report on 29th May 2020 and made the following recommendations in its report which was adopted by the House on 13th October 2020:

- (i) In line with the recommendations of the Auditor-General in the Special Audit Report dated 10th July 2019, KEBS' due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of this Committee, the Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No. 33 of 2015) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and MS ATJ for violating the Public Procurement and Asset Disposal Act in Tender No. KEBS/T019/2017/2020 and Ms. EAA in Tender No. KEBS/T057/2014-2015.
- (ii) The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement and Asset Disposal Act, 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2020; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team.
- (iii) The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with the award of tender No. KEBS/T019-2020. Potential areas of litigation may include:
 - i. Failure to have procurement plan approved by the National Standard Council before the invitation to tender contrary to Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006.
 - ii. Procuring without an indicative or approved budget is contrary to Section 53(5) of the Public Procurement and Disposal Act and the Public Procurement (Amendment) Regulations, 2013.
 - iii. Procuring without purchase requisition is contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
 - iv. Failure to declare in the invitation to tender that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
 - v. During the tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD

- Act and record of bid sums by the EAA and ATJ in the opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act, 2015.
- vi. Charging of PE of non-refundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
 - vii. Approving a recommendation from the tender Committee that all bidders proceed to the technical evaluation stage despite being unresponsive contrary to Section 79(3)(b) of the Public Procurement Asset Disposal Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.
 - viii. Financial proposals were opened by the Evaluation Committee instead of the Tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015.
 - ix. Failure to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) is contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.
 - x. Section 139 of the Public Procurement and Asset Disposal Act of 2015 that guides the variation of contracts did not anticipate floating of a new tender to amend existing contracts. Any new tender should culminate in the signing of a new contract and no variation of the existing contract.
- (iv) The Ethics and Anti-Corruption Commission (EACC) investigates the circumstances under which KEBS entered into a contract with M/S EAA Company Limited and M/S Auto Terminal Japan and submits its findings hereon to the National Assembly.
- (v) KEBS should always as much as possible ensure the full implementation of future contractual obligations KEBS enters to avoid unnecessary litigations and loss of public resources.
- (vi) Future international tenders should be widely advertised in leading international media houses to enable fair competition and service provision.
- (vii) The Public Procurement and Regulatory Authority (PPRA) expeditiously investigates the entire tendering process under tender No. KEBS/T019-2020 and report its findings to the National Assembly, the Directorate of Criminal Investigations, and the Directorate of Public Prosecutions.

2.3 Stakeholders Submissions

2.3.1 Ministry of Industry, Trade and Enterprise Development

16. The Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development made submissions to the Select Committee on Implementation on 8th August 2021 and apprised it of the implementation status of the House Resolutions as follows:

16.1 *On Recommendation 1; KEBS is cognizant of regulation 22 on debarment. However, it is notable that the recommendation was directed for implementation by the Public Procurement Administrative Review Board. That notwithstanding, the CS reported that the debarment proceedings were instituted against the two companies and EAA has since been debarred. ATJ had obtained a stay order against the PPARB debarment proceedings.*

16.2 *On Recommendation 2; That the Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement and Asset Disposal Act, 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2020; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team.*

Implementation status

17. The Cabinet Secretary submitted that the matter was before the court and the MD KEBS, Lt Col (Rtd.) Bernard Njiraini has obtained orders staying implementation of the PIC recommendations against himself as a person.

16.3 *On Recommendation 3; The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with the award of tender No. KEBS/T019-2020.*

Implementation status

18. The Cabinet Secretary submitted that the matter is before the court and the MD KEBS, Lt Col (Rtd.) Bernard Njiraini has obtained orders staying implementation of the PIC recommendations against himself as a person.

16.4 *On Recommendation 5; That KEBS should always as much as possible ensure full implementation of future contractual obligations KEBS enters to avoid unnecessary litigations and loss of public resources.*

Implementation status

19. The Cabinet Secretary submitted that KEBS takes cognizance of the report and notes it for future implementation.

16.5 On Recommendation 6; Future international tenders should be widely advertised in leading international media houses to enable fair competition and service provision.

Implementation status

20. The Cabinet Secretary submitted that the Ministry and KEBS had taken note of the recommendation and reports that this has already been implemented as was done during the advertisement of the PVOC tenders Tender No: KEBS/T012/2020-2023 (International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts) and Tender No: KEBS/T013/2020-2023 (International Tender for Provision of Pre-Export Verification of Conformity (Pvoc) to Standards Services) which was done as guided: on the Ministry's website, local newspaper, digital platform and the international tender advertisement platforms.
21. The Cabinet Secretary noted that the PIC report has detailed several recommendations that on full implementation will ensure that the procurement process at KEBS for the PVOC in the future is above board and will always end up procuring competent and most suitable PVOC partners that will ensure that all products destined for export into Kenya meet both the local and international standards and ensure the safety of the general public besides protecting local industry.
22. The Cabinet Secretary finally submitted that the recommendations cover three agencies: KEBS, PPRA and EACC which she committed to work with to ensure that all recommendations of the committee in the report are implemented fully.

2.3.2 The Directorate of Criminal Investigations (DCI)

23. The Directorate of Criminal Investigations (DCI) submitted a written response on 3rd December 2020 referenced CID/IB/ECCU/SEC/4/4/1/VOL.XLIV/73 and further appeared before the Committee in which an update on the implementation status was issued.

The DCI reported as follows:

24. Since the documents originated from a foreign country, investigators engaged the Ministry of Foreign Affairs requesting their office to liaise with the High Commissions and Embassies of the respective countries to ascertain the authenticity of the documents that had been used in Kenya to win tenders and offer services. Additionally, the investigators have engaged Interpol with a view to engaging foreign Country authorities to confirm the authenticity of the said documents.
25. That they had experienced a challenge in receiving responses from the said countries except for one response from Abu-Dhabi UAE who confirmed that the information mentioned in the professional license is a forgery.
26. The DCI in its investigations established that the alleged forged/falsified documents used by both M/S EAA Company Limited and M/S Auto Terminal Japan to source for various tenders with KEBS were part of the bid documents presented to KEBS.
27. The DCI also submitted that it had forwarded an inquiry file to the Office of the Director of Public Prosecution with recommendations that the directors of EAA Company Limited and Auto Terminal Japan be charged with making false documents contrary to Section 347 of the penal code, and uttering a false document contrary to Section 353 of the penal code.
28. Further, the DCI forwarded to the Office of the Director of Public Prosecution a request for Mutual Legal Assistance to have the directors of both EAA Company Limited and Auto Terminal Japan be extradited for processing and charged.

2.3.3 The Public Procurement Regulatory Authority (PPRA)

29. The Public Procurement Regulatory Authority (PPRA) submitted a written response in February 2022 in which they updated the Committee on the implementation status.
30. In implementing the recommendation touching on PPRA, that read; *“In line with the recommendations of the Auditor-General in the Special Audit Report dated 10th July 2019, KEBS’ due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of the PIC, the Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No. 33 of 2015,) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and M/S ATJ for violating the Public Procurement and Asset Disposal Act in Tender No. KEBS/T019/2017/2020 and M/s. EAA in Tender No. KEBS/T057/2014-2015.”* PPRA reported that it constituted a Debarment Committee to consider the recommendations for debarment against the two firms.

31. **On the Debarment of EAA Company Limited**, PPRA reported that the Debarment Committee considered the recommendation of EAA Company Limited during its sitting on 22nd March 2021. Upon consideration of the recommendation for debarment in accordance with regulation 22(5) (a) of the regulations, the Committee established that there was a *prima facie* case for debarment.
32. PPRA reported that the Committee, therefore, issued a Notice of Intended Debarment and invited EAA Company Limited and the office of the Auditor-General to make their presentations on the matter. The hearing of this debarment was also enjoined together with a request for debarment of EAA Company Limited by a different applicant, a Dr. Charles Nzai.
33. PPRA further reported that the Committee having heard all the three parties found that EAA Company Limited was guilty of falsification of documents and information, thus delivered the decision on 23rd June 2021, and observed that both requests for debarment have disclosed a case for debarment of the Respondent for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015. In accordance with the powers bestowed upon the Public Procurement Regulatory Board, the Respondent was debarred for the minimum period of three (3) years in line with section 41 (4) of the Act with effect from the date of the decision.
34. PPRA reported that the decision was communicated to the parties and EAA Company Limited on several occasions unsuccessfully filed several suits with the High Court seeking to review the debarment decision.
35. PPRA reported that, the debarment of EAA Company Limited was therefore published on the website of PPRA and gazetted by the National Treasury on 24th December 2021 Via Gazette Notice No. 14023 in line with the provisions of Regulation 22(5)(k) of the Regulations.
36. PPRA further reported that currently, the DCI was investigating the firm of Klein & Omino Associates and its proprietor Calvince Omondi Omino, who masqueraded as an advocate and filed a suit in the Chief Magistrates Court on the instructions of EAA Company Limited seeking to overturn the debarment decision.

37. Furthermore, PPRA also searched the website of Business Registration Services to confirm whether the said firm (Klein & Omino Associates) was registered as a law firm, the search revealed that the firm was registered as an agent and property manager. The Authority further wrote to the Law Society of Kenya (LSK) vide a letter Ref. No. PPRA/DEB/COMM/VOL.1 (29) dated 4th February 2022 and LSK responded vide a letter Ref No. M3 dated 8th February 2022 confirmed that according to their records, they did not have an Advocate who has declared to practice in the name of Klein & Omino Associates, and they do not have an advocate by the name Calvince Omondi Omino, and recommended that the said person be subjected to criminal proceedings.
38. The Chief Magistrates' suit had been dismissed on 12th January 2022 on that basis.
39. On Debarment of Auto Terminal Japan Limited; PPRA reported that the Debarment Committee considered the recommendation for debarment of Auto Terminal Japan Limited during its debarment sitting of 1st April 2021 and similarly established that there was a *prima facie* case for debarment.
40. PPRA reported that, the Committee, issued a Notice of Intended Debarment and invited Auto Terminal Japan Limited and the Office of Auditor General to make their presentations on the matter. The hearing of this debarment was also enjoined together with a request for debarment of Auto Terminal Japan Limited by a different applicant Dr. Charles Nzai.
41. PPRA further reported that, the Committee having heard all the three parties, found that Auto Terminal Japan Limited was guilty of falsification of documents and information, thus delivered the decision on 3rd June 2021, and observed that both requests for debarment have disclosed a case for debarment of the Respondent for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015. Therefore, and in accordance with the powers bestowed upon the Public Procurement Regulatory Board, the Respondent was debarred for the minimum period of three (3) years in line with section 41 (4) of the Act with effect from the date of this decision.
42. PPRA reported that, before the decision was communicated to the parties on 3rd June 2021, Auto Terminal Japan Limited served the Authority with conservatory orders suspending the debarment proceedings against them pending the hearing of their suit filed in the High Court Constitutional and Human Rights Court.

43. In a letter dated 31st May, 2022, the Authority further reported that the Petition by Auto Terminal Japan Limited was dismissed on 24th March, 2022. The Authority also reported that it had written to the Cabinet Secretary, National Treasury and Planning to issue a gazette notice confirming the debarment of the company.

2.34 SUBMISSION BY ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

44. The Acting Deputy Chief Executive Officer, Mr. Abdi Mohamed, accompanied by other officials of the Commission appeared before the Committee on 4th December 2020 to apprise the Members of the implementation status of the PIC report on the special audit on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards and submitted as follows:

45. The Commission was seized of the matter following a complaint received on 17th January 2020 for alleged procurement irregularities in the award of tender No. KEBS/T010/2019-2021 for provision on pre-export verification of conformity to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts.

46. The Commission commenced its investigation to establish among others; whether there was the budgetary allocation for the tender, whether procurement procedures were adhered to; whether the enlargement of the tender was regular, whether there were financial benefits to public officers and whether there was bid-rigging.

47. In June 2020, when the Commission received the recommendations of the PIC report, they incorporated them in their investigations as the allegations and objectives were similar.

48. The Commission reported that it had established the following so far:

- (i) That there existed a contract between KEBS and QISJ for the provision of tender for the period 2017 to 2021;
- (ii) The National Standard Council Board approved additional service providers arising from a need identified by KEBS;
- (iii) On 3rd December 2019 the tender was advertised on mygov.go.ke and KEBS' Website;
- (iv) Three bids were received from M/s Auto Terminal Japan and M/s EAA Company Limited and Nippon inspection Centre;

- (v) On 20th March 2020 KEBS entered into a contract with M/s Auto Terminal Japan (ATJ) and M/s East Africa Automobile Services Company (EAA Company Limited) which had been awarded the tender.
49. The Commission added that the investigations are ongoing and it has collected evidentiary documents, interviewed and recorded a total of thirty-one (31) statements from persons of interest.
50. The Commission also reported that it had established that M/s Auto Japan and M/s EAA are domiciled in Japan and United Kingdom respectively and had initiated the process of Mutual Legal Assistance to the foreign jurisdictions to establish the veracity of the registration and directorship of the aforementioned companies.
51. The Commission submitted that it has faced challenges that have hampered expeditious investigations which include delays occasioned by adjudication and litigation; a company by the name M/s Niavana agencies limited which was not among the bidders, filed a request for Review Application No. 28 of 2020 at the Public Procurement Administrative Review Board. Upon consideration of the application by the Board, the same was struck out for lack of merit. Consequently, M/s Niavana Agencies proceeded and filed a Judicial Review at the High Court, JR NO.66 of 2020.
52. M/s EAA Company Limited also filed a Judicial Review Application No. 88 of 2020 against PPRA touching on the same tender.
53. The Commission noted that the adjudication process took a fairly long period before the release of the documents to EACC for investigations. Additionally, the pending civil litigations have also impaired efficient and timely investigations. It expressed concern that courts were being used to derail investigations.
54. The Commission noted there were also delays as regards the processing of mutual legal assistance since the matter involves cross-border investigations that require mutual legal assistance from Japan and the UK. This is critical in obtaining evidentiary documents from the jurisdictions to support the case and will have a bearing on when the investigations will be concluded.
55. As regards whether EACC had stopped the two companies (M/s Auto Terminal Japan and M/s EAA Company Limited) from continuing with the contract, the Commission submitted that it had not as the companies had entered into a legal contract with the

Kenya Bureau of Standards and that contracts between two entities can only be interpreted in court.

56. Regarding whether the office of the Attorney General gave a legal advisory to KEBS regarding the tender, the Commission submitted that it had given the advisory, however, the advisory was not explicit and therefore KEBS proceeded with the contract issuing.

2.4 Implementation status

(i). In line with the recommendations of the Auditor-General in the Special Audit Report dated 10th July 2019, KEBS' due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of the PIC, the Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No. 33 of 2015) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and M/S ATJ for violating the Public Procurement and Asset Disposal Act in Tender No. KEBS/019/2017/2020 and M/s. EAA in Tender No. KEBS/057/2014-2015;

57. On its part, PPRA reported that the recommendation had been implemented fully as both M/S EAA and M/S ATJ have debarred for a period of three (3) years with effect from 2nd June, 2021. The firms will not be able to participate in public procurement and asset disposal proceedings in Kenya until the debarment period expires.

Committee Observation

58. The Committee noted that the recommendation had been adequately implemented.

ii. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement and Asset Disposal Act, 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2020; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team.

Implementation status

59. The Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development reported that the matter is before the court and the MD KEBS, Lt. Col (Rtd.) Bernard Njiraini had obtained orders staying implementation of the PIC recommendations against himself as a person.

Committee Observation

60. The Committee noted that with the stay orders in place, this recommendation had not been implemented.

iii. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with the award of tender No. KEBS/TO19-2020. Potential areas of litigation may include:

- a. Failure to have procurement plan approved by the National Standard Council before the invitation to tender contrary to Section 69(2) of PPAD Act of 2015 and Regulation 20(5) of the PPDA Regulations of 2006.
- b. Procuring without an indicative or approved budget is contrary to Section 53(5) of the Public Procurement and Disposal Act and the Public Procurement (Amendment) Regulations, 2013.
- c. Procuring without purchase requisition is contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
- d. Failure to declare in the invitation to tender that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
- e. During the tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in the opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act, 2015.
- f. Charging of PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section II(I) of Public Procurement and Disposal (Amendment) Regulations of 2013.
- g. Approving a recommendation from the tender Committee that all bidders proceed to the technical evaluation stage despite being unresponsive contrary to Section 79(3)(b) of the Public Procurement Asset Disposal Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(I) of the PPAD Act, 2015.
- h. Financial proposals were opened by the Evaluation Committee instead of the Tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015.
- i. Failure to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) is contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.
- j. Section 139 of the Public Procurement and Asset Disposal Act of 2015 that guides the variation of contracts did not anticipate floating of a new tender to amend existing

contracts. Any new tender should culminate in the signing of a new contract and no variation of the existing contract.

Implementation status

61. The Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development reported that the matter is before the court and the MD KEBS, Lt. Col (Rtd.) Bernard Njiraini had obtained orders staying implementation of the PIC recommendations against himself as a person.

Committee Observation

62. The Committee noted that with the stay orders in place, this recommendation had not been implemented.

- iv. ***The Ethics and Anti-Corruption Commission (EACC) investigates the circumstances under which KEBS entered into a contract with M/S EAA Company Limited and MIS Auto Terminal Japan and submits its findings hereon to the National Assembly.***

Implementation status

63. The Ethics and Anti-Corruption Commissions (EACC) and the Directorate of Criminal Investigations have submitted to the Committee that investigations are ongoing.

Committee Observation

64. The Committee noted that implementation of this recommendation is ongoing.

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

Implementation status

65. The Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development reported that KEBS takes cognizance of the report and notes it for future implementation.

Committee Observation

66. The Committee noted that the implementation of this recommendation is a continuous process as such cannot be evaluated at this moment.

- vi. ***Future international tenders should be widely advertised in leading international media houses to enable fair competition and service provision.***

Implementation status

67. The Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development reported that KEBS having taken note of the recommendation had already implemented the same, as was done during the advertisement of the PVOC tenders Tender No: KEBS/T012/2020-2023 (International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts) and Tender No: KEBS/T013/2020-2023 (International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services) which was done as guided: on the Ministry's website, local newspaper, digital platform and the international tender advertisement platforms.

Committee Observation

68. The Committee noted that the implementation of this recommendation had been done however, will follow up on a report on the outcome of the process.

vii. ***The Public Procurement and Regulatory Authority (PPRA) expeditiously investigates the entire tendering process under tender No. KEBS/TO19-2020 and report its findings to the National Assembly, DCI, and DPP.***

Implementation status

The DCI on its part reported that it had carried out investigations and established the following:

(i) That the alleged forged/falsified documents used by both EAA Company Limited and Auto Terminal Japan to source for various tenders with KEBS were part of the bid documents presented to KEBS;

69. The DCI also submitted that it had forwarded an inquiry file to the Office of the Director of Public Prosecution with recommendations that the directors of EAA Company Limited and Auto Terminal Japan be charged with making false documents contrary to Section 347 of the penal code and presenting a false document contrary to Section 353 of the penal code.

70. Further, the DCI submitted that it forwarded to the Office of the Director of Public Prosecution a request for Mutual Legal Assistance to have the directors of both EAA Company Limited and Auto Terminal Japan be extradited for processing and be charged.

Committee Observation

71. The Committee noted that the implementation of this recommendation had partially been done.

3.0 COMMITTEE OBSERVATIONS

73. The Committee having reviewed the implementation status on the Report of the Public Investments Committee on consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity (PVoC) to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards and having considered the evidence received, observed that:-

- 1) MD KEBS, Lt. Col (Rtd.) Bernard Njiraini obtained orders staying implementation of the PIC recommendations against himself as a person and is still in office;
- 2) PPRA established that there was a prima facie case for debarment of M/S EAA Company Limited and M/S Auto Terminal Japan Limited in accordance with regulation 22(5) (a) of the Public Procurement and Asset Disposal Regulations, 2020 and the Debarment Committee had already issued a Notice of Intended Debarment for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015; and
- 3) The Directorate of Criminal Investigations has carried out investigations and forwarded the file to the Office of the Director of Public Prosecution recommending action against M/S EAA Company Limited and M/S Auto Terminal Japan Limited.

4.0 COMMITTEE RECOMMENDATION

74. The Committee having reviewed the submissions on the implementation status and following the observations made, recommends that **the Office of the Director of Public Prosecution expedites the process of preferring charges against both M/S EAA Company Limited and M/S Auto Terminal Japan.**

SIGNED.......... DATE 7TH JUN 2022.....

HON. MOITALEL OLE KENTA, MP
CHAIRPERSON, COMMITTEE ON IMPLEMENTATION

 THE NATIONAL ASSEMBLY	
DATE: 08 JUN 2022	
TABLED BY:	
CLEARANCE THE TABLE:	

Appendix I

Adoption List

The National Assembly



12th Parliament–6th Session-2022

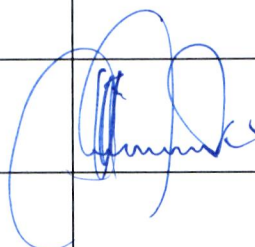



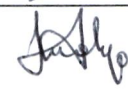
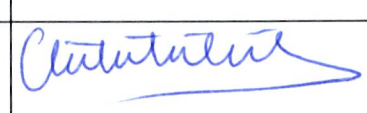
Committee on Implementation

We, the Members of the Committee on Implementation, have pursuant to Standing Order 199 adopted the Report on implementation status of PIC report on consideration of the special audit report on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards. We affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Venue: *5th floor Committee Room, Continental House*

Date: *Tuesday 7th June 2022*

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP – Chairperson	
2.	The Hon. Godfrey Osotsi, MP – Vice Chairperson	
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	
5.	The Hon. Moses Kiarie Kuria, MP	
6.	The Hon. Feisal Abdalla Bader, MP	<i>Virkually</i>
7.	The Hon. (Dr.) James Kipkosgei Murgor, MP	<i>Virkually</i>
8.	The Hon. Gabriel Kago Mukuha, MP	

	The Hon. Johnson Many Naicca, MP	
10.	The Hon. Joash Nyamache Nyamoko, MP	
11.	The Hon. John Muchiri Nyagah, MP	
12.	The Hon. Paul Simba Arati, MP	
13.	The Hon. Charles Ngusya Nguna, MP	
14.	The Hon. Benjamin Dalu Tayari, MP	
15.	The Hon. Peter Kimari Kihara, MP	
16.	The Hon. Hassan Oda Hulufu, MP	
17.	The Hon. Jared Okello, MP	
18.	The Hon. Joshua Mwalyo Mbithi, MP	
19.	The Hon. Michael Thoya Kingi, MP	
20.	The Hon. Nelson Koech, MP	
21.	The Hon. John Njuguna Wanjiku, MP	
22.	The Hon. Paul Abuor, MP	
23.	The Hon. Silvanus Osoro, MP	

Committee Clerk

Name..... Tracy Chebet Koskui

Echoki

(Signature)

Date..... 07/06/22

Appendix II

Minutes of the Select Committee on Implementation

**MINUTES OF THE TENTH SITTING OF THE COMMITTEE ON IMPLEMENTATION
HELD ON TUESDAY, 7TH JUNE, 2022, IN 5TH FLOOR COMMITTEE ROOM,
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 A.M.**

PRESENT

1. The Hon. Moitalel Ole Kenta, MP – **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. Alois Musa Lentoimaga, MP
4. The Hon. Benjamin Dalu Tayari, MP
5. The Hon. Gabriel Kago Mukuha, MP
6. The Hon. (Dr.) James Kipkosgei Murgor, MP
7. The Hon. Feisal Bader, MP
8. The Hon. Jared Okello, MP
9. The Hon. Hassan Hulufu, MP
10. The Hon. Joash Nyamache Nyamoko, MP
11. The Hon. John Njuguna Wanjiku, MP
12. The Hon. Joshua Mbithi Mwalyo, MP

ABSENT WITH APOLOGIES

1. The Hon. Paul Simba Arati, MP
2. The Hon. Johnson Many Naicca, MP
3. The Hon. John Muchiri Nyagah, M.P
4. The Hon. Richard Onyonka, MP
5. The Hon. Moses Kuria, MP
6. The Hon. Nelson Koech, MP
7. The Hon. Paul Odalo Abuor, MP
8. The Hon. Charles Ngusya Nguna, MP
9. The Hon. Peter Kihara, MP
10. The Hon. Michael Kingi, MP
11. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Ms. Tracy Chebet Koskei | - | Senior Clerk Assistant |
| 2. Mr. Abdirahman Hassan | - | Second Clerk Assistant |
| 3. Dr. Donald Manyala | - | Research Officer II |
| 4. Ms. Jane Serem | - | Audio Officer |

MIN.NO.NA/COI/2022/034: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten o'clock (10.20 a.m.) and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. Joshua Mbithi Mwalyo, MP, and the Hon. Jared Okello, MP, respectively.

MIN.NO.NA/COI/2022/035: CONFIRMATION OF THE PREVIOUS MINUTES

Minutes of the Ninth Sitting held on Tuesday, 17th May, 2022 were confirmed as a true record of the proceedings having been proposed by the Hon. Godfrey Osotsi, MP and seconded by the Hon. John Njuguna Wanjiku, MP, respectively.

MIN.NO.NA/COI/2022/036: MATTERS ARISING

There were no matters that arose from the confirmations of the Minutes of the previous Sitting.

MIN.NO.NA/COI/2022/037: CONSIDERATION AND ADOPTION OF THE FIFTH REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF INQUIRIES, PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee considered and adopted the Fifth Report on submissions from stakeholders regarding the implementation status of inquiries, petitions and resolutions passed by the House, having been proposed and seconded by the Hon. Hassan Hulufu, MP and the Hon. Joash Nyamache Nyamoko, MP, respectively.

The Committee made the following observations and recommendations:

Observations

- 1) A majority of the House resolutions require financial obligations for adequate implementation to be carried out by the Executive, thus there is a need for the appropriation of funds to ensure House resolutions are implemented as directed; and
- 2) Government officials in the Executive seem not to be implementing House resolutions promptly thus causing matters to delay unnecessarily longer.

Recommendations

- 1) The National Treasury should ensure appropriation of funds for implementation of House resolutions is done within one financial year following the adoption of a House resolution for the public to derive the intended benefit; and
- 2) Government Agencies and Departments directed to implement a House resolution should endeavor to fit in their work plans and deliver within the stipulated timeframe, failure to which sanctions shall be imposed on the responsible officials.

MIN.NO.NA/COI/2022/038: CONSIDERATION AND ADOPTION OF THE SIXTH REPORT ON SUBMISSIONS FROM STAKEHOLDERS REGARDING THE IMPLEMENTATION STATUS OF INQUIRIES, PETITIONS AND RESOLUTIONS PASSED BY THE HOUSE

The Committee considered and adopted the Fifth Report on submissions from stakeholders regarding the implementation status of inquiries, petitions and resolutions passed by the House, having been proposed and seconded by the Hon. Hassan Hulufu, MP and the Hon. Alois Musa Lentoimaga, MP, respectively.

The Committee made the following observations and recommendation:

- 1) Some of the House resolutions were not accompanied by the requisite budget hence making it difficult for Ministries, Departments, and Agencies to implement them; and
- 2) Some Agencies were not able to follow up on and implement some recommendations of the House due to the outbreak of the Covid-19 pandemic.

The Committee subsequently recommended that respective committees and the House should consider the financial implications of resolutions before committing them for implementation; and should allocate adequate funds to the implementing agencies.

MIN.NO.NA/COI/2022/039: REPORT ON IMPLEMENTATION STATUS OF THE REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON CONSIDERATION OF THE SPECIAL AUDIT REPORT ON PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARD SERVICES FOR USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS BY THE KENYA BUREAU OF STANDARDS

The Committee considered and adopted the Report on implementation status of the Public Investments Committee on consideration of the special audit report on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards, having been proposed and seconded by the Hon. Joshua Mbithi Mwalyo, MP and the Hon. Feisal Bader, MP, respectively.

The Committee made the following observations and recommendation:

Observations

- 1) MD KEBS, Lt. Col (Rtd.) Bernard Njiraini obtained orders staying implementation of the PIC recommendations against himself as a person and is still in office;
- 2) PPRA established that there was a prima facie case for debarment of M/S EAA Company Limited and M/S Auto Terminal Japan Limited in accordance with regulation 22(5) (a) of the Public Procurement and Asset Disposal Regulations, 2020 and the Debarment Committee had

already issued a Notice of Intended Debarment for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015; and

- 3) The Directorate of Criminal Investigations has carried out investigations and forwarded the file to the Office of the Director of Public Prosecution recommending action against M/S EAA Company Limited and M/S Auto Terminal Japan Limited.

The Committee subsequently recommended that the Office of the Director of Public Prosecutions expedite the process of preferring charges against both M/S EAA Company Limited and M/S Auto Terminal Japan.

MIN.NO.NA/COI/2022/040: CONSIDERATION AND ADOPTION OF THE LEGACY REPORT FOR THE SELECT COMMITTEE ON IMPLEMENTATION FOR THE PERIOD 2017-2022

The Committee considered and adopted the Committee's Legacy Report for the period 2017-2022, having been proposed and seconded by the Hon. Godfrey Osotsi, MP and the Hon. Benjamin Dalu Tayari, MP, respectively.

The Committee made the following recommendations:

- 1) The House should consider financial implications of resolutions before committing them for implementation, and should allocate adequate funds to the implementing bodies.
- 2) The National Assembly should develop an online tracking tool for the implementation of House resolutions as a matter of priority for effective follow up of implementation of House resolutions.
- 3) The National Assembly should enhance its scrutiny of Laws, resolutions and motions to ensure that resolutions passed are implementable.
- 4) The House and by extension committees should ensure that all resolutions passed are SMART, to ensure that they are implemented and for effective follow up of the same.

MIN.NO.NA/COI/2022/041: ADJOURNMENT

The meeting was adjourned at Quarter to one O'clock (12:45 p.m.).

Sign.....

Date.....08/06/2022.

Hon. Moitalel Ole Kenta, MP - Chairperson

APPENDIX III

Report of the PIC on consideration of the special audit report on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by KEBS

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION

PUBLIC INVESTMENTS COMMITTEE

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

AS ADOPTED BY THE HOUSE ON 13TH OCTOBER 2020

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE 2020

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ABBREVIATIONS AND ACRONYMS

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

CHAIRMAN'S FORWARD

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

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

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

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

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

The Committee further sought to establish if KEBS has implemented the recommendations of the National Assembly on the Special Report on the Inquiry into the Allegations of Procurement Irregularities in the Award of the Kenya Bureau of Standards Tender NO. KEBS/T057/2014-2015

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

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

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

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

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


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

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

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

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

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


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

1.0 PREFACE

1.1 Committee Mandate

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

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

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

1.2 Committee Membership

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

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

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

1.3 Committee Secretariat

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

Mr. Noelle Chelagat - Media Relations Officer III

Mr. John Mungai - Audio Recording Officer

Committee Proceedings

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

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

CHAPTER TWO

2.1 Introduction

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

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

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

Legal Basis of the Pre-Export Verification of Conformity Programme

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

Objectives of the Pre-Export Verification of Conformity Programme

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

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

Operations of the Pre-Export Verification of Conformity Program

6. The program is operated by accredited third party inspections companies on behalf of KEBS. The world is divided into nineteen (19) regions based on proximity and trade volumes. In addition, the program provides for multiple partners in majority of the regions to enhance efficiency. The basis of certification is Kenya's standards or approved specifications.

7. Unlike other goods, moto vehicles inspection services has not been divided into regions

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

8. After following the set out legal process, in its meeting held in December 2014, the KEBS Tender Committee approved the award of the Tender No. KEBS/T057/2014-2015 of Motor Vehicle inspection/verification services to Quality Inspection Service Inc. Japan and directed that due diligence be carried out before signing the contract.

9. A special audit on the tender No KEBS/T057/2014-2015 for the provision of pre-export inspection services for motor vehicles in Japan, United Arab Emirates, United Kingdom and South Africa was carried out following a request by the Clerk of the National Assembly in June 2015.

10. The findings of the report were that the procuring entity (KEBS) observed the provisions of the PPAD Act, 2005 and the attendant regulations and due process was adhered to in awarding the tender.

11. The PIC report recommendations of 30th November 2016 that could be germane in the current report was to the effect that:

"in order to ensure that a contracted company has a long-term commitment to inspection and keep off speculative bidders, KEBS should set minimum requirements for full

ownership of inspection facilities by the inspection companies based on the proportion of the number of vehicles coming from each country. It is recommended that the inspection company should fully own at least fifteen (15) facilities in Japan, three (3) in the United Kingdom and one (1) in the United Arab Emirates, distributed in major ports and towns. Leases in these towns can only be allowed to supplement fully owned facilities. KEBS should properly evaluate ownership of these facilities."

2.3 Special Audit Report

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

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

Findings of the Second Special Audit Report

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

CHAPTER: EVIDENCE

3.1 EVIDENCE SUBMITTED BY THE KENYA BUREAU OF STANDARDS

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

16. The Committee was briefed as follows:

Background on Pre-Export Verification of Conformity

17. Pre-Export Verification of Conformity (PVOC) to standards was said to be a conformity assessment program applied to products at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved specifications.

18. PVOC program was started on 29th September 2005 by KEBS, through the publication of *Legal Notice No. 78 of 15th July, 2005* by then Minister for Trade and Industry. This Legal Notice was revoked by *Legal Notice No. 127 of 19th June 2018*. On 5th December, 2019, the Cabinet secretary, Ministry of Trade, Industry and Co-operatives revoked this Legal Notice and issued Legal Notice 183. The program is also fully compliant with the provisions of Article 5 of WTO TBT Agreement.

Background on Pre-Export Verification of Conformity

19. Kenya Bureau of Standards established the PVOC program with the following objectives:

- a) To ensure quality of products, health and safety, and environmental protection for consumers.

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

Operations of the Program

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

Motor vehicle inspection

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

d) Specialized vehicles like mining trucks, excavators, combines harvesters, tractors, fire trucks are exempt from this once roadworthiness is verified;

e) Vehicles must not emit visible smoke to prevent environmental pollution; and

f) Vehicles imported from Japan must be inspected for radiation contamination

Number of Vehicles Inspected Under the PVOC Program

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

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

Table 1: Number of Vehicles Inspected

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

24.	Zambia	Africa	Eaa, Jevic, Atj
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Table 2: Motor vehicle Inspection Service providers in the World

Timelines for Vehicle Inspection by QISJ

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

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

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

The Tendering Process

25. The Kenya Bureau of Standards (KEBS) advertised the tender no. KEBS/T019/2017-2020 in two dailies; the *Nation* and *the Standard* newspapers, on 21st November, 2017. The tender was also advertised in the KEBS website for a period of twenty-one days. The tender was opened on 6th December, 2017 by the tender processing committee in the presence of bidders.

26. Fours bids were received from the following companies:

- a) M/S Nippon Inspection Centre Corporation;
- b) M/S Auto terminal Japan Ltd;
- c) M/S Quality Inspection Services Inc. Japan; and
- d) M/S EAA Company Limited.

Evaluation of Bids

27. Evaluation of the bids was carried out in line with the provisions of Section (80) of Public Procurement and Asset Disposal (PPAD) Act 2015. M/S Nippon Inspection Centre Corporation and M/S EAA Company Limited were disqualified at preliminary stage for not substantially responding to the requirement of clause 2.2.11 (a) on 15 of 49 of the tender document. The two companies did not qualify to proceed to the Technical evaluation stage as per evaluation report.

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

Due Diligence

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

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

Appeal for Re-Evaluation of the Technical Proposal

33. On 17th January, 2018, the Public Procurement Administrative Review Board (PPARB) wrote a letter ref: PPRA/ARB/7/14/2018 to the KEBS notifying it of a Request for Review by M/s Auto Terminal Japan Ltd seeking re-evaluation of the technical proposal.
34. On 6th February, 2018 PPARB heard and determined the Request for Review. The Request for Review by Auto Terminal Japan Ltd was dismissed by PPARB and KEBS was advised to proceed with the procurement to its logical conclusion.

Award of Contract

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

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

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

Preliminary Evaluation

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

Technical Evaluation

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

Financial Evaluation

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

Tender Evaluation Committee Recommendation

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

3.3 EVIDENCE BY EAA COMPANY LIMITED

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

44. The respondent raised preliminary objections to the Committee's consideration on the following grounds:

- a) Constitutional Grounds – The respondent stated that hat the National Assembly, and specifically the Public Investment Committee (PIC), was time-barred under Article 229(8) Constitution of Kenya 2010 from holding this hearing to consider the afore mentioned Auditor-General's Report.

He cited Article 229(8) of the Constitution of Kenya which obligates the National Assembly to debate and consider the Auditor-General's report, and take appropriate action upon it, all within three (3) months of receiving the report. Since the Special Audit Report before the PIC was presented to the House on 13th November, 2019, the House had until the 11th February, 2020 to debate and consider it, and to take

appropriate action upon it in default of which the House, and the PIC, could not hold the said hearing.

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

Mr. Sugai further briefed the Committee as follows:

- 45. **Company Details** - EAA Company Limited was formed on 6th July 2007 and registered on 12th September 2011. Thereafter, the company changed its name and expanded its purposes to include export-inspection of used cars, evaluation work on used cars, testing and training

for used car evaluators. This enabled it to provide pre-shipment/ export inspection services to standards agencies like the Kenya Bureau of Standards (KEBS), and to participate in the Pre-Export Verification of Conformity (PVOC) to Standards Services, and to bid for such work as and when advertised.

46. **Participation in PVOC Tender** - EAA Company Limited bid in the Procurement of PVOC to Standards - Used Motor Vehicles, Mobile Equipment and Used Parts by Kenya Bureau of Standards Tender No. KEBS/T019/2017-2020 and was disqualified. The company was enjoined in an application for review of that tender/ procurement process at the Public Procurement Administrative Review Board where the application for review was dismissed and the procuring entity (KEBS) was allowed to proceed to contract the successful bidder, M/s Quality Inspection Services Inc. Japan (QISJ)
47. There were only five (5) companies offering pre-export/ pre shipment inspection of used motor vehicles, mobile equipment and used parts. The recommendations in the Special Audit Report by the Auditor General to debar two (2) of them, and to recommend only one company to offer that service to Kenya, amounted to bias, a pre-conceived report and the establishment of a monopoly. These five (5) companies are: EAA Company Limited; Quality Inspection Services Inc. Japan (QISJ); Auto Terminal Japan Limited (ATJ); JEVIC Limited; and Nippon Logistics Limited. However, KEBS had indicated that there were more than five companies that can do the job.
48. **OAG Special Audit Report, 2016** - The PIC report of 30th November 2016 had also cleared the respondent of any fraud in an earlier procurement process for the year 2014-2015, tender No. KEBS/T057/2014-2015, in its Special Audit Report dated 25th January 2016. In the Report, the Office of the Auditor General gave a clean bill of health to that procurement process, and there is thus no reason why the respondent would subsequently misrepresent facts.

Audit query

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

inspection facilities/equipment purported to have been purchased were distributed to the twelve (12) inspection centers considering there were only eight leases.

Response to the audit query

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

Audit query

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

Response to the audit query

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

Audit query

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

Response to the audit query

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

Audit query

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

Response to the audit query

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

Audit query

57. **Cancellation of M/s EAA's Accreditation** - The Auditors interviewed senior management of EAA who confirmed that their Accreditation of ISO 17020:2012 was once cancelled by Japan Accreditation Board effective 27th November 2014, for reason which management of EAA could not disclose. The special audit however noted that a new one was issued on 9th November 2016 and was valid until 31st July 2020. A search on the authenticity of the documents under the JAB website under <https://www.jab.or.jp/en/system/iso/search/> yielded no results.

Response to the audit query

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

Audit query

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

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

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

Response to the audit query

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

Audit query

61. **Presence of EAA in the UK** – The Audit observed that M/s EAA Company Limited had no presence in the UK. The UK Company named EAA Automobile Ltd was owned by Mr. Seth Nguku with 100 per cent shareholding when Mr. Prosper Sugai ceased to be a director of the company and transferred his shares to Mr. Nguku. This means the company was officially a standalone with no affiliation with M/s. EAA Company Limited by either common directorship or even shareholding a fact that was also misrepresented in the technical proposal as it highlighted that the EAA Automobile Ltd was a branch.

Response to the audit query

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

Audit query

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

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

Response to the audit query

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

Audit query

65. The Audit report noted that as part of the technical proposals, a document indicating EAA had leased Office Space in Tilbury port dated 19th August 2014, could not be verified or authenticated by the Port Manager of Tilbury Mr. Cox Laurence. The deed was signed by Mr. Christopher Boniface Lukosi. On enquiry the special audit team was informed that Mr. Christopher Boniface Lukosi was a director in both EAA and a company called Serengeti Global Services. The yard and brand at the Offices of Serengeti indicated they were involved in Sea and Coast Services.

Response to the audit query

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

Audit query

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

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

Response to the audit query

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

Audit query

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

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

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

Response to the audit query

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

Audit query

74. **Lack of presence in Thailand and South Africa** – The Audit report noted that M/s. EAA did not provide documentation to demonstrate its legality and presence in South Africa and Thailand.
75. Mr. Sugai observed that the Company had specifically indicated in its bid that it did not have offices in Thailand and South Africa but that it would sub contract its works if it won the tender. Thailand and South Africa contributed barely 1% of all second hand vehicle imports into Kenya which advised the decision to sub contract if contracted by KEBS.

Audit query

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

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

Response to the audit query

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

3.4 EVIDENCE BY AUTO TERMINAL JAPAN (ATJ) LIMITED

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

He briefed the Committee as follows:

Audit query

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

Response to the audit query

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

Audit query

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

Response to the audit query

84. M/S ATJ stated that the property in Kisarazu was commissioned to the Company by the above referenced Housing Association since the year 2006. M/S ATJ thus claimed ownership of the facility and its operations because they purchased, installed and owned the inspection

equipment. The Housing association owns huge tracks of land in this high value area and commissioned it to specific target institutions to do complimentary business.

85. In Kobe Prefecture, M/S ATJ had a similar arrangement where Kobe City has commissioned very high value land to M/S ATJ. The office block, inspection facility including all its equipment was purchased, operated and owned by M/S ATJ. The Company noted that the land in such strategic areas like Ports in Japan is mostly managed by Government.

Audit query

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

Response to the audit query

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

Audit query

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

However, there was no documentary evidence or invoices raised by the sampled companies to M/S ATJ to validate the authenticity of the leases and inspection activity at the leased

locations which raised questions about M/S ATJ's claim in the technical proposal of undertaking 1,500 and 1,380 monthly inspections in owned and partner facility respectively.

Response to the audit query

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

Audit query

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

Audit query

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

Response to the audit query

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

Audit query

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

Response to the audit query

95. M/S ATJ explained that the norm of the business was that automobiles predestined for export were usually in on Duty Free basis. It was only after the Roadworthiness inspection and/or the inspection and Export Declaration that their customs bond were released. This means that the automobiles are bonded items before inspection. Once the bonded custom duties are paid then the automobiles become domestic units ready for export. Usually Road Worthiness Inspection (RWI) automobiles meant for Kenya, Jamaica, Tanzania and Zambia are allocated in this category since the exporter engages in customs clearance after the "PASS" inspection. On the other hand, regarding quarantine inspection for New Zealand and Australia, M/S ATJ Limited conducts inspection after customs clearance because inspection had to be done within 21 days before shipment. Accordingly, M/s ATJ had to invoice the inspection fee to the agents of the importer. This inspection fee is including the cleaning/washing fee was operated by JFA, so JFA will bill to AutoTerminal Japan Limited for payment.

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

Audit query

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

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

Response to the audit query

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

M/s AutoTerminal Japan Limited was an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited was clear. AutoTerminal Japan Limited was not in conflict of interest for inspection business whatsoever. In addition, the concept of “Conflict of interest” was first introduced by KEBS during this period and not earlier and therefore M/S ATJ adhered to this requirement for compliance.

98. M/s AutoTerminal Japan Limited operates in different countries globally and had never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the “Conflict of interest” issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship.

99. **Lack of Inspection Facility in the UK** – The Audit observed that M/s. ATJ didn't own any inspection centers nor had they contracted an inspection center (s) through “corporate partnerships” against the requirement for the United Kingdom where subcontracting was not allowed.

Response to the audit query

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

Audit query

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

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

Response to the audit query

102. Dr. Kalua submitted that M/s AutoTerminal Japan Limited was a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections. He provided the said license in his bundle of documents as annex 10.
103. Through the Tender notice, M/S AutoTerminal Japan Limited received a one month notice by KEBS to establish a company and purchase own equipment in the UK and UAE. This

being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and the UK ahead of the tender closure. This process has since been completed.

104. Allegations of Impropriety by the Office of the Auditor General. Dr. Kalua raised the following concerns regarding the conduct of the auditors while undertaking the audit assignment; the behaviour he believed was not expected from the Office of the Auditor General:

- a) It was unprocedural for the office of the Auditor General to use M/S QISJ in Visa applications, logistical and accommodation bookings. He tabled a letter from Jaffar Hassan (Manager of QISJ – UK Branch) addressed to the Visa Officer of the British High Commissioner Nairobi Kenya and dated 8th February 2019. This booking was done by QISJ requesting issuance of visas for the four auditors scheduled to travel to UK for audit. To Dr. Kalua, government entities should only deal with the Kenyan Embassy and not audities to avoid suspicion of bias.
- b) He further tabled an email from QISJ addressed to Ngeno J. of KEBS indicating dated 9th February 2019 indicating that QISJ had sent an invitation letters for Japan and Hotel bookings. The same email had invitation letters for UK and hotel bookings. The email further indicated that QISJ will apply for Dubai Visas on behalf of the Kenyan delegation and send them ones granted.
- c) Dr. Kalua tabled hotel booking in London Enfield Hotel for the Kenyan delegation that travelled to the UK for audit. The booking was done by Mr. Jaffar Hassan of QISJ. He further tabled hotel bookings dated 8th February 2019 for the Kenyan delegation going to Japan in JR-East Hotel Vets Yokohama Tsurumi.
- d) Dr. Kalua tabled an email from QISJ addressed to the Japan Embassy in Kenya dated 8th February 2019 inviting the Kenyan delegation to Japan for audit assignment. In the same date, the QISJ further emailed the Japanese Embssy in Kenya offering letters of guarantee and reasons for the Kenyan delegation travelling to Japan.
- e) The QISJ was notified as earlier of the impending audit assignment by Dr. Joseph Ngeno of KEBS in his email of 6th February 2019 while the M/S EAA and M/S ATJ were informed on 11th February 2019. This, to Dr. Kalua, indicated bias.

- f) The totality of the documents provided by Dr. Kalua painted the entire audit exercise as compromised by one of the competitors to the disadvantage of the others.

3.5 SUBMISSION BY THE OFFICE OF THE AUDITOR GENERAL

105. Through his letter to the Committee dated 24th March 2020, Mr. Fredrick Odhiambo (deputy Auditor General) denied the accusations from Dr. Isaac Kalua on conflict of interest when conducting the Special Audit assignment.

106. Mr. Odhiambo submitted that visa applications for OAG officials were made directly to the respective embassies in coordination with the Ministry of Foreign Affairs before travel. He provided the following documents to buttress his assertion:

- (a) Letter Ref: C.228/Vol.XVIII/(38), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the Principal Secretary in the Ministry of Foreign Affairs requesting facilitation of issuance of entry visas to South Africa for officers scheduled to travel for Special Audit assignment.
- (b) Letter Ref: C.228/Vol.XVIII/(39), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the Embassy of the United Arab Emirates requesting issuance of entry visas to Dubai for officers scheduled to travel for Special Audit assignment.
- (c) Letter Ref: C.228/Vol.XVIII/(33), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the Principal Secretary in the Ministry of Foreign Affairs requesting facilitation of issuance of entry visas to Japan for officers scheduled to travel for Special Audit assignment.
- (d) Letter Ref: C.228/Vol.XVIII/(36), dated 13th February 2019 signed by Agnes C. Mita for the Auditor General and addressed to the British High Commission requesting facilitation of issuance of entry visas to UK for officers scheduled to travel for the Special Audit assignment.
- (e) Letters dated 14th February 2019 signed by Charles Kalobia of International Conformity Assessment Solutions and addressed to the head of Consular Section of the South African High Commission requesting facilitation of issuance of entry visas to South Africa for officers scheduled to travel for the Special Audit assignment.

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- (f) Letter Ref: MFA.PRO 7/15/25/VOL.IX (36) dated 18th February 2019 from the Ministry of Foreign Affairs and addressed to the British High Commissioner requesting facilitation of issuance of entry visas to UK for officers scheduled to travel for Special Audit assignment.
- (g) A proforma invoice from City Lodge Hotel Fourways dated 11th February 2019 and addressed to International Conformity Assessment Solutions indicating reservations for 5 rooms.
- (h) A certified copy of the bank statement from Standard Chartered Bank for Mr. Fredrick Odhiambo indicating that his debit card was debited with Ksh. 94,935 from Intercontinental Yokohama Grand Yokohama (hotel). He further provided the invoice of the breakdown of the 94,935 dated 3rd March 2019. He also provided his hotel booking confirmation for Yokohama dated 24th February 2019.
- (i) Receipts for visa processing fee to Dubai and Japan dated 28th and 22nd February 2019 respectively. The amount for Japan was 8250 while that for UAE was AED3,150.
- (j) While confirming that indeed M/S indeed provided invitation letters to the Kenyan delegation going for Special Audit assignment, Mr. Odhiambo pointed out that the application guidelines specified the in documents to be attached including invitation letters from the institution being visited. By virtue of being the Company contracted by KEBS to provide PVOC services, QISJ provided the invitation letters for the visa applications. It is these letters that Dr. Kalua had tabled before the Committee. He dispelled fears on any conflict of interest associated with the matter.
- (k) Mr. Odhimabo confirmed that the initial scope of the Special Audit was to focus on the winning bidder (QISJ). However, the scope of audit was expanded to include the other bidders hence the reason why QISJ it was notified earlier than the others. This was however not intended to give QISJ any undue advantage over the others.
107. KEBS obtained invitation letters and hotel bookings for Japan, United Kingdom and South Africa from QISJ and these were presented by OAG officials to the respective Embassies as required in visa application.
108. KEBS made logistical arrangements for the Auditors to visit sampled sites during the audit and OAG officials used the transport provided by each of the entities being audited to visit their respective sites.

109. The initial scope of the audit was to focus on the successful bidder, QISJ but the scope was later expanded to include all bidders in the tender under review. M/s EAA Company Limited, M/s ATJ Company Limited and M/s Nippon Corporation were thus included in the expanded audit of which the latter was not audited as they provided scanty information that was not verifiable.
110. Mr. Odhiambo underscored the fact that despite M/S QISJ made hotel reservations for the auditors, this was only meant to secure visas and that the M/S did not cater for that cost. The Office of the Auditor General met all the accommodation costs for the officials who conducted the audit and receipts to that effect were presented to the Committee.

3.6 EVIDENCE BY PUBLIC PROCUREMENT REGULATORY AUTHORITY

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

He briefed the Committee as follows:

112. The Public Procurement Regulatory Authority had received the Special Audit Report from the Office of the Auditor General on 10th July, 2019.
113. Section 41 of the Public Procurement and Assets Disposal Act (2015) mandates the Public Procurement Regulatory Board to debar parties from participating in Public Procurement and Assets Disposal proceedings on various grounds. However, the Board was unable to process requests for debarment because Section 41 (b) of the Act provides that 'the procedure for debarment shall be prescribed by Regulations' and the Regulations of the Act have not been gazzeted hence all cases related to debarment were pending.
114. The Authority had received a letter from Mr. Isaac Ochieng on 13th December, 2014 requesting for debarment of M/S East Africa Automobile Services Company Limited on grounds of using fake certificates including certificates of registration in the UK and United Arab Emirates as well as tax certificate in the UK.
115. The Authority wrote to M/S East Africa Automobile Services Company on 19th January, 2015 followed by debarment sittings held on 6th May, 4th June and 10th September, 2015. The Company was represented by M/s Prof. Tom Ojienda and Advocates, while the

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- complainant was represented by M/s Andrew Obwayo and Company Advocates. The Company changed their advocates in the course of the debarment proceedings.
116. Further hearings were held on 1st and 26th April, 2016 but the term of the Public Procurement Advisory Board expired before the matter was concluded.
 117. The Ethics and Anti-Corruption Commission were investigating the matter of the alleged fake documentation presented by M/s East Africa Automobile Services Company and had written to the PPRA on 6th February, 2018 requesting for tender documents submitted by the Company to assist in the investigation.
 118. PPRA wrote a letter to KEBS on 28th February, 2020 requesting for tender documents submitted by M/s EAA Company Limited as well as the technical and financial evaluation reports for tender No. KEBS/T019-2020 that was the subject of the Special Audit Report. The Authority further requested KEBS to submit a copy of a due diligence report which had observed falsification of documents by M/s East Africa Automobile Services Company Limited.
 119. The Authority had also written to the Directorate of Criminal Investigation on 25th February, 2020 seeking assistance in verifying the alleged falsification and misrepresentation of documents by the two companies.
 120. The PPRA had since considered the tendering process of tender No. KEBS/T019-2021 and found it wanting. PPRA's letter to KEBS dated 21st April 2020 sought for responses on the irregularities identified within seven days. Such irregularities included:
 - a. The procurement plan was not approved by the National Standard Council hence in violation of the Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006. Procurement plan had been done on 2nd January 2020 while invitation to tender was done on 3rd December 2019.
 - b. Approved procurement plan by Mr. Njiraini lacked estimated cost and source of funding for the project contract to Regulation 21(1)(f) of the PPDA 2006.
 - c. The procurement was not based on indicative or approved budget contrary to Section 53(5) of the Act and the Public Procurement (Amendment) Regulations, 2013.

- d. The procurement was done without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
- e. The tender document stifled competition
- f. Addendum 1 and 2 were signed for the Managing Director without the letter delegating that authority.
- g. The invitation to tender failed to declare that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
- h. During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act , 2015.
- i. KEBS charged PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
- j. Despite all bidders being unresponsive, the tender Committee recommended procession to technical evaluation stage contrary to Section 79(3)(b) of the PPAD Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.
- k. Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015
- l. The evaluation criteria omitted the aspect of subcontractors submitting sworn statements.
- m. KEBS failed to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.

3.7 SUBMISSION BY QUALITY INSPECTION SERVICES JAPAN (QISJ)

121. Mr. Kiyako Hatano, the Managing Director of Quality Inspection Services Japan made a written submission to the Committee on the Special Audit Report on the Pre-

Verification of Conformity to Standards for Motor Vehicles and Used Spare Parts by Kenya Bureau of Standards.

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

CHAPTER FOUR

4.1 COMMITTEE OBSERVATIONS AND FINDINGS

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

4.2 General Observations

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

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

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

misrepresented its technical proposal and recommended its debarment for contravening Section 41 (1) (h) of the Public Procurement and Disposal Act, 2015.

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

diligence report which had observed falsification of documents by M/s East Africa Automobile Services Company Limited.

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

4.3 Summary Findings on KEBS Tender T010-2019-2020

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

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

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

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

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

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

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

4.4 Summary of Findings on M/s EAA Company Limited

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

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

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

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

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

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

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

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

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

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

- (72) M/s Japan Forwarding Agency (JFA) was established in September 2013. Upon the new requirement by KEBS in the tender, M/s AutoTerminal Japan Limited surrendered the license of Customs Clearance business to the authorities and was left with the inspection business only. It is also at this stage and moment that AutoTerminal Japan Limited was accredited with ISO17020 Type A on Nov 2013.
- (73) M/s AutoTerminal Japan Limited is an independent inspection body. The business purpose of Registration Certificate of AutoTerminal Japan Limited is clear. AutoTerminal Japan Limited is not in conflict of interest for inspection business whatsoever. In addition, the concept of "Conflict of interest" was first introduced by KEBS during this period and not earlier and therefore ATJ adhered to this requirement for compliance.
- (74) M/s AutoTerminal Japan Limited operates in different countries globally and has never been conflicted in line of their professional undertakings whatsoever. As a sign of good faith and to comply with the "Conflict of interest" issue as defined in Kenya, Mr. Mamoru Fujie resigned from JFA directorship as evidenced by attached
- (75) The Director of ATJ Limited stated that AUTO TERMINAL UK LTD is a company incorporated in by the Registrar of Companies for England and Wales as company Number 12010599. (Annexure (ATJ-UK) is attached as Certificate of Incorporation of a Private Limited Company in UK).
- (76) The respondent stated that M/s AutoTerminal Japan Limited Auto Services is a registered Company by the Government of Dubai with a professional license Number 870349 to undertake Road Worthiness Inspections (Annexure number 10 is attached as ATJ Auto Services -UAE).
- (77) On dispute on use of Inspection Facilities at Flashrise – Mr. Kalua failed to explain himself on the issue.
- (78) Through the Tender notice, Auto Terminal Japan Limited received a one month notice by KEBS to establish a company and purchase own equipment in the UK and UAE. This being a newly introduced mandatory requirement, AutoTerminal Japan Limited through its lawyers founded the registration of ATJ in UAE and the UK ahead of the tender closure. This process has since been completed. The Committee however found out that the incorporation certificate submitted by M/S ATJ on 11th December 2017

was not authentic after Dr. Kalua confirmed that the Company was incorporated in UK on 22nd May 2019 under certificate No. 12010599. This vindicates the audit observation on lack of presence of M/S ATJ in both UAE and UK and forgery of documents.

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

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

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

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

- i. In line with the recommendations of the Auditor General in the Special Audit Report dated 10th July 2019, KEBS' due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of this Committee, the Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No 33 of 2015,) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and MS ATJ for violating the Public Procurement and Asset Disposal Act in TENDER No. KEBS/T019/2017/2020 and Ms. EAA in Tender No. KEBS/T057/2014-2015.
- ii. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/ or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement And Asset Disposal Act 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2020; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team.
- iii. The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with award of tender No. KEBS/T019-2020. Potential areas of litigations may include:
 - (a) Failure to have procurement plan approved by the National Standard Council before invitation to tender contrary to Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006.

- (b) Procuring without indicative or approved budget contrary to Section 53(5) of the Public Procurement and Disposal Act and the Public Procurement (Amendment) Regulations, 2013.
- (c) Procuring without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
- (d) Failure to declare in the invitation to tender that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(1)(h) and (i) of the PPAD Act, 2015.
- (e) During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAD Act , 2015.
- (f) Charging of PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section 11(1) of Public Procurement and Disposal (Amendment) Regulations of 2013.
- (g) Approving a recommendation from the tender Committee that all bidders proceed to technical evaluation stage despite being unresponsive contrary to Section 79(3)(b) of the Public Procurement Asset Disposal Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(1) of the PPAD Act, 2015.
- (h) Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPAD Act, 2015
- (i) Failure to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.
- (j) Section 139 of the Public Procurement and Asset Disposal Act of 2015 that guides on variation of contracts did not anticipate floating of a new tender to

amend existing contracts. Any new tender should culminate in signing of a new contract and not variation of the existing contract.

- iv. The Ethics and Anti-Corruption Commissions (EACC) investigates the circumstances under which KEBS entered into a contract with MS/EAA Company Limited and M/S Auto Terminal Japan and submits its findings hereon to the National Assembly within sixty (60) days of adoption of this Report.
- v. KEBS should always as much as possible ensure full implementation of future contractual obligations KEBS enters to avoid unnecessary litigations and loss of public resources.
- vi. Future international tenders should be widely advertised in leading international media houses to enable fair competition and service providing.
- vii. The Public Procurement and Regulatory Authority (PPRA) expeditiously investigates the entire tendering process under tender No. KEBS/T019-2020 and report its findings to the National Assembly, DCI, and DPP within thirty (30) days of adoption of this report for further action.

Sign Date.....

HON. ABDULLSWAMAD SHARIFF NASSIR, MP - CHAIRPERSON

6.0 ANNEXURES

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

APPENDIX IV

Submission by Stakeholders to the Committee on Implementation



Kenya Bureau of Standards
Standards for quality life

06 AUG 2021

KEBS Head Office
P.O. Box 54974, Nairobi 00200
Tel: +254 (0) 20 694 8000
Mobile: 0722 202137/8,
0734 600 471/2
Fax: +254 (0) 20 694 8575
E-Mail: info@kebs.org
Web: http://www.kebs.org

Our Ref: KEBS/CONF/PARL/1 VOL 2(58)

Date: 5th August 2021

Samuel Njoroge
Clerk of The National Assembly
Parliament Buildings
P.O. Box 41842 - 00100

NAIROBI

KEBS Coast Region
P.O. Box 99376, Mombasa 80100
Tel: +254 (0) 41 2317050, 2230939/3840
Fax: +254 (0) 41 229 448
E-mail: kebs-msa@kebs.org

Dear *Madam CS,*

RE: IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Reference is made to the above subject matter.

KEBS Lake Region
P.O. Box 2949, Kisumu 40100
Tel: +254 (0) 57 202 8395, 202 9549
Fax: +254 (0) 57 202 7614
E-mail: kebs-lasumu@kebs.org

We acknowledge receipt of your letter Ref. NA/DAASC/CO1/2021/ (92) dated 28th July 2021 on the same subject, where the Clerk of the National Assembly has invited the Chairman of the National Standards Council (NSC) to appear before the committee on 10th August 2021 and apprise its members on Implementation of House Resolutions over the Implementation status and challenges faced, if any, in the implementation of the Report of PIC on its consideration of the "Special Audit Report on the Procurement of the Pre-Export Verification of Conformity to Standard Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by the Kenya Bureau of Standards."

KEBS South Rift Region
P.O. Box 2138, Nakuru 20100
Tel: +254 (0) 51 221 0555, 221 1208
+254 (0) 51 221 1418, 221 1819
Mobile: +254 736170070
E-Mail: kebs-nakuru@kebs.org

This is to kindly request you to reschedule the said meeting due to the 344th National Standards Council approved and scheduled full board meeting which will be held on same day of 10th August 2021. The NSC will among other things receive and deliberate the Performance Contracting (PC) and the budget for 2021/2022 Report whose timelines have legal implications. (See attached NSC notice for ease of reference).

KEBS North Rift Region
P.O. Box 8111, Eldoret 30100
Tel: +254 (0) 53 2033151
Fax: +254 (0) 53 2033150
E-Mail: kebs-eldoret@kebs.org

Yours *faithfully*
[Signature]

KEBS ML Kenya Region
P.O. Box 1790, Nyeri 10100
Tel: +254 (0) 61 203 1410/1
Fax: +254 (0) 611 203 2038
E-Mail: kebs-nyeri@kebs.org

Eng. Bernard M. Ngore
NSC CHAIRMAN

KEBS North Eastern Region
P.O. Box 978, Garissa 70100
Tel: +254 (0) 46 2102310
Fax: +254 (0) 46 3455
E-Mail: kebs-garissa@kebs.org

Copy to: Ms. Betty C. Maina, EGH
Cabinet Secretary
Ministry of Industrialization, Trade and Enterprise Development
P.O. Box 30547 - 00100
NAIROBI



**REPUBLIC OF KENYA
MINISTRY OF INDUSTRY, TRADE AND ENTERPRISE
DEVELOPMENT**

**SUBMISSIONS BY THE CABINET SECRETARY TO THE PUBLIC
INVESTMENTS COMMITTEE (PIC).**

8th August, 2021

1.0 Preamble:

The Chairman of the National Standards Council (NSC) received a letter ref NA/DAASC/CO1/2021/ (92) from the Clerk of the National Assembly to appear before the committee on Implementation of House Resolution on 10th of August 2021 whose subject was **Implementation Status of House Resolutions**. In the letter the Committee requested to be apprised on the implementation status and challenges faced, if any, in the implementation of the Report of Public Investment Committee (PIC) on its consideration of the Special Audit Report on the Procurement of the Pre-Export Verification of Conformity to Standard Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by the Kenyan Bureau of Standards.

2.0 Background

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

The Special Audit Report served as a follow up on the previous tender and special audit report dated 16th January 2016, tabled by the PIC and adopted by the House on 30th November 2016. The committee sought to ascertain the findings by the OAG on the current and past bidders for the Pre-Export Verification of Conformity to Standard Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by KEBS

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

1. Kenya Bureau of Standards
2. The Public Procurement Regulatory Authority
3. M/S EAA Company Ltd
4. M/S Auto Terminal Japan (ATJ)
5. The Attorney General (AG)
6. Quality inspection Services Japan (QISJ)
7. The Office of the Auditor General (OAG)

3.0. COMMITTEE RECOMMENDATIONS AND RELATED IMPLEMENTATION STATUS

I have reviewed the PIC report and its associated recommendations and do hereby update the committee on the implementation status of whatever is in the domain of KEBS.

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

Recommendation 1

In line with the recommendations of the Auditor General in the Special Audit Report dated 10th July 2019, KEBS ' due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of this Committee, the

Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No 33 of 2015,) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and MS ATJ for violating the Public Procurement and Asset Disposal Act in TENDER No. KEBS/019/2017/2020 and Ms. EAA in Tender No. KEBS/057/20 14-2015.

Implementation Update:

KEBS is cognizant of regulation 22 on debarment. However, it is notable that the recommendation was directed for implementation by the Public Procurement Administrative Review Board.

That notwithstanding, I hereby inform this Honorable committee that the debarment proceedings were instituted against the two companies and EAA have since been debarred (see Annex 1-EAA Debarment Application). ATJ has obtained a stay order against the PPARB debarment proceedings (See Annex 2- ATJ Stay Order)

Recommendation 2

The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be held personally responsible for failing to seek the legal opinion from the Attorney-General in time; withholding and/ or giving misleading information from the Attorney General when he belatedly sought such opinion contrary to Section 134 of the Public Procurement And Asset Disposal Act 2015; ignoring the Public Investments Committee's advisory to seek and follow the Attorney's General's legal opinion before awarding the tender No. KEBS/T019-2020; and an earlier opinion from KEBS' external lawyer Ref: STA-005-0184 dated 20th June 2017 and internal legal team

Implementation Update:

The matter is before court and the MD KEBS, Lt Col (Rtd.) Bernard Njiraini has obtained orders staying implementation of the PIC recommendations against himself as a person. (See Annex 3- Lt. Col. (Rtd) Bernard Njiraini - Stay Orders)

Recommendation 3

The Managing Director for KEBS, Lt. Col (Rtd.) Bernard Njiraini, should be personally held responsible for any loss that KEBS may make arising from litigations associated with award of tender No. KEBS/019-2020. Potential areas of litigations may include:

- (a) Failure to have procurement plan approved by the National Standard Council before invitation to tender contrary to Section 69(2) of PPAD Act of 2015 and regulation 20(5) of the PPDA regulations of 2006.
- (b) Procuring without indicative or approved budget contrary to Section 53(5) of the Public Procurement and Disposal Act and the Public Procurement (Amendment) Regulations, 2013.
- (c) Procuring without purchase requisition contrary to Section 73 of the PPAD Act, 2015 and Regulation 22 of the Public Procurement and Disposal Regulations of 2006.
- (d) Failure to declare in the invitation to tender that the tender was only open to those who met the requirements for eligibility and serialization of pages by the bidder contrary to Section 74(l) (h) and (i) of the PPAD Act, 2015.

(e) During tender opening, Committee members failed to record the number of pages of the bidding document as provided in Section 78 (5) of the PPAD Act and record of bid sums by the EAA and ATJ in opening of the financial proposals as required in Section 78(6)(b) of the PPAO Act, 2015.

(f) Charging of PE of nonrefundable fees of Kshs. 10,000 as opposed to Kshs. 1,000 contrary to Section II(l) of Public Procurement and Disposal (Amendment) Regulations of 2013.

(g) Approving a recommendation from the tender Committee that all bidders proceed to technical evaluation stage despite being unresponsive contrary to Section 79(3)(b) of the Public Procurement Asset Disposal Act of 2015. They further failed in the technical evaluation stage but were recommended to proceed to the financial evaluation stage contrary to Section 79(l) of the PPAD Act, 2015.

(h) Financial proposals were opened by the Evaluation Committee instead of the tender Opening Committee thus contravening Sections 46 and 78 of the PPA D Act, 2015

(i) Failure to notify unsuccessful bidders when notifying successful ones (M/s EAA and M/s ATJ) contrary to Sections 87(3) and 126(4) of the PPAD Act, 2015.

U) Section 139 of the Public Procurement and Asset Disposal Act of 2015 that guides on variation of contracts did not anticipate floating of a new tender to amend existing contracts. Any new tender should culminate in signing of a new contract and not variation of the existing contract.

Implementation Update:

The matter is before court and the MD KEBS, Lt Col (Rtd.) Bernard Njiraini has obtained orders staying implementation of the PIC recommendations against himself as a person. Refer to Response on Recommendation 3 above.

Recommendation 4

The Ethics and Anti-Corruption Commissions (EACC) investigates the circumstances under which KEBS entered into a contract with MS/EAA Company Limited and MIS Auto Terminal Japan and submits its findings hereon to the National Assembly within sixty (60) days of adoption of this Report.

Implementation Update:

The recommendation by PIC is to be implemented by the Ethics and Anti-Corruption Commissions (EACC)

Recommendation 5

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

Implementation Update:

KEBS takes cognizance of the report and notes it for future implementation.

Recommendation 6

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

Implementation Update:

KEBS takes note of the recommendation and reports that this has already been implemented as was done during the advertisement of the PVOC tenders Tender No: KEBS/T012/2020-2023 (International Tender For Provision Of Pre-Export Verification Of Conformity (PVoC) To Standards Services For Used Motor Vehicles, Mobile Equipment And Spare Parts) and Tender No: KEBS/T013/2020-2023 (International Tender For Provision Of Pre-Export Verification Of Conformity (Pvoc) To Standards Services) which was done as guided: on our website, local newspaper, digital platform and on the international tender advertisement platforms as can be seen in Annexes 4 -7.

Recommendation 7

The Public Procurement and Regulatory Authority (PPRA) expeditiously investigates the entire tendering process under tender No. KEBS/TO19-2020 and report its findings to the National Assembly, DCI, and DPP within thirty (30) days of adoption of this report for further action.

Implementation Update:

The recommendation by PIC is to be implemented by the Public Procurement and Regulatory Authority (PPRA)

4.0 SUBMISSION

Honorable Chair and members, the PIC report has detailed out several recommendations which on full implementation will ensure that the procurement process at KEBS for the PVOC in future is above board and will always end up procuring competent and most suitable PVOC partners that will ensure that all products destined for export into Kenya meet both the local and international standards and ensure the safety of our general public besides protecting our local industry. The recommendations cover three agencies: KEBS, PPRA and EACC which I commit to work with to ensure that all recommendations of this committee in the report are implemented fully.

Hon Chair, I submit.

END OF SUBMISSION

Annex 1: EAA Debarment Application

Annex 2: ATJ Petition Order

Annex 3: Lt Col (Rtd.) Stay Order

Annex 4: Advertisement in the Local Dailies

back in some form. We will
Trump departed office as the only
president ever impeached twice, and
with millions more out of work than
dead from the coronavirus.
Under his watch, Republicans lost
the presidency and both chambers of
Congress. He will be remembered for
inciting an insurrection, two weeks
of the symbolic passing of the torch
traditions surrounding the peaceful
transition of power, including inviting
Joe and Jill Biden to the White House
for a get-to-know-you visit.
He did follow at least one tradition:
The White House said Trump left
behind a note for Biden. A Trump
spokesman, Judd Deere, declined to say
what Trump wrote or characterize the
sentiment in the note, citing privacy for
communication between presidents.

President Donald Trump gestures as he boards
the White House yesterday in Washington on
[AP]

Members of Trump's family gather-
ed for the send-off on the military
base along with the former president's
loyalists, who chanted "We love you!"
"Thank you, Trump" and "U.S.A." Four
Army cannons fired a 21-gun salute.
Speaking without notes, Trump said

KEBS Kenya Bureau of Standards
Standards for Quality Life
Tel: 0206948000 | Toll Free Line 1545 | E-Mail: procurement@kebs.org | www.kebs.org

TENDER NOTICE - ADDENDUM

The Kenya Bureau of Standards (KEBS) invites sealed tenders from eligible firms for the following tenders:

No.	TENDER DESCRIPTION	TENDER NO.	CLOSING DATE
1.	International Tender For Provision of Pre-Export Verification of Conformity (PVoC) To Standards Services For Used Motor Vehicles, Mobile Equipment And Spare Parts.	KEBS/T012/2020-2023	10th Wednesday February, 2021 1200hrs (East African Time)
2.	International Tender For Provision of Pre-Export Verification of Conformity (PVoC) To Standards Services For Goods.	KEBS/T013/2020-2023	10th Wednesday February, 2021 1200hrs (East African Time)
3.	Provision of consultancy services – Communication support / Public relations.	KEBS/T014/2020-2021	3rd Wednesday February, 2021 1000hrs (East African Time)

Tender documents detailing the requirements may be obtained from Procurement office, KEBS Centre, Popo road, off Mombasa road, Nairobi on normal working days between 9.00 a.m. and 4.00 p.m. upon payment of a non-refundable fee of Kes.1,000 or be downloaded from KEBS website www.kebs.org for free. All payments shall be made to Kenya Bureau of Standards, Nairobi.

Completed tender documents in plain sealed envelopes clearly marked 'TENDER NUMBER AND TITLE OF THE TENDER' indicated on the envelope should be addressed and delivered to:

**THE MANAGING DIRECTOR,
KENYA BUREAU OF STANDARDS,
P.O. BOX 54974 – 00200
NAIROBI.**

Or be deposited in the Tender Box located at KEBS Centre Main Reception marked "TENDER BOX" so as to be received as indicated above. Tender opening will be carried out immediately thereafter at the KEBS centre conference room A, Adm. Block, ground floor. Tender opening will be carried out immediately thereafter in the presence of the tenderers or their representatives who choose to attend the opening at the KEBS centre conference room A, Adm Block, ground floor. Bid security will be as indicated in the tender document.

MANAGING DIRECTOR
#WajibikaNaKEBS
Verify the authenticity of KEBS quality marks by use of the KEBS Official Mobile App or sending a text to 20023: SM#Permit Number / ISM#UCR Number / DM#Permit Number

KEBS - Standards for quality life www.facebook.com/kebs.org [kebs_ke](https://twitter.com/kebs_ke)



Kenya Bureau of Standards
Standards for quality life

Tel: 0206948000 | Toll Free Line 1545 | E-Mail: procurement@kbs.org | www.kbs.org

TENDER NOTICE

The Kenya Bureau of Standards (KEBS) invites sealed tenders from eligible firms for the following tenders:

NO	TENDER DESCRIPTION	TENDER NO.	CLOSING DATE
1	International Tender For Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts.	KEBS/T012/2020/2023	10 th Wednesday, February 2021 1200hrs (East African Time)
2	International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services	KEBS/T013/2020/2023	10 th Wednesday February, 2021 1200hrs (East African Time)
2	Provision of consultancy services – Communication support / Public relations	KEBS/T014/2020/2021	3 rd Wednesday February 2021 1000hrs (East African Time)

Tender documents detailing the requirements may be obtained from the **Procurement Office, KEBS Centre, Pogo Road, Off Mombasa Road, Nairobi**, on normal working days between 8.00 a.m. and 4.00 p.m. upon payment of a non-refundable fee of Kes.1,000, or be downloaded from KEBS website: www.kbs.org, for free. All payments shall be made to the Kenya Bureau of Standards, Nairobi.

Completed tender documents in plain sealed envelopes clearly marked **"TENDER NUMBER AND TITLE OF THE TENDER"** indicated on the envelope should be addressed and delivered to:

**THE MANAGING DIRECTOR,
KENYA BUREAU OF STANDARDS,
P.O. BOX 54974 – 00200 NAIROBI.**

Or be deposited in the Tender Box located at KEBS Centre Main Reception marked **"TENDER BOX"** so as to be received as indicated above.

Tender opening will be carried out immediately thereafter in the presence of the tenderers or their representatives who choose to attend the opening at **KEBS centre conference room A, Adm. Block, ground floor.**

Bid security will be as indicated in the tender document.

MANAGING DIRECTOR



KENYA ROADS BOARD FUND



National Environment Management Authority

P.O. BOX 67839-00100, Nairobi, Kenya
Tel: (254 020) 2183718, 2101370, Fax: (254 020) 6088997
E-mail: dg@nema.go.ke Website: www.nema.go.ke

NOTICE TO THE PUBLIC TO SUBMIT COMMENTS ON AN ENVIRONMENTAL IMPACT ASSESSMENT STUDY REPORT FOR THE PROPOSED HEDWE DECENTRALIZED WASTEWATER TREATMENT FACILITY (DWT) IN KEGOYE SUB-LOCATION, WAMULUMA LOCATION, VIHIGA SUB-COUNTY, VIHIGA COUNTY

Pursuant to Regulation 21 of the Environmental Management and Coordination (Impact Assessment and Audit) Regulations, 2003, the National Environment Management Authority (NEMA) has received an Environmental Impact Assessment Study Report for the above proposed project.

The Proponent, Amatsi Water Services Company (AMASCO), proposes to develop a Decentralized Wastewater Treatment Facility (DWT) with a capacity of 50MS with associated components. The proposed project is located on part of parcel LR No.: KAKAMEGA/KLEGOYE/546 owned by Vihiya County Government, with GPS coordinates 0004'26.3"N, 34045'29.5"E (0.073978, 34.724867). The proposed project's overall goal is to improve health and sanitation by enhancing wastewater management for Mbatia town residents in Vihiya County.

The following are the anticipated negative impacts and proposed mitigation measures:

Impacts	Proposed Mitigation Measures
Vegetation Cover destruction and loss of biodiversity	<ul style="list-style-type: none"> Construction activities will be limited to Project sites/routes which already exist therefore no destruction to vegetation cover
Loss of top soil	<ul style="list-style-type: none"> Stock piling of top soil, construction material and wastes should be done only at designated sites approved by the supervising engineer. Erosion prevention through berthing
Waste generation and disposal	<ul style="list-style-type: none"> Construction wastes (residual earth, debris and scrap materials) to be removed for safe disposal Encourage recycling where possible (concrete debris for access road surfacing). Contaminated organic matter in the work areas to be isolated for safe disposal Material residuals to be disposed off in accordance with established regulations
Noise and Vibration control from plant and equipment	<ul style="list-style-type: none"> The Contractor shall keep noise level within acceptable limits and construction activities shall, where possible, be confined to normal working hours in the residential areas The Contractor must adhere to Noise Prevention and Control Rules of April 2009
Traffic management on site	<ul style="list-style-type: none"> Strict use of warning signage and tapes where the trenches are open & active sites Employ and train road safety Marshalls who will be responsible for management of traffic on site
Occupational Health and Safety	<ul style="list-style-type: none"> Provide construction workers with personal protective gear (gloves, gum boots, coveralls and helmets). Provide temporary toilets and bathrooms for the construction workers at the

National News

Economy House team allays fears that UK goods will flood the Kenyan market

MPs endorse Kenya-UK trade deal

Lawmakers say the pact will help boost the economy that has been ravaged by effects of Covid-19 pandemic

BY SAMWEL OWINO

Parliament last night ratified the Economic Partnership Agreement (EPA) with the United Kingdom, paving the way for its implementation. The UK Parliament passed the same last week on Thursday while their Kenyan counterparts had to wait until the last day as provided in the pact to pass it. The lawmakers pointed out that the deal is the best way to boost the economy that has been ravaged by the effects of the Covid-19 pandemic.

Address fears

In a session that was attended by Trade Cabinet Secretary Betty Maina and Principal Secretary Johnson Weru, the MPs said the deal provides mechanisms for addressing all the fears by those opposed to the agreement.

House Trade committee chairman Adan Haji said the deal comes at a time when the country's economy has been negatively affected by the Covid-19 pandemic,



UK's International Trade Minister Ranil Jayawardena (second left) and Trade and Industrialisation CS Betty Maina during the signing of the Kenya-UK trade deal in London. Kenya's High Commissioner to the United Kingdom Manohar Espisu (right) was present during the signing of the deal. PHOTO: IPOOL

and therefore the government should be lauded for signing the agreement to help in reviving the economy.

He said Kenya stands to gain from the trade agreement as "our farmers will have unlimited

access to the UK market". At the same time, Mr Haji allayed fears that UK goods would flood the Kenyan market as alleged by those opposed to the trade pact.

"There will be no negative bal-

There will be no negative balance of trade if this deal is ratified. This deal is the engine of Kenya's industrialisation agenda

Trade committee chairman Adan Haji



ance of trade if this deal is ratified. This deal is the engine of Kenya's industrialisation agenda," he said.

Nyando MP Jared Okelo said the deal would help the country achieve the Big Four agenda and Vision 2030.

He warned that failure to ratify the deal would have seen Kenyan goods become more expensive in the UK market, hence giving an edge to products from Ethiopia and Colombia.

Mr Okelo said the agreement is the only way out for the country to get out of the effects of the coronavirus.

However, Saku MP Dido Raso — the only MP who opposed the Trade committee of acting as "salespersons for the ratification report".

Mr Raso said the UK was only interested in the deal because of Brexit and not because they have interest in Kenya. "The UK is not on this deal not because they want it but because of Brexit. What we need to ask ourselves is what is in it for us as a country," he said.

But Garissa Town MP Aden Duale said Kenya should not fear getting into the deal as section 16 and 18 of EPA gives the Cabinet secretary powers to withdraw from the deal and also makes rules during its implementation.

He, however, said he would move an amendment to the Treaty Act so that Parliament can be involved from the initial negotiations.

DPP loses appeal in Tana River graft case

BY PHILIP MUANGA


The Director of Public Prosecutions (DPP) has lost an appeal in which he had challenged the acquittal of 10 people, among them some former officials of Tana River County government, who had been charged with corruption-related offences.

Justice Reuben Nyakundi of the High Court in Malindi dismissed the appeal, saying, he found no basis to interfere with findings and judgment of the anti-corruption court in Malindi.

The charges revolved around tender for supply of 100 collapsible water tanks in the county. The allegations were that the tender was irregular and flawed.

The judge noted that the decision of the trial magistrate showed that she gave adequate consideration to all evidence and reasons why the case for the prosecution failed against the respondents' scrutiny and evaluation.

The DPP had argued that the magistrate erred in law and fact by acquitting the respondents.



Kenya Bureau of Standards
Standards for Quality Life

Tel: 0206948000 | Toll Free Line 1545 | E-Mail: procurement@kebs.org | www.kebs.org

TENDER NOTICE - ADDENDUM

EXTENSION AND CLARIFICATION OF TENDERS

The Kenya Bureau of Standards (KEBS) wishes to inform firms participating in the tenders below, that clarifications have been deemed necessary, calling for an addendum to the tenders. The closing date has therefore been extended as shown below to give bidders adequate time to respond appropriately.

TENDER NAME	ITEM DESCRIPTION	NEW CLOSING DATE
KEBS/TO12/2020/2023	International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts. (Framework Agreement)	24 th March 2021 1100hrs (East African Time)
KEBS/TO13/2020/2023	International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services - Goods (Framework Agreement)	24 th March 2021 1100hrs (East African Time)

Tender Security Bonds should therefore be valid for 180 days from the new closing date shown above. Bidders are advised to download the addendum from KEBS website: www.kebs.org. The Tenders will be opened at the time indicated in the tender documents on the new closing date shown above. Tenderers or their representatives who wish to witness the opening are welcome.

All other terms and conditions of the tender remain the same.


MANAGING DIRECTOR

#WajidikaKEBS
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Standards for quality life

www.facebook.com/kebs.org [Kebs_Ken](https://www.instagram.com/kebs_ken)

REPUBLIC OF KENYA



COUNTY ASSEMBLY OF NYERI
P.O BOX 162-10100, NYERI

TENDER NOTICE (RE-ADVERTISEMENT)

The County Assembly of Nyeri invites tenders from interested and eligible firms to undertake the following works.

Tender Reference	IFMS NEGOTIATION NO.	Tender Description	Site Visit	Closing date	Target group
1 CAN/T/1/ 2020-2021	857585-2020/2021	Supply, Delivery, Installation, Testing and Commissioning of Integrated Reverse Osmosis water Dispensers	Monday 15 th March, 2021 AT 10:00 AM	Tuesday 23 rd March, 2021 AT 11:00 AM	Reserved [Women, Youth and PWDs]

Interested bidders are required to access the full tender information by downloading the tender document from the County Assembly of Nyeri Website www.nyeriassembly.go.ke or www.supplier.treasury.go.ke free of charge.

The closing date for submission of tenders will be on Tuesday 23rd March, 2021 at 11.00 AM.

The tenders will be opened immediately thereafter at the County Assembly's Lobby room, in the presence of the candidates or their representatives who choose to attend.

Bidders should submit one copy of the tender document enclosed in a plain sealed envelope marked (Original) with Tender name and reference number and deposited in the Tender Box at County Assembly of Nyeri Offices, Ruring'u at Block B or to be sent to:

The Clerk, County Assembly of Nyeri P.O. Box 162-10100 Nyeri so as to be received on or before Tuesday 23rd March, 2021 AT 11.00 AM.

NOTE: The Completed tender documents should be uploaded on the IFMS E-Procurement in PDF Format. Late tenders shall not be accepted.

THE CLERK
COUNTY ASSEMBLY OF NYERI
P.O. BOX 162-10100
NYERI

Pandemic. Guidance a "first step" toward restoring normalcy

Fully vaccinated Americans can gather without masks

New guidelines are designed to address a growing demand, as more adults have been getting vaccinated and wondering if it gives them greater freedoms.

By AP
newsdesk@standardmedia.co.ke

Fully vaccinated Americans can gather with other vaccinated people indoors without wearing a mask or social distancing, according to long-awaited guidance from federal health officials.

The recommendations also say that vaccinated people can come together in the same way — in a single household — with people considered at low-risk for severe disease, such as in the case of vaccinated grandparents visiting healthy children and grandchildren.

The Centers for Disease Control and Prevention announced the guidance on Monday.

The guidance is designed to address a growing demand, as more adults have been getting vaccinated and wondering

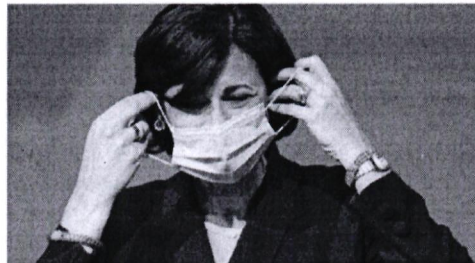
if it gives them greater freedom to visit family members, travel, or do other things like they did before the Covid-19 pandemic swept the world last year.

"With more and more people vaccinated each day, we are starting to turn a corner," said CDC Director Rochelle Walensky.

During a press briefing on Monday, she called the guidance a "first step" toward restoring normalcy in how people come together. She said more activities would be okayed for vaccinated individuals once case loads and deaths decline, more Americans are vaccinated, and as more science emerges on the ability of those who have been vaccinated to get and spread the virus.

The CDC is continuing to recommend that fully vaccinated people still wear well-fitted masks, avoid large gatherings, and physically distance themselves from others when out in public. The CDC also advised vaccinated people to get tested if they develop symptoms that could be related to Covid-19.

The CDC guidance did not speak to people who may have gained some level of immunity from being infected,



US Centres for Disease Control and Prevention (CDC) Director Rochelle Walensky. [Reuters]

and recovering from the coronavirus.

Officials say a person is considered fully vaccinated two weeks after receiving the last required dose of vaccine. About 31 million Americans — or only about nine per cent of the US population — have been fully vaccinated with a federally authorised Covid-19 vaccine so far, according to the CDC.

Authorised vaccine doses first

became available in December, and they were products that required two doses spaced weeks apart. But since January, a small but growing number of Americans have been fully vaccinated, and have been asking questions like: Do I still have to wear a mask? Can I go to a bar now? Can I finally see my grandchildren?

The guidance was "welcome news to

a nation that is understandably tired of the pandemic and longs to safely resume normal activities," said Richard Besser, president and CEO of the Robert Wood Johnson Foundation and a former acting director of the CDC.

"I hope that this new guidance provides the momentum for everyone to get vaccinated when they can and gives states the patience to follow the public health roadmap needed to reopen their economies and communities safely," said Besser, in a statement.

But some said the guidance is too cautious. Ali Khan, dean of the University of Nebraska College of Public Health, said the guidance is reasonable in many respects — with the exception of travel.

The CDC did not change its recommendations on travel, which discourages unnecessary travel and calls for getting tested within a few days of the trip. That could seem confusing to vaccinated people hoping to visit family across the country or abroad.

"They need to relax travel for those vaccinated" and to immediately publish electronic standards for documents that show whether a person is fully vaccinated, said Khan, who formerly was a leading CDC disease detective.

The new guidance also says nothing about going to restaurants or other places, even though governors are lifting restrictions on businesses, said Dr. Leana Wen, an emergency physician and public health professor at George Washington University who formerly was Baltimore's health commissioner.

CHUKA UNIVERSITY

Telephones: 020 2310512
020 2310518



P.O. Box 109-60400
Chuka

Knowledge is Wealth (*Sapientia divitia est*) *Akili ni Mali*
OFFICE OF THE DEPUTY VICE-CHANCELLOR
(Academic, Research & Student Affairs)

Telephones: 020 2310512/18
Direct Lines: 020-2329073, 0715-509858, 0731-620286
Direct Line: 020-202172

Email: cadmissions@chuka.ac.ke
Email: dvcrs@chuka.ac.ke

P.O. Box 109 60400, Chuka
Website: www.chuka.ac.ke
Website: www.chuka.ac.ke

INVITATION OF APPLICANTS FOR ADMISSION INTO THE BACHELOR OF LAWS PROGRAMME

Chuka University invites candidates to apply for the May, 2021 intake admission into the Bachelor of Laws (LL.B.) Self-Sponsored Programme. The aim of the Programme is to produce graduates to take towards becoming professional legal practitioners with expertise in research and practice needed in the society and legal institutions in Kenya and the rest of the world. The major focus of the Programme is environmental and land issues. This is in line with the University's niche in environment and renewable energy as well as the need to help resolve the increasing environmental and land cases. Possible career opportunities are available in: Government institutions; Inter-governmental institutions; Regional and international organizations; The United Nations Environment Programme; and NGOs, among others. The Chuka University's LL.B. Programme has been licensed by the Council of Legal Education (CLE) and accredited by the Commission for University Education (CUE).

MINIMUM ENTRY REQUIREMENTS

- At least a mean grade of C+ (Plus) in the Kenya Certificate of Secondary Education examination or its equivalent with a minimum grade of B (Plain) in English or Kiswahili;
- At least Five Principals/Passes in the Kenya Advanced Certificate of Education (A-Level) examination;
- A Bachelor's degree from institutions recognised by the Senate; or
- At least a Credit Pass in a Diploma in Law examination from accredited institutions recognized by the Senate

DURATION AND MODE OF STUDY: 8 Semesters (4 years), Full-Time

1. FEES: KSh. 185,000/= per annum for Kenyan Citizens, broken down as:

- (a) **TUTORIAL FEES:** KSh. 75,300/= per semester x 2 semesters
- (b) **STATUTORY FEES:** KSh. 18,200/= per semester x 2 semesters
- (c) Add 20% for non-Kenyan citizens.

2. CLINICAL ATTACHMENT: KSh. 15,000/= Once at the end of Year 3

APPLICATION PROCEDURE:

(a) Applications should be on official forms available at Chuka University Main Campus, OR downloaded from Website: www.chuka.ac.ke. Non-refundable fee of KES 2,000 to be deposited in the following accounts: Kenya Commercial Bank, Chuka Branch A/C No. 110 375 5439; or Cooperative Bank, Chuka Branch A/C No. 01 290 1818 9950; Equity Bank, Chuka Branch A/C No. 011021113 3460; ABSA Bank, Embu Branch A/C No. 2032727666; Family Bank, Chuka Branch A/C No. 014020002844; StanChart, Meru Branch A/C No. 010202475290. Deposits may be made at any branch.

(b) Applicants must return forms to P.O. Box 109 – 60400 Chuka, Attention should be: Registrar (Academic Affairs). Certified copies of certificates and original fee payment MUST be attached to the application form and returned latest two weeks prior to the commencement dates given for the programmes.

(c) One Academic Year is equivalent to 2 semesters of 12 weeks for full-time mode of study.

(d) A candidate may transfer up to a maximum of 40% of the course units (credit factors) from another institution in or outside Kenya, subject to the approval of the University in consultation with and recommendation of the Faculty of Law. Such credits must have been acquired from institutions recognized by the Senate, taken within a period acceptable to the Senate, and obtained by passing the courses with grades B and above.

Chuka University TELEPHONE LINES: 020-2329073, 0715-509858, 0731-620286

Chuka University is ISO 9001:2015 Certified



Inspiring Environmental Sustainability for Better Life



Kenya Bureau of Standards
Standards for Quality Life

Tel: 0206948000 | Toll Free Line 1545 | E-Mail: procurement@kbs.org | www.kbs.org

TENDER NOTICE - ADDENDUM

EXTENSION AND CLARIFICATION OF TENDERS

The Kenya Bureau of Standards (KEBS) wishes to inform firms participating in the tenders below, that clarifications have been deemed necessary, calling for an addendum to the Tenders. The closing date has therefore been extended as shown below to give bidders adequate time to respond appropriately.

TENDER NAME	ITEM DESCRIPTION	NEW CLOSING DATE
KEBS/T012/2020/2023	International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts. (Framework Agreement)	24 th March 2021 1100hrs (East African Time)
KEBS/T013/2020/2023	International Tender for Provision of Pre-Export Verification of Conformity (PVoC) to Standards Services - Goods (Framework Agreement)	24 th March 2021 1100hrs (East African Time)

Tender Security Bonds should therefore be valid for 180 days from the new closing date shown above. Bidders are advised to download the addendum from KEBS website: www.kbs.org. The Tenders will be opened at the time indicated in the tender documents on the new closing date shown above. Tenderers or their representatives who wish to witness the opening are welcome.

All other terms and conditions of the tender remain the same.

MANAGING DIRECTOR

#WajibBakuKEBS

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Standards for quality life

www.kbs.org www.facebook.com/kbs.org www.instagram.com/kbs.org

Annex 4: Advertisement on Digital Media



Website Tender Advertisement for PVOC 2021/2023

KEBS/T012/2020-2023: International Tender for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts

The screenshot shows the KEBS website interface. At the top, there is a navigation bar with the KEBS logo and tagline 'Standards for Quality life'. Below the navigation bar, there is a search bar and a language selector set to 'English'. The main content area is titled 'Tenders' and features a 'Media Centre' sidebar on the left. The sidebar includes links for 'News and Events', 'Media Release', 'Speeches', 'Public Notices', 'Procurement', 'Newsletters', and 'Standards Information Packets'. The main content area displays the tender details for 'KEBS/T012/2020-2023 - International Tender for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts'. The tender details include a list of conditions and contact information for the Managing Director of KEBS.

KEBS/T012/2020-2023 - International Tender for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts

11. The Kenya Bureau of Standards (KEBS) invites sealed technical and financial proposals from eligible companies for the provision of pre-export verification of conformity to standards for a period of three years. The verification of conformity is to be conducted on the basis of Kenya Standards or specifications approved by the Kenya Bureau of Standards.
12. Interested eligible companies may obtain further information from and inspect the tender documents at the Procurement Office, Kenya Bureau of Standards KEBS CENTRE Poyo Road off Mombasa Road during normal working hours (between 0800hrs and 1700hrs).
13. A complete set of tender documents may be obtained by interested companies from the procurement office upon payment of a non-refundable fee of KES 1,000.00 in cash or bankers cheque payable to Kenya Bureau of Standards or downloaded for free from the KEBS website: www.kebs.org. Companies which download the tender documents from the website must notify KEBS through procurement@kebs.org and info@kebs.org immediately.
14. Prices quoted must be expressed in United States Dollars and shall remain valid for a period of 180 days from the closing date of the tender.
15. Completed tender documents shall be enclosed in plain sealed envelopes, marked with the tender number and be deposited in the tender box provided at KEBS CENTRE, Poyo Road off Mombasa Road or be addressed and posted to:
Managing Director
Kenya Bureau of Standards
PO Box 54974-00200
NAIROBI-Kenya
Email address: info@kebs.org, procurement@kebs.org and contracts@kebs.org

Annex 5: Advertisement on international tender portal



← → ↻ kebs.org/index.php?option=com_content&view=article&id=843:kebs-t012-2020-2021-international-tender-for-provision-of-pre-export-verification-of-conformity-pro... 🔍 ☆ ⌵ ⌵ ⌵

Email address: info@kebs.org, procurement@kebs.org and www@kebs.org
to be received on or before **Wednesday 10th February 2021 at 1200hrs (East African Time).**

1.6 Tenderers must be accompanied by Tender Security of USD 200,000 (Two Hundred Thousand) in the form of a bank guarantee from reputable bank.

1.7 Tender/s will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend the opening at KEBS CENTRE, Popo Road off Mombasa Road. Tenders delivered outside the required time will not be accepted.

Download the tender document below:
KEBS/T012/2020-2023: International Tender for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts

Extension and Clarification of Tender
Approved for Extension of closing date for PVOC Tender Notice - 16 February 2021

Gazetted Extension Notice of the Tender
Addendum No.1 International Tender No. KEBS/T012/2020-2023 for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts
Addendum No.2 International Tender No. KEBS/T012/2020-2023 for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts
Addendum No.3 International Tender No. KEBS/T012/2020-2023 for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services for Used Motor Vehicles, Mobile Equipment and Spare Parts

Online Services	Industry Sectors	Related Links	Contact Us
Purchase Kenya Standards	Food and Agriculture	International Organization for Standardization (ISO)	Managing Director Kenya Bureau of Standards
Kenya Standards Catalogue	Chemical	International Electrotechnical Commission (IEC)	Popo Road, Off Mombasa Road,
Sample Test Results	Textile and Leather	The British Standards Institution (BSI)	P.O. Box 54974 - 00200
Purchase ISO Standards	Civil	The African Organisation for Standardisation (AFSO)	Nairobi Kenya
Motor Vehicle Inspection Details	Electrotechnical	African Electrotechnical Commission (AFSEC)	Tel: + 254 (0) 694 0000
Notify Kenya TBT	Mechanical	EAC SCoM (Standards, Quality Assurance, Metrology and Testing)	Mobile: 0722 202 137 or 0734 600 471/2
Propose Standardization Requests	Services	World Trade Organization (WTO)	PVOC: 0724 355 242
Enquiry	Trade Affairs		Email: info@kebs.org
METUMS Customer Portal			

Visitor Counter VICE-CHARTER



**Kenya Bureau of
Standards**
Standards for Quality life

Below are the links to the Tender and the Addendums: KEBS/T012/2020-2023

Tender Document

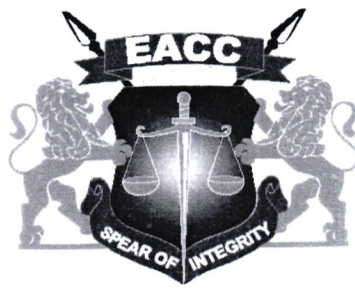
<https://www.kebs.org/images/tenders/2021/January/final/correction/Tender%20No%20KEBST0122020-2023.pdf>

Addendums

<https://www.kebs.org/images/tenders/2021/February/ADDENDUM%20NO%201-KEBS%20T012%202020-20230001.pdf>

<https://www.kebs.org/images/tenders/2021/March/ADDENDUM%20-KEBS.T012.2020.2023-%2010.03.2021.pdf>

<https://www.kebs.org/images/tenders/2021/April/Addendum-3--KEBS.T012.2020-2023-PVOC-MOTOR-VEHICLES.pdf>



ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya

TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000

FAX: 254 (020) 2240954 EMAIL: eacc@integrity.go.ke WEBSITE: www.eacc.go.ke

When replying please quote:

EACC. 1/13 VOL. II (30)

22nd April, 2021

Michael R. Sialai, EBS,
Clerk of the National Assembly,
Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI.

Tracy Chelot.
see deal card

Dear Sir,

RE: REPORT TO THE SELECT COMMITTEE ON IMPLEMENTATION

26/4/21

Reference is made to your letter Ref: **NA/DAASC/COI/2021/ (40)** dated **30th March 2020** requesting the Commission to apprise the National Assembly' Select Committee on Implementation on;

"The implementation status and challenges faced, if any, in the implementation of the report of the public investments committee on its consideration of the special audit report on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards"

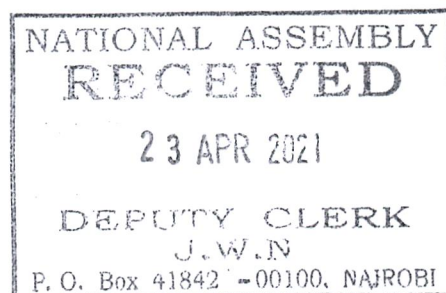
Kindly find the attached Report providing updates on the inquiry.

Thank you for your cooperation and support.

Yours sincerely

TWALIB MBARAK, CBS
SECRETARY /CHIEF EXECUTIVE OFFICER

Encls;





**REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)
ON THE IMPLEMENTATION STATUS OF THE SPECIAL AUDIT REPORT ON
PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY TO
STANDARD SERVICES FOR USED MOTOR VEHICLES, MOBILE EQUIPMENT
AND USED SPARE PARTS BY THE KENYA BUREAU OF STANDARDS**

Thursday, 22nd April 2021

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) ON THE IMPLEMENTATION STATUS OF THE SPECIAL AUDIT REPORT ON PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY TO STANDARD SERVICES FOR USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS BY THE KENYA BUREAU OF STANDARDS

1. Preliminaries

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act No. 21 of 2011. The Act was enacted pursuant to the requirement under Article 79 of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity, ethics and anti-corruption. The Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act of 2003, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Bribery Act, 2016 among others.
- On **4th December, 2020** the Select Committee on Implementation invited the Commission vide a letter Ref: **NA/DCS/COI/2020/ (98)** dated **26th November 2020** to be apprised by the Commission on;

"The implementation status and challenges faced, if any, in the implementation of the report of the public investments committee on its consideration of the special audit report on procurement of pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards"

- This is a further Report submitted pursuant to a request by the National Assembly Select Committee on Implementation vide a letter Ref: **NA/DAASC/COI/2021/ (40)** dated **30th March 2020**.

2. Background of the Investigations

- The Commission is seized of the matter following a complaint received on **17th January 2020** for alleged procurement irregularities in the award of tender for Pre-Export Verification of Conformity to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards.

- In **June, 2020** the Commission received the report of the Parliamentary Investments Committee (PIC) recommending expeditious investigations on the circumstances under which the KEBS entered into contract with firms *inter alia*;

M/s Auto Terminal Japan (ATJ) and M/s EAA Company Limited that had been recommended for debarment, procurement irregularities and forgery with a view of preferring charges against those found culpable.

- The recommendations of PIC were incorporated in the ongoing investigation as the allegations and objectives were similar.
- It is noteworthy the inquiry has both local and international aspects.

3. Highlights of Findings

The Commission has established the following;

- i. That on the **13th November, 2019** the National Standards Council (NSC) held a meeting and deliberated on the issue of additional service providers in the Pre-Export Verification of Conformity (PVoC) to standard services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards. It was resolved that the KEBS proceeds with the procurement of additional service providers.
- ii. That on the **19th November, 2019**, the Managing Director together with Chairman of the National Standards Council (NSC) signed the certificate of resolutions for the unzoning of PVoC contracts and addition of partners in the motor vehicle inspection segment respectively.
- iii. That on **3rd December, 2019** the tender for Pre-Export Verification (PVoC) of Conformity to standard services for used motor vehicles, mobile equipment and used spare parts was advertised on mygov.go.ke and [KEBS Website](#).
- iv. That **three (3) bids** were received from the following companies;
 - a. M/s Auto Terminal Japan (ATJ).
 - b. M/s EAA Company Limited.
 - c. Nippon Inspection Centre Ltd.
- v. That M/s Nippon Inspection Centre Ltd was declared non-responsive and subsequently disqualified for failure to meet the minimum set requirements.

- vi. That on **20th March, 2020** KEBS entered into a contract with **M/s Auto Terminal Japan (ATJ) and M/s EAA Company Limited** which had been awarded the tender.

4. Status of the Investigations

- The Commission has completed its investigations touching on the **local aspects** which established irregularities in the procurement process. Some of the offences identified include;
 - i. Willful failure to comply with the law and applicable procedures and guidelines relating to procurement and tendering of contracts contrary to the Anti-Corruption and Economic Crimes Act, Cap 65 of the Laws of Kenya.
 - ii. Abuse of Office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
 - iii. Forgery contrary to Section 349 of the Penal Code.
- The Commission is **compiling** the Report with its recommendations to be submitted to the Director of Public Prosecutions (DPP) as required under **Section 35 of the Anti-Corruption and Economic Crimes Act, 2003** for review and direction. However, the investigation will not be complete without inclusion of evidence from the foreign jurisdiction.
- On the **foreign aspects**, the Commission initiated **Mutual Legal Assistance (MLA)** requests to Japan and United Kingdom to establish the veracity of the registration and directorship of the aforementioned companies and issues of forgery. The Commission is awaiting servicing of the MLA requests.

5. Challenges

- The Commission has faced the following challenges which have hampered expeditious investigations as recommended in the PIC Report;

a) Delays occasioned by adjudication and litigation; The Companies involved in this matter such as;

- ✦ **M/s Niavana Agencies** proceeded and filed a Judicial Review at the High Court, **JR NO. 66 of 2020;**
- ✦ **M/s EAA Company Limited** also filed a **Judicial Review Application No. 88 of 2020;** and

↓ **Constitutional Petition No. 180 of 2020** dated **26th of May, 2020** filed on the same matter.

The **pending civil litigations** have also impaired efficient and timely investigations.

b) Processing of MLA Requests; The matter involves cross-border investigations that require Mutual Legal Assistance from Japan and UK. This is critical in obtaining evidentiary documents from the jurisdictions to support the case. This will have a bearing on when the investigations will be concluded.

6. Conclusion/Way Forward

This matter remains of priority to the Commission and upon completion, the file will be submitted to the Director of Public Prosecutions (DPP) in accordance with **Section 35 of the Anti-Corruption and Economic Crimes Act, 2003** for review and direction.

Dated this Thursday, 22nd day of April 2020.



=====

Twalib Mbarak, CBS
Secretary/Chief Executive Officer
ETHICS AND ANTI-CORRUPTION COMMISSION

NATIONAL POLICE SERVICE

Telegrams: "CRIMINAL" Nairobi

Email: director @cid.go.ke

Tel: 020343312, 0202603724



MAZINGIRA HOUSE

KIAMBU ROAD

P.O. Box 30036

DIRECTORATE OF CRIMINAL INVESTIGATIONS

DCI/IB/SEC/2/8/13/VOL.190

12TH APRIL, 2022

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. BOX 418422-00100
NAIROBI

@DAA705C

26/4/22

RE: IMPLEMENTATION STATUS OF HOUSE RESOLUTION

Legal Establishment of the DCI

The National Police Service is established by Article 243 of the Constitution of Kenya, 2010 and has its functions set out in the National Police Service Act No. 11A of 2011.

The Directorate of Criminal Investigations is established by Part V of the National Police Service Act No. 11A of 2011 as a directorate of criminal investigations to maintain law and order, investigate all criminal matters and arrest criminal offenders.

The Directorate of Criminal Investigations draws its mandate under Section 35 of the National Police Service Act No. 11A of 2011 among others to:

- a) Collect and provide criminal intelligence;
- b) Undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cyber-crime among others.

Background.

On 26th June 2020, the Director of Criminal Investigations received a letter from Public Procurement Regulatory Authority (PPRA) requesting the DCI to investigate allegations for falsification of documents by M/S EAA company limited in respect to tender number KEBS/T057/2014/2015. Subsequently on 1st October 2020, the DCI received a letter from the National Assembly, Public investment Committee forwarding a bunch of documents relating to both M/S EAA Ca. Ltd and Auto Terminal Japan (ATJ). The letter requested the DCI to investigate the authenticity of the documents that were used by EAA Company Limited and ATJ in application of various tenders with KEBS.

② Chebet Tracy
bring to the attention of committee
27/4/22



In the course of investigations, several investigative requests were placed and a host of documents recovered from Public Procurement Regulatory Authority (PPRA), Office of the Auditor General (OAG), Kenya Bureau of Standards (KEBS) and the National Central Bureau (INTERPOL). Interviews were conducted and the following are the findings;

1. **That** there is a complaint launched with the Public Procurement Regulatory Authority (PPRA) in respect to falsification of document by EAA Company Limited and Auto Terminal Japan (ATJ) Limited when trying to secure tender number KEBS/T053/2014/2015 with Kenya Bureau of Standards (KEBS).
2. **That** the complaint emanates from a Special Audit Report conducted by the Office of the Auditor General with recommendation of debarring both EAA Company Limited and Auto Terminal Japan (ATJ) Limited.
3. **That** the Special Audit Report recommended debarring both EAA Company Limited and Auto Terminal Japan (ATJ) Limited.
4. **That** the office of the Auditor General conducted a periodic audit in respect to tender number KEBS/T019/2017-2020 in line with section 34 of the Public Audit Act and compiled a report which was tabled before parliament. The Kenyan delegation going for the Special Audit Assignment visited Japan, United Arab Emirates, United Kingdom, and South Africa among other countries inspection of motor vehicles is done.
5. **That** the Special Audit Report disclosed that both EAA Company Limited and Auto Terminal Japan (ATJ) Limited used conflicting information to apply tenders with KEBS.
6. **That** KEBS established Pre-Export Verification of Conformity (PVOC) to standards program that is a conformity assessment program applied to products at the respective exporting countries, to ensure the compliance with the applicable Kenyan Technical Regulations and Mandatory standards or approved specifications.
7. **That** the PVOC program is operated by accredited third party inspection companies on behalf of KEBS where the basis of certification is KEBS.
8. **That** KEBS procured for inspection services for the period of 2017-2020 which attracted M/S Nippon Inspection Centre Corporation, M/S Auto terminal japan Ltd, M/S Quality Inspection Services Inc. Japan and M/S EAA Company Limited.
9. **That** M/S Nippon Inspection Centre Corporation, M/S Auto terminal japan Ltd, M/S Quality Inspection Services Inc. Japan and M/S EAA Company Limited submitted their bid documents to KEBS for the award of tender number KEBS/T019/2017-2020.
10. **That** the alleged forged/faisified documents used by both EAA Company Limited and Auto Terminal Japan (ATJ) to source for various tenders with KEBS were part of the bid documents presented to KEBS.

11. **That** both EAA Company Limited and Auto Terminal Japan (ATJ) are Multi-national organizations whose particulars cannot be found at the Business Registration Bureau. As such, the investigating officer used National Central Bureau (INTERPOL) to establish the presence of the duo in the respective countries as indicate in their bid documents.
12. **That** the investigating officer via National Central Bureau (INTERPOL) forwarded the alleged forged documents to the respective countries of origin with a view to determine the authenticity of the alleged falsified documents.
13. **That** the National Central Bureau (INTERPOL) having liaised with the respective countries as per the request received responses in respect to the alleged falsified documents as follows.

1. NCB ABU-DHABI UAE

- I. The information mentioned in the professional business license number 548797 is incorrect. The business license was registered after the document had been used in the tender document **(refer to B 2)**. This was also captured in the KEBS due diligence 2015.

2. NCB TOKYO JAPAN

- I. Agreement027 (Kisarazu Comprehensive Hole Sale Commerce Housing Complex Cooperative Association). It has been confirmed that the association exists and has lent land to Autoterminal Japan **(refer to B 3)**.
- II. Lease Agreement016 (RUN GLOBAL Co., Ltd). It has been confirmed that the company exists and the company has clarified that: **-(refer to B 3)**.
 - a. It is in a business relationship with EAA but has never signed a lease contract with them.
 - b. The signature on the lease contract was not signed by Mr. KOMURO (The director of Kisarazu)
- III. Lease Agreement-MUTSUI SOKIO023. It has been confirmed that the organization exists and clarified as follows; - **(refer to B 3)**.
 - a. The company lends a part of the vehicle storage area to EAA for 520,000 Yen per month where EAA conducts inspection work for vehicles.
 - b. MUTSUI SOKO and EAA have not signed an official lease contract or agreement for the use of the area.
- IV. Lease Agreement-NIPPON EXPRESS018. It has been confirmed that the organization exists and the company clarifies as follows; - **(refer to B 3)**.
- V.
 - a. The company is aware that EAA uses part of the vehicle handling area that the company lends to other company for inspection work for vehicles to be exported.
 - b. NIPPON EXPRESS and EAA have not signed a lease contract or agreement.

- VI. RECEIPT024 and invoice (SUCCESS Co. Ltd). It has been confirmed that the organization exists and the organization clarified that both the invoice and receipts were issued by SUCCESS to EAA. **(refer to B 3)**.
- VII. Lease Agreement-SANKYU LTD22. It has been confirmed that the organization exists and it has not been possible to clarify whether the agreement between SANKYU LTD and EAA is authentic because the said signatory already left the company. **(refer to B 3)**.
- VIII. Lease Agreement015 (MOJI KUON). It has been confirmed that the organization exists and the organization clarified that it has never signed a lease contract nor a lease agreement with EAA. **(refer to B 3)**.
- IX. Transfer ownership certification029 (AUTO LOGISTICS JAPAN). It has been confirmed that the organization exists and clarified that it entrusts the inspection work for vehicles to be exported to Kenya to EAA and gets export permission and as well signed the transfer certification. **(refer to B 3)**.
- X. Transfer ownership certification029 (KLC). It has been confirmed that the organization exist and clarified as follows;- **(refer to B 3)**.
- a. KCL is an inspection agency for vehicles to be exported where it sends inspection results and photos to EAA and EAA prepares necessary documents for export.
- b. KLC do not know if the transfer ownership certificate exists and the name of the representative director of KLC given on the certificate that was submitted by EAA to KEBS is different from the actual director's name.
- XI. In respect to ECL Agency Co. Ltd, the directors disputed having signed any formal lease agreement with East Africa Auto Mobile Services. **(Refer to B 4)**
This was as well confirmed by OAG Special report.

3. NCB MANCHESTER, UNITED KINGDOM

- I. Auto-Terminal. This company does not exist at Clipper house in Tilbury Port. **(Refer to B 4)**.
- II. In respect to KC GLOBAL LINKS LTD (Formerly known as East Africa Auto Mobile Limited), Chris Lukosi confirmed that he is the owner of the company. He distanced himself with the documents linking his company with East Africa Automobile Limited **(Refer to B 4)**. This was as well confirmed by KEBS due diligence report as well as OAG report.

Arising from the above findings and analysis of the documentary evidence, both EAA Company Limited and Auto Terminal Japan (ATJ) inserted falsified documents in their bid documents which were mandatory in securing contracts with KEBS. We have forwarded the inquiry file to the Office of the Director of Public Prosecution with recommendations that the directors of EAA Company Limited and Auto Terminal Japan (ATJ) be charged with:

1. Making a false document contrary to section 347 of the Penal code
2. Uttering a false documents contrary to section 353 of the Penal Code

Also forwarded to the Office of the Director of Public Prosecution is a request for Mutual Legal Assistance to have the directors of both EAA Company Limited and Auto Terminal Japan (ATJ) be extradited for processing and be charged.

Additionally, and over the same, the Public Procurement Regulatory Authority (PPRA) reported to the Director of Criminal Investigations via their letter Ref: PPRA/DEB/COMM/VOL.I(3) dated 7th February, 2022 (**Refer to B 5**), alleged impersonation of Calvince Omondi Omino C/O Klein & Omino Associates.

The facts surrounding the compliant are that one Calvince Omondi Omino C/O Klein & Omino Associates impersonated to be an Advocate of the High Court of Kenya at Milimani Law Courts. The purported advocated sort for stay orders in favor of EAA Company Limited to enable EAA evade debarment by PPRA in case number E1615 of 2021 EAA Company Ltd verses Paul Nyamodi and 6 others.

The case was filed by EAA Company Ltd via Klein & Omino Associates who are indicated as the advocate of the plaintiff. The matter is under active investigations and the preliminary finding is that the Law Society of Kenya (LSK) via a letter dated 20th February, 2022 (**Refer to B 6**) have confirmed that Klein & Omino Associates is not a registered firm with the Law Society of Kenya.

There are clear indications of possible offences of conspiracy and impersonation against the purported advocate and the director of EAA Company Limited.

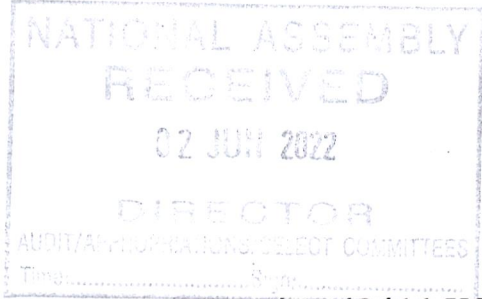
Thank you.



GEORGE KINOTI, CBS
DIRECTOR OF CRIMINAL INVESTIGATIONS

Encl.

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② CHG-BET
Please check
FAA
02/6/22

PPRA/DG/2/11 VOL. II(52)

31st May, 2022

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI
(Attention: Serah M. Kioko, MBS)

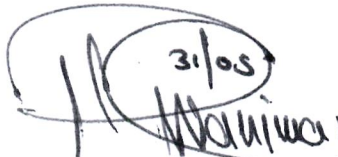
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DAA & OSE
2/6/22

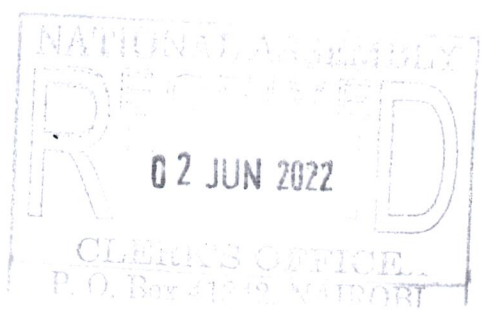
FINAL REPORT ON IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENTS COMMITTEE RECOMMENDATIONS ON ITS CONSIDERATION OF THE SPECIAL AUDIT REPORT IN PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY TO STANDARD SERVICES FOR USED MOTOR VEHICLES, MOBILES EQUIPMENT AND USED SPARE PARTS BY THE KENYA BUREAU OF STANDARDS

We refer to our letter Ref: PPRA/DG/2/11 VOL.11(49) of 2nd March, 2022 providing an update on the progress of the court matter that had been filed by M/s Auto Terminal Japan Limited challenging the decision of the Public Procurement Regulatory Authority to debar it for three years.

This is to notify you that the two cases filed in court by M/s Auto Terminal Japan have now been concluded in favour of the Authority. Consequently, the decision to debar M/s Auto Terminal Japan Ltd for a period of three (3) years with effect from 2nd June, 2021 has now been confirmed. The firm will not be able to participate in public procurement and asset disposal proceedings in Kenya until the debarment period expires.

We now enclose our final report on the matter for your onward transmission to the Select Committee on Implementation.


Patrick K. Wanjuki
DIRECTOR GENERAL
(Encl.)





PPRA

PUBLIC PROCUREMENT
REGULATORY AUTHORITY

FINAL REPORT ON IMPLEMENTATION STATUS OF THE PUBLIC INVESTMENTS COMMITTEE RECOMMENDATIONS ON ITS CONSIDERATION OF THE SPECIAL AUDIT REPORT ON PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY TO STANDARD SERVICES FOR USED MOTOR VEHICLES, MOBILE EQUIPMENT AND USED SPARE PARTS BY THE KENYA BUREAU OF STANDARDS

31ST MAY, 2022

INTRODUCTION

1. A special audit team of the Office of the Auditor General carried out investigations on the tender for procurement of **Pre-Export Verification of Conformity to Standards Services for used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards (KEBS) being tender number KEBS/T019/2017-2020.**
2. The special audit focused its review on the documents versus the evidence by bidders to corroborate the physical and technological infrastructure required to satisfactorily perform services required under this tender in Japan, United Kingdom and United Arab Emirates where subcontracting was not allowed.
3. As a result of the special audit, the Office of the Auditor General established that two of the bidders in the subject tender being EAA Company Limited and Auto Terminal Japan Limited had breached the procurement law and prepared a report dated 10th July, 2019 on its findings recommending the debarment of EAA Company Limited and Auto Terminal Japan Limited for falsification of documents.
4. The special audit report dated 10th July, 2019 was submitted to the National Assembly for consideration. After hearing the parties, the Parliamentary Investments Committee of the National Assembly prepared a report dated June, 2020 on **Consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standard services by the Kenya Bureau of Standards.** The PIC report was adopted by the House on 13th October, 2020.
5. Amongst the recommendations of the PIC report was a recommendation that:

“In line with the recommendation of the Auditor General in the Special Audit Report dated 10th July, 2019, KEBS due diligence report on Tender No. KEBS/T057/2014-2015 and the findings of this committee, the Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No 33 of 2015) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations 2020, immediately commences debarment proceedings against M/S EAA and MS ATJ for violating the Public Procurement and Asset Disposal Act in the adjudication of the TENDER No. KEBS/T019/2017/2020 and Ms. EAA in Tender No. KEBS/T057/2014-2015”

6. The Public Procurement Regulatory Board therefore invoked its powers under Section 41 of the Public Procurement and Asset Disposal Act, 2015 (the **Act**) and Regulation 22 of the Public Procurement and Asset Disposal Regulations, 2020 (the **Regulations**) and constituted a Debarment Committee to consider the recommendations for debarment against the two firms.

IMPLEMENTATION STATUS OF THE PIC REPORT

Recommendation for Debarment of EAA Company Limited

7. The Debarment Committee considered the recommendation for debarment of EAA Company Limited during its debarment sitting of 22nd March, 2021. Upon consideration of the recommendation for debarment in accordance with Regulation 22 (5) (a) of the Regulations the Committee established that there was a *prima facie* case for debarment.
8. The Committee therefore issued a Notice of Intended Debarment and invited EAA Company Limited and the Office of Auditor General to make their presentations on the matter. The hearing of this debarment was also enjoined together with a request for debarment of EAA Company Limited by a different applicant being Dr. Charles Nzai.
9. The Committee heard all the three parties and found that EAA Company Limited was guilty of falsification of documents and information.
10. A debarment decision of the Committee was delivered on 23rd June, 2021 where the Committee's finding was as follows:

“Having addressed our minds to the two requests for debarment, the response and submissions of the Applicants herein vis-à-vis the provisions of the law, it is our finding that both requests for debarment have disclosed a case for debarment of the Respondent for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015. Therefore, and in accordance with the powers bestowed upon the Public Procurement Regulatory Board, the Respondent is hereby debarred for the minimum period of three (3) years in line with section 41 (4) of the Act with effect from the date of this decision.”

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11. The decision was communicated to the parties and EAA Company Limited on several occasions unsuccessfully filed several suits with the High Court seeking to review the debarment decision.
12. The debarment of EAA Company Limited was therefore published on the website of Public Procurement Regulatory Authority and gazetted by the National Treasury on 24th December, 2021 via Gazette Notice No 14023 in line with the provisions of Regulation 22(5)(k) of the Regulations.
13. The current status of this matter is that the Directorate of Criminal Investigations is investigating the firm of Klein & Omino Associates and its proprietor Calvince Omondi Omino who masqueraded to be an Advocate and filed a suit in the Chief Magistrates Court on the instructions of EAA Company Limited seeking to overturn the debarment decision.
14. The Authority also searched through the website of the Business Registration Services to confirm whether the said firm (Klein & Omino Associates) was registered as a law firm. The search revealed that the firm was registered as agent and property managers. In addition, the Authority wrote to the Law Society of Kenya (LSK) vide a letter Ref No. PPRA/DEB/COMM/VOL.1(29) dated 4th February, 2022 and LSK responded vide their letter Ref No. M3 dated 8th February, 2022 confirming that according to the Society's records, they did not have an Advocate who had declared to practice in the firm of Klein & Omino Associates. They further confirmed that they did not have an Advocate by the name Calvince Omondi Omino and recommended that the said person be subjected to criminal proceedings.
15. The Chief Magistrates suit seeking to overturn the debarment of EAA Company Limited was therefore dismissed on 12th January, 2022 on the basis that the suit had been instituted by an unqualified person passing off as an Advocate.

Recommendation for Debarment of Auto Terminal Japan Limited.

16. The Debarment Committee considered the recommendation for debarment of Auto Terminal Japan Limited during its debarment sitting of 1st April, 2021. Upon consideration of the recommendation for debarment in accordance with regulation 22 (5) (a) of the Regulations the Committee established that there was a *prima facie* case for debarment.
17. The Committee therefore issued a Notice of Intended Debarment and invited Auto Terminal Japan Limited and the Office of Auditor General to make their presentations on the matter.

The hearing of this debarment was also enjoined together with a request for debarment of Auto Terminal Japan Limited filed by a different applicant being Dr. Charles Nzai.

18. The Committee heard all the three parties and found that Auto Terminal Japan Limited was guilty of falsification of documents and information.

19. A debarment decision of the Committee was issued on 3rd June, 2021 where the Committee's finding was as follows:

“Having addressed our minds to the two requests for debarment, the responses and submissions of all the parties herein vis-à-vis the provisions of the law, it is our finding that both requests for debarment have disclosed a case for debarment of the Respondent for falsification of information and documents contrary to section 41(1)(d) of the Public Procurement and Asset Disposal Act, 2015. Therefore, and in accordance with the powers bestowed upon this Board's Committee the Respondent is debarred for the minimum period of three (3) years with effect from the date of this decision.”

20. Before the decision was communicated to the parties, on 3rd June, 2021, Auto Terminal Japan Limited served the Authority with conservatory orders suspending the debarment proceedings against them pending the hearing of their suit filed in the High Court Constitutional and Human Rights Court being Petition Number E191 of 2021.

21. On 24th March, 2022 the Petition Number E191 of 2021 was dismissed and after a lapse of Twenty-One (21) days, the debarment of Auto Terminal Japan Limited was published on the Authority's website in accordance with the provisions of Regulation 22(5)(j) of the Regulations.

22. After dismissal of the petition, Auto Terminal Japan, yet again approached the court by way of judicial review under Nairobi High Court JR Application No. E055 of 2022 seeking to overturn the debarment decision. The judicial review application was dismissed by the court on 27th May, 2022. PPRA has now written the Cabinet Secretary, National Treasury & Planning to issue a gazette notice confirming the debarment of Auto Terminal Japan Limited.

CONCLUSION

23. In conclusion, we submit before the Honourable members that the recommendation of the Parliamentary Investment Committee on Consideration of the Special Audit Report on

Procurement of Pre-Export Verification of Conformity to Standard services by the Ke Bureau of Standards has now been fully implemented by the Authority; and the companies recommended for debarment i.e. EAA Company Limited and Auto Term Japan have been debarred from participating in procurement and or asset disposal proceedings in Kenya.

Dated this 31st day of May 2022.

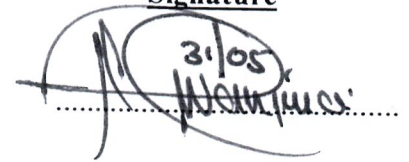
For PPRA

Designation

Signature

Patrick K. Wanjuki

Director General



Attachments:

- I. Debarment Decision in Debarment Application No. 1 & 2 – Auditor General & Char Nzai vs. EAA Limited
- II. Debarment Decision in Debarment Application No. 4 & 5 – Auditor General & Char Nzai vs. Auto Terminal Japan Limited
- III. Judgment in Nairobi High Court Judicial Review Application No. E055 OF 2022 Republic vs. Public Procurement Authority & Public Procurement Regulatory Board .
Parte Auto Terminal Japan
- IV. Judgment in Nairobi High Court Constitutional Petition No. E191 of 2021 – Auto Terminal Japan vs. Auditor General & 4 Others

