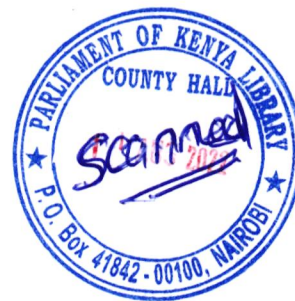


Approved for tabling.

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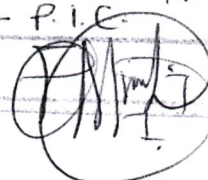
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FOURTH SESSION

PUBLIC INVESTMENTS COMMITTEE

PROGRESS 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 KENYA BUREAU OF
STANDARDS

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 FEB 2020	DAY: THURSDAY
TABLED BY:	HON. ABDULSWAMAD SHARIFF NASSIR, MP CHAIR- P.I.C.



DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY 2020

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ABBREVIATIONS AND ACRONYMS

ATJ	-	AUTO TERMINAL JAPAN
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 INC. JAPAN
WTO	-	WORLD TRADE ORGANIZATION
TBT	-	TECHNICAL BARRIERS TO TRADE
UAE	-	UNITED ARAB EMIRATES
U.K	-	UNITED KINGDOM

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 13th November, 2019.

This special audit 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.

The Committee has so far held meetings with the Management of the KEBS and proposes to meet the following entities in its consideration of the Special Audit Report:

- (1) The Public Procurement Regulatory Authority;
- (2) The National Standards Council;
- (3) KEBS Tender Committee;
- (4) M/S EAA Company Limited;
- (5) M/S Auto Terminal Japan; and,
- (6) The Kenya National Audit Office.

In its consideration of the Report, the Committee will seek 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 will also look 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 progress report contains the submissions by the Kenya Bureau of Standards management who appeared before the Committee, preliminary observations and findings arising from the Committee's consideration of the Report.

On behalf of the Public Investments Committee and pursuant to Standing Order 44 and Communication from the Chair No. 12 of 2019 on the procedure for presentation of progress reports from Committees, it is my pleasant duty to present this progress 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. 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 National Assembly Standing Orders 2013;
- (b) the Constitution of Kenya;
- (c) the National Assembly (Powers and Privileges) Act (Cap. 6);
- (d) the State Corporations Act (Cap. 446);
- (e) the Public Procurement and Disposal Act, 2005;
- (f) the Public Procurement and Disposal Regulations, 2006;
- (g) the Public Procurement and Assets Disposal Act, 2015
- (h) the Public Finance Management Act, 2012;
- (i) the Public Audit Act 2003, and
- (j) the Public Audit Act, 2015 among others.

1.2 COMMITTEE MEMBERSHIP

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

Name of Member	Constituency	Party
Hon. Abdullswamad Shariff 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, 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 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 Kwenya Thuku, MP	Kinangop	JP

1.3 COMMITTEE SECRETARIAT

Evans Oanda	-	Senior Clerk Assistant
Marlene Ayiro	-	Senior Legal Counsel
Mohamed Boru	-	Clerk Assistant II
Thomas Ogwel	-	Fiscal Analyst II
Eric Kariuki	-	Research Officer II
Noelle Chelagat	-	Media Relations Officer III
John Mungai	-	Audio Recording Officer
Alex Mutuku	-	Senior Sergeant-at-Arms

1.4 COMMITTEE PROCEEDINGS

In its consideration of the matter, the Committee has so far held two sittings in which it has met with the Kenya Bureau of Standards Management. The Committee also proposes to meet the following in the course of the inquiry:

- (a) The Public Procurement Regulatory Authority;
- (b) The National Standards Council;
- (c) KEBS Tender Committee;
- (d) M/S EAA Company Limited;
- (e) M/S Auto Terminal Japan;
- (f) The Kenya National Audit Office, among others.

2. 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.

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

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 Program

4. PVOC program was started on 29th September 2005 by KEBS, through the publication of Legal Notice No. 78 of 15th July, 2005 by the Minister for Trade and Industry. 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 Program

5. The following are the objectives of the Pre-Export Verification of Conformity program:
 - (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.

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

7. 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.
8. 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.
9. 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.

Special Audit Report of the Auditor General on Procurement of Pre-Export Verification of Conformity (PVOC) to Standard Services- Used Motor Vehicles, Mobile Equipment and Used Spare Parts

10. The Auditor-General conducted a follow-up special audit at Kenya Bureau of Standards (KEBS) after the May 2016 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

11. 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

12. 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 PPDA, 2015.

3. CHAPTER: EVIDENCE

3.1 EVIDENCE SUBMITTED BY THE KENYA BUREAU OF STANDARDS

13. 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.

14. The Committee was briefed as follows:

Background on Pre-Export Verification of Conformity

15. 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.

16. 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

17. 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 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.
- f) To enhance efficiency of clearance of imported goods at the ports of entry

Operations of the Program

18. 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

19. 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 **KS1515:2000 - 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.

20. 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

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

Table 1: Number of Vehicles Inspected

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

Table 2: Motor vehicle Inspection Service providers in the World

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 INPSECTION
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, JAAL, 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

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 the request for inspection is submitted by the 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

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

The Tendering Process

23. 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.

24. 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

25. 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.
26. 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.
27. 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.
28. The financial opening and evaluation was carried to M/s Quality Inspection services Japan (QISJ).

Due Diligence

29. 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.
30. 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.
31. 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

32. 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.

33. 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

34. 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.

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

35. The tender was advertised on 3rd December 2019 on MyGov in the Daily nation newspaper and KEBS website. The tender seeks to expand the contract for provision of PVOC services by bringing in additional service providers for the contract duration.
36. 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.
37. 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

38. 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

39. 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

40. 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

41. 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 M/s EAA Company Limited and M/s Auto Terminal Japan Limited - who scored the required overall score of 90.7 and 90.9 marks respectively, out of a maximum 100 points - subject to conduct of due diligence and consideration of the report confirming and verifying the qualifications of the tenderers.

4. CHAPTER 4:

4.1. COMMITTEE PRELIMINARY OBSERVATIONS

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 preliminary observations and findings:

- (1) KEBS PVOC Program was started on 29th September, 2005 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/T019/2017-2020. 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 has 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 a number of 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.
- (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 should be subjected to proceedings of the law having contravened Section 41 (1) (h) of the Public Procurement and Disposal Act, 2015.
- (15) The Company 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 has 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) The Company 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 that debarment procedures should be initiated against M/S Auto Terminal Japan and M/S EAA Company Limited due to their their fragrant violation of the provisions of the procurement law.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.

- (23) The contract for Enlargement of Provision of Pre-Export Verification of Conformity(PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts had not yet been awarded and the Committee advised the Management of KEBS to await the recommendations of the National Assembly on the Special Audit Report before awarding the contract.
- (24) KEBS Management had shown inconsistencies in the information that it has 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.
- (25) The Committee, through one of its Members, was in receipt of a legal opinion from the firm of Iseme Kamau and Maema Advocates who had been contracted by KEBS Management to provide an opinion on the legal implications of procuring additional partners for the PVOC services. The advocates were of the view 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.
- (26) 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.
- (27) KEBS Management acknowledged that it had received an advance legal opinion with regards to this matter vide an email from its Advocate. The opinion, which was made available in a subsequent meeting with the Committee, was similar to the document tabled by a Committee Member in the first meeting.
- (28) During the second meeting with KEBS, the Committee was informed 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.

- (29) The Management of KEBS had not sought legal advice from the Office of the Attorney General on the legal implications of expanding the PVOC contract. Management instead opted to seek the legal advice of their external firm of advocates on the matter, where they ended up incurring further costs in terms of legal fees.
- (30) 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.
- (31) M/S EAA Company Limited has gone 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.

Sign

Date..... 25/02/2020

HON. ABDULLSWAMAD SHARIFF NASSIR, MP - CHAIRPERSON

PUBLIC INVESTMENTS COMMITTEE

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

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

ANNEXURES

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|----------------|----------|---|
| Annex 1 | - | Special Audit Report of the Auditor General on the Procurement of of Pre-Export Inspection Services -Used Motor Vehicles, Mobile Equipment and Spare Parts |
| Annex 2 | - | The Special Report on the Inquiry into Allegations of Procurement Irregularities in the Award of KEBS Tender No. KEBS/TO57/2014/15 for the Provision of Pre-Export Inspection Services for Used Motor Vehicles |
| Annex 3 | - | 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. |
| Annex 4 | - | Legal Opinion by KEBS Lawyers |
| Annex 5 | - | Committee Minutes |
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ANNEX 1

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

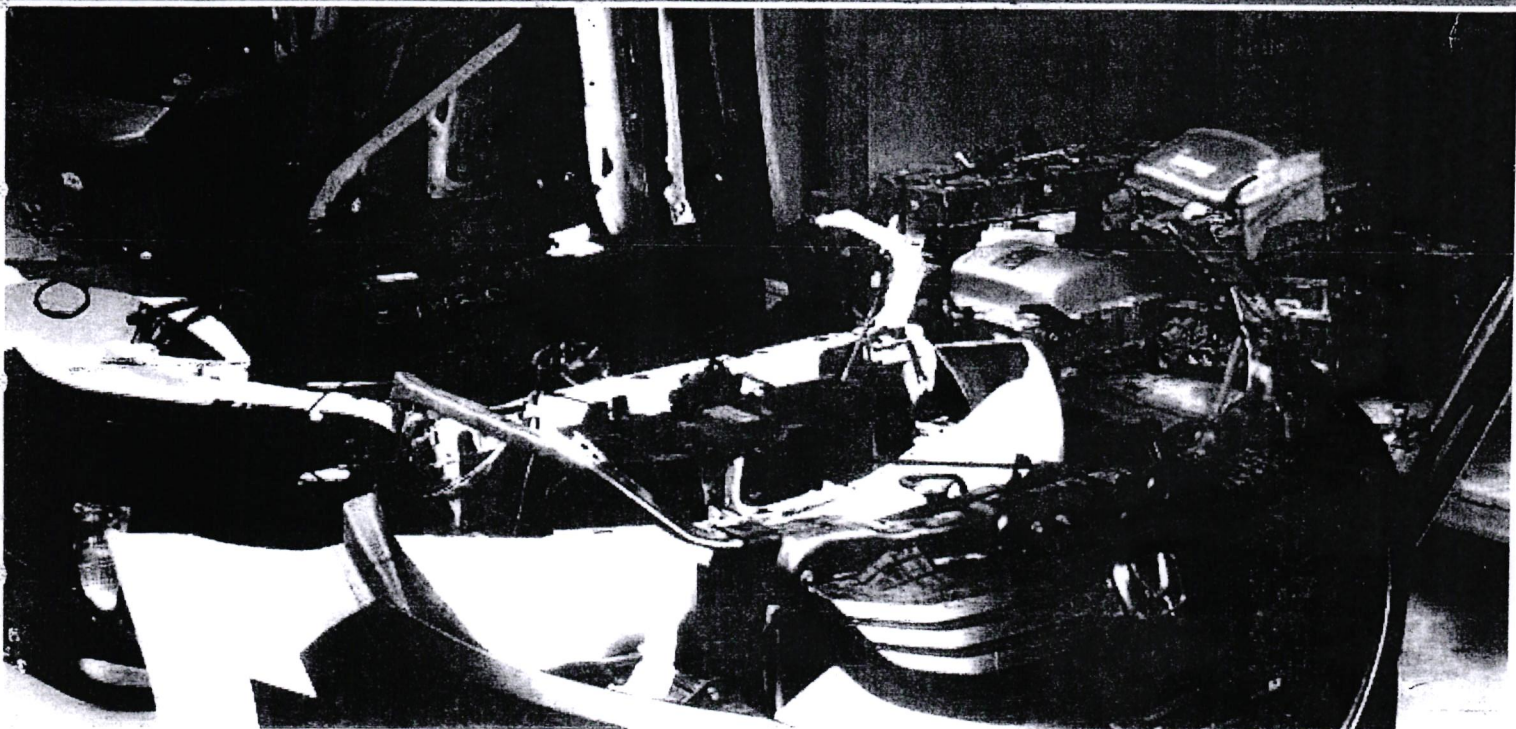


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LIST OF ABBREVIATIONS

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

1 EXECUTIVE SUMMARY

INTRODUCTION

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

SUMMARY OF FINDINGS AND CONCLUSION

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

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

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

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

1.12 Mr. Mamoru Fujie was identified as the sole Director in the confidential business questionnaire without disclosure of (i) Mr. Tetsuro Shirahama who was listed as the owner of the company with 100 percent shares, (ii) other directors for other regions including; Dr. Isaac Kalua, Mr. Wilson Mutabazi and Mr. Nithul Lakshmanan. This was noted to be a serious offence if a bidder provided false information on the confidential business questionnaire. Therefore, M/s. ATJ should have been subjected to the proceedings having committed the offence of not providing accurate or conflicting information on the confidential business questionnaire.

1.13 M/s. ATJ listed capacity of sixteen (16) inspection lines stationed in twelve (12) inspection centers. The special audit sampled; Tokyo-Bay Main Office in Kisarazu, Tokai and Nagoya Branch Office. The Tokyo-Bay Main Office based in Kisarazu had been leased through an agreement with Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association for the purpose to provide inspections services using its inspection facilities for Roadworthiness Inspection for export of used motor vehicles. This contradicted the information provided in the technical proposal that the facility actually belonged to M/s. ATJ as the agreement mentioned the facility and equipment was fully leased from Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association. Further analysis revealed a similar arrangement with Kobe City Government agreement signed on 1 August 2011 where the facility was also leased by M/s. ATJ.

1.14 The ATJ Tokai Office was on a large parcel of land with other on-going logistics operations including clearing and forwarding agents. With this parcel of land being owned by M/s. ATJ, it cast doubt on their involvement with only Road Worthiness Inspection of used motor vehicles for export. Further scrutiny showed that they attachment evidence of purchase of a parcel of land approximately 20,000 square meters at JPY555,000,000 (USD5Million), which was not ordinary for an inspection service company. A visit to the Nagoya inspection facility also revealed no activity and a dilapidated structure that had seemingly been idle with no staff presence. While these had been noted to be an owned inspection center, the facility did not exhibit a state-of-the-art testing equipment as alleged in the technical proposal of the tenderer. With the level of dilapidation, it was difficult to identify the serial numbers of the equipment or confirm if the testing equipment had been calibrated.

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

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

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

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

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

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

Summary of Findings on M/s. EAA Company Limited

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

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

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

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

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

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

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

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

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

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

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

1.41 Mr. Rashid Abeid Suba was actually the owner of M/s. Jabal Kilimanjaro Auto Elec. Mech., and is also a current Pre-Export Verifying Agent for Tanzania (TBS). TBS requirement for Pre-Export Verifying are done independently and in zones and therefore there could not have been an existing relation between M/s. Jabal Kilimanjaro Auto Elec. Mech. and M/s. EAA for purposes of this bid and being cognizant of the requirements of TBS for service providers of inspections.

1.42 EAA Company Ltd, provided a document which could not be verified as it purported to indicated that EAA bought the inspection facility in UAE in 2014, from M/s. Jabal Kilimanjaro Auto Elec. Mech. and entered into agreement with Mr. Rashid Abeid Suba to guide their operations, an allegation that Mr. Rashid Abeid Suba could not confirm as he owns the facility and uses it to service another contract for Tanzania.

1.43 M/s. EAA did not provide documentation to demonstrate its legality and presence in South Africa and Thailand.

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

- The bidder, East African Automobile Services Limited (EAAS) had its ISO 17020 accreditation status in Japan suspended and therefore not valid as per the governing conditions of the Japan Accreditation Board (JAB). The same company had attached a professional license for a different company called Jabal Kilimanjaro Auto. Elec. Mech in the UAE;
- In the United Kingdom, it did not exist in the physical address it had provided in the bid documents as the premises, 16D Tilbury Forth Port, was found to be for Serengeti Global Services which was a sea and coastal freight company;
- EAAS had also forged its registration documents depicting it was registered in 2013 instead of 2014, which was a forgery; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

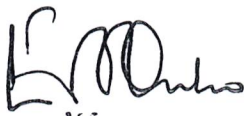
1.60 In South Africa, M/s. QISJ had subcontracted M/s. International Conformity Assessment Solutions (PTY) Ltd. (ICAS) as its liaison office and M/s. DEKRA Ltd as a testing station to manage the roadworthy inspections of motor vehicles. Field inspection on 28 February 2019 by the special audit team confirmed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

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

RECOMMENDATIONS

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

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



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

10 July 2019

2 INTRODUCTION

2.1 What Governed and Triggered the Special Audit?

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

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

2.2 Background Information about KEBS and the Criteria

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

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

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

2.2.4 KS 1515:2000 critical parameters include:

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

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

2.3.1 PVOC program was started on 29th September 2005 by KEBS, through the publication of Legal Notice No. 78 of 15th July, 2005 by the Minister for Trade and Industry. It is a Conformity Assessment Program applied to products at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved specifications. The PVOC program is operated by a qualified third party inspection company(s) on behalf of KEBS in the trade regions in the world.

2.3.2 These conformity assessment procedures are used to verify that Used Motor Vehicles exported to Kenya are in compliance with the KS 1515:2000 before shipment from Japan, United Kingdom United Arab Emirates, South Africa and Thailand as used motor vehicles are mainly imported from these countries. Statistically, by 2018 Japan provided nearly ninety five (95) per cent of the imported vehicles in Kenya. KEBS has no capacity to undertake this exercise not only in Japan but other enlisted countries, hence it contracts qualified third party inspection company(s) with presence in these countries to undertake the exercise on its behalf. A royalty payment is made to KEBS for this service.

2.3.3 The volume and activities of imports for used Motor-vehicles from these top five countries are analyzed as per the table below, for FY 2017/2018:

Table 1: PVOC Countries

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

Source: OAG Analysis of KEBS data.

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

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

Table 2: Chorology of the PVoC on Used Motor Vehicles

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

Source: OAG Analysis

2.3.6 The special audit noted that four out of the five contracts were performed by one Service Provider, and for the only cycle (2012 to 2015), where three Service Providers were awarded a contract, one of the service provider was actually terminated. The provider M/s. JEVIC was accused of permitting radioactive contaminated and overage vehicles into the country when a high radioactive reading was found to be coming from a container with four second hand vehicles at the Port of Mombasa.

2.3.7 In a letter dated 14th June 2016, JEVIC admitted that it inspected some of the vehicles with extremely radioactive contaminations, and following complaints and investigations of letting in defective and overage vehicles into the country, against the regulations, KEBS terminated its contract with JEVIC in 21st July, 2014, see Appendix 38, six (6) months before the end of the contract period, and for the list of overage vehicles certified by JEVIC, see Appendix 39. This therefore raises significant doubts as to whether KEBS can achieve Conformity to Standards under a multiple contract regime.

2.3.8 The current cycle under contract is the fifth cycle, signed between KEBS and Quality Inspections Services Japan, Inc. on 3 April 2018 for a period of **three years**. The contracts' deliverables were timeliness in meeting customers' requests for vehicle inspection, procedures of handling customer complaints, inspection fees and payment of royalties to KEBS. KEBS is also required under the contract to audit the service provider to establish adherence to the provisions of the contract which was undertaken by KEBS during the period from 13th - 20th February, 2019.

2.4 Objectives of the Special Procurement Audit

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

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

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

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

2.5 Terms of References of the Special Audit

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

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

2.6 Sampling Procedures and Scope of Work

2.6.1 Due to time and resource constraints, the special audit sampled a total of ten (10) regional inspection centers distributed within Japan, United Kingdom, Dubai and the Republic of South Africa to form the subject of this special procurement audit. This was based on the data collected and highlighted under **table 1** which indicates the level of activities in each country. Thailand was therefore excluded from inspection on this premise.

2.6.2 To obtain a more accurate sample population, the exporting countries were stratified according to the number of inspection centers there-in and the number of units (volume) of motor vehicles inspected in each center as detailed in Appendix 1. Consequently, the inspection centers with the highest units of motor vehicles inspected were selected as follows representing 57 per cent of the total population:

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

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

Source: OAG Sample Size Analysis

2.7 Source of Information and Audit Procedures:

2.7.1 The special procurement audit team obtained information based on the following audit procedures:

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

Table 4: Persons Interviewed during Field Work

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

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

2.8 Previous Special Audit Recommendations.

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

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

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

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

2.9 Limitations of the Special Audit.

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

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

3 DETAILED FINDINGS

3.1 Project Identification and Planning

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

3.2 Project Budgeting and Financing

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

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

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

Source: KEBS Financial Reports

3.3 Finding on the Procurement Process

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

KEBS/T019/2017-2020

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

Advertisement of the International Tender

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

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

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

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

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

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

Source: KEBS

Opening of the International Tenders

3.3.6 The international tender for PVOC to Standard Services; Used Motor vehicles, Mobile Equipment and Used Spare Parts was closed and opened on 17th December 2017. The tender opening and processing committee had been earlier appointed by Mr. Charles Ongwae - Managing Director on 13th December 2017 as per Section 46 (1) of the PPAD Act, 2015.

3.3.7 The aforementioned committee was duly constituted and mandated to carry out a comprehensive technical and financial evaluation, due diligence and inspection for the tender in strict adherence to the compliance and evaluation criteria set out in the tender document. This said committee was chaired by Mr. Chris Kibett and its members were; Mr. Birgen Rono, Mr. Gordon Onjore, Mr. James Onyiengo, Mr. Ken Keya, Mr. Brian M'mbwanga and Ms. Rhoda Kirui.

3.3.8 Evaluation of bids was done in three stages using the criteria set out in Section 2.11.2 of the Tender Document pursuant to Section 80 (2) of the PPAD Act, 2015 as follows:

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

Preliminary Evaluation

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

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

3.3.10 Analysis of KEBS procurement documents revealed the following:

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

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

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

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

Technical Evaluation

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

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

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

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

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

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

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

Financial Evaluation

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

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

Inspection of Mobile Equipment and Used Spare Parts

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

Inspection of Used Road Vehicles and other Off-Road Vehicles

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

Table 7: Proposed Inspection fees per Motor Vehicle

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

Source: Financial proposal for QISJ

Royalty fees payable to KEBS

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

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

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

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

Visiting Japan and UAE

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

Visiting UAE

Mr. James Onyiego
Mr. Joab Mbalanya

Visiting Thailand

Mr. Birgen Rono
Mr. Brian M'mbwanga

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

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

Tender Appeals, Award and Contract

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

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

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

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

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

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

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

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

Source: Contract document between KEBS & QJSJ

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

Table 9: Royalty fees per vehicle

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

3.4 Finding on Inspection and Documentation Review during Field Visits

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

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

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

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

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

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

3.4.5 The findings are as enumerated per firm below:

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

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

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

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

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

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

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

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

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

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

Auto Terminal Japan (ATJ) - Japan Headquarters

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

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

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

3.5.10 M/s. Auto Terminal Japan (ATJ) had listed their Offices as per the table below.

The special audit confirmed the physical presence of the Head Office and confirmed their addresses as listed in the table below. The lease documents and records of rent payments were verified by the special audit team to confirm they had been occupying the facilities in question.

Table 11: List of Offices of ATJ

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

3.5.11 The special audit noted that ATJ failed to meet the threshold of the tender as they didn't have the physical and technological infrastructure required to satisfactorily perform services required under this tender in Japan. The special audit noted that ATJ only owned four (4) inspection centers, and additionally had eight (8) other contracted inspection centers through "corporate partnerships". This was against the set criteria for Japan where subcontracting is not allowed, and therefore bidders were required to lease not more than 50 per cent of their required facilities i.e. Japan - 15 Centers.

3.5.12 Out of the list of sixteen (16) inspection lines that were purported to be stationed in twelve (12) inspection centers, attached under Appendix 8, the special audit sampled, visited and confirmed the presence of Tokyo-Bay Main Office in Kisarazu, Tokai and Nagoya Branch Office.

3.5.13 For the Tokyo-Bay Main Office based in Kisarazu, it was noted there was an agreement between Kisarazu Comprehensive Home Sale Commerce Housing Complex Cooperative Association and M/s. ATJ for leasing of the facility addressed as 1-17-69 Shiohama Kisarazu-city, Chiba-Japan, effective 1 April

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

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

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

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

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

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

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

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

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

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

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

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

3.5.22 Under Section 10 of the verifiable proof of financial strength to perform the contract, M/s. ATJ attached the audited accounts for the past three years. The special audit noted that in the statements of accounts details relating to sales from Domestic and Export business which was approximately 82 per cent of the total companies revenues (sales of export JPY427,414,033 out of total revenue of JPY521,391,887). The company also disclosed having consumption tax receivable, which would only be for companies engaged in export business. The statements also disclose accounts payable and receivable to companies like M/s. Japan Forwarding Agency Ltd. And M/s. Jacanna Customs & Freight and their relationships could not be clearly explained by M/s. ATJ management. These could therefore be possible conflicting the expectations of the tenderer to undertake inspection services.

3.5.23 On enquiry on potential conflict of interest between M/s. Japan Forwarding Agency Ltd and M/s. ATJ, the special audit noted that Mr. Mamoru Fujie, CEO of ATJ Ltd was a director of Japan Forwarding Agency Ltd for the period from September 2013 to February 2015 as noted under Appendix 14a, this was a clear conflict of interest and information was not disclosed to KEBS while M/s. ATJ was a service provider for the third cycle of contract between 2012 - 2015. Further scrutiny noted records of ATJ having been granted a permit for customs clearance business effective 10th January 2007, by the Director of Yokohama Customs - Mr. Hiromichi Tanigawa for the Tokyo-Bay area, see Appendix 14b, which exacerbated the potential conflict of interest for the said company being involved in export business.

3.5.24 The special audit also noted M/s. ATJ had also invested on an IT infrastructure platform for efficiency. The team undertook a walkthrough of the system and experienced a live demonstration of how to on board new clients, make requests for inspection, tracking progress of inspection real-time. Other discussion with management noted that M/s. ATJ is currently undertaking Roadworthiness inspection of used motor vehicles for Zambia, Tanzania and most recently was awarded a tender as the sole inspector of used motor vehicles to Jamaica. Further, M/s. ATJ also provides bio-security inspection on behalf of Ministry of Agriculture and Forestry of New Zealand and the Department of Agriculture Water and Resources of Australia.

Auto Terminal Japan (ATJ) - United Kingdom

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

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

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

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

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

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

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

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

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

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

Auto Terminal Japan (ATJ) - South Africa

3.5.37 Due to constraint of time, the special audit could not visit the ATJ agents based in Durban South Africa. This has also been noted under section 2.9 on the Limitation of the special audit.

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

3.6 Findings on M/s. EAA Company Limited

3.6.1 The special audit team visited the M/s. EAA Company Limited offices on 26th February 2019 and meet with the Senior Management of the Company. The special audit was focused on determining facts about EAAs operations as represented in the technical proposal as part of the submission for Tender No: KEBS/T019/2017- 2020, for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts.

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

- The physical presence of the Company and supporting registration documents;
- The physical and technological infrastructure required to satisfactorily perform services required under this tender in all the requisite jurisdictions;

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

3.6.3 The special audit noted that M/s. EAA Company Limited never filed for any review against the decision of KEBS in the matter of Tender No: KEBS/T019/2017- 2020 as they confirmed being content with the decision of KEBS of not meeting the requirements, having failed at the pre-liminary evaluation stage. M/s. EAA however, filed for a request for a review against the decision of KEBS in the matter of Tender No: KEBS/T057/2014-2015, for provision of Pre- Export Verification of Conformity (PVOC) to Standard services: Used Motor Vehicles, Mobile equipment and Used Spare Parts.

3.6.4 Despite this, the management of M/s. EAA Company Limited however confirmed their interest to be a part of the special audit by availing staff and documentation to facilitate the special audit processes as participants of the tender No: KEBS/T019/2017-2020 with an objective of understanding areas of improvement for subsequent tenders. Field inspections of M/s. EAA Company Limited was therefore also focused on the authenticity and validation of information contained in their documents as submitted for the Tender No: KEBS/T019/2017-2020 in the technical proposal, being their part fulfillment of the tender requirement for each jurisdiction similar to the other bidding companies.

3.6.5 In following the tender requirements, one of the most important requirements was for the bidders to provide evidence of physical presence and technical capacity to offer inspection services. Specifically, a bidder had to demonstrate ownership of inspection equipment and facilities in the jurisdiction that the company is legally registered to perform services required in; Japan, United Kingdom and United Arab Emirates. Further, the tenderer had the option to sub-contracts in Thailand and South Africa. For UK, Japan and UAE, where subcontracting is not allowed, bidders were required to lease not more than 50 per cent of their required facilities i.e.; Japan - 15 Centers, United Kingdom - 2 Centers, UAE - 1 Center)".

3.6.6 This means the special audit focused its review on the documents versus the evidence by the bidders to corroborate the physical and technological

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

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

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

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

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

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

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

Table 12: List of Office of EAA Company Limited

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

3.6.15 In visiting the Nagoya Region where M/s. EAA had indicated to own an inspection facility, EAA management opted to have the team visit a leased facility from M/s. Flash Rise Limited. The lease agreement provided in the tender documents for an existing relationship between M/s. EAA and M/s. Flash Rise indicated that EAA had listed the facility and not the land which was confirmed to have been falsified as the lease agreement attached was between M/s. EAA and M/s. Runglobal Co. Limited (Nagoya), see Appendix 24 a. The inspection further revealed no activity by EAA and EAA Senior Management could not identify the facility they purported to have leased, it was noted that one of the inspection lines actually belonged to QISJ Inc., who was actually undertaking real-time inspection at the time of our visit on 1st March 2019. The was no presence of EAA staff noted either.

3.6.16 The special audit team also sampled and engaged one of the agents According to the list of leased contracts M/s. ECL Agency Ltd. and a meeting with ECL was prompted by the fact that two of the bidders claimed to have contracts with M/s. ECL Agency Ltd. ECL was noted to be a logistic company where inspections companies lease land or equipment's for inspections. M/s. ECL Agency Ltd. agreed to the meeting and actually disowned the EAA leases presented to the special audit team for verification. M/s. ECL confirmed that they do not have any lease agreements with M/s. EAA but only had an agreement with company called M/s. Hamanasu Company Limited. Furthermore, ECL confirmed EAA uses the staff of ECL to perform inspection service for other countries. This scenarios exacerbated the doubt as to whether M/s. EAA really does inspections by itself or sub-contracts using other service providers staff.

3.6.17 EAA Company Limited indicated in their proposal to have a total of twenty-five (25) members of staff consisting of fifteen (15) inspectors and one Quality Manager stationed in Tokyo/Yokohama, Nagoya and Osaka/Kobe/Kyushu. There was no listing of staff assigned in Kisarazu, Kawasaki, Kitakyushu and Moji. The special audit further noted there were no staff assigned to any of the mentioned regions and management noted that all these technical staff were on contract and were only on boarded when there was inspection services needed for those regions. It therefore cast doubt as to the staff capacity and equally all the accreditation attached for the key staff could not be validated as no originals/notarized copies were provided to prove the qualifications and therefore cast doubt as to the staff competency.

3.6.18 The special audit also noted EAA had also invested on an IT infrastructure platform for efficiency. The team undertook a walkthrough of the system and

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

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

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

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

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

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

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

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

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

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

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

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

3.6.25 It was also noted that as part of the technical proposal's, a document indicating to have leased Office Space in Tilbury port dated 19th August 2014, could not be verified or authenticated by the Port Manager of Tilbury Mr. Cox Laurence, Appendix 29. The deed was signed by Mr. Christopher Boniface Lukosi. On enquiry the special audit team was informed that Mr. Christopher Boniface Lukosi was a director in both EAA and a company called Serengeti Global Services. The yard and brand at the Offices of Serengeti indicated they were involved in Sea and Coast Services.

3.6.26 In an interview with Mr. Prosper Sugai and Mr. Lee Sayer, it was confirmed that a visit any of the purported Inspection Centres was not necessary on revelation that such facility did not exist because there was no reason to retain the centers when there was no business. A request to also visit any of the purported partners of M/s. EAA was also not granted either.

3.6.27 In regards to the employees in M/s. EAA in the United Kingdom, the special audit noted that M/s. EAA had listed that it had one Manager Supervisor, 3 Supervisors and 6 Inspectors stationed within the United Kingdom. However, on enquiry none of the employees were available nor were their human resource records available for scrutiny and discussions to confirm that they were indeed employees of EAA. Therefore, apparent that this was a misrepresentation on the part of EAA in its technical proposal.

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

3.6.28 The special audit team visited the EAA Offices in UAE and met with management on 4th March 2019. The team noted that EAA had only attached a registration document to indicate it does business within the Freezone, Appendix 30 i.e. Sharjah Media City which had no relationship with the tender prerequisites as per the tender requirements where bidders were required to be legally registered and licensed to perform the service, and confirm if they owned inspections centers against the set criteria for UAE where subcontracting is not allowed, and therefore bidders were required to lease not more than 50 per cent of their required facilities i.e. UAE - 1 Center.

3.6.29 The team met and interviewed Mr. Prosper Sugai, Director, EAA Company Ltd and a purported EAA UAE representative Mr. Rashid Abeid Suba who was not identified anywhere in the technical proposal. Mr. Rashid Abeid Suba was noted to be actually the owner of a service provider called M/s. Jabal Kilimanjaro Auto Elec. Mech., and is also a current Pre-Export Verifying Agent for Tanzania (TBS). TBS requirement for Pre-Export Verifying are done independently and in zones and therefore there cannot be an existing relation

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

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

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

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

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

EAA - South Africa

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 13: Listing of owned inspection centers by QISJ

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

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

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

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

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

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

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

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

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

3.7.27 QISJ has regulation for dealing with customer and maintaining customer complains records coded QIS-003-008. In this regulations, each complaint was noted to be handled to their logical conclusion in consultations with KEBS whenever necessary.

3.7.28 Enquiry on potential conflict of interest between JANS Trading and QISJ as had been previously reported in PIC report to parliament dated 22nd November 2016. The special audit confirmed that there was no relationship between JANS' Trading Co. Ltd and Quality Inspection Services Inc. Japan (QISJ). It was noted that the Directors of the JANS' Trading Co. Ltd were Mr. Umar H. Jan and Mr. Yassin Jan who are brothers. They are of Pakistani origin doing business in Japan.

3.7.29 The special audit confirmed that that current Managing Director of QISJ Mr. Kiyoaki Hatano was a former employee of JANS's Trading Co. Ltd up until 2009. Mr. Kiyoaki Hatano, later formed QISJ to undertake pre-export inspections services of used motor vehicles for export. See Appendix 34 and 35 for the Certificate of incorporation between JANS and QISJ. The special audit therefore noted no conflict of interest between Jan's Trading Co. Ltd and Quality Inspection Services Inc. Japan (QISJ).

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

3.7.30 M/s. Quality Inspections Services Japan Limited was registered as a private limited Company in United Kingdom on 21st February 2012, and as a subsidiary of the parent company in Japan. The company registration number was 7957279. The company was subsequently changed to be a branch of the headquarters and was renamed to M/s. Quality Inspection Services Inc Japan UK Branch Limited with a registration number 10651781. See Appendix 36.

3.7.31 M/s. QISJ UK Branch Ltd reported to owns two (2) inspection centers/facility in Edmonton and Tilbury and also had leased other facilities which are approved by Ministry of Transport and Communications.

3.7.32 The audit reviewed the documentation and verified the existence of documentation to prove the presence of the said inspection centers that were either owned or leased by QISJ in the United Kingdom. Assurance was obtained from receipts and invoices of the on-going rental payment and fees for the leased premises. The special audit confirmed that these machines were performing the activities as required under KS 1515:2000 and all the equipment

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

3.7.33 The special audit sampled and visited an inspection center located in Tilbury. The inspection center was leased in the Freeport area of Tilbury. All inspection equipment comprising of Speed Meter, Brake Tester, Side Slip Tester, Headlight Tester, CO/HC Tester, Diesel Tester, Sound Level Tester, Noise Level Tester, Radiation Tester and Scan Tool were confirmed to be owned by QISJ and was purchased from a company called V-Tech Ltd.

3.7.34 The records present at the QISJ Site Office confirmed that indeed the company owned the facility. The special audit also experienced real time inspection at this same facility. It was further noted the other center in Edmonton, UK has since been closed and the machine was seen on site at the inspection centre in Tilbury, UK. The same was notified to KEBS through letter dated 10th January 2019.

3.7.35 The special audit noted that QISJ UK branch had staff at the inspection center in Tilbury, United Kingdom. The technical proposal presented indicated a total of three (3) senior members of staff who were present and working at the time of our visit on 11 March 2019. The audit also noted two inspectors performing inspection services, all whom demonstrated competency and capacity to offer inspection services based on the resume and years of experience working with QISJ in the United Kingdom.

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

3.7.36 The special audit team visited the QISJ Branch in UAE and met with management on 3 March 2019. The special audit team confirmed that M/s. Quality Inspection Services Inc. Japan had leased a warehouse in RAS Al Khor, alAwir Industrial 3, Dubai from Mr. Essa Al Kous for the purpose of vehicles technical testing. There was evidence of QISJ operations at the said facility and this was further corroborated with the existing lease agreement, and records of rent payments to the landlord.

3.7.37 It was noted that, the company has both the Registration Renewal Certificate of Branch of Foreign Facility No. 4157 valid from 20 March 2013 to 19 March 2020 and professional license No. 684010 valid from 21 February 2013 for surveying and evaluating services. These license are required for companies to conduct inspection services in the UAE.

3.7.38 To support ownership of the equipment, the special audit team reviewed invoice No. 1577 dated 3 March 2013 from M/s. Jaffer Moh'd Ali Garage to support the purchase of a full set of used motor vehicle testing equipment namely; Hydraulic jacks/ pit, slid slip tester/wheel alignment tester, brake tester, speedometer tester, exhaust proximity noise tester, headlight tester, Exhaust gas tester for petrol engines and diesel engines and tape measure.

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

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

3.7.40 M/s. Quality Inspection Services Inc. Japan (QISJ), subcontracted M/s. International Conformity Assessment Solutions (PTY) Ltd. (ICAS) as its liaison office and M/s. DEKRA Ltd as a testing station to manage the roadworthy inspections of motor vehicles.

3.7.41 A tripartite agreement between QISJ, ICAS and DEKRA Ltd was signed on 1 December 2017. According to the agreement ICAS was to collect the inspection fees and in turn pay DEKRA Ltd for roadworthy testing. ICAS has an office at 13 Sloane Street, Epsom Downs Office Park, Process House, Bryanston. The company was registered with the Companies and Intellectual Property Commission on 13th July 2010. In the same year, it was registered for Value Added Tax (VAT), Tax Registration No. 2010/014813/07. A copy of the agreement is attached under Appendix 37.

3.7.42 Field inspection on 28 February 2019 by the special audit team confirmed that M/s. DEKRA Ltd is located at 97, Wilem Cruywagen Avenue, Klrsoord, Rosslyn Pretoria. The company has six technical staff who carry out the vehicle testing. Further the team confirmed that DEKRA Ltd owns all the testing equipment listed in the tender documents namely; Hydraulic jacks/pit, slid slip tester/wheel alignment tester, brake tester, speedometer tester, exhaust proximity noise tester, headlight tester, exhaust gas tester for petrol engines and diesel engines and tape measure.

3.7.43 Overall, the special audit thus concluded that M/s. QISJ had demonstrated capacity to deliver one the current contract as it had delivered on its past

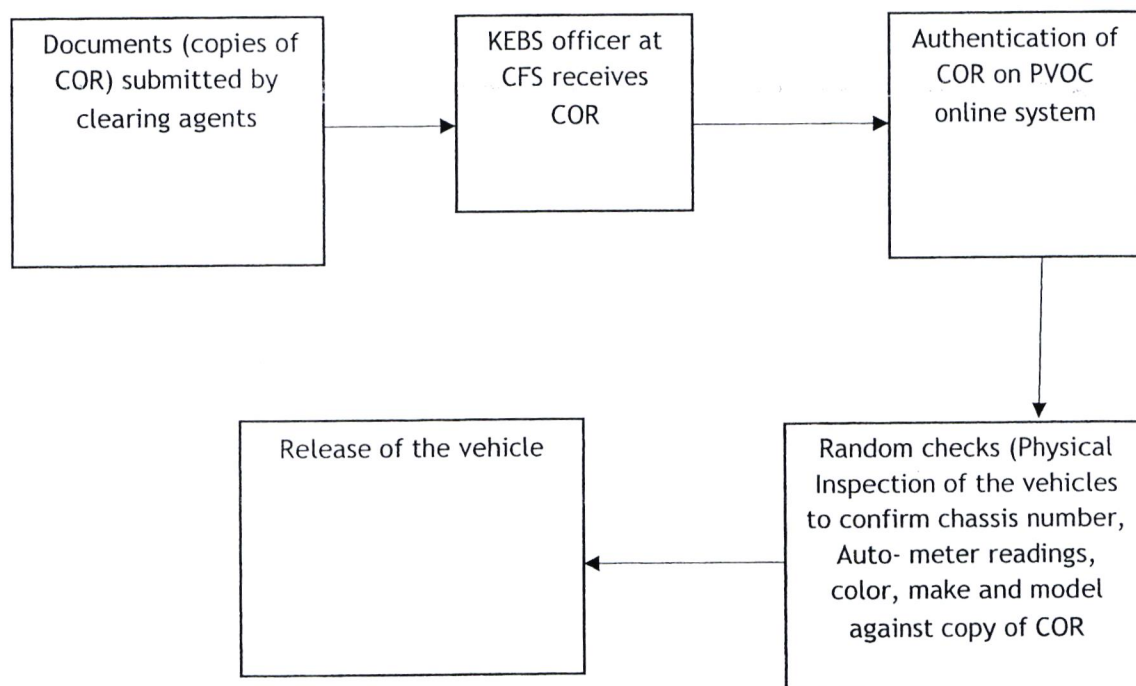
contracts with KEBS by virtue of having the physical and technological infrastructure required to satisfactorily perform services required under this tender, and the right capacity and competency of staff a to satisfactorily perform services required under this tender in Japan, United Kingdom and United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

3.8 Findings on Site Inspection at the Port of Mombasa

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

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

Motor vehicle inspection and clearance process flow chart



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

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

Table 14: Sampled Container Freight stations

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

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

4 APPENDICES

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ANNEX 2

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT

NATIONAL ASSEMBLY – FOURTH SESSION

PUBLIC INVESTMENTS COMMITTEE

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**

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NOVEMBER, 2016

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ABBREVIATIONS AND ACRONYMS

ATJ	Auto Terminal Japan Ltd
CAS	Central Alarm System
CBS	Chief of the Order of the Burning Spear
CEO	Chief Executive Officer
CPA	Certified Public Accountant
DOE	Department of Energy
EAA	East Africa Automobile Services Company Ltd
EGH	Elder of the Order of the Golden Heart of Kenya
HE	His Excellency
HSC	Head of State's Commendation (Civilian Division)
ISO	International Organization for Standardization
JAB	Japan Accreditation Board
JEVIC	Japan Export Vehicle Inspection Centre Company Ltd
JHTA	Japan Harbour Transport Association
JYP	Japanese Yen
KEBS	Kenya Bureau of Standards
KNBS	Kenya National Bureau of Statistics
MD	Managing Director
MGH	Moran of the Order of the Golden Heart of Kenya
MOU	Memorandum of Understanding
MP	Member of Parliament
NNSA	National Nuclear Security Administration
PIC	Public Investments Committee
PVoC	Pre-export Verification of Conformity
QISJ	Quality Inspection Services Inc. Japan
RFP	Request for Proposals
RPB	Radiation Protection Board
RPM	Radiation Portal Monitors
SLD	Second Line of Defence

TBT	Technical Barriers to Trade
UAE	United Arab Emirates
UK	United Kingdom
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organization

1.0 PREFACE

1.1 Committee Mandate

The Public Investments Committee (PIC) draws its mandate from the National Assembly Standing Order No. 206 which outlines the functions of the Committee as follows:

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

The Committee however is exempted from examining: -

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

1.2 Committee Membership

The Committee is comprised of the following Members:

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

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

1.3 Justification for the Inquiry

The market for used motor vehicles in Kenya has been growing steadily from 65,987 road motor vehicles imported in the year 2011 to 109,781 that were imported into the country in the year 2015 (KNBS, 2016). There was also an increase in the import expenditures on motor vehicles which stood at Ksh. 118 billion in the year 2015 compared Ksh. 102 billion in the year 2014. It is estimated that Kenya imports approximately 9,000 used motor vehicles a month mainly from Japan, United Arab Emirates (UAE), United Kingdom (UK), Singapore and South Africa. Kenya is the leading market for used motor vehicles in Africa as it overtook South Africa as the largest destination of used passenger vehicles exports from Japan in the year 2009 (Japan Customs and Tariff Bureau, 2009). Further, available data indicates that Japan exported 65,469 used passenger vehicles to Kenya in the year 2015 (Japan Customs and Tariff Bureau, 2015). Kenya imports of used motor vehicle from Japan in the year 2015 represent approximately 60 percent of all used motor vehicle imports into the Country.

The Kenya Bureau of Standards (KEBS) is legally mandated to conduct quality inspection on all goods imported to Kenya including used motor vehicles. The inspection of imports into the Kenyan market commenced on 1st July 1995 following the gazettelement of Legal Notice No. 227 of 14th June 1995 by the then Minister for Commerce and Industry. Subsequent Legal Notices have since been issued by the Government to ensure all imports to Kenya meet set Kenya standards and other standards as approved by KEBS. Pursuant to the provisions of Legal Notice No. 66 of 10th June 1999 all imports which do not meet the set standards are prohibited imports.

The KEBS pre-export inspection of used vehicles is required to conform to KS 1515:2000 - Kenya Standard Code of Practice for Inspection of Road Vehicles. These standards were formulated by the KEBS Technical Committee (TC) 122 on Road Vehicles. KEBS is required to appoint a

vehicle inspection companies in the origin market for the second used motor vehicles which are mainly: Japan, United Kingdom, United Arab Emirates and the Republic of South Africa. The appointed company is required to inspect the vehicles at a fee paid for by the importer prior to export to Kenya. The inspections are a mandatory requirement conducted pursuant to the provisions of Legal Notice 78 of 15/07/2005 and in line with Kenya Standard KS 1515:2000 Code of Practice for Inspection of Road Vehicles. The main areas of motor vehicle inspection under the Kenya Standard KS 1515:2000 Code of Practice for Inspection of Road Vehicles: The inspection for age limit; the inspection for conformity to the Right Hand Drive (RHD) requirement; road –worthiness which includes safety requirements, electrical and mechanical condition of the vehicle; prohibition of modifications on vehicles; and odometer inspection among others. Further, due to the nuclear disaster at the Fukushima Daiichi Nuclear Power Plant in Japan in the year 2011, radiation inspection has become a critical requirement on the ports of Japan to ensure all goods including vehicles exported from Japan are not contaminated with radioactive materials.

Pursuant to its mandate under Standing Order 206 (6) (c), the Committee commenced inquiry the Kenya Bureau of Standards Tender No. KEBS/T057/2014-2015 for provision of pre-export inspection services to Quality Inspection Services Inc. Japan (QISJ) on 12th February 2015 following a resolution of the Committee on 29th January, 2015. The tender was awarded to QISJ as the sole service provider of used motor vehicle inspection services for a period of 36 months (3 years).

1.4 Committee Proceedings

Having commenced inquiry, the Committee invited the following witnesses to adduce evidence on the matter: -

- i. Mr. Charles Ongwae - Managing Director, Kenya Bureau of Standards
- ii. Dr. Nicholas Muraguri - Principal Secretary, Ministry of Health
- iii. Mr. Joel Kamande - Secretary, Radiation Board of Kenya
- iv. Ms. Catherine Wairi-Mturi – Managing Director, Kenya Ports Authority

The evidence adduced by these witnesses is captured in Section 3.0 of this Report. The Committee Minutes on these deliberations are annexed to the Report.

The Committee also pursuant to Article 229 of the Constitution, wrote to the Auditor General on 19th June, 2016 to request for a Special Audit Report on the said Tender. The Findings of the Auditor General laid on the table of the House on 11th February, 2016, are also captured in Section 3.0 of this Report.

The Committee also sent a nine-member delegation on a fact-finding mission to Tokyo, Japan to gather evidence from the directors and managements of various organizations. The visit was undertaken from 28th May to 6th June, 2016. The details of the Committee's findings in Tokyo are captured in Section 4.0 of this Report.

In addition, the records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's Observations and Recommendations as outlined in the Report.

In making its Observations and Recommendations, the Committee also made reference to the provisions of the Constitution of Kenya 2010, the Standards Act Cap 496, Legal Notice No. 78 of 15th July 2005, the now repealed Public Procurement and Asset Disposal Act, 2005, the Radiation Protection Act Cap 243 and the Statutory Instruments Act, 2013.

These Observations and Recommendations, if taken into account and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent investment and financial management in state corporations and as a guide in future procurements.

1.5 Committee General Observations

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

- (i) THAT, the action by Kenya's Ambassador to Japan, H.E. Ambassador Solomon K Maina, to write a letter to KEBS recommending JEVIC, though undertaken in good faith, portrayed the Embassy in bad light, since it may be construed as an inappropriate influence on the tender by the Ambassador, contrary to provisions of Section 38 of the Public Procurement and Disposal Act 2005.**
- (ii) THAT, similarly, the request by Mr. Damson Jackson, the Managing Director of JEVIC to the Kenyan Embassy to issue the Company with a letter of recommendation reflecting collaborative activities so as to support JEVIC's bid for the tender, was an act of inappropriate influence on tender evaluation contrary to the provisions of Section 38 (1a) of the Public Procurement and Disposal Act 2005.**
- (iii) THAT, JEVIC was first awarded the tender to offer pre-export inspection of used vehicles to determine conformity to the requirements of the KS 1515:2000 by the Kenya Bureau of Standards (KEBS) in 2008. In 2011, the Company was again awarded a further 4-year contract with two other motor vehicle inspection companies; Auto Terminal Japan (ATJ) and Quality Inspection Services Inc. Japan (QISJ), until January 2015.**
- (iv) THAT, in the year 2014, JEVIC was accused of permitting radioactive contaminated vehicles into Kenya when a high radioactive reading was found to be coming from a container with four second hand vehicles at the Port of Mombasa. In a letter dated 14th June 2016, JEVIC admitted that it inspected two out of the four vehicles and the other two extremely radioactive contaminated vehicles were inspected by another company.**
- (v) THAT, following complaints and investigations of letting in defective and overage vehicles into the country, against the regulations, KEBS terminated its contract with JEVIC in August, 2014, four (4) months before the end of the contract period.**

- (vi) THAT, during bidding for Tender No. KEBS/T057/ 2014-2015, KEBS issued a notice to extend the contract for the other two companies Auto Terminal Japan (ATJ) and Quality Inspection Services Inc. Japan (QISJ), for three months (90 days) to allow for completion of the procurement process and left out JEVIC.
- (vii) THAT, JEVIC tendered for the current KEBS contract Tender No. KEBS/T057/ 2014-2015 and was among the three shortlisted companies of technical evaluation stage. The Company, however, failed to progress further at the financial evaluation stage of the tender that was awarded to QISJ. JEVIC appealed against the award but the appeal was dismissed by the Public Procurement Administrative Review Board.
- (viii) THAT, JEVIC is among the companies listed by Japan Harbour and Transport Association (JHTA) to offer motor vehicle pre-shipment inspection services.
- (ix) THAT, not all companies legally providing motor vehicle and radiation inspection services in Japan are accredited by the Japan Accreditation Board (JAB). JAB views the accreditation as an opportunity to spread the use of conformity assessment systems to spur their adoption to improve the quality of Japanese products. JAB, industrial groups and other Japanese agencies use accreditation and certification systems to promote to international standards, their products and services as part of Japan revitalization strategy and not necessarily to regulate the industry players.
- (x) THAT, Auto Terminal Japan (ATJ) is not listed by Japan Harbour and Transport Association (JHTA) as one of its radiation inspection firms at the ports of Japan. However, the Company is accredited to offer motor vehicle pre-shipment inspection and radiation inspection.
- (xi) THAT, ATJ tendered for the KEBS/T057/2014-2015 tender but was disqualified during the financial evaluation stage on grounds that it did not attach a valid and current tax compliance certificate. The certificate attached was for the period 1st October 2012 to 30th September 2013. The Request for Proposal did not state nor require that the tax compliance certificate must be for the immediate past year, furthermore at the time of opening the tender on 24th November 2014, no taxes were still due to be paid by ATJ since the taxes for the period 1st October 2013 to 30th September 2014 were still due to be paid on 30th November, 2014.
- (xii) THAT, Mr. Kiyoaki Hatano, the Managing Director of QISJ was Managing Director and a Director of Jan's Trading Company Ltd from 24th July 2007 to 6th January 2010. He, however, relinquished his Directorship of Jan's Trading Company Ltd for personal reasons from 1st July 2009 and was regularized on 6th January 2010 by Yokohama District Legal Affairs Bureau Kanagawa Office through a certificate of closure of matter reference number TA128673.
- (xiii) THAT, QISJ was incorporated on 22nd July, 2009 under company corporate registration no. 0200-01-062427 with 1,600 as the aggregate number of issuable shares out of which 400 shares were the aggregate number of issued shares and capital of

JPY 20,000,000. The company established a branch in the United Kingdom on 21st February 2012 and another branch in the United Arab Emirates on 21st February 2013.

- (xiv) THAT, QISJ demonstrated that it has the required competence in personnel, equipment and procedures needed to offer motor vehicle inspection services. The company conducts the inspection in its own facilities or those leased from other inspection companies.
- (xv) THAT, QISJ rejected a total of twenty-three (23) vehicles between March 2015 and February 2016 contaminated with radiations.
- (xvi) THAT, on the issue of de-listing of QISJ by the Japan Harbour Transport Association, QISJ demonstrated to the Committee via email dated 5th October 2015 from JHTA, that the Association does not issue licences for radiation inspection because there is no official license based on the laws in Japan for an inspection body to conduct radiation inspection on used motor vehicles and machinery in the port area.
- (xvii) THAT, it is evident pursuant to the Legal Notice No. 78 of 2005, Kenya Bureau of Standards prepared the terms and conditions of contract for inspection of motor vehicles which include checking of presence of radioactive materials without consulting the Radiation Protection Board; at the time of appearing before the Committee, the Radiation Protection Board was not aware of the inspection contracts by KEBS and its suppliers.
- (xviii) THAT, the Kenya Bureau of Standards being in cognizance of the existence of the Radiation Act has chosen to ignore a crucial body that has the technical capacity to advice on matters of radiation. KEBS ought to have at least consulted the Radiation Board when coming up with the Terms of Reference for the supplier of the service.
- (xix) THAT, Section 7(a) of the Radiation Protection Act Cap 243 provides one of the functions of the Radiation Protection Board as *“to advice the Minister on matters relating to radiation protection and radioactive waste disposal.”* Further, Section 14(1)(a) of the Act gives the powers to the Chief Radiation Officer to enter, inspect and examine any premises or part thereof, both, motor vehicle, vessel, aircraft or any other vehicle in or upon which he has reasonable cause to believe that irradiation device, radio-active material or any other source of ionizing radiation is stored, used, transported or disposed.

It is therefore evident that there is a conflict between the Legal Notice No. 78 of 2005 and the Radiation Protection Act. When coming up with the Regulations, the Government ought to have been cognizant of the existence of Cap 243 which prevails in case of any inconsistency.

- (xx) **THAT, from an analysis of the Functions of the Bureau under section 5 and the powers of the Council under section 7 of the Standards Act, none of the functions includes radiation protection analysis. The Regulation therefore amounts to casting a net too wide under a general provision of Section 20 that gives the Cabinet Secretary responsible for matters related to Standards, the power to make Regulations.**

Section 20 of the Standards Act which is a general provision ought to have been exercised within the confines of the Functions of the Bureau and the powers of the Council and the same cannot override the substantive provisions of section 7 and 14 of the Radiation Protection Act.

- (xxi) **THAT, it is also evident that the Legal Notice was issued on 15th July 2005; Legal Notices are deemed to expire ten years after making of the instrument with one extension; the 2005 Legal Notice has therefore expired by dint of Section 21 of the Statutory Instruments Act.**

1.6 Committee General Recommendations

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

- (i) **THAT, to minimize unmerited litigation by losing bidders, KEBS should have a register of service providers who are pre-qualified through a due diligence exercise to ensure that only companies with required competence and experience to undertake inspection are invited to bid for future contracts.**
- (ii) **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.**
- (iii) **THAT, having noted that the inspection services provider does not have custody of the motor-vehicles after inspection, KEBS and the inspection company should institute a system of preventing and detecting tampering after inspection, including penalties/punitive measures against those exporters who have been found to have tampered with already inspected vehicles.**
- (iv) **THAT, Kenya Bureau of Standards and its appointed inspections service provider should evaluate possibilities of signing agreements with logistics service providers in the country of origin to ensure that custody of inspected vehicles is changed from exporter to the shipping company and it is moved to the port of exit immediately after inspection.**

- (v) **THAT, the Kenya Bureau of Standards should endeavour to prepare the terms and conditions of any contract for inspection of motor vehicles which includes checking of presence of radioactive materials in consultation with the Kenya Radiation Board which has technical capacity to advice on matters in relation to radiation.**
- (vi) **THAT, there is need to harmonize Legal Notice No. 78 of 2005 and the Radiation Protection Act; when coming up with the Regulations, the Government ought to be cognizant of the existence of Cap 243 which prevails in case of any inconsistency; the government should always endeavour to harmonize statutory instruments with existing legislations to avoid inconsistencies at all times.**
- (vii) **THAT, there is need to renew Legal Notice no. 78 of 15th July 2005 to conform with Section 21 of the Statutory Instruments Act on expiry of legal notices.**
- (viii) **THAT the Radiation Protection Board in consultation with the Office of the Attorney General should fast tract amendments to the Radiation Protection Act in order to give the Board adequate powers to deal with matters related to radiation in all aspects including motor vehicle inspection at all points of entry into Kenya.**

1.7 Acknowledgement

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for facilitating the work of the Committee in fulfilment of its mandate. The Committee is also grateful to all the witnesses who appeared and adduced evidence before it. Further, the Committee is grateful to the Staffs of: Parliament, Office of the Auditor-General, the Inspectorate of State Corporations and the National Treasury for the services they rendered to the Committee. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

We also acknowledge and thank the Ministry of Foreign Affairs and especially H.E Ambassador Solomon. K Maina, Kenya's Ambassador to Japan for securing appointments for the Committee with the various relevant agencies/companies in Japan which facilitated the Committee to meet the objectives of the visit.

It is now my pleasant duty and privilege, on behalf of the members of the delegation to table this Special Report on the inquiry into the allegations of procurement irregularities in the award of the Kenya Bureau of Standards (KEBS) Tender No. KEBS/T057/2014-2015 for The Provision of Pre-Export Inspection Services for Used Motor Vehicles pursuant to Standing Order 199 and recommend it to the House for adoption.

SIGN:

DATE:.....

**HON. ADAN WEHLIYE KEYNAN, CBS, MP
CHAIRPERSON**

2.0 BACKGROUND INFORMATION

2.1 The Underpinning Legal Framework

The Kenya Bureau of Standards (KEBS) is a statutory body responsible for governing and maintaining the standards and practices of metrology in Kenya. It was established by Act of Parliament, the Standards Act, Chapter 496 of the Laws of Kenya. KEBS started operations in July 1974.

The Kenya Bureau of Standards is mandated to conduct quality inspection on all goods imported to Kenya including used motor vehicles. The inspection of imports into the Kenya market commenced on 1st July 1995 following the gazettment of Legal Notice No. 227 of 14th June 1995 by the then Minister for Commerce and Industry. Subsequent Legal Notices have since been issued by the Government to ensure all imports to Kenya meet set Kenyan standards and other standards as approved by KEBS. Pursuant to the provisions of Legal Notice No. 66 of 10th June 1999, all imports which do not meet the set standards are prohibited imports.

Further, the KEBS tender for provision of pre-export inspection services of used motor vehicles is legally underpinned by the provisions of Article 227 of the Constitution of Kenya 2010; the Standards Act Cap 496; the Legal Notice No. 78 of 15th July 2005; the now repealed Public Procurement and Asset Disposal Act, 2005; the Radiation Protection Act Cap 243; the Statutory Instruments Act, 2013; and the Public Procurement and Asset Disposal Regulations 2006 among other legal and statutory instruments.

KEBS Code of Practice - KS1515:2000

The KEBS pre-export inspection of used vehicles is required to conform to KS 1515:2000 - Kenya Standard Code of Practice for Inspection of Road Vehicles.

KEBS appoints vehicle inspection companies in Japan, United Kingdom, United Arab Emirates and the Republic of South Africa to inspect vehicles prior to export to Kenya. The inspections are a mandatory requirement conducted pursuant to the provisions of Legal Notice 78 of 15/07/2005.

The areas of motor vehicle inspection under the Kenya Standard KS 1515:2000 Code of Practice for Inspection of Road Vehicles are:

- a) Age Limit: - The inspection for age limit include**
 - (i) The vehicle shall be less than 8 years from the year of first registration.
 - (ii) The difference between the year of manufacture and the year of first registration shall not be more than one year
- b) The Drive: - The vehicle shall be Right Hand Drive (RHD).**
- c) Road –Worthiness: - This includes safety requirements, electrical and mechanical conditions of the vehicle.**
- d) Prohibition of Modified Vehicles: -Modified vehicles are not allowed to be exported to Kenya**

- e) **Odometer Checking:** - The inspection firm is to ensure that the odometer is correct and there is no tampering with the odometer reading.

Further, due to the nuclear disaster at the Fukushima Daiichi Nuclear Power Plant in Japan in the year 2011, radiation inspection has become a critical requirement on the ports of Japan to ensure all goods including motor vehicles exported from Japan are not contaminated with radioactive materials.

2.3 The KEBS Tender No. KEBS/T057/2014-2015

The Kenya Bureau of Standards (KEBS's) Tender No. KEBS/T057/2014-2015 for the provision of pre-export inspection services for used motor vehicles was occasioned by the expiry of the previous tender which was awarded to three companies namely: Auto Terminal Japan Ltd (ATJ); Japan Export Inspection Centre Co. Ltd (JEVIC); and Quality Inspection Services Inc. Japan (QISJ) on 6th January 2012 starting from 16th January 2012 for a period of three years to January 2015.

The KEBS's Tender No. KEBS/T057/2014-2015 was awarded to QISJ as the sole service provider of used motor vehicle pre-export inspection services for a period of 36 months (3 years) effective 1st March 2015 at a contract sum of US\$ 34,787,400.

3.0 SUBMISSIONS BY OFFICIALS FROM GOVERNMENT AGENCIES

This Section contains evidence submitted both orally and in writing by the following witnesses from the various government agencies: who were invited to make submissions and adduce evidence on the matter.:

- i. Managing Director, Kenya Bureau of Standards;
- ii. Managing Director, Kenya Ports Authority;
- iii. Secretary/CEO, Radiation Protection Board; and
- iv. Principal Secretary, Ministry of Health.

This Section also contains the findings of the Auditor General following a request by the Committee for a special audit to be carried out on the tender to establish adherence to the public procurement law and value for money following award of tender to the Quality Inspection Services Inc. Japan.

The observations/findings on each of the witness submission is also presented.

3.1 Evidence by Mr. Charles Ongwae, Managing Director, Kenya Bureau of Standards

Mr. Charles O. Ongwae, Managing Director, Kenya Bureau of Standards (KEBS), accompanied by Ms. Rhoda Kitui, Ag Head Procurement; Mr. Louise M. Racing, Legal Officer; Dr. Henry Kibet Rotich, Chief Officer, Research & Development; Mr. George Yichang, Legal Counsel; Mr. Simon Njoroge, Advocate and Mr. Samuel Omollo, Member, Tender Processing Committee appeared before the Committee on 12th February, 2015 and 26th May, 2016 to adduce evidence on the procurement process of the Motor Vehicle Pre-Shipment Inspection Tender.

He submitted that-

1. The tenderers were required to meet the requirements of KS 1515:2000, which is a code of practice for inspection of road vehicles. The standard specifies general safety and environmental requirements for road vehicles. The payment for this technical (inspection) service is paid for by the importer of such road vehicles to the country. KEBS is the appointed administrator of this service on behalf of the Government. KEBS collects an administration fee to cover its costs and this fee is inclusive in the amount charged to the importer.
2. Due to safety and environmental considerations, a premium is placed on technical evaluation of the subject Request for Proposal;
3. The administration fee is incidental and not the main objective for procuring or awarding the subject tender i.e. it's not to generate profits or revenue for KEBS but a public function;
4. KEBS had faced the challenges with respect to inspection of road vehicles in terms of import of overage vehicles, import of Radioactive vehicles and import of defective vehicles, and so KEBS placed a significance on the Tenderer's capacity to ensure only vehicles meeting the KS 1515:2000 enter the country;

20. JEVIC challenged its exclusion from the contract extension (90 days) and a notice of termination of their contract via KEBS letter dated 21st July 2014.
21. The Public Procurement Administrative Review Board (PPARB) dismissed all three appeals on 28th January 2015 and KEBS cleared to finalize the contract with QISJ.

Due Diligence Conducted

22. As resolved in the Tender Committee, a letter of award was sent to Quality Inspection Services Inc. Japan on 15th December 2014 and at the same time others sent to unsuccessful bidders. As per the Tender Committee resolution to do due diligence to be carried out before the contract is signed, the Tendering Processing Committee travelled to Japan, UAE and UK in December 2014 to perform it. The KEBS Audit Team also visited Japan in August 2015 to confirm the scope of operations of the Company.
23. The due diligence report by both teams confirmed that QISJ has the capacity to carry out pre-shipment inspection of motor vehicles for the next 36 months.
24. After the award of the tender in March 2015, other government bodies have also conducted due diligence visits, namely: -
 - (i) Principal Secretary, Ministry of Industrialization and Enterprise Development together with the Chairman of the National Standards Council and KEBS senior staff from 6th to 13th June 2015 visited the QISJ offices in Japan to understand the operations of the Company with respect to technical capacity;
 - (ii) Members of the National Standards Council and KEBS senior staff visited the Company in Japan to check on the capacity of the Company to undertake radiation checks in October, 2015. The team found QISJ performance as satisfactory.
 - (iii) Officers from the Auditor General Office visited QISJ offices in Japan in September 2015 and did a report.

Technical Capacity of QISJ

25. KEBS ascertained the technical capacity of QISJ during the tender process by evaluating their bid documents and in addition carrying out due diligence visit.
26. QISJ is a type A ISO/IEC 17020:2012 accredited body by Japan Accreditation Board since 2010.
27. The Company has 33 facilities for inspection of motor vehicles and 47 members of staff stationed around the testing centres in Japan. In addition, it has offices in the United Kingdom, Dubai and South Africa.
28. The performance of QISJ with respect to inspection of motor vehicles is evaluated once every year by KEBS at the various locations of its operations. An audit on this Company was done in August 2015 and was found to be operating within scope.

Physical Location and Directors of QISJ

29. QISJ is a company that exists and has offices in Japan, United Kingdom and South Africa. The various KEBS teams have confirmed the physical presence of these offices.
30. The Directors of QISJ are
 - (i) Mr. Kiyoaki Hatano - Japanese
 - (ii) Mr. Hashim Hassan - British
 - (iii) Mr. Salem SaiphEbrahim Bin Touq Al Mansouri – UAE

Alleged conflict of interest of QISJ as a motor-vehicle dealer and as an inspector

31. The MD KEBS denied knowledge of any conflict of interest of QISJ and any dealings of QISJ as a dealer of motor vehicles. In the bid documents, a sworn statement on the issue of conflict of interest was attached as required in the tender document.
32. KEBS has instituted a number of measures to prevent tampering of motor vehicles after inspection. The roadworthiness certificate captures the actual mileage as read in the odometer at the time of inspection.

Committee Observations

The Committee observed that-

- (i) the Kenya Bureau of Standards management adhered to the provisions of the PublicProcurement and Disposal Act in processing Tender No. KEBS/T057/2014-2015 for the provision of motor vehicle pre-export inspection services.
- (ii) The appeal by JEVIC and EAAfor review of KEBS decision to award the tender to Quality Inspection Service Inc. Japan was dismissed by the Public Procurement Administrative Review Board on 28th January 2015, thereby allowing KEBS to finalize the contract with QISJ.
- (iii) Various government agencies including KEBS Tender Processing Committee and the Audit Committee conducted due diligence visits to ascertain the technical capacity of QISJ to carry out the tender arrived at the conclusion that indeed the Company has the capacity to carry out the inspection in accordance with Kenya Standard KS 1515:2000 - Code of Practice for Motor Vehicle Inspection of Road Vehicles.

3.2 Evidence by Ms. Catherine Wairi-Mturi, Managing Director, Kenya Port Authority

Ms. Catherine Wairi-Mturi, the Managing Director Kenya Ports Authority (KPA) accompanied by Patrick Nyoike General Manager Finance, Eng. A.M Samatar, General Manager Engineering, and Mr. Geoffrey Kavate, Accountant appeared before the Committee

on 19th August, 2016 to adduce evidence on Inspection of Imported Motor Vehicles for Radiation Contamination.

She submitted that the KPA together with other government agencies has put in place various measures to protect the country from entry of radioactive contaminated vehicles. These include: -

Implementation of Second Line of Defence (SLD) Megaports Initiative Program

1. Second Line of Defence (SLD) Megaports Initiative Program is a key component of a multi-agency, multi-layered, defensive network that strengthens the overall capability of partner countries to deter, detect, and interdict illicit trafficking in special nuclear and other radioactive materials at key international seaports. This program is part of the Office of International Material Protection and Cooperation in the U.S. Department of Energy's National Nuclear Security Administration (DOE/NNSA).
 2. The US Department of Energy (DOE) is the partner agency in the SLD program and has provided equipment (Radiation Portal Monitors – RPM) where all imported containers through the Port of Mombasa are expected to pass through. The Intergovernmental MoU between the Kenya Government and the United States of America was signed on 1st April 2009 while that of the Partner Agencies (Kenya Revenue Authority, KRA, Radiation Protection Board and Kenya Maritime Authority) on 14th January 2010.
 3. Under the program 11 Radiation Portal Monitors (RPM) were installed at various locations near the berths and at the gates at the Port of Mombasa. The RPMs became fully operational on February 28, 2011.
-

Overview of the MoU between the Government of US and the Government of Kenya under the Second Line of Defence Megaports Initiative

The main objective of the MoU is to establish a cooperation mechanism to prevent the illicit trafficking in nuclear and other radioactive material.

Scope of Cooperation

4. The scope is as follows -
 - (i) Technical assistance in the form of equipment, material and training at the points of entry/exit for detecting and interdicting illicit trafficking in special nuclear material and other radioactive material
 - (ii) Installation at selected locations of equipment adapted as appropriate for customs control conditions.
 - (iii) Delivery of spare kit, test equipment and other maintenance equipment.
 - (iv) Technical support for maintenance.

Protection against Radiation for Imported Motor-Vehicles

5. Kenya Radiation Protection Board Management (KRPB) works together with the Kenya Bureau of Standards (KEBS) to inspect vehicles imported in the Kenyan market for clearance of such vehicles against radiation contamination from the source country.
6. Technical and regulatory standards are managed by Kenya Bureau of Standards (KEBS). The Pre-export verification of conformity (PVoC) is based on Article 5 of World Trade Organization – Technical Barriers to Trade (WTO-TBT) agreement, managed by KEBS on behalf of the Kenya Government concerning goods exported to Kenya. PVoC's are carried out by verification agents appointed by KEBS.
7. The overall objective of PVoC is to minimize the risk of unsafe and substandard goods entering Kenyan market, thus ensuring health, safety and environmental protection for Kenyans. The KEBS also works with several approved inspection companies globally for inspection of vehicles intended for import into Kenya.

Action taken by KPA following impounding of a Container at Kilindini Port in January 2013 that was found to be contaminated with Radioactive materials above acceptable levels.

8. On 26th January 2013 container number PONU7244724 (1x40') containing five motor vehicles imported by M/s Ali Baba Motors Limited was detected by Radiation Portal Monitors at lane 3 berth 16, of having significant levels of radioactivity.
9. The Kenya RPB officials subjected the container to secondary and tertiary inspection upon which the survey meters picked hot spots on both sides of the container and confirmed presence of radiation contamination. According to the RPB the Isotope Identifier showed presence of ¹³Cs and ²²⁶Ra radioisotopes at an average of 2000 Counts per Second.
10. The radioactivity levels were beyond acceptable level, subsequently RPB advised KRA Customs to compel the importer to immediately re-ship the consignment in order to protect the Kenyan public from exposure in accordance with CAP 243 Sec. 8(1), b, c, d, Sec. 8(2) and Sec. 18 a, b Laws of Kenya. KPA's main role in this particular incident was in the safe storage of the container at an isolated location before it was eventually shipped out of the country. The container was eventually re-shipped to its country of origin after a lengthy engagement with the importer.
11. Despite issuance of PVoC Certificates for motor vehicles at port of origin by KEBS appointed inspection companies, KRPB now conducts additional radiation checks upon arrival of the units at the Port of Mombasa, especially if they are from Japan to mitigate against future radiation risks.

Overview of the Inter-Agency Agreement under the Megaports Initiative: KRA, KPA, KRPB & KMA

Role of Kenya Revenue Authority

- (i) Facilitate deployment, installation and operation of equipment;
- (ii) Participate in technical workshops, site surveys and acceptance testing of radiation equipment;
- (iii) Designate operators in Central Alarm System (CAS) and One Stop Centre 24/7;
- (iv) Designate personnel for secondary work-station where Radiation Isotope Identification Device (RIID) scans are conducted;
- (v) Provide overall coordination relative to the project implementation.;
- (vi) Responsible for routine operation and maintenance of equipment;
- (vii) Designate appropriate personnel for the training of frontline officers and CAS operators; and
- (viii) Develop with other stakeholders' domestic response procedures and protocols in the operations of the installed alarm systems.

Role of Kenya Ports Authority

- (i) Facilitate deployment, installation and operation of the equipment;
- (ii) Develop domestic response procedures and protocols for the operations of the installed alarm systems;
- (iii) Supervise and manage the construction of necessary infrastructure for equipment infrastructure;
- (iv) Be responsible for security of equipment supplied;
- (v) Liaise with KRA to provide facilities and services for the training of personnel in the Project;
- (vi) Provide space for CAS and Megaports Server;
- (vii) Provide spaces for the construction of Radiation Portal Monitor (RPMs); and
- (viii) Provide operators to be trained in the operation and oversight function of the window CAS

Role of Radiation Protection Board

- (i) Facilitate and ensure testing and calibration of radiation detection equipment;
- (ii) Available for consultation and technical assistance in the identification of Radiation sources on a need basis;
- (iii) Respond promptly in event of nuclear material and other radioactive material to ensure cargo flows;
- (iv) Designate personnel for training; and

- (v) Develop domestic response procedures and protocols in the operation of the installed alarm systems.

Role of Kenya Maritime Authority

- (i) Participate in technical workshops, inspection and acceptance testing of Radiation equipment;
- (ii) Designate personnel for training; and
- (iii) Develop domestic response procedures and protocols in operations of the installed alarm systems

Committee Observations

The Committee observed that:-

- (i) On 26th January 2013, Container number PONU7244724 (1x40') containing five motor vehicles imported by M/s Ali Baba Motors Limited was detected by Radiation Portal Monitors at lane 3 berth 16 of having significant levels of radioactivity. The container was re-shipped to its country of origin, Japan after a lengthy engagement with the importer.
- (ii) Kenya has partnered with various agencies and governments including the United States Department of Energy to deter, detect, and interdict illicit trafficking in special nuclear and other radioactive materials at key international seaports. To this end, the Kenya Government and the United States of America signed an inter-governmental MoU on 1st April 2009 while Partner Agencies (Kenya Revenue Authority, Kenya Ports Authority, Radiation Protection Board and Kenya Maritime Authority) signed theirs on 14th January 2010.
- (iii) Under the Second Line of Defence (SLD) Megaports Initiative Program, 11 Radiation Portal Monitors (RPM) were installed at various locations near the berths and at the gates at the Port of Mombasa. The RPMs became fully operational on February 28, 2011. All imported containers through the Port of Mombasa are expected to pass through them.

3.3 Evidence by Mr. Joel Kamande, Secretary/CEO, Radiation Protection Board

Mr. Joel Kamande, the Secretary/CEO Radiation Protection Board accompanied by Prof. Erastus Gatebe appeared before the Committee on 4th August, 2016 to adduce evidence on the radiation inspection of motor vehicles.

He submitted as that—

Radiation Inspection of Motor Vehicles

1. Following the Fukushima Daiichi nuclear plant disaster of 12th March, 2011 in Japan, there was a worldwide concern that there would be contamination of consumer products and goods in Japan. Several months later after the nuclear accident, Europe, UK, USA, Republic of South Africa and other countries reported incidences of contaminated products and goods from Japan.

2. The Government of Kenya vide letter Ref. OP/CAB/3/7A of 22nd August 2012 issued a goods communication radio alert to the relevant government agencies for necessary action. Fortunately, by this time the government had received a grant from the US government for installation of eleven radiation portal monitors at the port of Mombasa to screen all imports/export containerized cargo. Meanwhile, the Kenya Radiation Protection Board (RPB) had established an Inspectorate office at the port since 1990 again after the 1986 Chernobyl nuclear power accident in Ukraine of the then USSR.
3. The USA radiation portal monitors project is run by four government agencies namely: Kenya Revenue Authority, Kenya Ports Authority, Kenya Association of Manufacturers and Radiation Protection Board. A joint MoU spells out the duties of each of the agency and has an annexed Standard Operating Procedures (SOP).
4. On 26th January 2013, five (5) containerized used motor vehicle units at Berth 16 were detected by radiation portal monitors to be contaminated with radioactivity. The signature of the radiation was most likely from the Fukushima Daiichi nuclear accident. This consignment of cars had a KEBS certificate of road worthiness, which also indicated that they were from a “radiation free source in Japan”.
5. Given that most of the imported motor vehicles are brought in using Roll-on Roll off (RoRo) shipping vessels, the RPB was concerned that many imported vehicles could also be radio-contaminated. Consequently, RPB, KRA, KPA and KAM held consultative meetings and involved the stakeholders in the car import business to find ways of ensuring that all RoRo imported motor vehicles are screened for radiation emissions.
6. A Standard Operating Procedures (SOP) was finally adopted to ensure all motor vehicles entering Kenya either from local market, trans-shipment for transit are screened for radio-contamination. The exercise continues to date and is carried out in conjunction with radiation protection service providers certified by RPB. This is in order to avoid conflict of interest, since RPB is a regulator and not a service provider as required by the General Safety Requirements of the International Atomic Energy Agency (IAEA) to which Kenya is a member since 1965.
7. The other types of conventional goods are also screened for radioactivity to ensure public consumer health and safety, against standards published by IAEA and recognized under the Radiation Protection Act Cap.243 Laws of Kenya and Regulations thereunder.

Scope of Radiological contamination inspection of imported motor vehicles conducted by the Board at the Port of entry to guarantee public safety

8. The RPB has capacity and capability of itself and through Certified Technical Support Organisations (CTSOs) to screen imported vehicles and other goods for radiological contamination or radiation emissions. The Board also partners with KPA, KMA and KRA through an MoU to run the eleven installed Radiation Portal Monitors (RPMs) at the port which were provided as grant to Kenya by the US government in 2011.

9. Terminal tractors that offload containerized cargo from ship vessels pass through the RPMs which are monitored at the Central Alarm Station (CAS) for automatic monitoring of radiation emissions.
10. In case the RPMs detect radiation emissions, alarms are raised simultaneously to the Board, KPA, KMA and KRA through the CAS who then collectively carry out manual secondary inspections. If need be, further tertiary inspection is carried out by the Board as the competent regulatory authority and necessary action taken as it has done on various occasions.
11. Conventional cargo and roll on/rollout (RoRo) motor vehicle vessels; including load on load off (LoLo) cargo, are monitored manually inside the ship by Board certified radiation protection service providers (TSOs).
12. Again, once the TSOs detect contaminated motor vehicles and other goods, they immediately inform the Radiation Protection Officers based at the port who then carry out confirmatory tests before action. Such action may include but not limited to return of goods to ports of origin, recommendations on appropriate decontamination and subsequent radioactive waste management, safety and security of radioactive materials. Motor vehicles found radio-contaminated inside the ship vessel are not allowed to off load. The captain of the ship is handed a rejection form of the specific motor vehicle for purposes of return of the unit to the port of origin.
13. In the fiscal year 2015/2016 a total of 50,808 motor vehicle units were scanned for radio-contamination by two TSOs based in Mombasa. Some of the motor vehicle units scanned were destined to neighbouring countries. However, it is still important to scan motor vehicles on transit to ensure safety of the Kenyan public while the vehicles travel through the country. Radiation exposure limits to the public are derived from the International Commission on Radiological Protection (ICRP) and adapted in local legislation.

Conformity of Motor vehicle units' pre-export inspection to safety standards on radiation aspects

14. The Board was aware that imported motor vehicles were subjected to tests of roadworthiness and radiation emissions under KEBS administration. However, in January 2013 the radiation portal monitors team (KMA, KRA, KPA, RPB) received radiation alarm from an imported containerized cargo (motor vehicles) consignment at port Kilindini.
15. The Board therefore undertook immediate investigations and came up with the following findings: -
 - (i) Originally, the certification stickers from the port of origin read "from radiation-free zone". It was therefore not clear if the actual radiological examination had been performed on the vehicles. However, later the KEBS certificate of roadworthiness was also found to be inserted with the words "this vehicle was surveyed and found to be within the internationally accepted limits at the time of inspection".

On enquiry from KEBS on the meaning of this insertion, it was explained that once the motor vehicles are inspected in the country of origin, some vehicles would still undergo re-conditioning and travel a distance of up to 400km for shipping.

The Board noted that under such circumstances the vehicles may be radio-contaminated in the process. This may explain the detection of radiation emission from the vehicles at the port of entry even after having been found not contaminated at pre-export inspection in the country.

The Board therefore undertook to ensure that all imports are scanned for radio-contamination to safeguard public health and safety against the harmful effects of ionizing radiation.

- (ii) The said containerized consignment had 5 motor vehicles originating from Japan. 3 vehicles were destined for Tanzania and 2 for Kenya. The Board noted that it was important to screen both trans-shipment and transit goods to further safeguard the health and safety of the Kenya public. To this end the Board has offices at the port of Mombasa and JKIA to ensure this is done.
- (iii) The radiation level from the said container was above the acceptable level for public exposure. Consequently, the Board and other government agencies (KPA, KRA, KMA) impounded the container and demanded its return to its port of origin. This was eventually done.

Compliance or non-compliance of imported motor vehicles inspected by Quality Inspection Services Japan to radiation safety standards

- 16. The RPB office at the port of Mombasa processes Import Declaration Forms (IDFs) attached with locally sourced radiation free certificates. It may be worthwhile to note that the IDFs do not indicate the pre-export inspecting organizations.
- 17. However, available statistics at the Board for screened vehicles by locally certified service providers indicate that measured radiation emissions of imported motor vehicles at the port of Mombasa are within acceptable limits for the period 1st March 2015 to date.

Allegations of radiation contaminated containerized motor-vehicles imported from Japan impounded at the port by the Board

- 18. The Board impounded a containerized consignment of 5 motor vehicles inspected and found to be radio-contaminated in January 2013. The consignment was then shipped back to the country of origin (Japan).
- 19. **Measures put in place by the Board to bar vehicles with excessive radiations from entering the country**
 - (i) The Board in partnership with KMA, KRA, KPA and KEBS has developed a standard operating procedure, part of which details the process of radiation screening for imports.
 - (ii) Motor vehicle screening for radio-contamination is undertaken on board the conveyance vessel. Should a motor-vehicle consignment be found and confirmed to be radio-

contaminated, then a Rejection Form is issued to the officer-in-charge of the importing vessel for purposes of returning the contaminated motor vehicle to the country of origin.

(iii) The on-board radiation screening therefore ensures that motor vehicles with radiation emissions above public safety limits are barred from entering the country.

(iv) The fact that Kenya screens its imports (consumer products and motor vehicles) for radio-contamination also acts as a deterrent measure for importers from shipping in the goods that are harmful to local consumers.

Committee Observations

The Committee observed that: -

- (i) The Radiation Protection Board is the legally mandated body to protect the health and safety of people and the environment from the harmful effects of ionizing radiations from radiation sources. The Board meets its mandates through inspections, enforcing compliance with the Radiation Protection Act, licensing and registration of third parties (local radiation protection service providers) to undertake radiation inspections.
- (ii) The Board works in partnership with other government agencies namely Kenya Revenue Authority, Kenya Ports Authority, Kenya Bureau of Standards (KEBS) and Kenya Maritime Authority to inspect containerized imports and exports. A joint memorandum of understanding (MoU) developed spells out the duties of each of the agency with Standard Operating Procedures (SOPs).
- (iii) KEBS deviated from the Standard Operating Procedures for radiation inspection of imported motor-vehicles at the port and usurped the powers of RPB. This is by using service providers whose competence is unknown to the Board to undertake radiation inspection without involving the competent and legally responsible body i.e. Radiation Protection Board; RPB raised complaint to KEBS vide a letter Ref. RPB/CB/KBS/13/8 VOL.1 9(44) on 28th March, 2013.
- (iv) The Board is constrained in law and in its capacity to undertake radiation inspection surveillance at the ports of entry, thus the Board cannot give full assurance that all imported motor-vehicles and consumer goods imported into the country are free from radio-contamination.
- (v) The Board does not have adequate human resource capacity and financial resources to fully undertake its mandate of protecting the health and safety of people and the environment from the harmful effects of ionizing radiations from radiation sources.
- (vi) The Country does not have adequate skilled radiation experts and the few who are available and employed by the Board are also engaged in private practice as technical service providers to private companies registered to test for radiation at the ports. This creates a serious conflict of interest and casts doubts on the authenticity of radiation tests performed by the private companies at the ports.

3.4 Evidence by Dr. Nicholas Muraguri, Principal Secretary, Ministry of Health

Dr. Nicholas Muraguri, the Principal Secretary for Health accompanied by Prof. Erastus Gatebe (Chairperson, Radiation Protection Board), Mr. Saleh Bardad (Parliamentary Liaison Officer, Ministry of Health), Mr. Ibrahim ABM (Ministry of Health), Mr. Nixon Kirwa (Radiation Protection Board) and Mr. Joseph Maina (Radiation Protection Board) appeared before the Committee on 25th August, 2016 to adduce evidence on the matter of the Motor Vehicle Pre-Shipment Inspection Contract.

He submitted that: -

Role of the Ministry of Health in inspection of imported motor vehicles at the port of entry for possible radiation contamination

1. After the 1986 Chernobyl Nuclear Power Plant disaster in Ukraine, the Ministry operationalized the Radiation Protection Board (the Board). In three to four years, a branch of the radiation control inspectorate was opened at the port of Mombasa.
2. The objective was to carry out radio analysis of consumer foods imported into the country. The main focus then was on food items imported from Europe, Asia, and then the USSR. Milk powder imports were particularly targeted, considering that this product is used to make baby formula. It may be noted that growing children are more vulnerable to radiation damage.
3. At the time, the Board also continued to conduct random radiation checks on other types of goods. Since the early 1990s, the Board has consistently insisted on radio analysis of consumer products and has itself continued with random radiation checks on other goods, either as imports or for exports. Other countries to where Kenya exports bulk agricultural products have also demanded that a “radio contamination free” certificate, by the Board, accompanies the exports.
4. In 2010, the US Government entered into an MoU with the Kenya Government to install radiation portal monitors (RPM) at the port. However, the RPMs are only capable of detecting radioactive/nuclear materials in containerized cargo and continued to conduct random radiation checks on other goods including motor vehicles. This includes the period up to and beyond 2011 Japan nuclear electricity generation power disaster.
5. However, in January 2013, the RPM system detected radiation emissions from one container; ID PONU 7244724 (IX40) belonging to Alibaba Motors P.O Box 99967-80107 Mombasa, Kenya. The container was later scanned and found to contain 5 motor vehicles. Secondary radiation measurements by KRA and Tertiary measurements by the Board confirmed presence of nuclear related materials which were responsible for the radiation emissions.
6. Alibaba Motors Ltd was then advised through KRA to reshipe the container to its port of origin. It is at this point that Ali Baba objected and produced a “certificate of road worthiness” issued in Japan by JEVIC and KEBS stating under remarks “VERIFIED RADIATION FREE”.

7. Consultative meetings were then held amongst the stakeholders i.e. KRA, KPA, KEBS, KMA and the Board, where the Board insisted that the container should be reshipped to its port of origin.
8. There were suggestions by Alibaba that they should then be allowed to tranship the container to Tanzania arguing that three out of five vehicles in the container belonged to customers in Tanzania. However, the Board insisted that the container must be reshipped to Japan. Kenya is a member state of the International Atomic Energy Agency and in the spirit of collective responsibility must safeguard all nationalities from unnecessary and undue exposure to radiation.
9. As a result of the incident, the Ministry through the board called several meetings of stakeholders to discuss the incident and chart a way forward. The stakeholders included but not limited to; Kenya Car Importers Association, KMA, KRA, KPA, the Board, Clearing Agents and local radiation service providers.
10. It was then agreed that all imported motor vehicles be subjected to radiation checks and the exercise be carried on board the carrier ship by the local radiation protection service providers. All vehicles including those destined to neighbouring countries are checked. Those destined for Kenya are reprocessed for release by KRA but must first obtain the certificate of radioactivity free from the local radiation protection service providers, before the Board can advise KRA to release the vehicles.
11. This exercise was to be undertaken despite the fact that there are double checks for radiation emissions in Japan. The subject contaminated container cargo had also undergone a double check for radiation emissions in Japan, yet it set the RPM alarms off at the port of entry. This was the justification for the 100% radiation emission checks of car imports at the port of entry today.
12. Indeed, Kenya had in the past returned food consignments which were found to contain radio-contaminants after radio-analysis at the port of entry.
13. From January 2013 to date, a total of thirteen motor vehicles have been found to be radio-contaminated and have not been allowed into the country. In fact, when a vehicle is found to be contaminated it is not off-loaded from the carrier ship. Instead, a rejection note is issued to the ship captain who sails it back to the port of origin.
14. The IAEA basic safety standards require that a regulator in matters of ionizing radiation, like the Board, should not engage in radiation protection services, as this may result in conflict of interest. Technically, therefore, the Board cannot assume ownership of the Radiation Portal Monitors (RPM) at the port. The portals are under the KRA. Secondly, the board cannot purport to offer radiation protection services and can only review radio analytical results from the service providers for necessary action. The board however, continues to carry out random checks for purposes of quality control and audit.

Competence by Quality Inspection Services Japan (QISJ) to offer pre-shipment inspection services in conformity with Radiation Protection Act

1. The Ministry does not have jurisdiction over QISJ. Neither does any form of collaboration exist between QISJ and the Ministry. Agencies of the Ministry manage the ports health offices to carry out various inspections and clearances, in order to safeguard the public from any harmful products. The Agencies include; Directorate of Public Health, Pharmacy and Poisons Board, and the Radiation Protection Board.
2. These agencies are responsible for ensuring the health and safety of consumer products at the point of entry even though such products may have foreign certification for imports.
3. It may be worthwhile to note that the Board is not privy to information on certification of goods by other agencies and conducts independent evaluations with information provided on IDI's and actual goods. Such independent evaluations are important, considering that goods may be shipped through third flag countries. Also, goods may be checked for worthiness at one physical point, in the country of origin, and shipped from another physical point in that country, i.e., subjecting the goods to environmental exposure within the country before shipment. Further, such goods may also be subjected to further "value correction" exercises after safety or worthiness tests and then shipped out.

Possible Link between the proliferation of cancer cases and importation of contaminated vehicles

4. There are no such reports and no studies have been undertaken. Generally speaking, such a study is untenable.
5. Radiation contaminated vehicles are isolated cases and cannot therefore generate adequate statistical data for analysis. Moreover, it would take many years to conclude such a study, if it were possible, since the latent period for some cancers are 20 to 30 years.
6. What is known though is that radiation is not capable of creating unique diseases. The kind of genetic mutations produced by radiation can be caused by other mutagenic agents, such as certain drugs, chemicals, or viral infections. Cells of cancer induced by radiation are indistinguishable from cells of cancers induced by other substances or activities in our environment. Further, high doses of radiation cause deterministic effects just like high doses of other mutagenic agents.

Coordination with various government agencies including Kenya Bureau of Standards in licensing of various Radiation Protection Service Providers

7. There exists a **Licensing and Technical Advisory Committee (LTAC)** under the Radiation Protection Board comprised of:
 - (i) Institute of Nuclear Science and Technology, University of Nairobi
 - (ii) Kenya Medical Research Institute
 - (iii) Kenya Bureau of Standards
 - (iv) National Intelligence Service
 - (v) Director of Medical Services

- (vi) Occupational Health and Safety Services Department
- (vii) National Commissions for Science and Technology
- (viii) Medical Practitioners and Dentist Board
- (ix) Kenya Medical Training College (KMTC) Lecturer
- (x) Society of Radiographers of Kenya
- (xi) National Environment Management Authority
- (xii) Attorney General's representative
- (xiii) Director of Public Prosecution's representative

8. The Terms of Reference for the LTAC include but are not limited to: -

- (i) Inventory and classification of radiation services, radioactive and nuclear materials, and facilities.
- (ii) Inspection protocols for Radiological facilities and Nuclear Safety.
- (iii) Radiation Protection Services and Technical Service Organizations.
- (iv) Licensing radiation facilities and workers and related Board registers.
- (v) Vetting of radiological and nuclear related activities, including radiation workers.
- (vi) Radiation Protection and Nuclear Safety Standards and Guidelines.
- (vii) International Atomic Energy Agency (IAEA) technical projects coordinated in the country.
- (viii) Other technical assistance and cooperation.
- (ix) Any other functions as may be directed by the Board.

9. There are relevant license application forms for various types of licenses including one for radiation protection service providers. Appropriate Inspection reports by the Radiation Control Inspectorate are attached to the license/certificate application form for consideration by the committee.

Committee Observations

The Committee observed that:

- (i) The Radiation Protection Board carries out quality control to ensure safety of the country from radiation.
- (ii) All vehicles imported into Kenya undergo double-check in Japan before being inspected at the port of Mombasa. Vehicles that do not conform to radiation standards are not offloaded.
- (iii) The involvement of Kenya Bureau of Standards in pre-shipment inspection to the exclusion of the Radiation Protection Board goes against the mandate of the Board.
- (iv) There is a need for harmonization between the Radiation Protection Act and the Legal Notice No.78 of 15 July 2005 with regards to the mandate of the Radiation Protection Board.
- (v) The Radiation Protection Board needs to be strengthened both financially and in human resource to be able to undertake its mandate effectively.

- (vi) The container ID PONU 7244724 (IX40) belonging to Alibaba Motors P.O Box 99967-80107 Mombasa, Kenya from which the RPM system detected radiation emissions was not re-shipped to Japan but was instead shipped to Tanzania.

3.5 Special Audit Report by the Auditor General

Following a request by the Committee on 19th June, 2015, the Auditor General conducted a Special Audit on Tender No. KEBS/T057/2014-2015 for Provision of Pre-Export Inspection for Use Motor-Vehicles and tabled his findings to the House on 11th February, 2016.

His findings are as follows:

Summary of Findings

Procurement Process Tender No. KEBS/T057/2014-2015

1. The procurement process for Tender No. KEBS/T057/2014-2015 commenced on 22nd August, 2014 just before the previous three existing contracts for the provision of pre-export inspection lapsed.
2. The procurement process was to source for a service provider to offer motor-vehicle inspection/verification services in accordance with Kenya Standard Code of Practice KS1515:2000 for inspection of road services.
3. On 23rd October 2014, KEBS advertised in the Daily Nation and the Standard newspapers the Request for Proposals (RFP) to offer motor vehicle inspection/verification services in accordance with Kenya Standard Code of Practice KS1515:2000 for inspection of motor vehicles. Thirteen (13) bidders bought the tender documents at Kshs. 1,000. An addendum was issued on 10th November, 2014 to clarify issues raised by bidders. A tender opening committee was appointed on 19th November, 2014 and the responses were opened on 24th November, 2014.
4. A tender evaluation committee was appointed on 24 November, 2014 and instructed to carry out both technical and financial evaluation, due diligence and inspection of Tender No. KEBS/T057/2014-2015 in strict adherence to the compliance and evaluation criteria set out in tender document and submit a report with recommendations by 1 December 2014.
5. Three (3) companies attained the minimum score of seventy (70) marks and therefore found to be technically responsive. The three responsive companies that therefore progressed to financial evaluation were:

Bidder No. 1: East Africa Automobile Services Company Ltd (EAA)

Bidder No. 3: Quality Inspection Services Inc. (Japan) (QISJ)

Bidder No. 7: Japan Export Vehicle Inspection Company (JEVIC)

6. Bidder No. 7 –JEVIC sought recommendations from the Kenyan Embassy in Japan vide letter Ref. KET/COM/17/XII dated 14November 2014 contrary to Section 38(a) and (b) of the Public Procurement and Disposal Act, 2005 on inappropriate influence on evaluations.
7. The tender processing committee evaluated the financial proposals on the basis of 'Administration Fee' submitted by bidders. Inspection fees charged for the exporter services under this contract were specified in Clause 2.11.2 Article b-l.
8. The overall score is the total of both the technical and financial scores. The three companies overall score is as indicated below: -

Bidder No.1 (EAA): OS=TS+FS; OS=72+20=92 marks

Bidder No.3 (QISJ): OS=TS+FS; OS=78+20=98 marks

Bidder No.7 (JEVIC): OS=TS+FS; OS=71+20=91 marks

9. On the basis of evaluation carried out in accordance with the criteria set in the RFP document, QISJ attained an overall score of 98 marks and therefore recommended for the award of the contract.
10. The tender committee held its meeting No.8/2014/15 on 4December 2014 and approved the award of the tender No. KEBS/T057/2014-2015 to Quality Inspection Services Inc. Japan and directed that due diligence be carried out before signing the contract.

Appeal

11. EAA, JEVIC and ATJ made an application No.55/2014, No.56/2014 and No. 59/2014 respectively to the Public Procurement Administrative Review Board for review of the award of tender No. KEBS/T057/2014-2015.
12. On 21January 2015, the PPARB consolidated applications No.55/2014, No.56/2014 and No. 59/2014 since they were all seeking the same orders and heard them together. After taking into account all factors in the request for review, the PPARB did not make any order as to costs nor arrived at any decision.
13. On 28January 2015, the PPARB made the following orders in respect of application No.55/2014, No.56/2014 and No. 59/2014 in respect of the provisions of Section 98 of the Public Procurement and Disposal Act, 2005: -
 - (i) The Applicants bear their own cost for the request for review;
 - (ii) KEBS pay Kshs. 150,000 to the applicant(s) within seven (7) days and provide evidence of payment to the Board before 5 February 2015; and
 - (iii) KEBS proceed with and complete the procurement process.

Due Diligence

14. Various teams were sent to Japan, United Kingdom and United Arab Emirates to carry out due diligence by KEBS. The teams were required to verify and validate documentary

evidence, infrastructural, technical and managerial competence of QISJ to provide service as per the Kenya Standards KS1515:2000 code of practice. No team was sent to South Africa for due diligence process.

15. On 9 January 2015, the due diligence team issued a report signed by the six members who were involved in the exercise recommending that KEBS enter into contractual agreement with QISJ. The team was satisfied that the company had the requisite capacity to provide the service as per the Kenya Standard Code of Practice KS1515:2000.
16. On 2 February 2015, the Managing Director of KEBS and Managing Director of QISJ signed and sealed a contract for QISJ to provide motor-vehicle inspection service as per the Kenya Standard Code of Practice KS1515:2000. The contract was witnessed by Mr. George Sichangi for KEBS and Mr. Khalid Swaleh for QISJ.

Value of Money for the Tender

17. Section 29 of the Public Audit Act, 2003 provides that value for money is achieved through economy, efficiency and effectiveness. From an economy point perspective, the tender was allocated to the most technically qualified bidder. In terms of financial bids, the administrative fee offered by the bidder was US\$41 which was within the limit set out in the tender document by KEBS.
18. A review of the terms as per the Service Level Agreement between KEBS and QISJ required that vehicles be inspected within three (3) days of application for inspection. Waiting time registers highlighted that the longest waiting time was three days with the majority of vehicles inspected on the same day or the second day of application for inspection which highlights efficiency.
19. A comparison on the royalties received from motor-vehicles inspections from the three companies in the previous contracts i.e. JEVIC, QISJ and ATJ for the period between March 2014 and July 2014 versus a similar period in 2015 by QISJ alone indicated a 46% rise in royalties received over and above the collections of 2014, which is an indication of effectiveness, notwithstanding other factors that could have also affected importation of vehicles during the comparable periods.

Possible Fraud in the Procurement Process

20. An analysis of the procurement process for pre-export inspection services for used motor vehicles shows that the procuring entity complied with the law and regulations. Evaluation of the bids was as per tender documents bought by the bidders. The Auditor General could not establish indications for fraud in the process of awarding the tender for pre-export inspection service for used motor vehicles to Quality Inspection Services.

Verification of physical location of QISJ

21. QISJ was incorporated on 22 July 2009. The Company's head office and physical address is at YCC 1608, 22 DaikokuFotou, Tsurumi, Yokohama.

22. The company owns ten (10) inspection facilities in various locations/regions in Japan.
23. QISJ Inc. Dubai was first registered on 20 February 2013. The branch is owned by QISJ Japan and Salem SaifEbrahim Bin Touq as an agent. This is to fulfil UAE requirement. The branch's postal address is P.O. Box 99325, Parcel ID 6131291.
24. QISJ does not own any physical facilities in South Africa but has contracted International Conformity Assessment Solutions (pty) Ltd of 52 Grosvenor Road, Fairway Office Park, Gleneagle Building, Ground Floor, Bryanston 2021 South Africa, to carry out inspection of motor vehicles on its behalf.
25. QISJ was registered as a private limited company in United Kingdom on 21 February 2012. QISJ owns Barking and Tilbury inspection facilities and has leased thirteen (13) other facilities which are approved by Ministry of Transport and Communications in the UK.

Institutional capacity of QISJ to undertake motor vehicle inspection services in accordance with Kenya Standard (KS1515:2000)

Employees

26. QISJ has forty-seven (47), four (4) and six (6) members of staff in Japan, UAE and United Kingdom respectively. Therefore, the company has a total of (57) employees giving a service to exporters of motor vehicles to Kenya from the four source markets.
27. Motor-vehicle inspectors had an auto-mobile mechanics grade two (2) or three (3) which is equivalent to a diploma in automobile engineering. Other employees have competencies ranging from 1st to grade book keeping to university degrees.

Inspection Equipment

28. The company has installed pits, hydraulic jacks, side slip tester/wheel alignment tester, brake tester, sound level tester, emission gas measuring equipment for CO/HC (petrol and diesel), radiation emission tester and all handy tools required for inspections.

Inspection Procedures

29. The company has an inspection procedure that is followed in all its facilities in and outside Japan. This is to ensure uniformity and consistency in the way the company carries out its tests.

QISJ Tax Returns for the period 2011-2015

30. QISJ made tax returns between 1 April 2011 and 31 March 2015 of JPY 2,974,874, JPY 9,482,737, JPY 23,604,015, JPY 34,419,892 and JPY 27,071,850. The tax certificate is issued by Tsurumi District.
31. The company therefore has been filing its tax returns as required by the Japanese tax laws and regulations.

32. ICAS is fully registered by South Africa Revenue Services Income Tax and Value Added Tax (VAT) departments. VAT returns were up to date. The company is registered as a Small Business Enterprise and therefore does not qualify to pay income tax.
33. The revenue (taxes) in the United Kingdom is collected by Her Majesty Revenue and Customs Department. QISJ made tax payment of GBP 3,097,.67 for the period 1 March 2013 and 28 February 2014.
34. United Arab Emirates does not have a tax regime. Companies operating in these countries are not liable to pay taxes, therefore QISJ has not tax liabilities outstanding.

Possible conflict of interest by QISJ as an inspector and a dealer in exporting used motor vehicles

35. QISJ is registered to carry out survey, inspection, measurement assessment of automobile among other things. Japan Used Motor Vehicles Exporters Association confirmed that QISJ is not a member of the association and therefore would not be allowed to export motor-vehicles. The conflict of interest assertion that QISJ is a dealer in exporting used motor vehicles was not confirmed.
36. Further, Japan Accreditation Board (JAB) indicated that QISJ has no historical sanctions such as suspension, withdrawal since its initial accreditation in 2010. JAB has conducted two full size assessments and three surveillance assessments on QISJ. No serious non-conformity issues were found in all JAB's assessment.
37. In South Africa, the company is not directly involved in doing any other business. Therefore, there was no activity that would indicate a conflict of interest in its operations.
38. QISJ is registered as a quality inspection company in the United Kingdom. The company is not involved in any trading activities since its certificate of registration restricts it to inspection of motor vehicles only. The Auditor General could therefore not establish a conflict of interest in its operations in the UK.

Conclusion

39. The procuring entity observed the provisions of the Public Procurement and Disposal Act, 2005 and its Regulations in adjudicating the tender as the winning bidder was arrived at on the basis of the due tender process which was backed with a trail of documents in line with the procurement regulations.
40. The previous contract was handled by three firms which included QISJ that won the current contract. Based on this experience and evidence collected, the winning bidder QISJ is capable of handling the contract as required by Kenya Standard Code of Practice KS1515:2000.

Recommendations

41. To minimize unmerited litigation by losing bidders, KEBS should have a register of service providers who are pre-qualified through due diligence to ensure that only companies with

required competence, experience to undertake inspection are invited to bid for future contracts.

42. 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 proportion of 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.
43. Having noted that the inspection services provider does not have custody of the motor-vehicles after inspection, KEBS and the inspection company should institute a system of preventing and detecting tampering after inspection, including penalties/punitive measures against those exporters who have been found to have tampered with already inspected vehicles.
44. KEBS and its appointed inspections service provider should evaluate possibilities of signing agreements with logistics service providers in country of origin to ensure that custody of inspected vehicles is changed from exporter to the shipping company and it is moved to the port of exit immediately after inspection.

4.0 EVIDENCE BY WITNESSES DURING FACT-FINDING VISIT TO JAPAN

This section contains evidence submitted both orally and in writing by the various witnesses in Japan, where a delegation of the Committee undertook a fact-finding visit from 28th May to 6th June, 2016. The observations/findings and preliminary recommendations on each of the witness submission is also presented.

(a) Objectives of the Visit to Tokyo, Japan

The specific objectives for the inquiry visit by the delegation of members of the PIC were: -

- (i) To meet and gather crucial evidence from key witnesses in the inquiry in the Republic of Japan, where the companies that tendered for the motor vehicle pre-export contract have their headquarters;
- (ii) To establish the directorship of the companies that tendered for the contract, their registration and accreditation status by Japanese authorities to undertake pre-export inspection services of motor vehicles.
- (iii) Review the motor vehicle pre-export inspections procedures and its conformity to the Kenya Bureau of Standards (KEBS) code of practice KS 1515:2000;
- (iv) Verify the physical location of Quality Inspection Services Japan (QISJ) Ltd and its technical and financial competency to undertake the pre-export inspection services for used motor vehicle;
- (v) To determine whether there was any possible malpractice in the procurement of the services of QISJ by KEBS Ltd and adherence to the Kenya procurement laws and regulations;
- (vi) Establish any possible conflict of interest by QISJ and its Directors as an inspector and a dealer in exporting used motor vehicles to Kenya;
- (vii) To find out the technical capacity of Quality Inspection Services Japan (QISJ) Ltd to conduct radioactive contamination inspection;
- (viii) To establish the relationship between Quality Inspection Services Inc. Japan (QISJ) Ltd, Quality Inspection Services Inc. Japan (United Kingdom) and Jan's Trading Company Ltd;
- (ix) To establish the ISO Certification of the companies; and
- (x) Address the complaints arising out of the procurement process of the KEBS pre-export inspection tender.

(b) Meetings held in Tokyo, Japan

- 11. The Committee in its visit to Tokyo Japan met with Directors and Management of the following organizations: -
 - (i) Embassy of the Republic of Kenya in Tokyo, Japan;
 - (ii) Japan Accreditation Board;
 - (iii) Japan Export Vehicle Inspection Centre Company Ltd (JEVIC)

- (iv) Quality Inspection Services Inc. Japan (QISJ);
- (v) East Africa Automobile Services Co. Ltd (EAA);
- (vi) Auto Terminal Japan Ltd (ATJ);
- (vii) Japan Harbor Transport Association; and
- (viii) JANS Trading Company Ltd. (Japan)

(c) Members of the Delegation

The Delegation comprised the following: –

- (i) Hon. Adan Wehliye Keynan, CBS, MP –Chairperson/Leader of the delegation**
- (ii) Hon. Franklin Mithika Linturi, MP
- (iii) Hon. John Olago Aluoch, MP
- (iv) Hon. (Eng.) John Kiragu, MP
- (v) Hon. Dorcas Kedogo, MP
- (vi) Hon. Beatrice Nkatha Nyaga, HSC, MP
- (vii) Hon. Bernard Munywoki Kitungi, MP
- (viii) Hon. Cornelly Serem, MP
- (ix) Hon. John Muchiri Nyaga, MP

The delegation was accompanied by two officers of the Parliamentary Service Commission who provided the secretariat support.

4.1 Evidence by H.E Amb. Solomon Maina, MBS, Kenya’s Ambassador to Japan

The Ambassador, Extraordinary Plenipotentiary, His Excellency (HE) Mr. Solomon K Maina, welcomed and held a meeting with the delegation at the Embassy of the Republic of Kenya in Tokyo, Japan on Tuesday, 31st May 2016 at 9.00am. He was accompanied by other Embassy officials namely Mr. Paul Kalihi (Minister Counselor/ Deputy Head of Mission; Ms. Nelly N. Wanjala (First Secretary); Ms. Naoko Yagi (Executive Assistant); Ms. Patricia N. Maangi (Administrative Attaché); Ms. Elma (Secretary); and Ms. Joseph (Office support staff).

4.1.1 Welcome Remarks and Objectives of the Visit

After a brief self-introductory session by the Embassy officials and the members of the delegation, the meeting started with welcoming remarks from H.E the Ambassador and introductory remarks from the Head of the Delegation, Hon. Adan W. Keynan, CBS who informed the meeting that:

1. The Public Investments Committee (PIC) of the National Assembly was undertaking a special inquiry into the Kenya Bureau of Standards (KEBS) tender no. KEBS/T057/2014-2015 for

the provision of pre-export inspection services for used motor vehicle which was awarded to Quality Inspection Services Japan (QISJ).

2. The foreign inquiry visit was undertaken pursuant to Article 125 clauses 1 and 2 of the Constitution of Kenya, 2010 which gives the Committee the power to call for evidence. The Article 125 (1) specifically states that “*Either House of Parliament, or any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information*”. For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court: -
 - (a) to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise);
 - (b) to compel the production of documents; and
 - (c) to issue a commission or request to examine witnesses abroad.
3. The Committee therefore scheduled an inquiry visit to Tokyo, Japan to examine the following witnesses abroad in line with Article 125 (2) (c): -
 - (i) His Excellency Amb. Solomon K. Maina, - Ambassador of Kenya to Japan;
 - (ii) The Directors and management of Japan Accreditation Board;
 - (iii) The Directors and management of Auto Terminal Japan (ATJ);
 - (iv) The Directors and management of Quality Inspections Services Japan (QISJ);
 - (v) The Directors and management of Japan Export Vehicle Inspection Center Co Ltd (JEVIC);
 - (vi) The Directors and management of Japan Harbour Transporters Association (JHTA);
 - (vii) The Directors and management of East African Automobile Services Co. Ltd (EAA);
 - (viii) The Directors and management of Jan’s Trading Ltd Japan.
4. The Inquiry visit was aimed at achieving the following objectives: -
 - (i) To ascertain the existence of Quality Inspection Services Japan (QISJ), its directors and business registration;
 - (ii) Relationship between QISJ and Jan’s Trading Company Ltd;
 - (iii) Verify institutional and technical capacity of QISJ to undertake pre-export inspections services of motor vehicles in accordance with Kenya Standards KS 1515:2000 Code of Practice for inspection of road vehicles which specifies general safety, health and environmental requirements; and specifically and ascertain its capacity to conduct radioactive contamination inspection;
 - (iv) Complaints arising out of the procurement process from other companies that bid for the tender including Auto Terminal Japan Ltd (ATJ), East Africa Auto Mobile

Services Company and Japan Export Vehicle Inspection Services (JEVIC) Company among others; and

- (v) Whether the H.E Mr. Solomon K. Maina, Ambassador Kenya Embassy in Japan had any inappropriate and undue influence in the procurement proceedings of the tenders by Kenya Bureau of Standards (KEBS).

4.1.2 Briefing on Operations of the Kenya Embassy in Tokyo

5. The delegation was briefed on the operations of the Kenya Embassy in Tokyo through a presentation by Mr. Paul Kalihi, Minister Counselor/ Deputy Head of Mission.

4.1.3 Submission by the H.E Ambassador S. K Maina on the Engagement of the Kenya Embassy in relation to the Contract

H.E Ambassador S. K Maina in his written submission informed the delegation as follows:

(a) Courtesy meeting with Managing Director of JEVIC Mr. Damon Jackson

6. On 13th November, 2014 the Managing Director of Japan Export Vehicle Inspection Company Ltd (JEVIC), Mr. Damon Jackson paid a courtesy call on him as the new ambassador in Tokyo, for purposes of acquainting him with the work of JEVIC in Japan. This included JEVIC's collaborative work with the Embassy in its drive to curb the prevalent used motor vehicle fraud, as well as support the Mission's promotion events, which is part of Economic Diplomacy agenda.
7. It is worth mentioning that the Embassy has always partnered with all Japanese companies with business interest in Kenya to carry out promotional activities and JEVIC was not an exemption.
8. Subsequently Mr. Jackson took the opportunity of the meeting and him of the advertisement of the Kenya Bureau of Standards (KEBS) for tender to supply pre-shipment inspection services of cars for the period beginning January 2015. He further requested the Embassy to give them a letter of recommendation reflecting collaborative activities.
9. In light of the above and given the fact that he found JEVIC's support to the work of the Embassy to be indeed true, he wrote an introductory letter dated 14th November 2014 about JEVIC and its collaborative activities with the Mission to the Managing Director KEBS. **(Appendix3)**. Amb. Maina however categorically stated that the recommendation was made **"without any prejudice whatsoever to any existing procedural or regulatory processes"**. In this case, it was his considered opinion that the letter was purely introductory and was in no way intended to form part of the procurement process undertaken by KEBS.

(b) Visit to Japan by Dr. Henry Rotich, KEBS Tender Processing Committee Chair

10. On Wednesday, 24th December 2014, at around 12:45 hours while in Kyoto on Christmas holiday, he received a call from Dr. Henry Rotich informing him of the presence of a KEBS team in Tokyo apparently for a due diligence exercise. Neither the Embassy nor the Ministry of Foreign Affairs had any prior notification of the team's planned visit nor their presence in

Tokyo until the said call was made through a Japanese mobile telephone number +81-990-7732-7601.

11. During this time and in keeping with the host country tradition, the Mission was already closed for Christmas and New Year Holidays and therefore he was not able to meet the team. The Mission resumed official duties on 6th January, 2015, upon which the Embassy received a letter dated 1st December, 2014, and signed by Dr. Rotich, seeking clarification on the ownership of the earlier mentioned introductory letter for JEVIC. The alleged letter signed by Dr. Rotich was an unofficial communication since it was neither on a letterhead nor bore a reference number or the stamp of KEBS.
12. Additionally, the said letter was posted from Tokyo, Japan and not Nairobi, Kenya as should have been the case. He thereafter wrote to KEBS informing them that he was not in a position to respond to an unofficial letter.
13. Thereafter, the Managing Director of KEBS communicated unofficially on the same matter vide letter Ref. KEBS/CONF./ADM/17- VOL.5 dated 14th February, 2015, clarifying the impartial position of the Embassy on the matter.

(c) Media Reports on the Japan Vehicle Inspection Centre (JEVIC)

14. On Saturday 24th January, 2015, his attention was drawn to an article appearing on page 11 of the Standard Newspaper regarding a failed bid by JEVIC. The appalling thing, however, was the fact that the paper had featured a copy of the introductory letter which he had written to the Managing Director, KEBS, in good faith, and without prejudice, to try and malign his name and indeed the name of the Kenya Embassy by insinuating that the Kenya Embassy in Tokyo was trying to tamper with the tendering process.
15. He took the responsibility to clarify the article to the Principal Secretary of the Ministry of Foreign Affairs & International Trade vide letter Ref. No KET/COM/17/XII (38) dated 26th January, 2016 for accountability reasons and also in case of any inquiries on the matter that would come through the Ministry.
16. In meeting with the KEBS Board which visited Japan unexpectedly from 4th October, 2015 to 17th October, 2015, the Board confessed that the letter was released to the press by unidentified official of KEBS. This was certainly a breach of the Civil Service Code of Regulations and Ethics by the Bureau to share with the media confidential information which had been conveyed in good faith.

(d) Visit to Japan by the Kenya Bureau of Standards

17. On 5th October, 2015, the Embassy received a four (4) member delegation from the Kenya Bureau of Standards which had apparently visited the Mission without prior notice. The team was led by Mr. Hillary Kosgey, a member of the Board of Directors. Other members of the delegation were Director Mr. Hussein Ali and KEBS officials Eng. Reuben Chesire and Eng. Gordon Anjore.

18. According to the team, the delegation had been sent by the Board of Directors on a fact finding mission following public complaints about radiation inspection related to use of motor vehicles export into Kenya. This was after the de-listing of Quality Inspection Services Japan (QISJ) by the Japan Harbour Transport Association (JHTA) in early September 2015.
19. During the meeting, the delegation requested the Mission to facilitate appointments with Japan Harbour Transport Association (JHTA) as well as Japan Accreditation Board (JAB). He expressed his disappointment due to the fact that the team failed to observe proper channels of communication prior to their visit. This not only undermines the Mission's capacity to seek appropriate appointments in good time, but also override desirable synergy that ensures all engagements are based on consensus and for the collective good. Nonetheless, the Embassy fully supported and facilitated the work of the team throughout their stay in Tokyo.
20. During the meeting with Japan Harbour Transport Association (JHTA) and the Japan Accreditation Board (JAB), it was observed that the team was keen to understand the reasons for the delisting of QISJ as one of the radiation inspectors. The team was emphatic on the need for proof of QISJ alleged ineptitude, without which then JHTA was requested to write a letter clearing the company.
21. Both agencies JHTA and JAB declined to provide a proof incriminating QISJ. They however stated that they would have no objection in providing evidence if a written official request was made through competent authorities of Kenya and Japan.
22. He shared the report of the visit with the Ministry of Foreign Affairs and International Trade vide letter Ref. No. KETR/COM/15/XVI(51) dated 12th October, 2015. In his communication, he clearly informed why the Japan Ports and Harbours Authority could not issue a written report on the reasons of delisting QISJ. He therefore recommended that KEBS formally communicate to the Ministry of Transport and the Ministry of Foreign Affairs and International Trade for action to be taken.
23. Additionally, given the gravity and sensitivity matter of radiation issue, he observed that in the said letter it would have been advisable for an independent audit team including Radiation Board, among others to have undertaken the fact finding mission.
24. In his closing submissions, the H.E the Ambassador informed the delegation that: -
 - (i) One of the Foreign Missions' mandates is to facilitate Kenya's economic transformation through economic diplomacy and related activities. The realization of this mandate calls for multi-sectoral and collaborative approach with all stakeholders on the ground.
 - (ii) In view of the foregoing, it has been the policy of the Kenya Embassy in Tokyo to relate with all business companies in good faith and fairness to inspire confidence amongst the country's foreign investors in pursuing economic diplomacy agenda. Part of this engagement includes introducing prospective companies with proven track record to related agencies in Kenya upon the companies' requests. In this case it is assumed that

the referred to, Kenya agencies have the aptitude to establish whether they can do business with the concerned companies or not.

- (iii) It would therefore be a remiss as a representative of the Government of the Republic of Kenya in Japan to shy away from introducing companies that wish to do business in Kenya, or fail to engage the Government on serious matters that touch on the livelihoods of Kenyans and the image of Kenya at large. It is indeed for this reason that 100 Japanese companies including three leading Japanese banks will actively participate in TICAD VI in Nairobi in August 2016.
- (iv) He acted in all fairness and without prejudice, within the mandate of the Embassy to strengthen economic and trade ties between Kenya and Japan. He is desirous that the matter will be dealt with appropriately for the collective good and continued strengthened relations between Kenya and Japan.

Committee Observations

The Committee made the following observations and findings from the submission by the Embassy of the Republic of Kenya, Tokyo Japan:

- (i) The Kenya Government Officials in Tokyo, Japan are doing a commendable job in promoting Kenya-Japan diplomatic relations.
- (ii) The letter dated 14th November 2014 by HE the Ambassador recommending JEVIC for positive consideration for the tender by KEBS was issued with a disclaimer that the recommendation was made without any prejudice to the existing procedural and regulatory process.
- (iii) The action by H.E. Ambassador Solomon K Maina to write a letter to KEBS recommending JEVIC though undertaken in good faith, portrayed the Embassy in bad light since it may be construed as an inappropriate influence on the tender by the Ambassador, contrary to provisions of Section 38 of the Public Procurement and Disposal Act 2005.
- (iv) The request by Mr. Damson Jackson, the Managing Director JEVIC to the Embassy to give them a letter of recommendation reflecting collaborative activities, so as to support JEVIC's bid for the tender was an act of inappropriate influence on tender evaluation, contrary to the provisions of Section 38 (1a) of the Public Procurement and Disposal Act 2005.

4.2 Evidence by Japan Export Vehicle Inspection Centre (JEVIC) Company Ltd

Mr. Aaron Treadway (Executive Director and General Manager International Operations) Mr. Jordi Vollom (Manager, Marketing Division); and Mr. Lee Sayer (Manager, IT) received the delegation on Tuesday 31st May 2016 from 11a.m to 1. 00p.m, at the JEVIC Boardroom in Tsurumi-Ku Yokohama City.

The witnesses submitted that—

(a) Company Profile

1. Japan Export Vehicle Inspection Center Company Ltd (JEVIC) is a Japanese registered company highly respected for its work in pre-shipment inspection and certification of cargo. Our services are primarily for used-vehicle inspection and extend to vessels, containers and new vehicles. The Company was established in 2001 to provide third party independent vehicle inspections to businesses exporting motor vehicles.

JEVIC's Competence and Experience in Pre-Shipment Inspections

2. JEVIC is ISO/IEC 17020:2012 accredited in New Zealand and with deep knowledge of all aspects of motor vehicle inspection in Japan and internationally. JEVIC provides independent pre-shipment inspections, surveys, verifications and certifications.
3. The Company has thorough knowledge of the inspection industry and the skills required to deliver the highest quality and most efficient service. Importing countries implement strict regulations to meet various safety and environmental policies; to assist in meeting such requirements and providing assurance to the importing countries, authorities and end users, JEVIC has employed the latest technology in pre-shipment inspection and verification.
4. The Company has world first-class facilities strategically located at major Japanese ports – in Yokohama, Kawasaki, Nagoya, Osaka and Kobe – and the Head Office is in Yokohama City and key vehicle pathways around the world.
5. With more than 30 other facilities for inspection purposes, JEVIC carries out inspections in countries such as Dubai and South Africa where vehicles are shipped from Japan and subsequently exported to other countries such as African nations. Subsidiaries and strategic partners are located throughout the world in Dubai, New Zealand, Singapore, the United Kingdom, South Africa, and Kenya.
6. JEVIC clients range from shipping agents, freight forwarders and vehicle importers/exporters to individuals and countries that require mandatory inspection and certification. They return to JEVIC time and time again because they have confidence in the extensive benefits we provide.
7. The Company currently has active service agreements for the decontamination of used motor vehicles with the New Zealand Ministry of Primary Industries (NZMPI), the New Zealand Transport Authority (NTZA) and the Australia Department of Agriculture (DOA). Decontamination at JEVIC facility is assurance that no organic matter is present at the time of export, thus keeping the bio-safety risks offshore. The US Department of Agriculture (USDA) and the Canadian Food Inspection Agency (CFIA) have approved JEVIC for inspection of pre-departure sea bound vessels.
8. Government clients of JEVIC include Uganda, Zambia and Sri Lanka.

(b) Inspection Services

9. The Company offers full range of services beyond roadworthiness and quarantine inspection. Odometer Verification – the authenticity of vehicle's mileage is confirmed before importing

the vehicle. The odometer may be removed for forensic inspection. Pre-export Appraisal – this is done to confirm the vehicles condition, accessories, structural and mechanical integrity with over 120 check points.

10. Radiation Inspection: - Since the Fukushima nuclear disaster in 2011, radiation inspections have been important part in ensuring the public of the safety of the imported vehicles. JEVIC is approved by the Japanese authorities and that JEVIC radiological assessment is accredited to ISO/IEC 17020:2012 in New Zealand.

(c) Independence and conflict of interest

11. JEVIC does not have any conflict of interest in the supply of vehicle pre-shipment inspection services. It is not involved in the purchase or selling of vehicles, shipping and freight forwarding.

(d) JEVIC engagements with Kenya Bureau of Standards

12. JEVIC was first awarded the tender to offer pre-export inspection of used vehicles to determine conformity to the requirements of the KS 1515:2000 by the Kenya Bureau of Standards (KEBS) in 2008.
13. In 2011, JEVIC and two other firms, Auto Terminal Japan (ATJ) and Quality Inspection Services Inc. Japan (QISJ), were contracted to inspect the vehicles before shipping to Kenya, however their contract with KEBS was terminated on allegations that some vehicles inspected by JEVIC were found to contain radioactive emissions, tampered export certificates and overage.
14. JEVIC however contends that loading of motor vehicles for export is done at the port outside the Company premises and exposure of the inspected vehicles to radioactive materials once in the port and in the shipment container during shipment is beyond the control of the Company.

Committee Observations

The Committee made the following observations from the submissions by JEVIC: -

- (i) JEVIC conducts inspections and tests motor vehicles for shipment in its premises and is among the companies listed by Japan Harbour and Transport Association (JHTA); an association which deals with major matters that seriously affect the employment conditions of port workers, to offer motor vehicle pre-shipment inspection services.
- (ii) JEVIC had motor pre-shipment inspection contract with KEBS from 2008 to 2011. It was again awarded a further 4-year contract with two other different motor vehicle inspection companies up to January 2015; however, following complaints and investigations of letting in defective and overage vehicles into the country, against the regulations, KEBS terminated the contract in August, 2014, four months before the end of the contract period.
- (iii) During bidding for the current Contract, KEBS issued a notice to extend the contract for the other two companies QISJ and ATJ for three months (90 days), to allow for completion of the procurement process and left out JEVIC.

- (iv) JEVIC tendered for current KEBS contract Tender No. KEBS/T057/ 2014-2015 in accordance with KEBS Code of Practice for Inspection of Road Vehicles (K1515:2000) and was among the three shortlisted companies for technical evaluation stage. However, it failed to progress further at the financial evaluation stage of the tender that was awarded to QISJ. JEVIC appealed against the award but the appeal was dismissed by the Public Procurement Administrative Review Board.
- (v) The request on 13th November 2014 by Mr. Damson Jackson, the Managing Director JEVIC to the Embassy of Kenya, Tokyo Japan to give them a letter of recommendation reflecting collaborative activities so as to support JEVIC's bid for the tender was an act of inappropriate influence on tender evaluation, contrary to the provisions of Section 38 (1a) of the Public Procurement and Disposal Act 2005.
- (vi) In the year 2014, JEVIC was accused of permitting radioactive contaminated vehicles into Kenya when a high radioactive reading was found to be coming from a container with four second hand vehicles at the Port of Mombasa. JEVIC agreed that two out of the four vehicles were inspected by it and the other two extremely radioactive contaminated vehicles were not inspected by the company as per their submission in a letter dated 14th June 2014. **(Appendix 4).**

4.3 Evidence by Japan Accreditation Board

Mr. Makato Kubo (Executive Director General), Mr. Yoshinobu Uematsu (Deputy Director-General), and Mr. Masaki Uematsu received the delegation on Tuesday 31st May 2016 from 3:00p.m to 4:30p.m at the Japan Accreditation Board (JAB) Boardroom in Shinagawa-Ku, Tokyo, Japan

After exchanges of compliments and introductions, Mr. Makato Kubo the Executive Director, JAB informed the delegation as follows: -

(a) Overview of Japan Accreditation Board

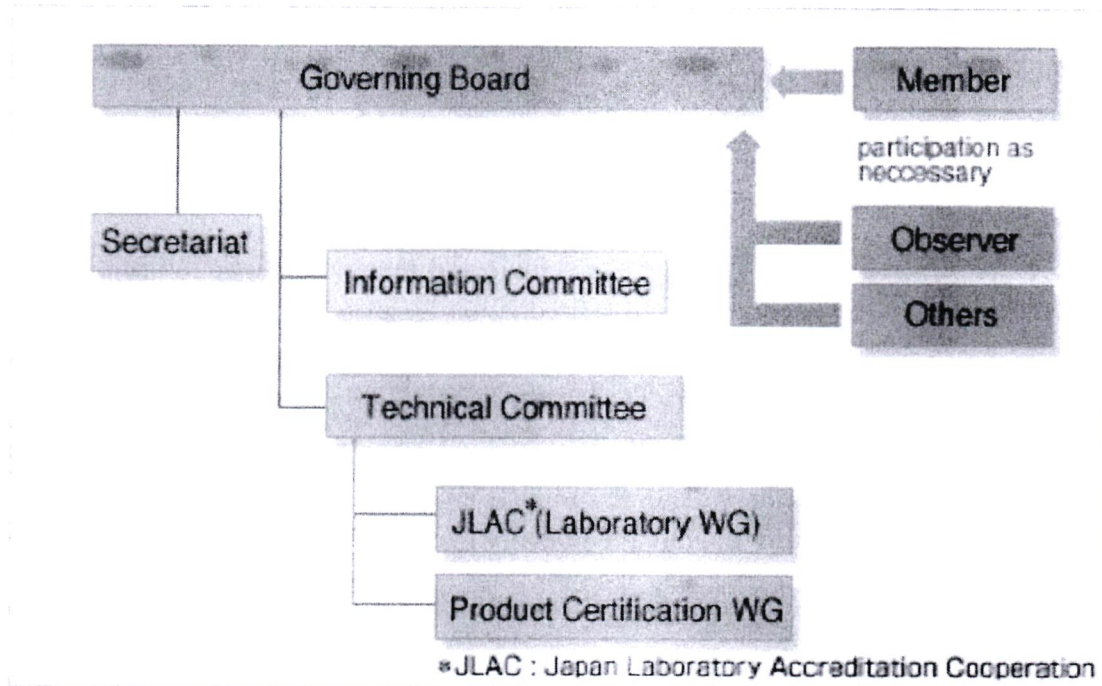
1. Japan Accreditation Board (JAB) was established on 1st November, 1993 as a private non-profit organization in accordance with the recommendation presented by the Japanese Industrial Standards Committee (JISC) and supported by 35 industrial organizations under the auspices of the Japan Federation of Economic Organizations.
2. JAB operates under the provisions of the Civil Law Act of Japan and it is the only organization in Japan carrying out almost all accreditation programs. It was authorized as a public interest incorporated foundation by Cabinet Office, Government of Japan on 1st July, 2010.
3. By conducting activities related to conformity assessment under Japanese Industrial Standards (JIS), international standards, or statutory and technical requirements, JAB seeks to establish and promote progress in the conformity assessment scheme in Japan and a multilateral/mutual recognition scheme with accreditation bodies abroad, through which to promote and contribute to the sound development of the Japanese economy and industry. JAB offers accreditation and registration of the following management systems:-

- (i) ISO/IEC 17021 management system certification;
 - (ii) ISO 9001 quality management systems;
 - (iii) ISO 14001 environmental management systems;
 - (iv) ISO/IEC 27001 information security management systems;
 - (v) ISO 22000 food safety management systems;
 - (vi) JIS Q 13485 medical device quality management systems;
 - (vii) JIS Q 9100 aerospace quality management systems;
 - (viii) TL 9000 telecommunications management systems;
 - (ix) ISO/IEC 17024 personnel certification bodies;
 - (x) ISO/IEC 17025 testing and calibration laboratories;
 - (xi) ISO 15189 medical laboratories; and
 - (xii) ISO/IEC 17020 inspection bodies.
4. At present, JAB is a member of international MLA (Multilateral Recognition Arrangement) groups for the accreditation of quality and environmental management system certification bodies, and MRA (Mutual Recognition Arrangement) group for testing laboratories, and medical laboratories.
-
5. JAB implements the following activities related to the conformity assessment scheme:
- (a) Accreditation and registration of management system certification bodies and personnel certification bodies;
 - (b) Accreditation and registration of product certification bodies;
 - (c) Accreditation and registration related to greenhouse gas (GHG) validation and verification bodies;
 - (d) Accreditation and registration of laboratories, medical laboratories and inspection bodies;
 - (e) Evaluation service based on the MRA Law;
 - (f) Publication of certified organizations (companies certified with a quality management system, an environmental management system, and others);
 - (g) Promotion of multilateral / mutual recognition from foreign accreditation bodies;
 - (h) Surveys and research;
 - (i) Response to complaints, etc. relating to accreditation / certification;
 - (j) Dissemination/ enlightenment and public relations activities;
 - (k) Exchange of information and cooperation with relevant bodies both in Japan and

abroad.

(b) Organization Structure of Japan Accreditation Board

6. The organization structure of JAB is as per the diagram



Source: Japan Accreditation Board

(c) Accreditation status of Quality Inspection Services Inc. Japan, Auto Terminal Japan Ltd, East Africa Automobile Company Ltd and JEVIC by JAB

7. Quality Inspection Services Inc. Japan is among the companies accredited currently by Japan Accreditation Board (JAB) to offer motor vehicle and radiation inspection. It was issued with accreditation certificate on 28th May 2015 with a validity period of 4 years; up to 30th April, 2018 as long as it continues to meet the accreditation conditions and qualifications by JAB.
8. Auto Terminal Japan Ltd, East Africa Automobile Company Ltd and JEVIC are not in the database of accredited companies by JAB.
9. JAB has not received any complaints from either from the port workers nor from the Japan Harbour and Transport Association on any malpractices regarding QISJ. In the event a complaint is received by JAB from the concerned stakeholders, JAB Complaints Committee institutes investigations and if the allegations are found to be true the Accreditation certificate is immediately revoked.

Committee Observations

The Committee made the following observations:-

- (i) JAB has accredited QISJ to offer motor vehicle and radiation inspection services despite allegations that the Company was delisted/declassified by the Japan Harbour and Transport Association in September 2015.
- (ii) JAB officials did not know the reasons behind the delisting of QISJ. They informed the Committee that JHTA could provide the appropriate response since it was the JHTA that delisted QISJ from its list.
- (iii) Not all companies legally providing motor vehicle and radiation inspection services in Japan are accredited by JAB. JAB views the accreditation as an opportunity to spread the use of conformity assessment systems to spur their adoption to improve the quality of Japanese products.
- (iv) JAB, industrial groups and other Japanese agencies use accreditation and certification systems to promote to international standards their products and services as part of Japan revitalization strategy and not necessarily to regulate the industry players.

4.4 Evidence by Auto Terminal Japan Ltd

Mr. Mamoru Fujie (Director and Chief Executive Officer), Dr. Isaac P. Kalua (Director Africa Affairs) and Ms. MiraneBorres Nakata (Quality Management Officer) received the delegation on Wednesday 1st June 2016 from 10:00 Hours to 12:30 Hours at the Auto Terminal Japan Ltd (ATJ) Boardroom in ShiohamaKisarazu-City Chiba

After exchanges of compliments, Mr. Mamoru Fuji the Chief Executive Officer informed the delegation as follows:-

Background of Auto Terminal Japan (ATJ)

1. Auto Terminal Japan Ltd. (ATJ) was established and registered and on 10 March 1997 and has been in motor vehicle inspection business for more than 17 years. It was established as an independent motor vehicle inspection company and started providing third party pre-shipment s for used motor vehicles.
2. On October 2004, ATJ put up its pre-shipment inspection terminal at the Port of Kobe within a Safety of Life and Sea Convention secured and approved facility where ATJ conduct its operations in proximity to major auction houses and major ports in West Japan, which includes Kobe, Osaka and Nagoya.
3. In October 2006, ATJ created its ATJ-Tokyo branch in Kisarazu, which is also an owner-operated terminal receiving and pre-export inspection facility. The establishment of this facility allows ATJ to expand its operations and provide inspection services within any of the major ports in East Japan, including Yokohama, Kawasaki and Kisarazu.
4. ATJ provides independent inspection and testing services of the highest industry standards without compromise.
5. ATJ can inspect, test and verify motor vehicle bound for any country in the world. It has

exceptional functional and technical expertise as well as state-of-the-art facilities coupled with industry knowledge.

Company Profile

6. ATJ provides superior world class inspection and testing services for previously owned or used motor vehicles, complying with both Japan domestic and international or other countries' requirements and standards and serving the exporters, importers and government regulatory agencies of motor vehicles.
7. Under the strict provisions set out within the International Organization for Standardization (ISO) 17020, ATJ has been accredited with the Type A third party inspection approval for pre-shipping inspections of used motor vehicles by New Zealand.

Type "A" Accreditation to ISO/IEC 17020:2012 Conformity Assessment – Requirements for the Operation of Various Types of Bodies Performing Inspection

8. ATJ is certified as an ISO/IEC 17020 company as per International Standards Organization Conformance Standard "General criteria for the operation of various types of bodies performing inspection" for Export Vehicle Inspections – Type A" and upgraded to ISO 17020:2012 Conformity Assessment, which is a critical requirement for the operations of various companies performing inspection of motor vehicle inspection.
9. Under the strict provisions set out within the International Organization for Standardization ("ISO") 17020, ATJ has been accredited with the Export Vehicle Inspection - Type "A" Inspection Body approval for pre-shipping inspections of used motor vehicles.
10. ATJ has fine-tuned its internal quality systems and business functionality to meet the requirements of ISO 17020:2012 so as to meet the general criteria for the operation of various types of bodies performing inspection.
11. ATJ is the first company to obtain approval Structural inspection processes approved under New Zealand's Import Health Standards from the Ministry of Agriculture and Forestry Bio-Security of New Zealand (MAF-BNZ) and New Zealand Transport Agency ("NZTA")
12. Auto Terminal Japan Ltd. is currently contracted by the Zambia Bureau of Standards (ZABS) to provide Pre-Shipment Roadworthiness Inspection (RWI) for Zambia for used motors vehicles from Japan, United Arab Emirates, Singapore, United Kingdom, South Africa and United States of America.
13. The Company also offers complete owner operated pre-shipping inspection services for both exporters and importers of used or pre-owned vehicles. Their main business is to provide the services required for the pre-shipment inspection and verification of used motor vehicles which comprise the following:

Product/Vehicle Inspection Services

14. The company offers various types of products / motor vehicle inspection services which include the following:

- (i) Bio-security pre-shipment inspection;
 - (ii) Vehicle Appraisal Inspection;
 - (iii) Pre-shipment non-invasive structural damage inspection;
 - (iv) NTZA – pre-shipment border inspection for all vehicle classes; and
 - (v) Roadworthiness Inspection.
15. The scope of this inspection service includes inspection done upon arrival and receipt of the vehicle at ATJ's yard sites. The vehicle is then checked as to the correctness of the vehicle information, its status and notes as to the damages and accessories of the vehicle are documented at this stage.
16. ATJ's independent vehicle appraisals are designed to provide customers with both historical vehicle's profiled data and physical inspection by a qualified technical expert to validate this information. This service is also known as Terminal Receiving Inspection (TRI). Upon arrival at ATJ's yard sites, vehicles are further inspected to identify whether those units have been through pre-purchase inspection or previously inspected by a vehicle auction or lease company's appraisal service. A vehicle has undergone pre-purchase inspection if it has a Vehicle Inspection Checklist with it. No vehicle can be released unless it has been subjected to ATJ's inspection processes duly conducted by its technically compliant specialists:-
- (a) Vehicle Appraisal Inspection
 - (b) Odometer Inspection
 - (c) Structural Inspection
 - (d) Quarantine Inspection
 - (e) Vehicle Valuation Inspection
 - (f) Vehicle History Inspection

Quarantine Inspection

17. The Pre-Quarantine inspection (PQI) service is to conduct inspection based on ATJ's internal Quarantine Inspection Procedure (ATJ-PRTD-004). Pre-quarantine inspection is an inspection process which ensures and validates that the decontamination of a vehicle has been properly done. This process is supported by verification and certification procedures to ensure that New Zealand Ministry of Agriculture and Forestry (NZMAF) bio security requirements have been met. The inspection covers all related used vehicles and vehicle parts: cars, car parts as well as the cargo inside inspected vehicles tires on rims.

Radiation Checks

18. All vehicles exported from Japan are inspected for any radiation or radioactive contamination. A reading on the level of contamination will be provided to the customer with a remark on whether it is below or above the allowable non-hazardous standard level of 0.3.

19. ATJ can provide surface inspection for vehicles including containers and vessels at all Japan ports. ATJ's inspection network has internal and external inspection lines as well as partner international inspection centres based in countries outside Japan.
20. ATJ has two owner-operated internal inspection centres located near the major ports of Kisarazu, Yokohama, Kobe and Osaka. The facilities are built "fit for purpose" with complete tooling and fixed permanent buildings and are registered with the Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT) to meet Japan's safety standards and it's the only company in Japan which has been issued with a licence by MLIT to provide Japan roadworthiness inspection.

Conflict of Interest

21. ATJ is not directly or indirectly involved in the sale of second hand motor vehicles; its business is purely inspection of motor vehicles for export.
22. ATJ has established offices in Kenya, Myanmar and Zambia. The ATJ inspectors performed a demonstration of motor vehicle inspection service including testing for radiation for the delegation.

Bidding for Tender No. KEBS /T057/2014-2015

23. Following the KEBS advertisement for the Tender No. KEBS /T057/2014-2015, ATJ responded to the invitation, applied and submitted the pre-qualification and all documents in accordance with the tender document.
24. The KEBS Request for Proposals and Tender document at paragraph 2.3.1 required the proposal and tender to comprise the following: Instruction for tenders; general conditions of contract; special conditions of contract; schedule of requirements; details of services; tender form; contract form; confidential business questionnaire form; tender security form; and performance security form.
25. The KEBS Request for Proposals and Tender document at paragraph 2.7 required the proposal prepared by the tenderer to comprise the following components: A proposal form completed in accordance with Clause 2.8 below; documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted; tender security furnished in accordance with Clause 2.12; and confidential business questionnaire.
26. The ATJ duly submitted all the above documents that KEBS required in response to the pre-qualification and tender parameters. ATJ believed that its submission on the pre-qualification was responsive to the set criteria and that the purpose of the pre-qualification proposal was to ensure that all bidders who qualified past this stage were suitable companies.
27. By a letter dated 15th December 2014 and delivered by email on the 16th of December 2014, the KEBS informed ATJ that its bid was not responsive on account of the reason the proposal by ATJ did not contain a valid tax compliance certificate.

4.5 Evidence by JAN'S Trading Company Ltd

Mr. Umar H. Jan (the Founder and Chief Executive Officer of Jan's Holding Group Ltd), and Mr. Yasir Jan (Managing Director, Jan's Holding) received the delegation at Jan's Trading Ltd Boardroom in Namugi, Yokohama City, Tokyo Japan on Wednesday 1st June 2016 from 14:00 hours to 15:30 hours.

The Chief Executive Officer Mr. Umar H. Jan informed the delegation as follows: -

(a) Directors of Jan's Trading Ltd

1. The Directors of the Company are Mr. Umar H. Jan and Mr. Yassin Jan who are brothers, each having a 50% shareholding of the company. They are of Pakistani origin doing business in Japan.
2. Jan's Trading Company Limited is one of the biggest exporters of new and used cars worldwide. The Company is based in Japan and serves its customers from almost every part of the world. It has been in business of exportation of vehicles since the year 2000.
3. Jan's Trading Company is a member of the biggest auto auction groups in Japan which also includes Used Cars System Solutions (USS) Auction group, Toyota Auto Action (TAA) Group, Challenge Advance Assist (CAA) Auction Group, Japan Used Cars Association Group, ARAI Auction Group, Honda Auto Auction Group, Isuzu Umax Auction Group and many more.
4. The goal of Jan's Trading Company Ltd is to meet customer satisfaction through quality business by providing an easy and flexible environment without compromising on quality.
5. The Company has been selling motor vehicles to Kenya. Pre-shipment inspection of the motor vehicles imported to Kenya was done by JEVIC. Kenya has been one of the main markets for Jan's Trading Ltd, importing about 10,000 cars annually before the number reduced to less than 5,000 due to allegations levelled against him of drug trafficking into Kenya.
6. He has a sister in Kenya living in Mombasa and he last visited Kenya in October 2015. During one of his visits to Kenya, he was arrested by the Kenya Police on allegations of drug trafficking and was later released after interrogation.
7. He is no longer actively involved in the running of the Company and has since relinquished his responsibilities to his brother Mr. Yassin Jan.
8. Mr. Umar H. Jan, in his own submission categorically stated that he does not believe in the pre-export services of the second hand vehicles destined to Kenya from Japan, since Japan is an advanced country with better vehicle maintenance requirements and better roads than Kenya. The pre-export inspection services are additional unnecessary burden to car importers from Kenya.

Relationship between Jan's Trading Ltd Inc. Japan, Jan's Trading Ltd, Kenya, and Quality Inspection Services Japan (QISJ).

9. Mr. Umar H. Jan denied the existence of Jan's Trading Ltd, Kenya, however upon further interrogation he informed that he established and registered the Company to deal with motor vehicle importation, however, he closed it down and the Company has not been in business for the last 12 years.
10. The Managing Director of QISJ Mr. Kiyooki Hatano was a former employee and Director of QISJ up to 2009.
11. QISJ, a company which was formed by Mr. Kiyooki Hatano, undertakes pre-export inspections services of used motor vehicles for export.

Committee Observations

12. The Committee observed that:-
 - (i) Jan's Trading Limited is one of the largest Japanese exporters of used vehicles to Kenya.
 - (ii) The Managing Director of QISJ resigned as a Director of Jans Trading in 2009.
 - (iii) Jan's Trading office in Kenya is located opposite Railway Station, Mombasa.

4.6 Evidence by Quality Inspection Services Japan (QISJ)

Mr. Kiyooki Hatano (Managing Director), Mr. Michio Kono (Manager), Mr. Marwin Morado and other members of staff of QISJ received the delegation into QISJ Boardroom in Tsurumi-Ki, Yokohama City on Wednesday 1st June, 2016 from 15.30 hours to 16:30 hours.

After introductions, Mr. Marwin Morado and Mr. Michio Kono took the delegation through a presentation on QISJ. Mr. Marwin Morado and Michio Kono also assisted in the English- Japanese interpretation to enable the delegation communicate effectively with Mr. Kiyooki Hatano, the Managing Director QISJ.

The following is a summary of the presentation by Mr. Michio Kono including written submissions by Mr. Kiyooki Hatano, the Managing Director, Quality Inspection Services Japan (QISJ) dated 15th June 2016.

Background of Quality Inspection Services Japan (QISJ)

1. Quality Inspection Services is an independent third party inspecting company incorporated in Japan with its headquarters in YCC 1608 DaikokuFutou 22, Tsurumi, Yokohama, Kanagawa Japan and having inspection facilities and registered offices in the United Arabs Emirates, United Kingdom and South Africa.
2. The Company was incorporated on 22nd July, 2009. It was among the first companies in Japan to be accredited to ISO 17020 by the Japanese Accreditation Board (JAB) in the area of roadworthiness and vehicle inspection.
3. The Company is run by the Managing Director Mr. Hatano who is also the sole director and proprietor of the Company.

QISJ Scope of Accreditation

4. The scope of the Company's accreditation enables it to carry out the visual/body inspection, structural inspection, mechanical inspection, electrical system, safety inspection, radioactive contamination and document verification to prevent fraud. The Company also undertakes roadworthiness inspection, odometer verification, import and export third party independent verification and bio-security inspection,

QISJ Information Technology and Resources

5. QISJ has a custom built Customer Relationship Management System that is interlinked across all its inspection centres in four different countries. Development of the CRM was part of the objectives to realize QISJ strategy of delivering a complete service online and up-to-date database of roadworthiness status of vehicles.
6. An inspector can access the system to log a vehicle into the system after inspection. Once the inspection is completed an inspector will update the system with the inspection result. Clients such as KEBS and other registered customers can access and view a summary of their booked in vehicles, inspected mileage and inspection results and conformity or non-conformity of their inspected vehicles.

Inspection Facilities

7. QISJ has a total of thirty-four (34) inspection facilities located in strategic ports of Japan; of these QISJ owns 11 and 23 are leased, 26 inspection facilities in United Kingdom of which it owns 2 and leases 24. It also owns one inspection facility in the United Arab Emirates.

Inspection Procedures

8. The appointed inspectors, who must possess a minimum of diploma in vehicle inspection, make sure that the checklist has been fully followed without any bias or prejudice. The checklist is professionally documented report and is used to check the compliance or non-compliance of vehicles to be exported. The verdict of compliance or non-compliance is issued by the inspectors.

9. A window sticker is affixed on the windscreen by the authorized inspector of the vehicles which passed inspection and a certificate of roadworthiness is issued to the passed vehicle.
10. Non-compliant vehicles are issued with non-compliance report with details of non-compliance, and the vehicle is re-inspected if it has been repaired to obtain a certificate of roadworthiness.
11. If the non-compliance is of forgery or odometer alteration, or radiation levels are high, non-conformity certificate is issued instantly.

Complaints and Appeals

12. QISJ has documented procedures for dealing with complaints from clients or other parties and consideration for resolution of appeals against the results of the inspection, where these are carried out under legally delegated authority.

SWORN AFFIDAVIT BY MR. KIYOAKI HATANO, MANAGING DIRECTOR, QISJ DATED 15TH JUNE 2016 (APPENDIX 5)

The following is a summary of Mr. Kiyoaki Hatano's written submission to clarify issues raised in the meeting held on 1st June, 2016 at QISJ offices in Japan: -

Conflict of interest between Jan's Trading Group Ltd and QISJ

13. Mr. Hatano, as the Managing Director and owner of QISJ categorically denied the existence of any conflict of interest between the two companies. He tendered his resignation due to personal reasons as the Director of Jan's Trading Company Ltd on 1st April 2009 (**Appendix 6**).
14. He also submitted a copy of a legal document named "Certificate of Closure of Matters" issued by Yokohama District Legal Affairs Bureau Kanagawa office indicating his resignation from Jan's Trading Company Ltd as from 6th January 2010. The time difference of eleven months between his letter of resignation dated 1st April 2016 and the registration of closure of matter dated 24th February 2010 is attributed to legal reasons. (**Appendix 7**)

The involvement of Messrs. Hashim Abdallah Hassan and Salem SaifEbrahim Bin Touq as "Directors" of QISJ

15. Mr. Hatano submitted that Mr. Hassan is QISJ nominee in the United Kingdom which was a requirement to legally establish the QISJ UK Company as per the letter of appointment (**Appendix 8**).
16. Mr. Hashim Abdallah Hassan was appointed Director QISJ UK from 6th February 2012. Mr. Salem SaifEbrahim is a United Arab Emirates (UAE) national who agreed to be QISJ local partner in UAE as required by UAE laws. Mr. Salem SaifEbrahim therefore does not hold shares or management position in QISJ and is only compensated a royalty of twelve thousand five hundred Dirhams (Dhs. 12,500/-) or an equivalent of approximately Kenya shillings three hundred and seventy-five thousand (Ksh. 375,000/-) per annum as per the contract of appointment of local agent (**Appendix 9**).

The establishment of QISJ inspection centres: -

17. Mr. Hatano submitted a list of QISJ inspection centres which are either owned or leased in Japan indicating the date of establishment or commencement of lease (**Appendix 10**).
18. He also provided the list of QISJ owned or leased inspection centres at the time of bidding for the contract (**Appendix 11**).

The business relations between QISJ and East Africa Automobile Services Co. Ltd (EAA)

19. Mr. Hatano submitted that QISJ signed an agreement with EAA on 8th February 2010 to lease EAA facilities for conducting road-worthiness inspection of used vehicles for export. The agreement was verbally terminated on 24th October 2014 at a meeting held between the Managing Directors of the two companies. This termination was communicated formally to the Managing Director, EAA on 4th November 2014 vide a letter signed by Mr. Kiyoaki Hatano, MD QISJ (**Appendix 12**).
20. Mr. Hatano categorically submitted that at no time did QISJ sub-contract the services of EAA or any company in Japan. QISJ only leased the facilities of EAA for the purpose of using their equipment.

Royalty fees payment to KEBS

21. Mr. Hatano submitted that QISJ pays KEBS USD 41.00 per vehicle inspected. Every month, based on the vehicles inspected count, QISJ sends monthly royalty fees to KEBS by international bank transfer. The monthly submissions to KEBS for the period March 2015 to May 2016 is attached (**Appendix 13**).
22. The number of vehicles inspected for the period March 2015 to May 2016 is also attached (**Appendix 14**).

De-listing of QISJ by Japan Harbour Transport Association (JHTA)

23. Mr. Hatano submitted that on 26th August 2011, JHTA appointed seven (7) companies including QISJ as preferred establishments for the measurement of radioactive contamination of used motor vehicles and construction machineries handled by members of JHTA at the ports in Japan. The appointment was made by announcement letter sent to members of the JHTA's Special Central Committee On Safety dated 26th August 2011 (**Appendix 15**).
24. QISJ commenced radiation services at the ports in Japan after getting clarification from JHTA, that QISJ is not supposed to sign any contract with JHTA and that QISJ should follow the guidelines posted on JHTA website (<http://zenkoku-kowan.jp/pdf/agreement2012.pdf>). The guideline document is hereby attached (**Appendix 16**).
25. QISJ did not receive any complaint whatsoever from JHTA during the period of 26th August 2011 and 27th August 2015 when it offered radiation measurement services for JHTA.
26. On 27th August 2015, Chairman, Central Safety Committee, JHTA sent a Memo to Special Members of each District of JHTA informing them that two companies (Automotive Technologies and QISJ) have been de-listed from providing measurement of radioactive contamination at the ports. The memo referred to the two companies as "foreign

capital companies” and “inadequate companies” judging from how they actually conducted radiation inspection services. (**Appendix 17**)

27. QISJ upon receipt of letter of de-listing made a request to JHTA for a meeting to clarify their letter of 27th August 2015. JHTA confirmed the meeting for 4th September 2015 (**Appendix 18**)
28. On 4th September 2015, QISJ and JHTA held the meeting and JHTA verbally explained to QISJ that its de-listing was because the volumes of contaminated vehicles over the acceptance level of 0.3 micro Sieverts has been going down, making JHTA to cut down on number of firms providing radiation inspections for JHTA. QISJ raised concerns with JHTA that although there was no contract, a prior notice should have been sent to QISJ before such a letter was sent to their members informing them of the de-listing of QISJ.
29. QISJ raised the question of why JHTA referred to it as “foreign capital company” and “inadequate” in its letter of de-listing. JHTA did not fully answer the concerns of QISJ but instead sent a revised letter to its members which did not make any reference to the words “foreign capital company” and “inadequate” (**Appendix 19**)
30. There is no basis in Japanese law for JHTA to “black list” companies in Japan. JHTA confirmed in an email dated 5th October 2015 that there is no official license based on the laws in Japan for inspection body to conduct radiation inspection on used motor vehicles and machinery in the port area and, therefore JHTA never issues any such licence to anybody. (**Appendix 20**)

Why QISJ continues to perform radiation measurement even after they have been performed by appointed agents of JHTA

31. Mr. Hatano submitted that the de-listing of QISJ by JHTA does not in any way prevent QISJ from fulfilling its contractual obligations for overseas governments such as Kenya and Tanzania. QISJ has signed contract with KEBS to perform vehicle road worthiness inspection and conduct radiation measurement.
32. Through radiation measurements interventions within its contract with KEBS, QISJ has rejected a total of 23 vehicles between March 2015 and February 2016. The list of vehicles rejected by QISJ during the period is attached as **Appendix 21**.

Local Representative of QISJ during tender opening

33. Mr. Khalid Swaleh was the local Kenya representative during the opening of the tenders at KEBS offices in Nairobi.

Committee Observations

The Committee made the following observations and findings from the submissions of QISJ: -

- (i) Mr. Kiyoaki Hatano, the Managing Director of QISJ was Managing Director and a Director of Jan's Trading Company Ltd from 24th July 2007 to 6th January 2010. He, however, relinquished his Directorship of Jan's Trading Company Ltd for personal reasons from 1st July 2009 and was regularized on 6th January 2010 by Yokohama District Legal Affairs Bureau Kanagawa Office through a certificate of closure of matter reference number TA128673.
- (ii) QISJ was incorporated on 22nd July, 2009 under company corporate registration no. 0200-01-062427 with 1,600 as the aggregate number of issuable shares out of which 400 shares were the aggregate number of issued shares and capital JPY 20,000,000. The company established a branch in the United Kingdom on 21st February 2012 and another branch in the United Arab Emirates on 21st February 2013.
- (iii) QISJ demonstrated that it has the required competence in personnel, equipment and procedures needed to offer motor vehicle inspection services. The company conducts the inspection in its own facilities or those leased from other inspection companies.
- (iv) QISJ rejected a total of twenty-three (23) vehicles destined for Kenya, between March 2015 and February 2016.
- (v) On the issue of de-listing of QISJ by the Japan Harbour Transport Association, QISJ demonstrated to the Committee via email dated 5th October 2015 from JHTA, that the Association does not issue licences for radiation inspection because there is no official license based on the laws in Japan for an inspection body to conduct radiation inspection on used motor vehicles and machinery in the port area.

4.7 Evidence by Japan Harbour Transport Association

Mr. Kazuyuki Horie (Executive Advisor, JHTA), Mr. Masaya Tamada (Secretary-General, Dock Workers Union); Mr. Hitoshi Tanaka (General-Manager, JHTA Liaison Department); Mr. Tadaomi Narita (Senior Researcher, JHTA); Mr. Takahishi Nakawa (Director; Business Development); and Mr. Takeshi Yashumira (Inspector) met with the delegation at JHTA board room in Shinbshi-Tokyo Tsurumi-Ki, Yokohama City, on Thursday 2nd June, 2016 from 15:00 hours –16:30 hours.

After introductions, Mr. Kazuyuki Horie, the Executive Advisor, JHTA informed the delegation that:-

1. JHTA officials started radiation tests at the Japan Ports three months after the East Japan (Fukushima) earthquake in March 2011 to enhance the safety of its workers.
2. In order to secure the safety of workers at the ports, all used cars and construction machines are to be tested by radiological examination under the responsibility of shippers. Since there were many vehicles to be checked in the beginning, JHTA sought the service of QISJ, in

addition to 4 other All Nippon Checkers Corporation companies that were already involved in the testing.

3. However, at some point, the dock workers complained that relatively high amount of contamination was found on vehicles cleared by QISJ. The JHTA official noted that the number of vehicles requiring radiation testing had reduced drastically and the services of many testing companies were not necessary.
4. JHTA provided the names of five (5) companies which are the major (not the only) companies in Japan dealing with the issue of contamination with radioactive material. The said companies are:
 - (i) Japan Cargo Tallying Corporation (JCTC)
 - (ii) All Nippon Checkers Corporation (ANCC)
 - (iii) Nippon Kaiji Kentei Kyokai (NKKK)
 - (iv) Sinnippon Kentei Kyokai (SK)
 - (v) Japan Vehicles Inspection Company (JEVIC)

Committee Observation

The Committee observed that QISJ is not among the companies listed by JHTA to offer radiation inspection services for used motor vehicles at the ports of Japan. However, as earlier observed, in an email dated 5th October 2015 from JHTA, the Association admitted that it does not issue licences for radiation inspection because there is no official license based on the laws in Japan for an inspection body to conduct radiation inspection on used motor vehicles and machinery in the port area. The de-listing of QISJ by JHTA, therefore, does not affect the Company's capacity to effectively conduct motor vehicle pre-shipment inspection services.

4.8 Evidence by East Africa Automobile Services Company Ltd

Mr. Prosper Sugai (Director and CEO, EAA); and Stout Dean Lawrence (International Operations Manager) and other management & staff of East Africa Automobile Services Company Ltd (EAA) met with the delegation at EAA Company meeting room in Tsurumi-Ku, Yokohama City, on Thursday 2nd June, 2016 from 15:00 hours – 16:30 Hrs.

The meeting started with a demonstration at the yard of steps EAA follows in motor vehicle inspection, including testing for radiation. Thereafter, the meeting proceeded to EAA meeting room where a presentation was done by Mr. Stout Dean Lawrence and various issues raised responded to by both Mr. Prosper Sugai and Mr. Stout Dean Lawrence.

The following section provides a summary of the submissions made by EAA.

Profile of East Africa Automobile Services Company Limited

1. East Africa Automobile Services Company Ltd is a private limited liability company of Japanese origin founded in 2007 and registered in Japan and compliant under all laws applicable to motor vehicle inspections for Japan.
2. The headquarters are located in Rinkan, Yamato – City, Kanagawa – Japan.
3. The core business of the company is carrying out independent third party quality and safety inspections for road vehicles, equipment, plant and machineries in accordance with the clients' needs.
4. The Company ensures pre-shipment inspection of motor vehicles conforms to the pre-shipment standards in which it is contracted by clients, mainly government authorities to ensure that un-roadworthiness used vehicles are detected at the source and thus prevented from being exported to their home countries.
5. The company also offers vehicle inspections and testing services annually for the local market as per Japanese laws. Inspection services are done according to the National and International standards for environmental protection and road safety.
6. The staff have a wide knowledge of the inspection industry and are equipped with technology that provides high quality and efficient inspection services.
7. The Company owns inspection facilities, strategically located in Hokkaido, Okinawa, Yokohama (Tokyo Bay) which is the main port, Kawasaki (Tokyo Bay), Nagoya and Osaka, in Japan. The Company is also present in United Kingdom, Dubai-United Arabs Emirates and Tanzania.
8. EAA strives to ensure that exporters meet the environment and safety standards of the importing country. It carries out high quality pre-shipment inspection and issue certificates as proof of compliance and assurance to the importing country's authorities and end user.
9. EAA has pioneered the market in mobile pre-export inspection services where the company carries the inspection tools and equipment to the location of the vehicle rather than the vehicle being brought to the inspections yard owned by the company.
10. The company strives in protecting each and every customer from the risks incurred within the international trade and safety standards for the motor vehicle market.
11. The Company maintains independence in everything we do, so that its clients can be assured that they receive both quality and the highest level of safety standards.
12. EAA has been providing pre-shipment verification and conformity to standards inspections for used motor vehicles (PVoC) for the Tanzania Bureau of Standards (TBS) and Uganda National Bureau of Standards (UNBS) since its inception in 2007.

Why Motor Vehicle Inspection?

13. Governments worldwide are now aware and have taken a more active role against the increase in vehicle related accidents and cars brought in country below standard. They are worried how they can improve this problem and also save the environment.
14. It is agreed that vehicles should be subject to technical inspections and testing at the time of exporting. In this regard, East Africa Automobile Services Company Ltd having developed its own inspection system are providing this service at each of Japan's ports.
15. The company has more thanseventeen (17) offices in Japan. Outside of Japan offices include the UK, SA,Singapore, UAE, Dubai and Bangkok.
16. These locations were specifically set to offer a route for Japanese citizens and diplomats returning from their official duties in those countries.This service was available to them should they decide to bring their personal vehicles back from abroad and have a roadworthiness inspection completed to drive the vehicle in Japan.

Vehicle Inspection test checks

17. The Company undertakes various inspection checks including but not limited to the following
 - (i) Brakes
 - (ii) Exhaust- tested for noise levels as well as gaseous emissions
 - (iii) Exterior Inspection
 - (iv) Headlamps
 - (v) Speedometer accuracy
 - (vi) Undercarriage i.e. suspension
 - (vii) Wheel alignment/ tyre's condition
 - (viii) Radiation contamination: - The aim of the test is to measure radiation doseon the surface, interior and on the tyres of motor vehicles when the vehicle is stationary. It is recommended that radiation emission should not exceed 0.3 microSv/hr (micro Sieverts per hour).

EAA Accredited to ISO/IEC 17020:2012

18. EAA is one of the few inspection firms in Japan that has been accredited with ISO/IEC 17020:2012 roadworthiness inspection, which is a demonstration that EAA has the required competence in personnel, equipment and procedures needed to effectively inspect and certify road vehicles to the expectations of the client and other interested parties. The Company received the accreditation in the year 2011.
19. The Company has the highest standard for an Inspectorate providing assurance, quality of inspection and accurate impartial results under the General Criteria for operation of various types of bodies (vehicular).

20. EAA uses the highest international standards in the world accredited for used vehicle inspection.
21. With ISO/IEC 17020:2012 accreditation EAA gives an assurance of complete confidence in both system documentation and technical competence.

EAA Inspection Capacity

22. EAA has installed equipment capacity in excess of 100,000 vehicle inspections per year.

Committee Observations

The Committee observed that: -

- (i) EAA is accredited with ISO/IEC 17020:2012 roadworthiness inspection, which is a demonstration that EAA has the required competence in personnel, equipment and procedures needed to offer motor vehicle inspection services.
- (ii) EAA partners with other motor-vehicle inspection companies.

5.0 COMMITTEE GENERAL OBSERVATIONS

5.1 Committee General Observations

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

- (i) THAT, the action by Kenya's Ambassador to Japan, H.E. Ambassador Solomon K Maina, to write a letter to KEBS recommending JEVIC, though undertaken in good faith, portrayed the Embassy in bad light, since it may be construed as an inappropriate influence on the tender by the Ambassador, contrary to provisions of Section 38 of the Public Procurement and Disposal Act 2005.
- (ii) THAT, similarly, the request by Mr. Damson Jackson, the Managing Director of JEVIC to the Kenyan Embassy to issue the Company with a letter of recommendation reflecting collaborative activities so as to support JEVIC's bid for the tender, was an act of inappropriate influence on tender evaluation contrary to the provisions of Section 38 (1a) of the Public Procurement and Disposal Act 2005.
- (iii) THAT, JEVIC was first awarded the tender to offer pre-export inspection of used vehicles to determine conformity to the requirements of the KS 1515:2000 by the Kenya Bureau of Standards (KEBS) in 2008. In 2011, the Company was again awarded a further 4-year contract with two other motor vehicle inspection companies; Auto Terminal Japan (ATJ) and Quality Inspection Services Inc. Japan (QISJ), until January 2015.
- (iv) THAT, in the year 2014, JEVIC was accused of permitting radioactive contaminated vehicles into Kenya when a high radioactive reading was found to be coming from a container with four second hand vehicles at the Port of Mombasa. In a letter dated 14th June 2016, JEVIC admitted that it inspected two out of the four vehicles and the other two extremely radioactive contaminated vehicles were inspected by another company.
- (v) THAT, following complaints and investigations of letting in defective and overage vehicles into the country, against the regulations, KEBS terminated its contract with JEVIC in August, 2014, four (4) months before the end of the contract period.
- (vi) THAT, during bidding for Tender No. KEBS/T057/ 2014-2015, KEBS issued a notice to extend the contract for the other two companies Auto Terminal Japan (ATJ) and Quality Inspection Services Inc. Japan (QISJ), for three months (90 days) to allow for completion of the procurement process and left out JEVIC.
- (vii) THAT, JEVIC tendered for the current KEBS contract Tender No. KEBS/T057/ 2014-2015 and was among the three shortlisted companies of technical evaluation stage. The Company, however, failed to progress further at the financial evaluation stage of the tender that was awarded to QISJ. JEVIC appealed against the award but the appeal was dismissed by the Public Procurement Administrative Review Board.

5.2 COMMITTEE GENERAL RECOMMENDATIONS

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

- (i) THAT, to minimize unmerited litigation by losing bidders, KEBS should have a register of service providers who are pre-qualified through a due diligence exercise to ensure that only companies with required competence and experience to undertake inspection are invited to bid for future contracts.
- (ii) 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.
- (iii) THAT, having noted that the inspection services provider does not have custody of the motor-vehicles after inspection, KEBS and the inspection company should institute a system of preventing and detecting tampering after inspection, including penalties/punitive measures against those exporters who have been found to have tampered with already inspected vehicles.
- (iv) THAT, Kenya Bureau of Standards and its appointed inspections service provider should evaluate possibilities of signing agreements with logistics service providers in the country of origin to ensure that custody of inspected vehicles is changed from exporter to the shipping company and it is moved to the port of exit immediately after inspection.
- (v) THAT, the Kenya Bureau of Standards should endeavour to prepare the terms and conditions of any contract for inspection of motor vehicles which includes checking of presence of radioactive materials in consultation with the Kenya Radiation Board which has technical capacity to advice on matters in relation to radiation.
- (vi) THAT, there is need to harmonize Legal Notice No. 78 of 2005 and the Radiation Protection Act; when coming up with the Regulations, the Government ought to be cognizant of the existence of Cap 243 which prevails in case of any inconsistency; the government should always endeavour to harmonize statutory instruments with existing legislations to avoid inconsistencies at all times.
- (vii) THAT, there is need to renew Legal Notice no. 78 of 15th July 2005 to conform with Section 21 of the Statutory Instruments Act on expiry of legal notices.
- (viii) THAT the Radiation Protection Board in consultation with the Office of the Attorney General should fast tract amendments to the Radiation Protection Act in order to give the Board

adequate powers to deal with matters related to radiation in all aspects including motor vehicle inspection at all points of entry into Kenya.

LIST OF APPENDICES

Appendix 1: KEBS Newspaper advertisement dated 23rd October 2014

Appendix 2: Letter dated 19th Nov., 2014 appointing the Tender Opening Committee

Appendix 3: Letter dated 14th Nov. 2014 by Amb. S.K. Maina recommending JEVIC

Appendix 4: Letter by JEVIC dated 14th June 2014 regarding radioactive contaminated motor-vehicles at the port of Mombasa in 2013

Appendix 5: Submission by Mr. Kiyooki Hatano, Director, QISJ

Appendix 6: Mr. Hatano's resignation from Jans Trading Ltd dated 1st April 2009

Appendix 7: Certificate of Closure of Matters submitted by Mr. Hatano

Appendix 8: Mr. Hashim Abdallah Hassan's nomination as QISJ UK representative

Appendix 9: Contract of appointment as local agent in the UK

Appendix 10: List of QISJ inspection centres

Appendix 11: List of QISJ leased or owned inspection centres

Appendix 12: Letter dated 4.11.2014 by Mr. Hatano (QISJ) terminating contract with EAA

Appendix 13: QISJ monthly submissions to KEBS for the period March 2015 to May 2016

Appendix 14: Number of vehicles inspected between March 2015 and May 2016

Appendix 15: Letter dated 26th August 2011 by JHTA appointing QISJ as one of the radiation inspectors

Appendix 16: JHTA Guidelines

Appendix 17: JHTA Memo dated 27.08.2015 de-listing QISJ

Appendix 18: QISJ letter dated 27.08.2015 seeking clarification on de-listing by JHTA

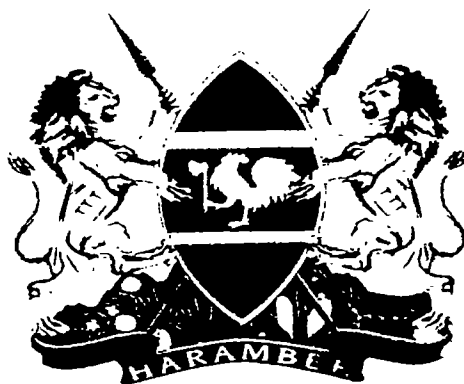
Appendix 19: JHTA response letter to QISJ

Appendix 20: JHTA email dated 5th October, 2015

Appendix 21: List of vehicles rejected by QISJ for the period March 2015 to February 2016

Appendix 23: Committee Minutes

ANNEX 3



OFFICE OF THE AUDITOR-GENERAL

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**

DECEMBER 2015

1. EXECUTIVE SUMMARY

1.1 Background and Introduction

- 1.1.1 Kenya Bureau of Standards (KEBS) is a statutory body that was established by the Standards Act of 1973, Chapter 496 of the Laws of Kenya. The Standards Act, Part II - 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 under the said Act which may lawfully be done or performed by a body corporate.
- 1.1.2 It is on this premise that KEBS sources for the services of third parties to assist in performing its functions, among them being, pre-shipment inspection of motor vehicles that are imported into Kenya. Pre-shipment inspection of motor vehicles into the Kenyan market has been a procedure dating back to 2005.
- 1.1.3 KEBS has developed a code of practice KS 1515:2000 for inspection of road vehicles that specifies general, safety and environmental requirements. The Code of Practice was developed to address challenges arising from importation of defective motor vehicles to the Kenyan market. It is now a mandatory inspection carried out pursuant to the provisions of legal Notice 78 of 15/07/2005 and importers of used vehicles coming from Japan, United Arab Emirates, United Kingdom and Republic of South Africa are required to demonstrate conformity to the standard before shipment.
- 1.1.4 M/s. Japan Auto Appraisal Institute was the first company that won the KEBS pre-shipment inspection tender for the period from 2005 to 2008. M/s. Japan Export Vehicle Inspection Company then took over the pre-shipment inspection tender for the period from 2009 to 2011. Three companies; M/s. Quality Inspections Services Japan, M/s. Japan Export Vehicle Inspection Company and M/s. Auto

Terminal Japan took over the pre-shipment inspection tender for the period from 2012 to 2015. The current tender was reverted to one company which was awarded to M/s. Quality Inspections Services Japan for the period from 2015 to 2018.

1.1.5 This special audit on the latest tender by Kenya Bureau of Standards, Tender No. KEBS/T057/2014-2015 for provision of pre-export inspection services for motor vehicles in Japan, United Arab Emirates, United Kingdom and South Africa in accordance with KEBS code of practice K1515:2000, was carried out pursuant to a request for a special audit by the Clerk of the National Assembly dated 19 June 2015.

1.1.6 The summary of our findings should be read in conjunction with the detailed findings section in order to comprehend fully the approach to, and findings of our work. The report which should be read in its entirety comprises of the following sections:

1. Executive Summary
2. Background and Introduction
3. Detailed Findings
4. Appendices

1.2 Summary of findings

Procurement process Tender No. KEBS/T057/2014-2015

1.2.1 Procurement process for Tender No. KEBS/T057/2014-2015 commenced on 22 August 2014, just before the previous three existing contracts for the provision of pre-export inspection services lapsed. The procurement process was to source for a service provider to offer motor vehicle inspection/verification services in

accordance with Kenya Standard Code of Practice KS 1515:2000 for Inspection of Road Vehicles.

1.2.2 On 23 October 2014 KEBS advertised in The Daily Nation and The Standard newspapers the Request for Proposal (RFP) to offer Motor Vehicle Inspection/Verification Services in accordance with Kenya Standard Code of Practice KS 1515:2000 for Inspection of Road Vehicles. Thirteen (13) bidders bought the tender documents at Kshs.1,000.00. An addendum was issued on 10 November 2014 to clarify issues raised by bidders. A tender opening committee was appointed on 19 November 2014 and the responses were opened on 24 November 2014.

1.2.3 A tender evaluation committee was appointed on 24 November 2014 and instructed to carry out both technical and financial evaluation, due diligence and inspection on Tender No. KEBS/T057/2014-2015 in strict adherence to the compliance and evaluation criteria set out in the tender document and submit a report with recommendations by 1 December 2014.

1.2.4 Three (3) companies attained the minimum score of seventy (70) marks and therefore found to be technically responsive. The three responsive companies that therefore progressed to financial evaluation were:

- **Bidder No. 1:** East Africa Auto Services Company limited (EAAS);
- **Bidder No. 3:** Quality Inspections Services Inc. Japan (QISJ); and
- **Bidder No. 7:** Japan Export Vehicle Inspection Company (JEVIC).

1.2.5 Bidder No. 7 - JEVIC sought recommendation from the Kenyan Embassy in Japan vides letter Ref: KET/COM/17/XII dated 14 November 2014 contrary to Section 38 (a) and (b) of Public Procurement and Disposal Act, 2005 on inappropriate influence on evaluations.

- 1.2.6 The tender processing committee evaluated the financial proposals on the basis of "Administration Fee" submitted by bidders. Inspection fees charged to the exporter for services under this contract were specified in Clause 2.11.2, Article b-l.
- 1.2.7 The overall score is the total of both the technical and financial scores. The three companies overall score is as indicated below:
- Bidder No.1 (EAAS): $OS=TS+FS$; $OS=72+20 = 92$ marks;
 - Bidder No.3 (QISJ): $OS= TS +FS$; $OS=78+20=98$ marks; and
 - Bidder No.7 (JEVIC): $OS=TS+FS$; $OS=71+20 =91$ marks.
- 1.2.8 On the basis of the evaluation carried out in accordance with the criteria set in the RFP document, Quality Inspections Services Inc. Japan (QISJ) attained an overall score of ninety (98) marks and therefore recommended for the award of the contract
- 1.2.9 The tender committee held its meeting No.8/2014/15 on 4 December 2014 and approved the award of the tender No KEBS/T057/2014-2015 of Motor vehicle inspection/verification services to Quality Inspection Services Inc. Japan and directed that due diligence be carried out before signing the contract.

Appeal

- 1.2.10 East Africa Automobile Services Co. Ltd, Japan Export Vehicle Inspection Company and Auto Terminal Japan Ltd made an application No.55/2014, No.56/2014 and No.59/2014 respectively to Public Procurement Administrative Review Board for review of the award of Tender No. KEBS/T057/2014-2015.
- 1.2.11 On 21 January 2015 the PPARB consolidate application No.55/2014, No.56/2014 and No.59/2014 since they were all seeking the same orders and heard them together. After taking into account all

factors in the request for review, the PPARB did not make any order as to costs nor arrived at any decision.

1.2.12 On 28 January 2015 the PPARB made the following orders in respect of application No.55/2014, No.56/2014 and No.59/2014 in respect of provisions of Section 98 of the Public Procurement and Disposal Act, 2005.

- A review filed by Auto Terminal Japan Ltd on 30 December 2014 be struck out on the ground that it was filed out of time;
- The Applicants bear their own cost for the request for review;
- KEBS pay Kshs.150.000.00 to the applicant(s) within seven (7) days and provide evidence of payment to the Board before 5 February 2015; and
- KEBS proceed with and complete the procurement process.

Due diligence

1.2.13 Various teams were sent to Japan, United Kingdom and United Arab Emirates to carry out due diligence by KEBS. The teams were required to verify and validate documentary evidence, infrastructural, technical and managerial competence of QISJ to provide service as per the Kenya Standard KS 1515:2000 code of practice. No team was sent to South Africa for the due diligence process.

1.2.14 On 9 January 2015 the due diligence team issued a report signed by the six members who were involved in the exercise recommending that KEBS enter into contractual agreement with Quality Inspection Service Japan. The team was satisfied that the company had the requisite capacity to provide the service as per the Kenya Standard Code of Practice KS 1515:2000.

1.2.15 On 2 February 2015 the Managing Director of KEBS and Managing Director of QISJ signed and sealed a contract for QISJ to provide

motor vehicle inspection service as per the Kenya Standard Code of Practice KS 1515:2000. The contract was witnessed by Mr. George Sichangi for KEBS and Mr. Khalid S. Swaleh for QISJ.

Value for money of the Tender

- 1.2.16 Section 29 of the Public Audit Act, 2003 provides that value for money is achieved through economy, efficiency and effectiveness. From an economy perspective, the tender was allocated to one of the technically qualified bidder. In terms of financial bids, the administrative fee offered by the bidder was US\$41 which was within the limit set out in the tender document by KEBS.
- 1.2.17 A review of the terms as per the Service Level Agreement (SLA) between KEBS and QISJ required that vehicles be inspected within three (3) days of application for inspection. Waiting time registers highlighted that the longest waiting time was three days with the majority of vehicles inspected on the same day or the second day of application for inspection which highlights efficiency.
- 1.2.18 A comparison on the royalties received from motor vehicles inspections from the three companies in the previous contracts i.e. JEVIC, QISJ and ATJ for the period between March 2014 and July 2014 verses a similar period in 2015 by QISJ alone indicated a 46% rise in royalties received over and above the collections of 2014, which is an indication of effectiveness, notwithstanding other factor that could have also affected importation of vehicles during the comparable periods.

Possible fraud in the procurement process

- 1.2.19 An analysis of the procurement process for pre-export inspection services for used motor vehicles shows that the procuring entity

Japan, United Arab Emirates (UAE), United Kingdom, and South Africa. The current contract is the fourth since introducing PVOC on motor vehicle. The service provider/s is identified after advertisement and the winning bidder enters into a contract for a period of three (3) years. KEBS has no capacity to undertake this exercise hence it contracts suitable companies with presence in those countries to undertake the exercise on its behalf. A royalty payment is made to KEBS for the service.

- 2.1.5 Japan provides over ninety (90) percent of the imported vehicles in Kenya. The service provider for this contract was required to have presence in Japan, United Arab Emirates (UAE), United Kingdom and South Africa. The current contract was signed between KEBS and QISJ on 2 February 2015 but the contract commenced on 1 March 2015 for a period of three years. The contract deliverables are timeliness in meeting customers' requests for vehicle inspection which should be within three (3) days of placing a request, procedures of handling customer complaints, inspection fees and payment of royalties to KEBS. KEBS is also required under the contract to audit the service provider to establish the adherence to the provisions of the contract.
-

Inspection/Verification services

- 2.1.6 Inspection/verification services as per Kenya Standard KS 1515:2000 is to be provided by the contractor for used motor vehicles originating from Japan, United Kingdom United Arab Emirates and South Africa on behalf of the client.

Main Features of the Kenya Standard CoP KS 1515:2000

- 2.1.7 KS 1515:2000 is a Kenya Standard Code of Practice for inspection and verification of road vehicles. The standard applies to both used and new road vehicles, which include motorbikes, cars, vans, buses and truck of all sizes. However the application of the standards under this contract shall be limited to used road vehicles.
- 2.1.8 Conformity assessment procedures are used to verify that used motor vehicles exported to Kenya are in compliance with the Kenya Standard before shipment from Japan, United Kingdom United Arab Emirates and South Africa.
- 2.1.9 Critical Parameter of KS 1515:2000 are:
- The age limit shall be less than 8 years from the year of first registration;
 - The difference between the date of manufacture and the date of first registration shall be not more than one year;
 - The drive shall be Right Hand Drive-(RHD);
 - Road-Worthiness shall be determined by compliance to requirements specified in the standard; and
 - Prohibition of modified vehicles.
- 2.1.10 It is imperative that all used vehicles undergoing inspection and verification to detect any major modification e.g. LHD to RHD. The contractor will undertake this inspection and will issue certificates only for the vehicles that have not been modified

What triggered the Audit?

- 2.1.11 This special audit was carried out pursuant to a request from the Clerk of the National Assembly on Kenya Bureau of Standards tender No. KEBS/T057/2014-2015. The tender No KEBS/T057/2014-2015 is for provision of pre-export inspection services for used motor vehicles in

Japan, United Arab Emirates, United Kingdom and South Africa in accordance with Kenya Standard Code of Practice (K1515:2000).

2.1.12 Article 252 section 1 (a) and (d) of the Constitution of Kenya mandates the office of the Auditor-General (OAG) to carry out investigations on financial management in the public sector. The investigation could either be a reactive audit resulting from written requests to the Auditor General when fraud has occurred, or a proactive audit which involves the analysis of probable risks in an entity operations that may lead to occurrence of fraud. The purpose of such an audit is to identify the weakness and suggest preventive mechanism that may deter fraud from occurring.

2.2 Objective of the Audit

The objectives of the special audit were:

1. To review the procurement process of the Tender No. KEBS/T057/2014-2015 with focus on technical and financial evaluation of the bids.
2. To confirm whether there was value for money in the award of the tender.
3. To confirm or dispel whether there was any fraud in the award of the tender.
4. Confirm physical location and existence of QISJ.
5. To determine institutional capacity of the company to undertake the exercise in accordance with Kenya Standard Code of Practice (K1515:2000).
6. Obtain and review QISJ Tax returns for the last five financial years 2010-2014 in Japan, United Kingdom United Arab Emirates and South Africa.

-
7. To determine any possible conflict of interest by QISJ considering that the company is also a dealer in exporting used motor vehicles.

2.3 Terms of Reference

The special audit was conducted based on the following terms of references:

1. Procurement process of the Tender No. KEBS/T057/2014-2015 with a focus on technical and financial evaluation of the bids.
2. Value for money audit in award of the Tender.
3. Possible fraud in the procurement process.
4. Verification of physical location of QISJ.
5. Institutional capacity of the company to undertake the exercise in accordance with Kenya Standard (K515:2000).
6. QISJ Tax returns for the last five financial years in Japan, United Kingdom, United Arab Emirates and South Africa.
7. Possible conflict of interest by QISJ considering that the company is also a dealer in exporting used motor vehicles.
8. Any matter relevant to this investigation.
9. To provide relevant conclusions and recommendations.

2.4 Scope of the special audit

The special audit covered the procurement process of Tender No. KEBS/T057 2014 for provision of pre-export Inspection services for used motor vehicles to Kenya.

2.5 Procedures performed

The special audit was conducted based on the following procedures:

1. Document examination, several documents were reviewed in the course of the audit. They include certificates of Roadworthiness, (COR), Certificates of Non conformity, Leases ,tax returns

2. Data analysis of information and reports generated from financial management Information system –Sage AccPac, and Traffic Act.
3. Interviews with key members of staff in operations department at QISJ and KEBS as a way of gathering information.
4. Site visit were done at the Ministry of Roads and Infrastructure Workshop along Machakos Road Industrial Area Nairobi, Japan, U.A.E, United Kingdom and South Africa on various dates.

2.6 Persons interviewed

We interacted with several members of staff at Kenya Bureau of Standards, Ministry of Roads and Infrastructure, Quality Inspection Services Japan and Kenya Bazaar Association in the course of the audit. Key persons interviewed are as indicated below:-

Table 1: List of persons interviewed

Institution	Name	Designation
Kenya Bureau of Standards	Dr. Henry Rotich	Director Strategy
Kenya Bureau of Standards	Mr. John Abong's	Director Quality Assurance
Kenya Bureau of Standards	Rhoda Kirui	Procurement Manager
Kenya Bureau of Standards	Ben Nguyo	PVOC
Kenya Bureau of Standards	John Rukaria	PVOC
Kenya Bureau of Standards	Peter Owuor	Finance
Kenya Bureau of Standards	Oteko Otieno	In charge Port operations
Ministry of Transport and	Eng. Ikinu	Chief Mechanical and Transport Engineer

Infrastructure		
QISJ-Japan		
QISJ-U.A.E		
QISJ-UK	Jaffrey Hassan	Manager
ICAS-SA	Hamida Akoth	Director
Kenya Bazaar Association	Mr. Munyori	Chairman
Car Importers Association	Peter Otieno	Chairman

Japan Accredited Board		
Japan Used Motor Vehicle Expert Association		

2.7 Limitation

The following were the limitations encountered during the audit exercise:

- i. It was not possible to visit all the inspection sites as they are widely scattered in the four Countries; and
- ii. It was a challenge understanding some documents which were written in Japanese language.

However, the limitation mentioned may not affect the results of the final audit report.

3 DETAILED FINDINGS

3.1 Procurement process of the tender No. KEBS/T057/2014-2015.

Procurement plan

3.1.1 Kenya Bureau of Standards prepared the annual procurement plan for the year 2014/2015 which was approved by Management. Within the procurement plan, Tender No. KEBS/T057/2014-2015 was captured as cost center 20135 detailed as, "Tender expenses-Evaluation outside working stations, due diligence inspection (PVOC) and acceptance committee Procurement of PVOC inspection Agency for Motor Vehicle and Goods". The proposed budget on expenditure for acquiring this service was Kshs.6,500,000.00.

3.1.2 In the budget the service is detailed as Import fees on motor vehicle and captured as a recurrent income. In the proposed budget 2014/2015, the income from this activity was estimated at Kshs.220,000,000.00 and the revised estimate for the same period was Kshs.245,000,000.00

Expiry of the previous contract

3.1.3 The previous motor vehicle inspection contract for pre-export inspection services for used motor vehicles was carried out by Quality Inspection Services Ltd (QISJ), Japan Export Vehicle Inspection Centre Company Limited (JEVIC) and Auto Terminal Japan Limited (ATJ). The agreement was made on 16 January 2012 between Kenya Bureau of Standards and each of the three contracted companies. The contract was for a period of thirty six (36) months effective, 15 January 2012.

3.1.4 On 21 July 2014 KEBS notified JEVIC through their letter Ref KEBS/CONF./PVOC/1/VOL 1, of the expiration/termination of contract between KEBS and JEVIC for the provision of pre-export inspection services for used motor vehicles. Section 7.1 of the contract provides that

either party to the contract may terminate the contract by giving the other party six months' notice of termination. A party terminating a contract under this clause shall not be required to assign any reason to the termination. The Tender Committee Minute No. 101/11/2014/2015 indicated that members of the tender committee had noted the issue of unsatisfactory performance by JEVIC.

- 3.1.5 The contract between QISJ, ATJ, JEVIC and KEBS expired on 15 January 2015 before the completion of the process of Tender No. KEBS/T057/2014-2015 for a new service provider. Subsequently on 13 January 2015 KEBS vide letters Ref KEBS/CONF./IMP.VOL 6/ (17) and Ref KEBS/CONF./IMP.VOL 6/ (18) to ATJ and QISJ respectively extended the contract of motor vehicle inspection and verification services for a further three months with effect from 16 January 2015. The purpose of the extension was to continue providing motor vehicle inspection/verification service in accordance with Kenya Standard Code of Practice KS 1515:2000 for Inspection of Road Vehicles before concluding processing of Tender No. KEBS/T057/2014-2015.

Need for vehicle Inspection under Kenya Standard 1515:2000

- 3.1.6 The Standard Code of Practice KS 1515:2000 for Inspection of Road Vehicles was developed for the purpose of addressing the issue of importing defective vehicles into the Kenyan market. This standard applies to inspection of motor vehicles as per the Traffic Act Cap 403 of the laws of Kenya and Legal Notice No. 78. The code specifies general, safety and environmental requirements for Road vehicles and includes inspection of Road vehicles.
- 3.1.7 Under this standard all Road vehicles shall be subjected to an inspection which is carried out by an authorized body. Imported road vehicles to Kenya shall be accompanied by a certificate of road worthiness from the

exporting country. The inspectors and facilities used must be approved by the relevant authorities in the countries where inspections is carried out. All road worthy vehicles shall be subjected to inspection by the Kenya government vehicle inspection agent before registration.

- 3.1.8 The standard also provide that the personnel involved in inspections of motor vehicles should have a minimum qualifications of higher diploma in motor vehicle engineering, experience of not less than five (5) years in the motor industry, and a valid driving license.
- 3.1.9 The age limit of the vehicles imported into Kenya should be eight years old or less from the date of manufacture and be right hand drive. The difference between the date of registration and the date of manufacture shall not be more than one year. The vehicle should also meet safety requirements in respect to steering control, wheel and column, track and tie rods, wheel hubs/stub axles, the braking systems, tyres, electrical wiring and equipment and lighting systems after inspections.
- 3.1.10 The first company that won the pre-shipment inspection tender was JAAI from 2000 to 2005, JEVIC won the contract from 2005 to 2011 and JEVIC, QISJ and ATJ were all contracted for the period from 2012 to 2014. The current contact was won by QISJ for three years from March 1, 2015.

Advertisement for the tender

- 3.1.11 On 22 August 2014, KEBS sought approval from the Principal Secretary (PS) in charge of the Ministry of Industrialization and Enterprise Development to advertise the tenders for five items which included Tender No. KEBS/TO57/2014-2015 for Pre-Export Verification of Conformity (PVOC) for inspection of motor vehicles through their letter REF: KEBS/ADM/17/1. The PS approved the request on 29 September 2014.
- 3.1.12 On 22 October 2014, The Managing Director, KEBS authorized the advertisement for the Request for Proposal, to offer Motor Vehicle

Inspection/Verification Services in accordance with Kenya Standard Code of Practice for Inspection of Road Vehicle Tender No. KEBS/TO57/2014-2015.

3.1.13 The Tender No. KEBS/TO57/2014-2015 was advertised in The Daily Nation and the Standard newspapers, and KEBS website on 23 October 2014. The closing date for the tender was 24 November 2014. The bidders were required to pay a non-refundable fee of Kshs.1,000.00. The tender documents were to be obtained from the procurement office at KEBS Centre, POPO Road, off Mombasa Road, on normal working days between 9.00 am and 4.00 pm or to be downloaded from KEBS website.

3.1.14 Thirteen (13) bidders bought the tender documents after paying Kshs.1,000.00 as detailed in the table below.

Table 2: List of bidders

Date Document was Bought	Name of the Company that bought the document	Receipt No
23/10/2014	JEVIC	120980
23/10/2014	Bureau Veritas Bival BV	120992
23/10/2014	SGS Kenya Limited	120998
23/10/2014	TUV Rhineland	121007
24/10/2014	Polucon Service	121030
24/10/2014	Quality Inspection Service Japan	121044
24/10/2014	Baltic Control Limited	121067
24/10/2014	Auto Terminal Japan	121126
24/10/2014	Wilna International	121127
24/10/2014	JAAI	121145
31/10/2014	Nippon Inspection Centre	121252

31/10/2014	Alfa Bright services International	121310
19/10/2014	East Africa Automobile Service Co. Ltd	121712

3.1.15 Bidders sought clarifications on five items as indicate below. KEBS issued an addendum No.1 for T057/2014/2015 dated 10 November 2014 Ref: No. KEBS/T057/2014-2015: Clarification Request for REP KEBS/T057/2014-2015. The issues raised for clarification were:

1. The questions were Preliminary Examination and responsiveness 2.20.4;
2. Criteria for Evaluation of technical proposal 2.22.1 part 7;
3. Tender security bank guarantee acceptable from a financial institution;
4. Where should we submit the proposal; and
5. Page 22 of the RFP document clause 2.11.1.8. A sworn statement should be completed with a legal signature or not.

Tender Opening

3.1.16 Tender opening committee was appointed on 19 November 2014 through a memo reference KEBS 2014 for tender KEBS/T056/2014-2015 and KEBS/T057/2014-2015. The tender opening committee members appointed were:

- Mr. Albert Nyagechi - Chairperson
- Mrs. Chemutai Tanui - Member
- Mr. Michael Oganga - Member
- Mr. Peter Njau - Member
- Mrs. Rhoda Kirui - Member
- Mr. Jude Dede - Member

3.1.17 The tender was opened on 24 November 2014. All the tender opening committee members were present except Mrs. Chemutai Tanui. Twenty five (25) representatives of the bidders witnessed the opening. Seven firms responded positively to the tender as detailed in the table below:

Table 3: Firms that responded positively to the tender

Name of bidder	Tender Amount US\$	Bid Bond US\$	Bid Bond Issued By
East Africa Automobile Services	34,787,400.00	200,000.00	The Bank of Tokyo – Mitsubishi
Bureau Veritas	Not given	200,000.00	Credit Industrial et-Commercial
Quality Inspection Services Inc. Japan	34,787,400.00	200,000.00	The Bank of Tokyo Mitsubishi
Auto Terminal Japan	34,787,400.00	200,000.00	The Bank of Tokyo Mitsubishi
Wilna International Co. Ltd.	Not given	200,000.00	CRDB Bank Plc. Tanzania
Japan Auto Appraisal Institute	35,000,000.00	200,000.00	Mizuho Bank
JEVIC	34,787,400.00	200,000.00	Mizuho Bank

Tender Processing

3.1.18 On 24 November 2014 the Managing Director appointed the Tender processing committee vide memo reference KEBS/T057/2014/2015. The tender processing committee members appointed were:

- Dr. Henry Rotich - Chairman
- Mr. Juma Boniface - Member
- Mr. Samuel Onjolo - Member
- Mr. John Kingori - Member
- Mr. James Onyiengo - Member
- Mr. Muindi Justus - Member

3.1.19 On 3 December 2014 KEBS vide a letter REF: KEBS/057/2014/2015 requested Weights and Measures Department, Kenya National Accreditation Service and the Kenya Institute of Supplies Management to attend as observers in the tender processing meeting.

3.1.20 The evaluation committee was to evaluate and submit a report with recommendation to the Secretary of Tender Committee not later than 1 December 2014. The evaluation committee was to carry out a comprehensive technical and financial evaluation, due diligence and inspection of tender in strict adherence to the compliance and evaluation criteria set out in the tender document and report within a period of fifteen (15) days after the opening of the tenders

3.1.21 The members of the evaluation committee were required to sign a declaration of impartiality and confidentiality before the exercise commences. The evaluation of the tender was extended by a further two (2) days up to 3 December 2014 through a letter dated 1 December 2014 signed by the Managing Director of KEBS. It was done in pursuant to regulation 46(2) of the Public Procurement and Disposal Regulations 2006 and notice No.106 of 18 June 2013 which provides that "where a tender is

complex and/or has attracted a high number of tenders, the Accounting Officer or Head of Procuring Entity may extend the period for the evaluation for a further period within the tender validity period but not exceeding thirty days''.

Tender Evaluation

3.1.22 The tender evaluation was carried out in three (3) stages:

- Preliminary
- Technical
- Financial

Preliminary Evaluation

3.1.23 The mandatory requirement in the preliminary stages were:

- ◀Details of directors
- ◀Registered office
- ◀Tax compliance validity
- ◀Organization profile
- ◀Duly completed confidential business questionnaire
- ◀Certified copy of company registration
- ◀Valid Audited account (2010-2013)
- ◀Integrity Affidavit
- ◀Copy of receipt of purchase
- ◀Tender security guarantee

3.1.23.1 After the preliminary evaluations, three (3) companies qualified to proceed to technical evaluation. The three (3) companies are:

- East Africa Auto mobile services company limited (EAAS);
- Quality Inspections Services Inc. Japan (QISJ); and

-
- Japan Export Vehicle Inspection Company Japan (JEVIC).

Technical Evaluation

3.1.24 The criteria for technical evaluation are as detailed below:

1. The installed infrastructure and methodology (inspection own facilities will be an added advantage, equipment and procedures/ manuals/ work instructions) for verifying conformity to KS 1515:2000 and for radioactive contamination inspection in an efficient and effective manner.
2. Current 'type A' accreditation of the said system to ISO/IEC 17020 with scope relevant to inspection requirements specified in KS 1515:2000.
3. The company experience in providing motor vehicles inspection/verification to standards to other regulatory authorities, including current and former contracts and the record is satisfactory fulfilling its duties and obligations with those regulatory authorities. Attach current and the previous fully completed contracts. KEBS has the discretion to independently obtain a record of performance for contracts served.
4. The company's organization in Japan, United Kingdom, United Arab Emirates and South Africa including the structure and established capacity through infrastructure and physical locations within proximity of major ports in the four aforementioned countries. A copy of evidence (title or lease agreement) to show the company will have uninterrupted access to the facilities for the duration of the contract to be included.
5. The qualifications, competence and experience of the company personnel assigned to the program to perform all necessary supervision and inspection tasks in an effective and timely manner.

-
6. The information communications technology resources and how the resources will be deployed for achieving the company objectives.
 7. A detailed description of the risk management system to be deployed by the bidder and how the system will be used to assist inspection services being proposed.

3.1.25 On 1 December 2014 KEBS communicated vide Ref: KEBS /TO57 /2014-2015 to the three (3) companies which attained the minimum score of seventy (70) marks and therefore technically responsive and qualified to proceed to the financial evaluation stage. The three companies that proceeded to financial evaluation were:-

- **Bidder No.1:** East Africa Auto mobile Services company Ltd (EAAS)
- **Bidder No.3:** Quality Inspections Services Inc. Japan (QISJ); and
- **Bidder No.7:** Japan Export Vehicle Inspection Company (JEVIC)

3.1.26 The committee made the following observations in respect to two of the aforementioned bidders:

Bidder no.1

The ISO 17020:2012 accreditation was found to indicate suspended at (JAB) Japan Accreditation Board and the committee sought clarification. They recommended that the bidder was not suitable to continue participating in the tender. The company provided information that they were providing the same services to Uganda and Tanzania. This was never confirmed by the said countries after enquiries were made by KEBS.

Bidder no.7

3.1.27 JEVIC request Kenyan Embassy in Japan to recommend the company for the Tender No. KEBS/TO57/2014-2015 vide letter Ref: KET/COM/17/XII dated 14 November 2014. This correspondence was noted as an inappropriate influence on the evaluation process, which is contrary to

Section 38 (a) and (b) of Public Procurement and Disposal Act, 2005 and Regulations 2006. The Company sought endorsement in the Kenyan Mission in Japan while it was clear that the bidding process was competitive with other firms involved. In spite of this infraction, the firm was allowed to participate in the tender pending the clarification on the matter at hand.

3.1.28 The company had provided documents indicated that they were providing services to both Uganda National Bureau of Standards and Tanzania Bureau of Standards. KEBS sought confirmation from Tanzania Bureau of Standards and Uganda National Bureau of Standards on performance of the bidder on the contracts. No response was received from the two bodies.

Financial Evaluation

3.1.29 The financial proposals were opened on 3 December 2014 at KEBS Boardroom and the criteria for evaluation as per the tender document were as follows:

- ✓ Bidders who quoted administration fees of less than US\$40 were awarded a score of zero marks.
- ✓ Bidders who quoted administration fee of US\$40 shall be awarded a score of 15 marks.
- ✓ Bidders who quoted administration fee greater than US\$40 shall be awarded a full score of 20 marks

3.1.30 The tender processing committee agreed to evaluate the financial proposals of the three companies based on the "Administration Fee" submitted by bidders. The three companies each scored twenty (20) marks since they all quoted more than US\$40 in their financial proposals. As per clause 2.11.2 article b-I inspection fees charged to the exporter for

services under this contract was specified in the contract document as indicated in the table below.

Table 4: Service Contract Pricing

SN	Country of Origin	Quantity	Unit price US\$
01	Japan	1	150
02	United Arab Emirates	1	180
03	United Kingdom	1	210
04	South Africa	1	220

Overall Total Scores

3.1.31 The overall total scores for bidders is a combination of the technical and financial score. This is given by the formulae:

$$<\text{Overall Scores (OS)} = \text{Technical Scores (TS)} + \text{Financial Scores (FS)}>$$

The three bidders scored as indicated below:

Table 5: Evaluation Results

Name of the company	Technical Score	Financial Score	Total Score	Position
East Africa Auto mobile Services company limited (EAAS)	72	20	92	2
Quality Inspections Services Inc. Japan (QISJ)	78	20	98	1
Japan Export Vehicle Inspection Company Japan (JEVIC)	71	20	91	3

Recommendation for award

3.1.32 On the basis of both the technical and financial evaluations and in accordance with the criteria set in the RFP document, Quality Inspections

Services Inc. Japan (QISJ) attained the highest overall score of ninety eight (98) marks. The evaluation committee then recommended to the tender committee that QISJ be awarded the contract of tender KEBS/T057/2014-2015 Motor vehicle inspection/verification services in accordance with the Kenya Standard Code of Practice (KS 1515:2000) for Inspection of Road Vehicles.

3.1.33 The tender committee in its meeting No.8/2014/15 held on 4 December 2014 approved the award of the Tender No. KEBS/T057/2014-2015 Motor vehicle inspection/verification services in accordance with the Kenya Standard Code of Practice (KS 1515:2000) for Inspection of Road Vehicles to Quality Inspection Services Inc. Japan and directed that due diligence be carried out before signing the contract.

Appeals on award of the tender

3.1.34 Requests for review of award of the contract were made to Public Procurement Administrative Review Board (PPARB) initially by East Africa Automobile Services Co. Ltd vide application No.55/2014 and later by JEVIC vide application No.56/2014, and finally Auto Terminal Japan Ltd vide application No.59/2014.

3.1.35 East Africa Automobile Services Co. Ltd requested the Board for the following orders:

- Review of the procuring entity decision as communicated to the applicant in the letter dated 15 December 2015 as unsuccessful bidder;
- The procuring entity to properly and correctly evaluate the proposals submitted by all the bidders in the tender; and
- The procuring entity be ordered to pay the costs of and incidental to these proceedings.

3.1.36 Auto Terminal Japan Ltd sought orders on the following areas:

- That there should be fair administration action by the Procuring entity;
- The rejection of its proposal was not fair; and
- That the procuring entity be directed to admit the applicant's proposal to offer motor vehicle inspection services.

3.1.37 JEVIC Application No.56/2014 sought review on the following grounds:

- That the procuring entity in carrying out its evaluation would appear to have considered a non-responsive bid proposal that was not in accordance with the specific requirements of the request for proposal.
- The procuring entity failed to provide the applicant with records for the procurement and in particular, the minutes of the technical proposal, opening minutes of 24 November 2014, and a summary of the evaluation and comparison of the proposals, despite request. This is contrary to the terms of Section 45 (2) and (3) of the Public Procurement and Disposal Act, 2005; and
- The process had been carried out in a biased and non-objective manner contrary to Section 2 of the Public Procurement and Disposal Act, 2005.

3.1.38 On the basis of the above grounds, JEVIC requested the board to:

- Set aside the procuring entity decision and nullify the award;
- Direct the procuring entity properly and correctly evaluate the proposals submitted by all the bidders; and

-
- That the procuring entity be ordered to pay the costs of and incidental thereto of this appeal.

3.1.39 On 21 January 2015 the PPARB made the following orders in respect to application No.55/2014. The application for review failed and was dismissed, the requests for reviews No. 55/2014, 56/2014 and 59/2014 were consolidated and heard together by the Board. The outcome of the procurement process was to be determined after the decisions of the three cases. The PPARB after taking into account all factors in the request for review made no order as to costs and no decision was arrived at.

3.1.40 On 28 January 2015 the PPARB made the following orders in respect to applications No.55/2014, No.56/2014 and No.59/2014. as per the provisions of Section 98 of the Public Procurement and Disposal Act, 2005:

- The request for reviews filed by Auto Terminal Japan Ltd on 30 December 2014 was struck out on the ground that it was filed out of time;
- The Applicants were to bear their own cost for the Request for Review;
- The procuring entity was to pay costs of Kshs.150,000.00, to the applicant within seven (7) days from the date of this decision and was to supply the PPARB with the evidence of compliance as directed on or before 5 February 2015; and
- The procuring entity was at liberty to proceed with and complete the procurement process.

Due diligence

3.1.41 Following the recommendations of the tender committee, six members of staff in three teams carried out due diligence in three source market. Dr. Henry Rotich and Mr. John Kingori went to Japan, Mr. Samwel Onjolo and

Mr. James Onyiego went to United Kingdom while Mr. Juma Boniface and Mr. Justus Muindi went to United Arab Emirates.

3.1.42 The objective of the exercise was to verify and validate documentary evidence, infrastructural development, technical capacity and managerial competence of QISJ to provide the service as per the Kenya Standard Code of Practice KS 1515:2000 for Inspection of Road Vehicles. The teams were guided by requirements set out on KEBS/T057/2014-2015 request for proposal (RFP).

3.1.43 On 9 January 2015 the due diligence team issued a report signed by all six members involved in the exercise with recommendation that Quality Inspection Service Japan is competent to undertake the project and therefore KEBS should go ahead and sign a contract with the service provider - Quality Inspection Service Japan. The team confirmed that the company had the requisite capacity in terms of infrastructure development, technical personnel and managerial competence, in the four source markets and is a legal entity and therefore competent to undertake the contract.

Contract

3.1.44 On 2 February 2015 a contract between Kenya Bureau of Standards and Quality Inspection Services Inc. Japan was signed by Managing Director KEBS and Managing Director QISJ witnessed by Mr. George Sichangi for KEBS and Mr. Khalid S. Swaleh for QISJ in Kenya. The contract date of commencement was 1 March 2015.

3.1.45 All the tendering processes as per the Public Procurement and Disposal Act, 2005 and Regulations 2006 were noted to have been followed and QISJ were validly awarded the contract.

3.2 Value for money of the Tender

3.2.1 Section 29 of the Public Audit Act, 2003 provides that value for money is achieved through economy, efficiency and effectiveness.

3.2.2 **Economy** refers to minimizing the cost of resources used or required (inputs). The tender was allocated to one of the technically qualified bidder. In terms of financial bids, the administrative fee offered by the bidder was US\$41 which was within the limit set out in the tender document by KEBS.

3.2.3 **Effectiveness** was analyzed based on the royalties received on motor vehicles inspections from the three companies in the previous contracts i.e. JEVIC, QISJ and ATJ for the period between March 2014 and July 2014 had collection of revenue totaling US\$1,302,764.00, while for the similar period in 2015, revenues collections by QISJ had totaled US\$1,907,098.00. This difference US\$604,334.00 received over and above the collections of 2014 can be likely attributed to QISJ being effective in ensuring that all vehicles destined for the Kenyan market are inspected for quality, notwithstanding other factor that could have also affected importation of vehicles during the comparable periods. Refer to **Appendix 1V and V** for details.

3.2.4 **Efficiency** was analyzed by reviewing the terms as per the Service Level Agreement (SLA) between KEBS and QISJ which required that vehicles be inspected within three (3) days of application for inspection. A review of the waiting time revealed that the longest waiting time was three days with the majority of vehicles inspected on the same day or the second day of application for inspection. Refer to **Appendix I and II** for details.

3.3 Possible fraud in the procurement process

3.3.1 An analysis of the procurement process for pre-export inspection services for used motor vehicles shows that the procuring entity complied with the

law and regulations. Evaluation of bids was conducted as per the tender documents bought by the bidders. We could not establish any indicators of fraud in the process of awarding the tender for pre-export inspection service for used motor vehicles.

3.4 Verification of physical location of QISJ

Japan

3.4.1 Quality Inspection Services Japan Ltd was incorporated in Japan on 22 July 2009 and issued with a Registration Certificate Number 0200-01-062420. The Company's head office and physical address in Japan at the time of registration was 1-18-12 Komaoka, Tsurumi, Yokohama. The Company later moved its head office to its current Headquarters at YCC 1608, 22 Daikoku Fotou, Tsurumi, Yokohama.

3.4.2 The Company was incorporate to carry out the following functions among others:

1. Survey, inspection, sworn measure & Assessment of Automobile/Electronic product/Industry products/ Ship/ Clinical products/Oil/Mineral products/Plastic/Metal /Fibre/ Farm products/Foods /Medical products.
2. Inspection of products listed above, including physical examination and scientific analysis.

Company Shares

3.4.3 The company aggregate numbers of issuable shares is one thousands six hundred (1600) and the total numbers of shares so far issued is four hundred (400). The share capital of the company is JPY20,000,000.00. The

transfer of company shares to any member of the public can only be done after approval of the directors but if the shares are transferred from one shareholder to another within the company then the transfer is deemed to have been approved.

President and Managing Director

3.4.4 The President and Managing Director of the company is Mr. Kiyooki Hatano of YCC 1608, 22 Daikoko Futoa, Tsurumi, Yokohama.

Inspection Facilities in Japan

3.4.5 QISJ Ltd owns ten (10) inspection facilities in the following region in Japan as detailed in the table below.

Table 6: Inspection facilities in Japan

REGION	Name of Facility	Physical Address	Nearest Port
Kanto	QISJ Kawasaki	7-2 Higashi Kawasaki – KU Kawasaki – Shi Kanagawa	Kawasaki
Kanto	QISK Yokohama	9-19-Daikoko-cho Tsurumi-Ku, Yokohama – Shi Kanagawa	Yokohama
Kanto	QISJ Yokohama DaikokoFuto	15 Daikoku - Futo Tsurumi - Ku, Yokohama – Shi Kawagawa	Yokohama
Kanto	QISJ KISARAZU	14-1 Shin Minato, Kisarazu –Shi Chiba	Kisarazu

QISJ owns Barking and Tilbury inspection facilities and has leased thirteen (13) other facilities which are approved by Ministry of Transport and Communications in the United Kingdom. See **Appendix III** for details.

3.5 Institutional capacity to undertake motor vehicle inspection

Employees

Japan

- 3.5.1 The company has forty seven (47) members of staff stationed around inspecting centers in Japan. Twenty eight (28) are technical staff while nineteen (19) are administrative staff members.

United Arab Emirates

- 3.5.2 In UAE, the company has four members of staff. Three technicians and one Administrator.

South Africa

- 3.5.3 In South Africa the company does not have any employee since it has sub-contracted the inspection services to International Conformity Assessment Solutions (PTY) Ltd of South Africa.

United Kingdom

- 3.5.4 In the UK, the company has six (6) employees. Five technical and an Administrator.
- 3.5.5 In general therefore, the company has a total of fifty seven (57) employees giving a service to exporters of motor vehicles to Kenya from the four source markets. The employees have various education and technical competencies related to motor vehicle inspection. Most motor vehicle inspectors have an automobile mechanics grade two (2) or three (3).

3.5.6 This is equivalent to a diploma in automobile engineering. Other employees involved in finance and management services have both academic and professional competencies ranging from 1st grade book-keeping to university degrees.

Inspection Equipment

3.5.7 The company has the following equipment's in their inspection centers which include

- Pits.
- Hydraulic jacks.
- Side Slip Tester /Wheel alignment tester.
- Brake Tester
- Sound level tester
- Emission Gas measuring equipment, for CO/HC (Petrol & Diesel)
- Radiation emission tester.
- And all handy tools required for inspections (i.e. Hammer, Tyre tread depth probe)
- Adequate hard space for carrying out structural and general view of vehicles.

Inspection Procedures

3.5.8 The company has an inspection procedure that is followed in all its facilities. This is to ensure uniformity and consistency in the way the company carry out its tests. The flow chart at **Appendix VI** indicates the detailed procedure that the company undertakes to ensure compliance with KEBS requirement.

Inspection Reports

3.5.9 Between March and September 2015, QISJ Inspected a total of fifty five thousand seven hundred and seventy nine (55,779) vehicle for the Kenyan Market – During the same period a total of one hundred and seventy one

(171) inspected vehicles did not meet the Kenyan Standard and therefore were rejected for one reason or another.

- 3.5.10 During the same period, the Dubai facility inspected three hundred and forty (340) vehicles, out of which fourteen did not meet the inspection condition and regulations and therefore were declared to be non-compliance with regulation (NCR)

Inspection in South Africa

- 3.5.11 International Conformity Assessment Solutions (PTY) Ltd provides Inspection/verification services for used motor vehicles for export to Kenya in accordance with Kenya Standard Code of Practice KS 1515:2000. In South Africa the motor vehicles are categorized as either individual and company motor vehicles.

Individual

The test for individual motor vehicles should conform and provide the following:

- Certificate of registration in report in respect of motor vehicle RC1 (7);
- Registration number certificate RNC;
- Police Clearance;
- Identification/Copy of passport; and
- Completed QISJ road worthy inspection application form Kenya.

Company

The tests for company motor vehicles should conform and provide the following:-

- Certificate of registration in report in respect of motor vehicle RC1 (7);

-
- Business Registration Number Certificate BRNC;
 - Police Clearance; and
 - Completed QISJ Roadworthy Inspection Application Form Kenya.

3.5.12 Conformity assessment procedures are used to verify that used motor vehicles for exported to Kenya are in compliance with Kenya Standard before shipment is done from South Africa.

3.5.13 After inspection, a vehicle's information is produced that could be a conditional report, roadworthy certificate, and ENATIS 174, which is a completed check list of the vehicle and clearly dated photographs which is loaded onto fleet operator that give all the details pertaining to a vehicle.

3.5.14 In case the vehicle fails the test, then the client is given a window of fourteen (14) days to repair and bring it back for inspections with no extra cost. If owner fails to bring back the vehicle for re-inspection after fourteen (14) days, he has to pay for inspection. If it fail on both cases a non-conformity report (NCR) is issued. For vehicles that pass the test a certificate of conformity is issued. All original certificate for inspection are issued by QISJ.

Prohibition of modified vehicles

3.5.15 When inspecting a motor vehicle, due care is taken so as to ensure safeguards and to detect any major modification e.g. LHD modified to RHD. The inspector will issue certificates only for the vehicles that have not been modified. We sampled a number of sites visited and witnessed inspections.

United Kingdom

3.5.16 In the UK, QISJ owns Barking and Tilbury inspection facilities. QISJ has leased Thirteen (13) other facilities. Inspection for motor vehicle is done within three (3) days after placing the request. The result for inspection is real time.

3.5.17 In UK motor vehicles for inspection are categorized into four groups before inspection:

- ◀Category A- Vehicles that have had accident;
- ◀Category B- Broken down vehicle repaired to new;
- ◀Category C-Cosmetic vehicles, where minor repairs are done; and
- ◀Category D –minor repairs like wind screen repair.

3.5.18 The inspecting process is prone to the following challenges and risk in executing the KEBS contract:

- After inspection a vehicle may be involved in an accident.
- Customer bring proper vehicles where they do pictures and after inspection the customer export a different vehicles
- Alteration/tampering on the mileage system after inspection.
- Vehicles tires replaced after inspection.

3.6 QISJ Tax returns for the last five financial years.

Japan

3.6.1 QISJ financial year is between 1 April and 31 March every year. QISJ has made payments and returns on taxes of JPY 2, 974, 874, JPY 9,482,737, JPY 23,604,015, JPY 34,419,892, and JPY 27,071,850 for the financial years 2011, 2012, 2013 2014 and 2015 respectively. The tax certificates in compliance are issued by the Tsurumi District.

3.6.2 The company therefore has been filing their tax returns as required by the Japanese tax laws and regulations.

South Africa

3.6.3 Correspondence received from the Company Auditors Ms. Tangerine Tax and Accounting Solutions dated 3 August 2015 indicates that ICAS is fully registered by South Africa Revenue Services Income Tax and Value Added Tax (VAT) Departments with a registration number: 2010/0148113. VAT returns were up to date. The company is registered as a Small Business Enterprise which does not qualify to pay income tax. This is as per the tax laws in South Africa. Therefore there was no income tax owing.

United Kingdom

3.6.4 The government revenue (taxes) in UK is collected by Her Majesty Revenue and Customs Department. QISJ has paid all the taxes due. On 16 June 2015 QISJ UK made tax payment of GBP3,097.67 for the period 1 March 2013 and 28 February 2014.

UAE

3.6.5 UAE do not have a tax regime. Companies operating in these countries are not liable to taxes. Therefore QISJ has no tax liabilities outstanding.

3.7 Possible conflict of interest by QISJ as an inspector and a dealer.

3.7.1 QISJ is registered to carry out survey, inspection, measurement assessment of automobile among other things. The company is allowed to carry out the following tests.

- Physical and scientific analysis of all products listed above
- Intermediary with the government and company

-
- Planning software program, development, manufacture and sale
 - International cooperation and consultation
 - Contracting business of security
 - Worker dispatching (Governmental)
 - Education and related services
 - Incidental or related work in the preceding items

3.7.2 On 30 September 2015 interviews were conducted with Japan Used Motor Vehicles Exporters Association of 8th Floor Gotonda Daikhi Seimei Building, 2-19-3 Nishi Gotonda, Shinagawa, Tokyo, Japan Postcode 141-0031, which is an authorization Exporters Association by the Ministry of Economy, Trade and Industry in Japan. The association is mandated to register, monitor and regulate all used vehicle exporters in Japan.

3.7.3 The association also receives complaints from their members on delays of inspection of motor vehicle. The association confirmed that QISJ was not a member of the association that export motor vehicles out of Japan and therefore are not involved in motor vehicle export. They further indicated that they have not received any complaints from their members that QISJ has delayed inspection of their motor vehicle for export. Therefore the conflict of interest assertion that QISJ is a dealer in exporting used vehicle was not confirmed.

3.7.4 Further Japan Accreditation Board (JAB) of Gotonda AN Bldg 3F1-22-1, Higashi Gotonda, Shinagawa Tokyo 141-0022, Japan indicated that they first accredited QISJ in 2010 and renewed its accreditation in 2014. QISJ has also extended its accreditation scope twice after renewal. JAB stated that QISJ has no historical sanctions such as suspension, withdrawal since its initial accreditation in 2010.

3.7.5 JAB has conducted two full size assessments on QISJ. The initial assessment, reassessment and three surveillance assessments including witness of inspections at site after initial accreditation and two extraordinary/extension assessment after renewal of accreditation. No non-conformity issues were found in all of these JAB's assessment.

South Africa

3.7.6 In South Africa the company is not directly involved in doing any other business. QISJ has only contracted International Conformity Assessment Solutions (Pty) Limited (ICAS) to undertake motor vehicle inspection on their behalf. The company is not involved in buying and selling of motor vehicle either for the local market or for export. Therefore there was no activity that would indicate a conflict of interest in its operation.

United Kingdom

3.7.7 QISJ was registered as a quality inspection company in the United Kingdom. The company was not involved in any trading activities since its certificate of registration restricts it to inspection of motor vehicles. Therefore we would not establish a conflict of interest in its operation in United Kingdom.

3.7.8 Generally, in the audit in the four areas of operation, ascertained that there was no conflict of interest between the activities the company is registered to carry on and what it actually does in the four used motor vehicle source markets. The company is not licensed to trade in motor vehicles or do mechanical repairs. The company's accreditation to ISO 17020:20 AS type certification is normally given to companies that do not have a conflict of interest with respect to the items they inspect. Through physical verification at the inspection sites, observation and analysis of records, there was no

evidence suggesting that QISJ traded in motor vehicles as alluded to by Japan Used Motor Vehicles Exporters Association.

4 APPENDICES

Appendix 1: Monthly Report on the number of vehicles imported

Monthly Report on number of vehicle inspected by QISJ

Total number of vehicles inspected

Month, 2015

Countries	March	April	May	June	July
Japan	7075	8230	7018	8302	7510
UK	550	683	443	418	406
UAE	24	60	71	49	45
South Africa	10	11	19	15	64
Total	7659	8984	7551	8784	8025

Monthly Report on number of Un-roadworthy vehicle by QISJ

Total number of Un-roadworthy vehicles

Month, 2015

Countries	March	April	May	June	July
Japan	11	15	13	29	27
UK	0	0	0	3	3
UAE	0	3	1	4	1
South Africa	0	1	0	0	0
Total	11	19	14	36	31

Appendix 2: Facilities in Japan

S/N	REGION	NAME	ADDRESS	NEAREST PORT
1	KANTO	KOJIMA	17-9 Higashi Ogijima, Kawasaki-ku, Kanagawa-shi, Kanagawa	KISARAZU
2	KANTO	KAWASAKI AUTOMOBILE ASSOCIATION	3-24-3 Shiohama, Kawasaki-ku, Kuwasaki-shi, Kanagawa	KAWASAKI
3	KANTO	KEIHIN SHARYOU HANBAI	5-8-42 Namamugi, Tsurumi-ku, Yokohama-shi, Kanagawa	YOKOHAMA
4	KANTO	JAPAN ENGINEERING	4-10, Torihama-cho, Kanazawa-ku, Yokohama-shi, Kanagawa	YOKOHAMA
5	KANTO	ECL AGENCY KISARAZU	10-1 Shin Minato, Kisarazu shi , Chiba	KISARAZU
6	KANTO	AQUOS	5568 Shin Tsutsumi, Kimagase, Noda, Chiba	KISARAZU
7	KANTO	PAPERA TRADERS	2396-1 Funagata, Noda, Chiba	KISARAZU
8	KANTO	FWT LOGISTICS	5568 Shin Tsutsuma, Toukai-mura, Naka-gun Ibaraki	HITACHINAKA
9	KANTO	ISUZU AUTO SERVICE	3193-2 Oaza Shinozuka, Ouramachi, Oura-gun, Gunma	HITACHINAKA
10	CHUBU	SEIRYO JIDOSHA	7-23 Honmachi, Kanie-cho. Ama-gun, Aichi	NAGOYA
11	CHUBU	NOMURA JIDOSHA	1-329 Namiki, Nakamura-ku , Nagoya-shi, Aichi	NAGOYA
12	CHUBU	DAIEI JIDOSHA	4-18 Kawanishi-dori, Minato-ku, Nagoya-shi, Aichi	NAGOYA
13	CHUBU	KOSEI JIDOSHA	4-1-21 Inaei, Minato-ku, Nagoya-shi , Aichi	NAGOYA
14	CHUBU	NAGASE JIDOSHA	9 Oaza Umenogoaza Miyahigashi. Tobishima-mura, Ama-gun, Aichi	NAGOYA

15	KANSAI	KYOWA JIDOSHA	1-8-17 Kitaonkajima, Taisho-ku, Osaka-shi, Osaka	OSAKA
16	KANSAI	ABA INTER CARS	3-10- 28 Tadaoka-Kita, Tadaoka-cho, Senboku-gun, Osaka	OSAKA
17	KANSAI	OTSUKI JIDOSHA	932-1 Mita-cho, Kishiwada-shi, Osaka	OSAKA
18	KANSAI	ECL AGENCY SENBOKU	2-8/9 Minami-Takasago, Takaishi-shi, Osaka	OSAKA
19	KANSAI	AUTO LOGISTICS JAPAN OSAKA	104 Shiomi-cho, Izumi Ohtsu-shi, Osaka	OSAKA
20	KANSAI	DAIKYO AUTO SERVICE	2 Yunagi-cho, Izumi Otsu-shi, Osaka	OSAKA
21	KYUSHU	AUTO LOGISTIC JAPAN HAKATA	4-10 Hakozakifutou, Higashi-ku, Fukuoka-shi, Fukuoka	HAKATA
22	KYUSHU	ECL AGENCY KITAKYUSHU	3-1-10 Shin Moji, Moji-ku, Kitakyushu-shi, Fukuoka	SHIN MOJI/MOJI
23	KYUSHU	IDE JIDOSHA KOGYU	3-3-1 Kishi, Moji-ku, Kitakyushu-shi, Fukuoka	SHIN MOJI/MOJI

Appendix3: Inspection Facilities in UK

Landlord	Tenant	Physical Location	Lease Commencement period
FRESH WHARF ESTATES LIMITED	QISJ	Suite 3, 98-106 High Road, South Woodford, London E18 2QH	N/A
PORT OF TILBURY LONDON LIMITED	QISJ	Unit 9A/10B Industrial Complex,Tilbury Freeport,Essex	11/10/2014
BRITCOM INTERNATIONAL LIMITED	QISJ	York Road,Market Weighton East Yorkshire,YO43 3XQ	15/01/2015
ATE COMMERCIALS	QISJ	Boundary Industrial Estate Stafford Road, Fordhouses,Wolverhampton,WV107EL.	15/01/2015

C & W COMMERCIALS	QISJ	Bean Road Tipton, West Midlands, DY49AQ	15/01/2015
ABBAS AUTO	QISJ	Oxney Road, Peterborough PE1 5YW	15/01/2015
ASSETWELL LIMITED	QISJ	Toll Bar Garage Selby Road DN6 0ET	15/01/2015
FOLEY SPECIALIST VEHICLES LTD	QISJ	The Roses, Epping Road, Roydon, Essex, CM19 5DD	29/07/2015
NASS TECH AUTOS LIMITED	QISJ	15, Highmeres Road, Troon Industrial Area, Leicester LE4 9LZ	28/07/2015
PARKWOOD GARAGE LTD	QISJ	Bicknor Farm, Sutton Road, Maidstone, Kent, ME173NG	29/07/2015
VOLVO GROUP UK LTD	QISJ	Volvo Used Truck Centre, Padstow Road, Torrington Avenue Industrial Estate, Coventry CV4 9AP	15/01/2015
EDMONTON AUTO CENTRE	QISJ	Unit 3 Kenninghall Road, Edmonton, London N182PD	21/06/2012
WOODHOUSE MOT CENTRE	QISJ	96 Woodhouse Road, Leyton, E113 NA	21/06/2012

Appendix 4: Royalties received by KEBS

KENYA BUREAU OF STANDARDS				
Year 2013/2014	QISJ	JEVIC	ATJ	TOTAL
	USD	USD	USD	USD
July	82,008.00	148,448.00	16,184.00	246,640.00
August	80,614.00	128,346.43	13,770.00	222,730.43
September	99,484.00	160,450.00	17,272.00	277,206.00
October	103,156.00	136,748.00	15,368.00	255,272.00
November	125,392.00	160,752.00	20,604.00	306,748.00
December	29,444.00	50,864.00	8,500.00	88,808.00
January	34,034.00	56,784.00	9,180.00	99,998.00
February	68,816.00	108,970.00	13,974.00	191,760.00
March	89,964.00	106,148.00	11,220.00	207,332.00
April	102,510.00	125,596.00	15,538.00	243,644.00
May	95,642.00	114,478.00	16,286.00	226,406.00
June	106,896.00	123,046.00	15,572.00	245,514.00
	1,017,960.00	1,420,630.43	173,468.00	2,612,058.43

Year 2014/2015	QISJ	JEVIC	ATJ	TOTAL
	USD	USD	USD	USD
July	76,160.00	98,178.00	13,770.00	188,108.00
August	104,584.00	115,430.00	15,164.00	235,178.00
September	125,426.00	126,616.00	14,756.00	266,798.00
October	126,514.00	142,528.00	17,374.00	286,416.00
November	150,960.00	157,488.00	17,646.00	326,094.00
December	39,814.00	46,104.00	6,358.00	92,276.00
January	142,596.00	27,608.00	8,602.00	178,806.00
February	197,098.00	-	28,806.00	225,904.00
March	314,090.00	-	-	314,090.00
April	368,344.00	-	-	368,344.00
May	309,591.00	-	-	309,591.00
June	360,144.00	-	-	360,144.00
July	329,025.00	-	-	329,025.00
	2,644,346.00	713,952.00	122,476.00	3,480,774.00

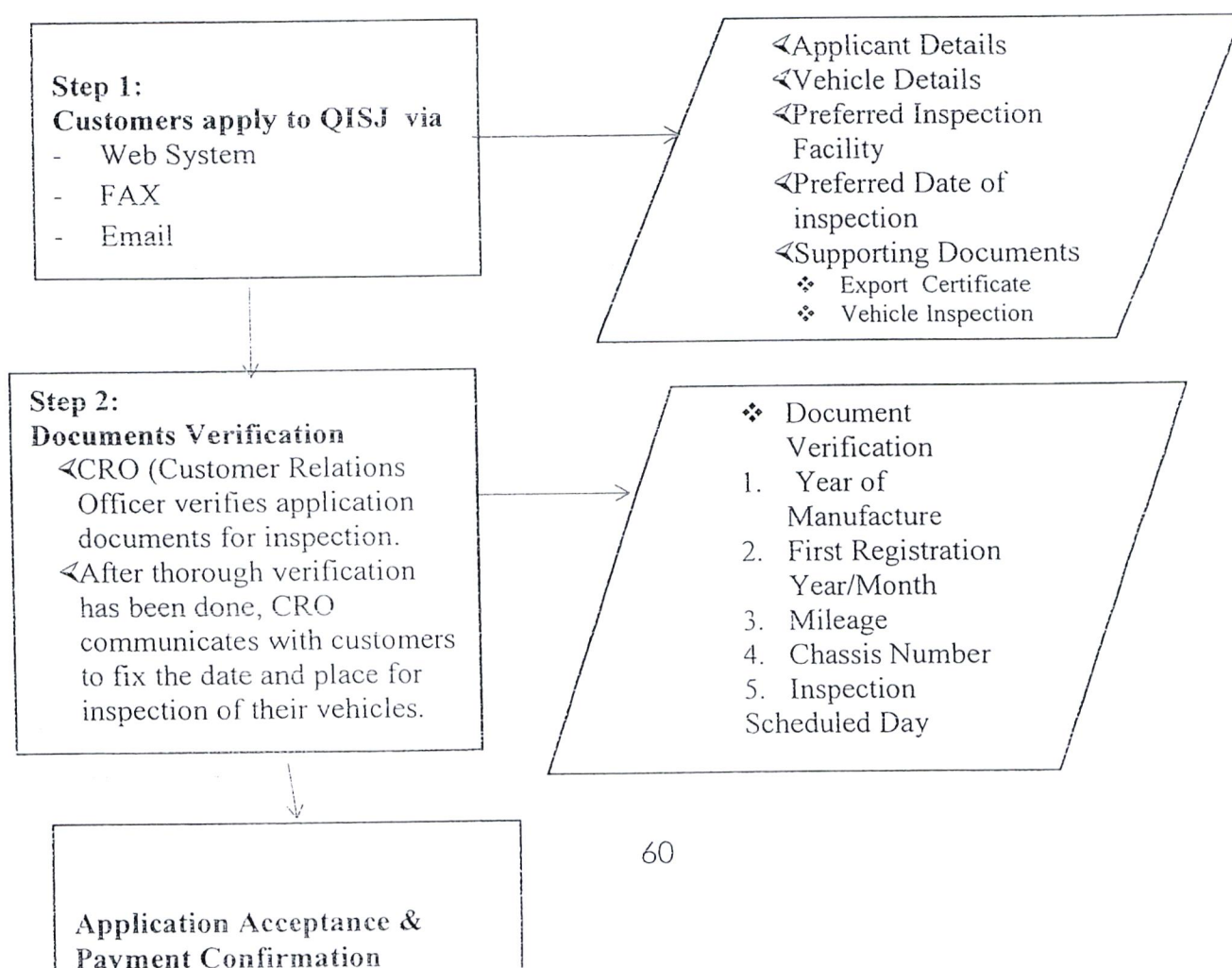
Appendix 5: Comparison of Royalties for similar periods in the two contracts

Comparison of royalties received

	QISJ/JEVIC/ATJ	QISJ
Month	Year 2013/2014	Year 2014/2015
February	191,760.00	225,904.00
March	207,332.00	314,090.00
April	243,644.00	368,344.00
May	226,406.00	309,591.00
June	245,514.00	360,144.00
July	188,108.00	329,025.00
	1,302,764.00	1,907,098.00

Appendix 6: Vehicle Inspection Flow Chart

INSPECTION PROCESS FLOWCHART



Step 4:

Inspection Assignment

◀By loading the data into the system, CI (Chief Inspector) assigns the inspector for the preferred facility and the preferred inspection date requested by the Customer.

- ❖ Vehicle delivery to the particular place for

◀Generate Inspection Sheet based on the verified document

Step 4:

Inspector conducts inspection

- ❖ Inspector performs inspection in accordance with QISJ inspection Work Instruction, Work flow and Manual.
- ❖ Conformity sticker is attached to vehicle windshield.
- ❖ First inspection is Radiation check

Step 5:

Inspection Result

- ❖ Inspector reports the inspection result to Chief inspector.
- ❖ Chief Inspector confirms the inspection result and forward the information to CRO
- ❖ CRO registers the inspection result to the QISJ web system so

Step 6:

COR/NCR Issuance

Conformity of Roadworthiness (COR) or Non-conformity Report (NCR) is issued

- ❖ COR/NCR is issued to the customer re-confirming the vehicle details with the Original Export Certificate
- ❖ Send the certificate by courier or the customer collects it at QISJ head office

Step 7:

Inquiry/Claim

Inquiry or Claim from the customer on the inspection result

- ❖ CRO receives inquiry or claim from the customer
- ❖ Chief Inspector and the management check the inquiry or claim by examining the inspection data and hearing the inspector in

ANNEX 4

Your Ref: KEBS/LEG/1/2

Our Ref: STA-005-0184

Date: ~~20th June 2020~~

Managing Director
Kenya Bureau of Standards
Popo Road
Kebbs Building
P.O. Box 54972-00200
NAIROBI.

**By Acknowledged Delivery
Advance copy by Email**

Dear Sirs,

**RE: LEGAL OPINION ON PROCUREMENT OF ADDITIONAL KEBS
PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC)
PARTNERS (BOTH GOODS AND MOTOR VEHICLES)**

We refer to the above matter.

By your letter dated 3rd February, 2020 and further telephone clarifications, KEBS has sought a legal opinion on the procurement of additional PVOC partners.

1. Issues

KEBS requested us to advise on the following issues:

- 1.1. whether KEBS is entitled to proceed with procurement of additional PVOC partners; and
- 1.2. whether there are any legal impediments to such procurement particularly in light of the provisions of the Public Procurement and Asset Disposal Act, 2015 ("**PPAD Act**")

2. Documents Examined

For the purposes of giving this opinion, we have examined the following documents:

- 2.1. Contract for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services- Used Motor vehicles, Mobile Equipment and used Spare Parts in Japan, United Arab Emirates, United Kingdom, Thailand and South Africa between KEBS and Quality Inspection Services Inc. Japan dated 3rd April 2018 ("**the Existing Contract**"); and
- 2.2. PPAD Act.

3. Documents yet to be Examined/reviewed

As at the time of this opinion, we were yet to be supplied with and neither had we examined and reviewed the following:

- 3.1. the tender documents that gave rise to the Existing Contract;
- 3.2. the considerations made in awarding the Existing Contract; and,
- 3.3. the details of procurement and asset disposal planning for the additional tendered services as envisaged under Section 53 of the PPAD Act;

4. Status of Opinion

- 4.1. This opinion relates to Kenyan law ("**Kenyan Law**") as it exists and is interpreted at the date of this letter. We express no opinion as to the laws of any other jurisdiction and none is to be implied.
- 4.2. This opinion is governed by and shall be construed in accordance with Kenyan Law.

5. Assumptions

For purposes of this opinion and in light of the documents yet to be examined, we have made the following assumptions (the "**Assumptions**"):

- 5.1. that the Existing Contract was validly issued having followed all the requisite procurement steps;
- 5.2. that the Accounting Officer had prior to issuing the Existing Contract prepared the necessary procurement plans as required;
- 5.3. that Accounting Officer had prior to issuance of the Existing Contract satisfied himself of existence of necessary budget for the performance of the contract; and,
- 5.4. that a detailed procurement and asset disposal planning for the additional tendered services has been undertaken.

6. Opinion

Whether KEBS is entitled to proceed with procurement of additional PVOC partners under the provisions of the PPAD Act

6.1.1. The Existing Contract

- a) the Existing Contract is dated 3rd April 2018;
- b) the Existing Contract was procured following what is referred to in the contract as a KEBS "*Tender Reference No. KEB/T019/2017-2020 and dated 21st November 2017...*";
- c) the Existing Contract was to commence on 15th April 2018 with a tenure of 36 months; and,
- d) that in effect, the existing Contract is valid upto 14th April 2021.

6.1.2. Justification for Additional PVOC Partners

- a) We understand that KEBS proposes to and has tendered for additional partners to supplement the Existing Contract; and,
- b) KEBS has provided rationale for seeking additional partners including reducing the risk of relying on one partner and the likely exposure in the event of disputes or other challenges involving performance by the existing contractor.

6.1.3. Is KEBS entitled to proceed with procurement of Additional partners

- a) The PPAD Act provides for procurement through open tenders by all state bodies unless where exemptions are provided for under the Act.
- b) We note that the Existing Contract is silent with regard to exclusivity of the contract with the contracted Partner. In such circumstance, any other contract not involving a public

Your Ref: KEBS/LEG/1/2
Our Ref: KEN-013-0003
Date: 19th February 2020

Managing Director
Kenya Bureau of Standards
Popo Road
Kebs Building
P.O. Box 54972-00200
NAIROBI.

By Acknowledged Delivery
Advance copy by Email

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+254 0733 843162
E info@ikm.co.ke
W www.ikm.co.ke

Dear Sirs,

**RE: LEGAL OPINION ON PROCUREMENT OF ADDITIONAL KEBS
PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC)
PARTNERS (BOTH GOODS AND MOTOR VEHICLES)**

We refer to the above matter.

By your letter dated 3rd February, 2020 and through further consultations, KEBS sought a legal opinion on the procurement of additional PVOC partners.

1. Issues

KEBS requested us to advise on the following issues:

- 1.1. whether KEBS is entitled to proceed with procurement of additional PVOC partners; and
- 1.2. whether there are any legal impediments to such procurement particularly in light of the provisions of the Public Procurement and Asset Disposal Act, 2015 ("PPAD Act")

2. Documents Examined

For the purposes of giving this opinion, we have examined the following documents:

- 2.1. Contract for Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services- Used Motor vehicles, Mobile Equipment and used Spare Parts in Japan, United Arab Emirates, United Kingdom, Thailand and South Africa between KEBS and Quality Inspection Services Inc. Japan dated 3rd April 2018 ("the Existing Contract");
- 2.2. PPAD Act; and,

James Kamau
William Maema
Kamau Karori, MBS
Martin Munyu
Anne Kinyanjui
Beatrice Nyabira
Amrit Soar
Norah Mutuku
David Lekeral
Milly Jalega
Caleb Langat

Iseme Kamau & Maema Advocates ("IKM Advocates") is a partnership registered in Kenya (with Certificate of Registration Number 314076) under the Registration of Business Names Act (Chapter 499, Laws of Kenya). Its place of business is at IKM Place, Tower A, 5th Ngong Avenue, Off Bishops Road, P.O. Box 11866-00400, Nairobi, Kenya. The firm is regulated by the Law Society of Kenya (www.lsk.or.ke).

IKM Advocates is a member of DLA Piper Africa, a Swiss Verein whose members are comprised of independent law firms in Africa working with DLA Piper.

Further information on DLA Piper Africa can be found at www.dlapiper.com/africa.

16 1

- g) In seeking to expand the number of Service Providers (PVOC), we understand that KEBS is implementing Government of Kenya (GoK) policy. With over twenty (20) Agencies previously inspecting goods at the point of entry, delay in clearing resulted in public outcries. At the same time, GoK has the obligation to protect consumers from sub-standard and/or harmful goods and substances finding their way into the Kenyan market and consumers.
- h) We understand that KEBS overall intention is to protect the Kenyan public against importation of dangerous, hazardous or substandard goods getting into the country from any jurisdiction across the world.
- i) We also understand KEBS challenge in reliance with one contractor performing pre import inspection from every conceivable port in the world and at the same time maintaining integrity and efficiency. The exposure to KEBS with the said arrangement is obvious considering the spectrum of goods involved and jurisdictions exporting goods to Kenya.
- j) We understand the GoK policy decision to exit most of the inspecting Agencies at the port of entry and transferring most of those Agencies mandates to KEBS thus greatly widening KEBS responsibilities. To cope with this expanded mandate, KEBS had to widen the pool of Service Providers to ensure all goods are inspected at the points of export and PVOC issued at the points of export. In Kenya's Public Interest, it is untenable for example to have only one Service Provider pre-inspecting vehicles in all the countries in the world. A monopoly is not in Kenya's Public Interest. Further, given the wide variety of goods to be inspected, the different expertise required for different items, medicine as an example, cannot be domiciled in the one Service Provider.
- k) In our opinion therefore, the decision to expand Service Providers (PVOC) from the existing number is both rational, necessary and in Kenya's Public Interest.

6.5. We have considered the following Board decisions in support of this opinion:-

- (i) The decision in Public Procurement Administrative Review Board (PPARB) Application No. 14 of 2020, TUV Austria Turk -vs- KEBS (KEN-013-005) in which the Board declined a



request to suspend the current tender and directed that the Procurement should proceed.

- (ii) Public Procurement Administrative Review Board (PPARB)
Application No. 43 of 2018, Britam General Insurance
Company (K) Limited -vs- County Government of Mandera -
Procuring Entity

7. Conclusion

Having reviewed the matter, our conclusion is that the proposed tender for additional partners is justifiable and entitled to proceed to its lawful conclusion unless barred by the Board or any other lawful process on the following basis:-

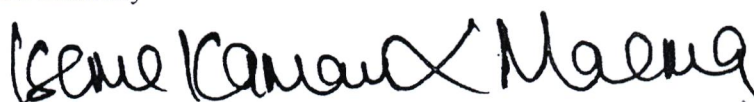
- 7.1. That the Existing Contract continuous running its term without interference;
- 7.2. That the term of the Existing Contract remains as contracted unless validly and legally terminated as provided in the Contract and applicable law;
- 7.3. That the Additional partners are justified in the public interest, in pursuit of government policy and to increase efficiency;
- 7.4. That KEBS should demonstrate succinct procurement planning for the additional partners;
- 7.5. That the decision to expand Service Providers (PVOC) from the existing number is both rational, necessary and in Kenya's Public Interest.

8. Benefit

This opinion is given solely for the benefit of KEBS and may not, without our consent, be disclosed to or relied upon by any other person except KEBS' relevant staff. It is based on the facts and documents presented to us and may not be applied to any different set of facts or circumstances. The opinion is limited to the matters set out herein and does not extend to and is not to be taken as extended by implication to any other matter. It speaks only as of its date.

We trust that the foregoing is clear, but if you require further information /clarification, please do not hesitate to contact us.

Yours faithfully



ISEME, KAMAU & MAEMA ADVOCATES

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

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

MIN/PIC/001/2020: PRELIMINARIES

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

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

The Office of the Auditor General briefed the Committee on the Special Audit Report

on Procurement of Pre-Export Verification of Conformity to Standards for Motor Vehicles and Spare Parts.

The Committee heard that:

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

Procurement Process

8. Procurement for Pre-Export Verification of Conformity (PVOC) to Standard Services-Used Motor Vehicles, Mobile Equipment and Used Spare Parts by Kenya Bureau of Standards (KEBS)-Tender Number KEBS/T019/2017-2020 was captured in the Annual Procurement Plan for FY 2017/2018.
9. An international tender for provision of pre-export verifications to conformity to standard: Used Motor Vehicles, Mobile Equipment and used Spare parts was advertised on 21 November 2017.
10. Four firms responded to the bid i.e. M/S Nippon Inspection Center Corporation, M/S Auto Terminal Japan (ATJ) Ltd, Quality Inspection Services inc. Japan (QISJ) and EAA Company Ltd.
11. Quality Inspection Services inc. Japan (QISJ) and EAA Company Ltd emerged the most responsive bidder with a combined score of 94 out of 100 marks.

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

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

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

He briefed the Committee as follows:

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

Committee Observations

The Committee made the following observations:

1. KEBS PVOC program was started on 29th September 2005 by KEBS, through the publication of Legal Notice No. 78 of 15th July, 2005. 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.
2. 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/T019/2017-2020. Four firms responded to the bid i.e. M/S Nippon Inspection Center Corporation, M/S Auto Terminal Japan (ATJ) Ltd, Quality Inspection Services Inc. Japan (QISJ) and EAA Company Ltd.

3. Quality Inspection Services Inc. Japan (QISJ) and EAA Company Ltd emerged the most responsive bidder with a combined score of 94 out of 100 marks.
4. 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.
5. PPARB dismissed the application by M/S Auto Terminal Japan (ATJ) Ltd indicating that the company did not meet the technical evaluation requirements and that KEBS should proceed with the procurement process.
6. Consequently, KEBS and Quality Inspection Services Inc. Japan (QISJ) entered into contract agreement on 03 April 2018 for a period of 3 years effective 15th April 2018.
7. KEBS has an existing contract with Quality Inspection Services Japan (QISJ) for pre-export inspection of motor vehicles that runs from 3rd April, 2018 to 14th April, 2021. The existing contract is for the current three-year cycle of inspection before a new tender is floated.
8. 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.
9. The Auditors conducted site visits in three out of 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.
10. 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.
11. 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 should be subjected to proceedings of the law having contravened Section 41 (1) (h) of the Public Procurement and Disposal Act, 2015.
12. The Company 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 has 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.

13. 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.
14. The Company 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.
15. The Special Audit Report recommended that debarment procedures should be initiated against M/S Auto Terminal Japan and M/S EAA Company Limited due to their their fragrant violation of the provisions of the procurement law.
16. On 3rd December 2019, KEBS advertised a tender for enlargement of provision of PVOC services to bring on additional service providers. The tender KEBS/T010-2019-2021 for Enlargement of Provision of Pre-Export Verification of Conformity (PVOC) to Standards services for used motor vehicles, mobile equipment and spare parts was advertised in the Daily Nation, the Standard and MyGov website.
17. KEBS stated that the rationale for expanding the contract was to mitigate against the risk of relying on one service provider and the exposure in case of dispute or lack of performance by the existing service provider.
18. 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.
19. KEBS Management had shown inconsistency in the information provided to the Committee. The Managing Director indicated that KEBS had not tendered for the expansion of the contract but had conducted a pre-qualification of service providers before later admitting that they advertised a tender when documentary evidence to that effect was provided.

20. KEBS Management intimated that they had received an advance opinion vide an email from its advocate on record with regards to this matter, the firm of Iseme Kamau and Maema Advocates. A copy of that advance opinion was not made available to the Committee.
21. The Committee through one of its Members was also in receipt of the above referenced legal opinion from the aforesighted Advocates to KEBS Management which was perused by the committee Members. The advocates were of the view 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.
22. 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.

Committee Resolutions

The Committee made the following resolutions:

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

MIN/PIC/004/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/005/2020: ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

25/02/2020

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

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

MIN/PIC/006/2020: PRELIMINARIES

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

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

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

He briefed the Committee as follows:

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

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

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

Committee Observations

The Committee made the following observations:

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

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

Committee Resolutions

The Committee reiterated its earlier resolutions THAT:

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

MIN/PIC/008/2020: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/009/2020: ADJOURNMENT

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

Signed

The Hon. Abdulkwamad Sharrif Nassir, MP
(Chairperson)

Date.....25/02/2020