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Nairobi

FORENSIC AUDIT REPORT OF THE AUDITOR-GENERAL

ON

THE KBC DIGITAL TERRESTRIAL TELEVISION (DVB-T2 PLATFORM) COVERAGE ROLL OUT PROJECT



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Exchange Rate

1 EUR = Kshs.109 (Based on the prevailing Exchange Rate on 07 July 2015, when KBC Received funds from APD).

List of Abbreviations

The following abbreviations have been used in this report.

Table 1: List of Abbreviations

Abbreviation	Full Description
AG	Auditor-General
APD	Algoritmos, Procesos Y Disenos (APD) S.A
BQs	Bills of Quantities
CFS	Container Freight Station
CTO	Chief Technical Officer
DRC	Definitive Reception Certificate
DTT	Digital Terrestrial Television
DVB-T2	Digital Video Broadcasting- Second Generation Terrestrial
EIC	Engineers in Charge
EUR	Euros
GE06	Geneva 2006
GOK	Government of Kenya
HQs	Headquarters
ICO	Instituto De Credito Oficial
IPSAS	International Public Sector Accounting Standards
KBC	Kenya Broadcasting Corporation
LPO	Local Purchase Order
MD	Managing Director
MOICT	Ministry of Information, Communications and Technology
MSS	Managed Storage Solution
PAC	Public Accounts Committee
PFM Act	Public Finance Management Act
PIC	Project Implementation Committee
PPAD	Public Procurement and Asset Disposal Act
PPDA	Public Procurement and Disposal Act
PTO	Principal Technical Officer
RFQ	Request for Quotations
RFS	Radio Frequency Systems
SDoBT	State Department of Broadcasting and Telecommunications
TOR	Terms of Reference
TV	Television
UPS	Uninterruptible Power Supply
VAT	Value Added Tax

1.0 EXECUTIVE SUMMARY

1.1 Background and Introduction

- 1.1.1 The Auditor- General expressed a Disclaimer of Opinion on the audit of the Kenya Broadcasting Corporation Digital Terrestrial Television (DVB-T2 Platform) Coverage Roll Out Project for the financial year 2017/2018. The Public Accounts Committee (PAC) adopted the Report of Auditor-General in June, 2021 and made several recommendations, one being that the AG should undertake a Forensic Audit, on the KBC Digital Terrestrial Television (Dvb-T2 Platform) Coverage Roll Out Project. The Auditor-General carried out the Forensic Audit on the Project in accordance with the request from Parliament.

1.2 Audit Objective

- 1.2.1 The primary objective of the audit was to establish the overall status of the Digital Terrestrial Television (DVB-T2 Platform) Project.

1.3 Terms of Reference

- 1.3.1 The TORs included; the review of Project Identification, Feasibility and Planning, Budgetary Allocation, Financial Management Issues, Procurement Issues, Asset Management Issues and Physical Verification to Ascertain Current Status of the Project.

1.4 Audit Scope and Limitations

- 1.4.1 The audit was carried out at the Kenya Broadcasting Corporation Headquarters in Nairobi, State Department of Broadcasting Telecommunications (SDoBT), Ngong and Lang'ata transmitting stations and the ten (10) digital TV transmission sites.
- 1.4.2 The Audit Team covered the entire scope of the Project for a period of three financial years from 2015/2016, 2016/2017 and 2017/2018.
- 1.4.3 Some of the challenges encountered by the Audit Team included; poor access to several transmission sites due to the tough terrain and distance between the sites, some difficulties in understanding the technical nature of the Project, slow retrieval of records, documents not provided, difficulties in conversion of currencies between Euros as used in the Project Agreement and the reporting currency in Kenyan Shillings, among others.

1.5 Audit Approach and Methodology

- 1.5.1 Meetings were held with both the KBC and State Department of Broadcasting and Telecommunications' Management Teams. The Audit Team collected evidence through document reviews, interviews, physical verification among others.

1.6 Report Summary

Project Identification, Feasibility and Planning

- 1.6.1 A Bilateral Financial Cooperation Agreement was signed on 08 June, 2009 between the Ministry of Finance of the Republic of Kenya and the Ministry of Industry, Tourism and Trade of the Kingdom of Spain. The agreement was valid for a period of two years' renewable, ending 08 June 2011. It was renewed for two years ending 08 June 2013. However, documents on how Spain, APD (Contractor) and ICO (financier) both from Spain were identified were not provided for audit.
- 1.6.2 The Project was awarded to Algoritmos, Procesos Y Disenos (APD). However, evidence on whether the awarding was competitive in compliance with Section 2.2 of the Bilateral Agreement was not provided for audit.
- 1.6.3 The feasibility study reports and documents on Project definition and appraisal carried out by APD (Spanish Company), were not provided for audit.
- 1.6.4 Contract Agreement of EUR 10,388,903 approximately Kshs.1,132,390,427 between MOICT and APD, was signed on 11 November 2013. Evidence on how the ten transmission sites were identified and KBC's involvement in the identification of the ten sites were not provided for audit.
- 1.6.5 The Project was spearheaded by a Project Implementation Committee, although the composition and the appointment letters for the committee members were not provided for audit.
- 1.6.6 Review of the Contract Agreement revealed that the GOK proposal(s) were not included in the contract and were also not provided for audit. Further, no supporting documents including the Project proposal/concept paper on how the infrastructure works were identified were provided for audit.
- 1.6.7 Information and documentation including loan survey and loan negotiation, prior to signing of the loan agreement between the Instituto De Credito Oficial of the

Kingdom of Spain (ICO) and The National Treasury of the Republic of Kenya which took effect from 19 November 2014, were not provided for audit.

- 1.6.8 A comparison between the loan agreement and contract agreement revealed that, the loan agreement (dated 19 November 2014), was signed one year after the contract agreement between MOICT and APD (dated 11 November 2013). The Ministry therefore, engaged the contractor before the GOK secured the Project funding.
- 1.6.9 The Project was commissioned on 24 October 2019, which was approximately one and a half years after the end date of 30 April, 2018 as stated in the 3rd Addendum to the contract. No supporting documents to explain the one-and-a-half-year delay including a 4th addendum to the contract, if any, were provided for audit.
- 1.6.10 Project trainings were not carried out as per the Contract agreement. Further, two trainings totaling to Kshs.2,510,090, were paid for by KBC, contrary to the Contract which required the training to be funded by APD.
- 1.6.11 According to an Instrument Status Report as at 21 December 2021 when the prevailing CBK exchange rate was EUR 1 to Kshs.127.52, Kenya had interest arrears for September 2021 of EUR 45,134 (approximately Kshs.5,755,768) and principal repayment for September 2021 of EUR 371,032.25 (approximately Kshs.47,316,332), totaling to EUR 416,166.25 (approximately Kshs.53,072,100) which led to a breach of the contract. The principal and interest are repayable in September and March every year starting September 2021.

Budgetary Allocation

- 1.6.12 The Project's budget was not classified in economic classes (not itemized), contrary to Section 11 of the State Corporations Act, Chapter 446 and Section 32(4) of the Public Finance Management Act, 2012. Further, KBC did not make budget provisions for the Project in financial years 2016/2017 and 2017/2018.
- 1.6.13 Expenses amounting to Kshs.93,573,048 which were not in the Contract Agreement were incurred during the implementation of the Project. Further, documents on the budgetary allocation for the additional expenses were not provided for audit.

- 1.6.14 Though the Project continued beyond April 2018, budgetary provisions for financial year 2018/2019, were not provided for audit. It was therefore, not possible to confirm if Kshs.10,758,897 spent on the Project after the end of the Project period was budgeted for or not.
- 1.6.15 The loan agreement required a maximum amount of EUR 2,265,095, approximately Kshs.246,895,355 to be disbursed to KBC to finance foreign materials and local expenses. Out of the Kshs.246,895,355 (EUR 2,265,095), KBC received Kshs.89,615,876, an equivalent of EUR 822,144, leaving a balance of EUR 1,442,951 approximately Kshs.157,285,485, which was not received by KBC. Documents including disbursement schedules for the Kshs.246,895,355 were not provided for audit.

Financial Management Issues

- 1.6.16 The KBC Management did not maintain separate books of accounts for the Project, including cashbooks, trial balance, ledgers, bank statements and bank reconciliation statements contrary to Regulations 76(1), 77 (a to c), 90(1), 100,104(1) and 143(1) of the Public Finance Management (National Government) Regulations, 2015.
- 1.6.17 Kshs.89,615,876 was transferred by APD to KBC's bank account. However, approval documents by the Cabinet Secretary allowing the funds to be disbursed directly to KBC were not provided for audit.
- 1.6.18 A total of EUR 1,374,208 approximately Kshs.149,785,620 was dispatched to APD by ICO to cater for a 2 year- guarantee. Supporting documents on how this amount was utilized were not provided for audit.
- 1.6.19 KBC utilized Kshs.120,472,095 from internal sources to facilitate completion of the primary infrastructure under the Project after exhausting the Kshs.89,615,876 received from APD. Reallocation approvals for the Kshs.120,472,095 were not provided for audit.
- 1.6.20 The total expenditure incurred by KBC on the primary infrastructure works and other expenses amounted to Kshs.210,735,511 out of which Kshs.53,325,715 were unsupported expenditure and Kshs.647,539 were expenses not related to the Project.

- 1.6.21 Accumulated demurrage and shipping line charges, amounting to Kshs.34,048,886 was spent when the equipment was retained at the customs warehouse in Mombasa due to delays in preparation/ readiness of the 10 sites.
- 1.6.22 Kshs.10,758,897 was incurred after the end of the Project period and the 2018/2019 financial statements for the Project were neither prepared nor the Project disclosed in the main KBC 2018/2019 financial statements.
- 1.6.23 KBC Management withheld taxes amounting to Kshs.2,884,849 from payments to Suppliers/Contractors of taxable goods and services relating to the Project. Documents to support remission of the withheld taxes to Kenya Revenue Authority (KRA) were not provided for audit.

Procurement and Other Related Issues

- 1.6.24 Seven (7) out of the ten (10) primary infrastructure works were undertaken at a cost of Kshs.85,345,070 through sixteen procurements relating to construction of access roads, construction of perimeter walls, purchase of generators and purchase of containers. It was further noted that provision of clearing and forwarding services and environmental impact assessment, although carried out at a cost of Kshs.16,588,300 were not part of the ten primary infrastructure works.
- 1.6.25 Procurement documents for land acquisition at Kshs.2,450,000; remodeling and improvement of existing structures on the sites; and hiring of security services at Kshs.144,000 were not provided for audit.
- 1.6.26 KBC did not have work plans for the Project. In addition, items amounting to Kshs.32,219,995 were procured though not in the procurement plan. It was further noted that two contractors involved in the Project, did not appear in KBC's list of pre-qualified suppliers for the period 2015 to 2018.
- 1.6.27 Procured works amounting to Kshs.14,076,870 from three contractors through Request for Quotations (RFQs) were above the required threshold of Kshs.4,000,000.
- 1.6.28 Other anomalies in the procurement included: two contracts lacked professional opinion reports; six contracts lacked interim/ inspection/ completion certificates.
- 1.6.29 The contract between KBC and Enostel International Company Ltd for Supply, Installation, Testing and Commissioning of Generators was extended and the

amount varied by Kshs.3,000,000. However, no evidence was provided for audit to support the contract extension.

- 1.6.30 KBC did not undertake close outs for all contracts in the Project contrary to Section 154(a) of the Public Procurement and Assets Disposal Act, 2015.

Asset Management, Physical Verification and Current Status

- 1.6.31 KBC lacked policies and manuals to guide the staff on how to manage the Project equipment.
- 1.6.32 Siaya, Maralal, Kwale, Kilifi, Hola and Wajir sites had output power less than 2.0 KWs, due to failure of transmitters, UPSs, air conditioning systems and lack of spare parts. Further, there was delay in replacing/ repairing the faulty components, leading to further failure of other units within the transmitters. The tower base at Hola site was tilted, thus weakening connection from the transmitting shelter to the tower.
- 1.6.33 The Audit Team noted that the Project's equipment was neither recorded in the goods received vouchers nor in an asset register.
- 1.6.34 Forty-two (42) spare parts were supplied by APD. However, only twenty-seven (27) spare parts were accounted for by the KBC Management, resulting to fifteen (15) spare parts of unknown value, not accounted for.
- 1.6.35 A co-siting agreement between KBC and MediaMax, allowed the co-siting of Msenangu FM, which was putting a strain on the Kwale site equipment, especially the Air Conditioner and Generator, due to the added load.
- 1.6.36 Lack of proper planning during the selection of the sites may have led to identification of six unsuitable sites. Further, KBC lacked valuation reports for four sites and ownership documents for seven sites.
- 1.6.37 Land size for Kwale site acquired through the County Government of Kwale was indicated as 0.5 acres. However, the verified land size was estimated at 0.25 acres, resulting to an unexplained variance of approximately 0.25 acres. In addition, Project status report indicated the land size for Hola site was 0.5 acres while the verified land size was estimated at 1 acre.
- 1.6.38 The Audit Team was informed that Kilifi site access road of approximately 200 meters, may have been constructed by the County Government of Kilifi. For Kwale site access road, the length of the road was 2 Kms, as per the BQs. The

verified length of the constructed road was approximately 0.6 Kms, resulting to an unexplained variance of approximately 1.4 Kms.

- 1.6.39 The anomalies in the construction of perimeter walls included incomplete and/or weak perimeter walls, civil and electrical works not carried out, 2 fire extinguishers not verified, unconstructed container base and generator shed and unusable pit latrines.
- 1.6.40 The anomalies in the Stand-By Power Generators included non-delivery of items, generators that were broken down, idle and irregular allocation of generators.
- 1.6.41 The Project procured 34 containers and got 50 additional containers which were used to transport the equipment, all totaling to 84 containers. However, 46 out of the 84 empty containers were not accounted for by the KBC Management.
- 1.6.42 The Audit Team noted that Lamu site had three security guards while Kwale site had two security guards, instead of the four required as per the contract agreement between KBC and BASE Security.
- 1.6.43 The security officers lacked security tools and shelter. In five sites, the security officers claimed not to have been paid salaries for periods between 5 and 7 months.
- 1.6.44 The officers in charge of Hola, Lamu and Kilifi sites were nearing retirement age (approximately within 1.5 years) and no officers had been taken to the sites for training, to ensure smooth transition. Further, there was no shelter for the staff in all the 10 Transmission sites.

1.7 Recommendations

- 1.7.1 The Audit Team noted inadequate planning at preliminary and the feasibility stages. It is recommended that proper planning and involvement of all parties be undertaken in future phases of the Project or other Projects.
- 1.7.2 It was further noted that the MOICT contracted APD before The National Treasury secured the funding. It is recommended that funding be secured before engaging the contractor in future Projects.
- 1.7.3 It was further noted that the Project incurred additional expenses not in the contract, extension of contract period without approval and undisbursed Project funds. It is recommended, that KBC Management and other players should

ensure that Projects adhere to Laws on budgeting, funding, procurement and expenditure.

- 1.7.4 The Audit Team noted that the Project's assets were not recorded and lacked ownership documents. It is recommended, that KBC Management and other players should ensure that Projects adhere to Laws on asset management.
- 1.7.5 Management should set up functional monitoring and evaluation teams, build capacity and good working conditions of officers in charge.
- 1.7.6 Further investigations on the missing spare parts and containers should be carried out and appropriate action should be taken on the perpetrators.
- 1.7.7 As at the time of audit, the Audit Team observed that the Project was implemented and operational in all the 10 sites.
- 1.7.8 The secondary infrastructure (equipment), was fully installed in the 10 sites. However, various units within the equipment were faulty leading to some sites having low power output. In addition, some sites had strain on equipment due to co-siting. The primary infrastructure works was also undertaken in the 10 sites. However, cases of incomplete works and items that were not supplied were noted. It is recommended that KBC Management and other players ensure that routine repairs and maintenance are undertaken on the Project. In addition, appropriate action should be taken on the suppliers that failed to complete the works and those that did not supply the Project items, as per the Contract.
- 1.7.9 The Audit Team noted that there were non-disbursed funds amounting to Kshs.149,785,620, irregular utilization of internal funds of Kshs.120,472,095, unsupported expenditure of Kshs.53,325,715, expenditure not related to the Project of Kshs.647,539, irregular funding of training expenses by KBC, Kshs.2,510,090 and non-remittance of withheld taxes amounting to Kshs.2,884,849. It is recommended, that KBC Management and other players ensure that Projects adhere to Laws on funding and expenditure. In addition, KBC should follow up on the non-disbursed funds meant for the Project to cater for the internal funds used on the Project.

1.8 Conclusion

- 1.8.1 The objective of the Audit was to establish the overall status of the KBC Digital Terrestrial Television (Dvb-T2 Platform) Coverage Roll Out Project. The Audit Team noted lack of adequate planning at the Project inception stage resulting to under budgeting thus making KBC utilize internal funds for the Project without approvals/ authorizations for reallocation.
- 1.8.2 Further, the Audit Team noted that the Project was undertaken and financed by Spanish Companies, APD and ICO, respectively. However, documents to support the basis on which Spain and the two Companies were identified were not provided for audit. The Audit Team noted that the Project was extended by one and a half years without authority for the extension.
- 1.8.3 The Project cost was EUR 10,388,903 (Kshs.1,132,390,427) which was a loan from ICO in Spain. Out of the EUR 10,388,903, EUR 8,192,551 (Kshs.892,988,931) was disbursed to APD for equipment while EUR 822,144 (Kshs.89,615,876) was disbursed to KBC for primary infrastructure works. However, the balance amounting to EUR 1,374,208 (Kshs.149,785,620) meant for the Project were not disbursed to KBC. The Contract between MOICT and APD indicated that the EUR 1,374,208 was for two years guarantee of the equipment. However, the EUR 1,374,208 remained unaccounted for.
- 1.8.4 Project assets that included spare parts and containers could not be accounted for by the KBC Management. The Audit Team further noted frequent transmission interruptions due to faulty equipment. The problem is further worsened by inadequate spare parts for the faulty equipment.
- 1.8.5 Further, there was a risk that the sites would be managed by untrained/unexperienced staff due to a noted lack of succession plan. It was further noted that the Project equipment may be in a risk of theft due to ineffective monitoring and supervision and non-payment of required salaries to the security guards.

2.0 INTRODUCTION AND BACKGROUND INFORMATION

2.1 Introduction

- 2.1.1 The Auditor- General expressed a Disclaimer of Opinion on the audit of the Kenya Broadcasting Corporation Digital Terrestrial Television (DVB-T2 Platform) Coverage Roll Out Project for the financial year 2017/2018. The basis for the opinion according to the Report, is as summarized below;
- i. Non-Existence of Accounting Records- Cashbooks, Ledgers, Bank Account Opening and Fixed Assets Register
 - ii. Financial Statements' Anomalies- Late Submission; Presentation and Disclosure Anomalies
 - iii. Unsupported Acquisition of Non- Financial Assets
 - iv. Irregular Expenditure that included- Unsupported, Misclassified, Unrecorded, Unbudgeted for and Voidable Expenditure
 - v. Failure to Remit Value Added Tax
 - vi. Domestic Funds Receipt after scheduled end of Project
 - vii. Construction Issues on- Perimeter Fence, Perimeter Walls and Access Roads
 - viii. Anomalies in the Acquisition of Land
 - ix. Procurement Irregularities on Standby Auto Controlled Silenced Generators
 - x. Incomplete Digital Terrestrial Television Coverage Sites and Secondary Infrastructure
- 2.1.2 On 24 June 2021, the Public Accounts Committee (PAC) adopted the Report of Auditor-General for the financial year 2017/2018 and made several recommendations. Included in the PAC report recommendations, was the AG to undertake a forensic audit, on the KBC Digital Terrestrial Television (Dvb-T2 Platform) Coverage Roll Out Project. The Auditor-General carried out the Forensic Audit on the Project in accordance with the request from Parliament.

2.2 Background Information

- 2.2.1 According to the KBC's Strategic Plan 2018-2023, KBC is a State Corporation established by an Act of Parliament CAP 221 of the Laws of Kenya, to undertake

public broadcasting. The objective of the Corporation is to inform, educate and entertain the public through radio and television services.

- 2.2.2 The strategic plan further stated that in 2009, the Government licensed KBC to spearhead the migration from analogue to digital, thus making KBC the designated Digital Terrestrial Television (DTT) signal distributor in the Country.
- 2.2.3 KBC Digital Terrestrial Television (DVB-T2 Platform) Coverage Roll Out Project was undertaken by the Government of Kenya, with KBC as the implementing agency, in conjunction with the Spanish Government. The Project objective was to improve digital broadcasting in Kenya.
- 2.2.4 A Contract Agreement between Ministry of Information, Communications and Technology (MOICT) and Algoritmos, Procesos Y Disenos (APD) S.A was signed on 11 November 2013. The contract indicated that the Project was to be implemented by Kenya Broadcasting Corporation (KBC) - "the USER".
- 2.2.5 Subsequently, a loan agreement of EUR 10,388,903 (approximately Kshs.1,132,390,427) was signed by The National Treasury of the Republic of Kenya and the Instituto De Credito Oficial of the Kingdom of Spain on 19 November, 2014 to finance the Project.
- 2.2.6 The strategic goals of the Project were as follows:
- i. Enhance availability of free to air digital TV and radio in all parts of the Country
 - ii. Local programming content which reflects the Nation's cultural diversity becoming an integral part of the national broadcasting
- 2.2.7 The Project was carried out in two phases; Primary infrastructure and Secondary infrastructure.
- 2.2.8 Primary infrastructure included;
- i) Acquisition of land
 - ii) Construction of access roads
 - iii) Design and Construction of stand-by power generators shelters on sites
 - iv) Design and installation of electrical power supply on the sites
 - v) Acquisition and installation of stand-by power generators on the sites
 - vi) Design, construction and equipping of amenities
 - vii) Landscaping of the sites
 - viii) Remodeling and improvement of existing structures on the sites to suite DVB-T2 system installation requirements
 - ix) Design and construction of warehouses on the ten sites

- x) Hiring of security services for the ten sites
- 2.2.9 The secondary infrastructure included installation of digital transmission equipment at the Project transmission sites.
- 2.2.10 On 28 January 2016, Project transmission equipment (Secondary Infrastructure) valued at Kshs.892,988,931 were received from the Spanish Government for installation in the designated Project sites.
- 2.2.11 The Project constructed 10 digital TV transmission sites in Lamu, Kwale, Kilifi, Nyadundo, Maralal, Wajir, Webuye, Siaya, Homa and Kitui.

2.3 Audit Objective

- 2.3.1 The primary objective of the audit was to establish the overall status of the Digital Terrestrial Television (DVB-T2 Platform) Project.

2.4 Terms of Reference

- 2.4.1 The following Terms of Reference (TORs) guided the audit;
 - a) **Project Identification, Feasibility and Planning;**
 - To identify the triggers and/or need for the Project
 - Establish whether the Project aligns to the overall KBC objectives
 - To verify feasibility study and appraisal reports to justify the specific activities within of the Project
 - Evaluate Project-planning processes and execution
 - b) **Budgetary Allocation;**
 - Establish the budgetary allocation for the Project for financial years 2015/2016 to 2017/2018, and note any variances
 - Establish whether the Project had approved work plans and whether the Project's activities were as per the approved work plans
 - To confirm whether the budget had irregular and unbudgeted for items
 - To compare the budget and work plans, and note any variances
 - To determine the donors, total funds allocated, disbursed and received by the Project
 - To confirm whether there was funding disbursed and received beyond the scheduled end of the Project

- c) **Financial Management Issues;**
- To determine whether there were any irregularities in management of the funds received by the Project
 - To confirm whether proper accounting records for the Project were prepared and maintained
 - To confirm whether there were unbudgeted for, misclassified, unsupported and unrecorded expenditure
 - To confirm whether appropriate taxes were deducted and remitted to the relevant authority
- d) **Procurement Issues;**
- To confirm whether procurements undertaken within the Project, followed all the laid down procurement procedures
- e) **Asset Management Issues and Physical Verification to Ascertain Current Status of the Project;**
- To ascertain the Project's assets, count and ownership status, valuation and their general physical state.
 - To confirm whether all assets were recorded, stored and valued appropriately.
 - To establish whether the Project's assets were delivered as per contract agreements
 - Carry out physical verification of the Project's non-financial assets
 - To confirm the existence and status of the Project's primary infrastructure
 - To confirm the existence and status of the Project's secondary infrastructure
- f) **Report on Any Irregularities and give Recommendations on the Way Forward**

2.5 Scope of Work and Limitations

Scope

- 2.5.1 The audit was carried out at the Kenya Broadcasting Corporation Headquarters in Nairobi, State Department of Broadcasting Telecommunications (SDoBT), Ngong and Lang'ata transmitting stations and the ten (10) digital TV

transmission sites that are in Lamu, Kwale, Kilifi, Nyadundo, Maralal, Wajir, Webuye, Siaya, Hola and Kitui,

- 2.5.2 The Audit Team covered the entire scope of the Project for a period of three financial years from 2015/2016, 2016/2017 and 2017/2018.

Limitations and Mitigation

- 2.5.3 The Audit Team experienced challenges and limitations which were mitigated in several ways in order not to negatively affect the quality and result of our findings. Some challenges and measures taken included;

- i) Access challenges to some transmission sites for verification due to the tough terrain and distance between the sites. To mitigate this challenge, the Audit Team split into two sub-teams during physical verification, and was able to visit all the 10 digital TV transmission sites.
- ii) Due to the technical nature of the Project, there were some difficulties in understanding the Project. The Audit Team mitigated against this challenge by constantly engaging both KBC and MOICT staff.
- iii) The audit covered three financial years of 2015/2016, 2016/2017 and 2017/2018. Consequently, retrieval of necessary records took longer than expected. The challenge was mitigated by forwarding to the client, the list of required documents one week before the audit exercise started. Further, during audit execution, the Audit Team constantly updated the client on the documents not provided as a follow up. However, documents as detailed in **Appendix I** were not provided for audit.
- iv) There were difficulties in conversion of currencies between Euros as used in the Project's Agreements and the reporting currency in Kenyan Shillings. To mitigate the effect of exchange rate fluctuations, the Audit Team applied an approximated exchange rate of 1 EUR= Kshs.109, based on the prevailing exchange rate when KBC received funds on 7 July, 2015. For the loan repayment, an exchange rate of 1 EUR= Kshs.127.52 based on the prevailing Central Bank of Kenya exchange rate as at 21 December, 2021 was applied.

2.6 Audit Approach and Methodology

2.6.1 The Audit Team held entry and exit meetings with the KBC Management Team on 4 November, 2021 and 28 March, 2022 respectively. In addition, the team held two more meetings with the Management Team from State Department of Broadcasting and Telecommunications (SDoBT) on 2 November, 2021 and 25 March, 2022 respectively. During the entry meeting, the audit strategies were discussed and adopted which were then applied in the execution of the audit.

2.6.2 The following were the main evidence gathering methods applied during the audit execution;

Document Review

2.6.3 To effectively plan for the audit and as a source of audit evidence, the Audit Team reviewed various documents including Public Finance Management Act, 2012, Public Finance Management (National Government) Regulations 2015, Public Procurement and Assets Disposal Act, 2015, Public Procurement and Assets Disposal Regulations, 2006, Public Procurement and Disposal (Amendments) Regulations, 2013, KBC approved budgets, Project Financial Statements, Project agreements and contracts, relevant policies and regulations, expenditure schedules, payment vouchers, bank statements, KBC procurement documents, transmission sites' documents, amongst other documents.

Physical Verification

2.6.4 The Audit Team carried out physical verifications of the Project and related assets at the HQs and the ten transmission sites, namely; Lamu, Kwale, Kilifi, Nyadundo, Maralal, Wajir, Webuye, Siaya, Hola and Kitui.

Interviews

2.6.5 The Audit Team interviewed senior officers from the KBC and State Department of Broadcasting and Telecommunications to clarify the various issues to assist in making an informed report as detailed below:

Table 2: List of Interviewees

No.	Name	Designation	Date Interviewed
1.	Eng. Daniel Obam	Chair- Project Implementation Committee	30 Nov 2021
2.	Mr. Edward Ndegwa	Technician- Ngong Station	12 Jan 2022
3.	Mr. Francis Muraya	Chief Technician- Lang'ata Station	12 Jan 2022
4.	Mr. Justus Ochieng	Staff in Charge- Siaya Site	18 Jan 2022
5.	Mr. Preston Kipinge	Staff in Charge- Webuye Site	25 Jan 2022
6.	Mr. Michael Wandati	Staff in Charge- Nyadundo Site	27 Jan 2022
7.	Mr. David K. Mbogo	Staff in Charge- Maralal Site	4 Feb 2022
8.	Mr. Christopher Mburu	Staff in Charge- Kitui Site	8 Feb 2022
9.	Mr. John Tumbo	Technician- Wajir Site	18 Jan 2022
10.	Mr. Jambo Dume	Staff in Charge- Hola Site	24 Jan 2022
11.	Mr. Daniel Munga	Staff in Charge- Lamu Site	1 Feb 2022
12.	Mr. Charles Wanjohi	Staff in Charge- Kilifi Site	7 Feb 2022
13.	Mr. Matu K. Gichuki	Staff in Charge- Kwale Site	10 Feb 2022
14.	Mr. Liverstone Mwasere	Principal Technical Officer - Coast Region	8 Feb 2022
15.	Mr. Julius Kamula	Security Officer- Coast Region	8 Feb 2022
16.	Dr. Henry Momanyi	KBC Head- Finance and Administration	8 Mar 2022
17.	Mr. Robert Wekesa	KBC Head- Procurement	8 Mar 2022
18.	Rtd. Col King'oo	KBC Head- Security Services	8 Mar 2022
19.	Mr. Job Ngatia Kirimi	KBC Manager- Technical Services	8 Mar 2022
20.	Mr. Paul Jilani	KBC Corporation Secretary	8 Mar 2022
21.	CPA Antony Opondo	KBC Head of Internal Audit	8 Mar 2022

2.7 Reporting Structure

2.7.1 This report is presented in the following format:

- I. Executive Summary
- II. Introduction and Background
- III. Detailed Findings
- IV. Irregularities and Recommendations
- V. Conclusion

2.7.2 The report should be read in its entirety in order to comprehend fully the approach to and findings of our work. The report has covered analysis and facts as understood with the aim of informing the Public Accounts Committee of the status of the KBC Digital Terrestrial Television (Dvb-T2 Platform) Coverage Roll Out Project bearing in mind the challenges and limitations experienced.

3.0 DETAILED FINDINGS

3.1 Project Identification, Feasibility and Planning; Triggers and/ or Need for The Project.

- 3.1.1 A Bilateral Financial Cooperation Agreement was signed on 08 June, 2009 between the Ministry of Finance of the Republic of Kenya and the Ministry of Industry, Tourism and Trade of the Kingdom of Spain. The agreement was valid for a period of two years ending 08 June 2011, and was renewable. The Agreement was renewed for a period of two years, ending 08 June 2013.
- 3.1.2 According to Article 1 (Financial Facilities) of the Bilateral Agreement, the Ministry of Industry, Tourism and Trade of the Kingdom of Spain was to make available to the Ministry of Finance of the Republic of Kenya a total of 150 million Euros, in form of Standard Concessional facilities (up to 140 million Euros) and Grant facilities (up to 10 million Euros).
- 3.1.3 Article 2 (Standard Concessional Facilities) Section 2.1 (Eligible Projects) listed the preferred sectors within which public Projects of mutual interest agreed on by both parties, may be implemented. The Communication and Information Technologies sector, was listed as one of these sectors that the Agreement allowed to be financed using the concessional facilities.
- 3.1.4 Consequently, a Contract Agreement of EUR 10,388,903 approximately Kshs.1,132,390,427 between Ministry of Information, Communications and Technology (MOICT) and Algoritmos, Procesos Y Disenos (APD) S.A was signed on 11 November, 2013 for the development of the Digital Terrestrial Television Network Roll Out Project in Kenya.
- 3.1.5 According to a concept paper developed by KBC in April 2017 on Digital TV Roll Out under APD Project- Phase 2, the Government of Kenya, as a signatory to the Geneva 2006 (GE06) Agreement on the migration from analogue to digital terrestrial TV broadcasting, migrated from analogue to digital TV broadcasting within the internationally set deadline of 17 June 2015.
- 3.1.6 Subsequently, all analogue TV broadcasts were switched off in favor of the digital TV broadcast and has since then continued to expand the TV coverage across the Country. Apart from being an international requirement under the GE06 agreement, Digital TV migration/ broadcasting was intended to help the

Kenya Government spur growth of the Gross Domestic Product by 10% in line with the Vision 2030.

- 3.1.7 Therefore, based on the abovementioned Sections of the Concept paper, it was noted that there was need to expand digital TV broadcasting, which the DTT (DVB-T2) Project was able to fulfil, by expanding digital transmission in 10 sites.
- 3.1.8 However, documents on how Spain was identified as the Project financier were not provided for audit.

Project Alignment to the Overall KBC Objectives

- 3.1.9 According to the April 2017 Concept paper- Phase 2, the Kenya Government was to provide the necessary capital investment funding to KBC in order to facilitate development of the necessary Digital TV signal distribution infrastructure across the country.
- 3.1.10 Therefore, the Audit Team noted that the Project which was implemented by the KBC was in line with the Corporation's objective.
- 3.1.11 According to a letter vide Ref No: KBC/MD/14/2/A/25/C VOL. V dated 04 January 2013, the audit team noted that KBC had been tasked to look into the APD proposal and advise. KBC through the Managing Director confirmed that the proposed solution was acceptable and within the Corporation's technical specification for the earmarked sites. This therefore confirmed that KBC was involved in the planning and funding proposals, of the DTT (DVB-T2) Project.

Verification of Feasibility Study and Appraisal Reports

Lack of Feasibility Study Reports by Spanish Companies

- 3.1.12 According to Article 1 (Financial Facilities) Section 1.2 (Grant facilities) of the Bilateral Agreement, up to 10 million Euros approximately Kshs.1.09 billion was a grant from the Spanish Fund "Fondo de Estudios de Viabilidad" (FEV), to finance feasibility studies implemented by Spanish companies for public interests and programs agreed upon by both parties.
- 3.1.13 Further, 3.1(a) in Article 3 (Grant Facilities) states that the grant facilities were to be used to finance feasibility studies, project definition and project appraisal implemented by Spanish companies for projects of common interest for both parties.

3.1.14 However, the feasibility study reports and documents on Project definition and appraisal carried out by APD (Spanish Company), were not provided for audit.

Absence of Preliminary Documents during Site Identification

3.1.15 According to Clause 2.1 of the Contract Agreement between MOICT (Purchaser) and APD (Supplier), MOICT agreed to acquire from APD, Goods and Services specified in Exhibit IV of the Contract, for the Project on ten sites in the remote areas in the Republic of Kenya as summarized below;

No.	Equipment Supplied
1	2.3KW DVB-T2 UHF Transmitter
2	1 + 1 Redundant Transmitter
3	DVB-T2 Gateway and Multiplexer
4	Radiating System and Feeder
5	UPS
6	Electrical Protection Equipment
7	Testing equipment
8	Spare Parts
9	Shelter (if required)
10	Satellite Receiver
11	Tower
No.	Services
1	Site Survey
2	UHF TV Coverage Report
3	Factory Acceptance and Training
4	Installation
5	Commissioning
6	Training at Customer Facilities
7	Guarantee

3.1.16 The ten sites identified as per Clause 3.1.1 to 3.1.10 were namely; Garissa, Kitui, Lamu, Lodwar, Lokichogio, Maralal, Marsabit, Mbui-Nzau, Narok and Wajir.

3.1.17 However, documentary evidence on how the ten sites were identified and the KBC involvement on the identification, were not provided for audit.

Evaluation of Project-Planning Processes and Execution

Absence of Appointment Letters for Project Implementation Committee

3.1.18 The Audit Team noted that the Project was spearheaded by a Project Implementation Committee (PIC). However, the criteria on the committee composition and the members' appointment letters were not provided for audit. The Audit Team could therefore, not ascertain the role played the committee at the planning, implementation and completion of the Project.

Non-compliance of Agreement on Selection of Spanish Firm (APD)

- 3.1.19 Section 2.2 (Use of the Facilities) of the Bilateral Agreement states that, "*The concessional facilities under this Article will be used for projects awarded through public limited tenders among Spanish companies or in international competitive bidding processes if the awarded Company is Spanish*".
- 3.1.20 Further, Section 9.0 of the Due Diligence Report dated April 2013, listed 8 reasons why the Spanish Government selected APD.
- 3.1.21 However, no evidence including the Due Diligence Report was provided for audit to support that Section 2.2 of the Bilateral Agreement was complied with.

Lack of Project Proposals by the GOK

- 3.1.22 A Memorandum of Understanding (MOU) was signed on 05 March, 2010 between the Government of the Republic of Kenya represented by the Ministry of Information and Communications (GOK) and Algoritmos Procesos y Disenos S.A. (APD).
- 3.1.23 In the MOU, APD offered to assist in facilitating the financing of the Project by the Government of Spain to the GOK for reinforcing, equipping, modernizing and upgrading the actual infrastructure of the Project.
- 3.1.24 According to the MOU, the GOK was to provide the Project proposal including technical and data information, drawings, plans and technical consultation to APD while APD was to prepare a detailed technical and commercial proposal which was to be negotiated with GOK.
- 3.1.25 Review of the Contract Agreement revealed that the APD Proposal was included in Exhibit IV of the contract. However, the GOK proposal were not included in the contract were also not provided for audit.

Lack of Project Concept Paper for KBC Works

- 3.1.26 Clause 6.1 of the Contract agreement between MOICT and APD listed the ten primary infrastructure works that were undertaken in the ten sites. However, no supporting documents including the Project proposal/concept paper on how the infrastructure works were identified were provided for audit.

Lack of Documentation Prior to Signing of the Loan Agreement

- 3.1.27 A loan agreement between the Instituto De Credito Oficial of the Kingdom of Spain (ICO) and The National Treasury of the Republic of Kenya was signed on and took effect from 19 November 2014. According to Clause three of the

loan agreement, a loan for an amount of up to EUR 10,388,903 approximately Kshs.1,132,390,427 was granted to Government of the Republic of Kenya (GOK), and this facility was equivalent to 100% of the Spanish Official financing allocated to finance the development of the Digital Terrestrial Television Network in the Republic of Kenya.

- 3.1.28 However, no information and documentation including loan survey and loan negotiation, prior to signing of the loan agreement were provided for audit. The Audit Team could therefore, not confirm how the 10,388,903 EUR was arrived at.

Signing of Contract Agreement Prior to Signing of Loan Agreement

- 3.1.29 A comparison between the loan agreement and contract agreement revealed that, the loan agreement between ICO (for Spanish Government) and The National Treasury (for GOK) (dated 11 and 19 November 2014), was signed one year after the contract agreement between MOICT and APD (dated 11 November 2013). The Ministry therefore, engaged the contractor before the GOK secured the Project funding.

Absence of Contract Addendum Extending the Project Duration

- 3.1.30 The Audit Team noted that the contract agreement between the MOICT and APD signed on 11 November, 2013 was for one year ending 01 June 2016. However, the period was extended vide three addenda agreed by both parties, as shown below;

Table 3: Contract Agreement and Addenda

No.	Document	Date Signed	Contract Period
1.	Contract Agreement	11 November 2013	29-05-2015 to 01-06-2016
2.	1st Addendum	20 June 2016	01-06-2016 to 31-03-2017
3.	2nd Addendum	18 July 2017	01-04-2017 to 31-12-2017
4.	3rd Addendum	15 December 2017	01-01-2018 to 30-04-2018

- 3.1.31 Documents provided for audit revealed that the Project was commissioned on 24 October, 2019, which was approximately one and a half years after the date as stated in the 3rd Addendum of 30 April, 2018.
- 3.1.32 However, supporting documents to explain the one-and-a-half-year delay including a 4th addendum to the contract, if any, were not provided for audit.

Variance between Agreed Training and Actual Training Undertaken

- 3.1.33 Paragraph 5 of the APD proposal included in Exhibit IV of the Contract Agreement between MOICT and APD, included a specific training on all the Project's components.
- 3.1.34 However, a review of documents revealed variances between the agreed and actual training undertaken, as detailed in the table below;

Table 4: Agreed and Actual Training Undertaken

No.	Agreed Training	Actual Training	Remarks
1.	In person training in the local country for a period of 6 months for 16 people proposed by the client.	Training in Kenya for 16 technical staff for five (5) days in June 2018.	1-week Training done instead of 6 months
2.	6 Trips to APD Headquarters in Madrid (Spain) for training and project management. The trips will be distributed in 6 different stages with a maximum of 8 people per trip and will last 7 days	A group of ten (10) engineers received factory training in Spain for seven (7) days in March 2017.	1 trip of 10 engineers, instead of 6 trips of 8 staff

- 3.1.35 From the foregoing, it was noted that the trainings were not carried out as per the Contract agreement which may have led to poor management of the sites and frequent breakdown.

Non-Payment of Training Expenses by APD

- 3.1.36 It was further established that the 7-days training carried out in Spain for 10 engineers totaling to Kshs.1,763,390 and the 5-days training carried out in Kenya for 16 technical staff totaling to Kshs.746,700 was paid for by KBC both totaling Kshs.2,510,090. This was contrary to the proposal document in the Contract agreement which required the training to be paid for by APD.

Non-Payment of Loan Amount and Interest Due

- 3.1.37 The loan facility as per the loan agreement signed on 19 November 2014 was EUR 10,388,903 at an interest rate of 0.85% per annum. The principal repayments of EUR 371,032.25 were to be paid semi -annually on September 25 and March 25, beginning in September 2021.
- 3.1.38 Document provided for audit including the Instrument Status Report as at 21 December 2021 when the prevailing CBK exchange rate was EUR 1 to Kshs.127.52, revealed that Kenya had interest arrears for September 2021 of EUR 45,134 (approximately Kshs.5,755,768) and principal repayment for

September 2021 of EUR 371,032.25 (approximately Kshs.47,316,332), totaling to EUR 416,166.25 (approximately Kshs.53,072,100), which led to a breach of contract.

3.2 Budgetary Allocation

Budgets not in the Prescribed Format

3.2.1 Documents provided for audit revealed that the DTT (DVB-T2) Project's budget for 2015/2016 was Kshs.90,000,000. However, the Project budget was not classified in economic classes, contrary to Section 11 of the State Corporations Act, Chapter 446 which states that, "Every state corporation shall cause to be prepared and shall, not later than the end of February in every year, submit to the Minister and to the Treasury for approval, estimates of the state corporation's revenue and expenditure for the following financial year accompanied by ***proposals for funding all projects to be undertaken by the state corporation***, or the implementation of which will continue during the financial year to which those estimates relate". Section 32(4) of the Public Finance Management Act, 2012 further states that, "*Budget proposals shall be submitted in the prescribed formats that support program-based budgeting and classification of expenditure in economic classes*".

3.2.2 Further, it was established that KBC did not make budget provisions for the DTT (DVB-T2) Project in 2016/2017 and 2017/2018 financial years

Unbudgeted Project Expenses

3.2.3 Clause 6 of the contract agreement signed between MOICT and APD listed the 10 primary infrastructure works that were to be carried out by the "end user", being KBC. A review of documents revealed that additional expenses amounting to Kshs.93,573,048 which was not in the Contract Agreement were incurred during the implementation of the Project, as listed below;

• Domestic travels/ subsistence allowances	Kshs.27,859,316
• Transportation and storage	Kshs.62,690,482
• Clearance charges	Kshs.400,000
• Environmental Impact Assessment	Kshs.2,412,500
• Diesel Purchase for Generators	Kshs.210,750
Total	Kshs.93,573,048

3.2.4 Further, documents on the budgetary allocation for the additional expenses were not provided for audit.

Absence of Budget Beyond Scheduled End of Project

3.2.5 Further, as earlier noted, the Project period was extended past the 30 April 2018 deadline, by approximately one and a half years to 29 October 2019.

3.2.6 However, budgetary provisions for financial year 2018/2019, were not provided for audit. It was therefore, not possible to confirm if the Kshs.10,758,897 spent on the Project after the Project period was budgeted for or not.

Non- Disbursement of Funds for Works and Services

3.2.7 Clause 3 (1.1) of the loan agreement indicated that out of the loan amount of EUR 10,388,903, a minimum amount of EUR 8,123,808, approximately Kshs.885,495,072 (78.20%) shall be applied to the financing of the export of Spanish goods and services. Clause 3 (1.2) required that a maximum amount of EUR 2,265,095, approximately Kshs.246,895,355 (21.80%) to be disbursed to KBC shall finance foreign materials and local expenses.

3.2.8 However, documents provided for audit including KBC bank statements revealed that KBC received Kshs.89,615,876, an equivalent of EUR 822,144 (1 EUR=Kshs.109) leaving a balance of EUR 1,442,951 approximately Kshs.157,285,485 which was not received by KBC. Further, documents including disbursement schedules were not provided for audit.

3.3 Financial Management Issues

Failure to Maintain Separate Project Books of Accounts.

3.3.1 The KBC Management did not maintain separate books of accounts for the Project, including cashbooks, trial balance, ledgers, bank statements and bank reconciliation statements. This contradicted the provisions of Regulations 76(1), 77 (a to c), 90(1), 100,104(1) and 143(1) of the Public Finance Management (National Government) Regulations, 2015.

DTT (DVB-T2 Total Project Funding

3.3.2 Kshs.1,252,862,522 was the total funding for the DDT (DVB-T2) Project, for the three years under review. This amount was classified into two categories as shown below;

- a) Loan facility from Spanish Government: Kshs.1,132,390,427 (EUR 10,388,903)
 - i) Funds Received in form of Equipment: Kshs.892,988,931 (EUR 8,192,551)
 - ii) Funds Disbursed to KBC by APD: Kshs.89,615,876 (EUR 822,144)
 - iii) Unaccounted for Funds- Guarantee 2 years: Kshs.149,785,620 (EUR 1,374,208)
- b) Funds utilized by KBC from Internal sources: Kshs.120,472,095

a) Loan Facility from Spanish Government:

i) Funds Received in form of Equipment

3.3.3 According to the contract agreement between the MOICT and APD, a total of EUR 8,192,551 (EUR 6,339,140 and EUR 1,853,411) approximately Kshs.892,988,931, was the funding in kind, in form of the installation of secondary infrastructure for the DTT(DVB-T2) Project, in 10 transmission sites to enhance availability of free to air digital TV.

ii) Funds Disbursed to KBC by APD

3.3.4 A total of EUR 822,144 or approximately Kshs.89,615,876 was disbursed to KBC, for primary infrastructure works of the Project as detailed below;

- i) Acquisition of land
- ii) Construction of access roads
- iii) Design and Construction of stand-by power generators shelters on sites
- iv) Design and installation of electrical power supply on the sites
- v) Acquisition and installation of stand-by power generators on the sites
- vi) Design, construction and equipping of amenities
- vii) Landscaping of the sites
- viii) Remodeling and improvement of existing structures on the sites to suite DVB-T2 system installation requirements
- ix) Design and construction of warehouses on the ten sites
- x) Hiring of security services for the ten sites

3.3.5 Each of the 10 sites identified under the APD Project was to be equipped with the above-mentioned primary infrastructure works before the installation of the secondary infrastructure (equipment).

Funds Irregularly Disbursed to KBC

- 3.3.6 Documents provided for audit including KBC bank statement revealed that Kshs.89,615,876 was transferred on 7 July 2015, by APD to KBC's main bank account No.0300079001 at Citi bank.
- 3.3.7 However, approval documents by the Cabinet Secretary allowing the funds to be disbursed directly to KBC were not provided for audit. This contravened Section 50(7) of the Public Finance Management Act, 2012 which states that *"The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are paid into the Consolidated Fund or into any other public fund established by the national government or any of its entities as Cabinet Secretary may determine in accordance with regulations approved by Parliament"*.

iii) Unaccounted for Funds- Guarantee 2 years

- 3.3.8 According to the Contract agreement, a total of EUR 1,374,208 approximately Kshs.149,785,620 were dispatched to the Supplier, to cater for a 2 year-guarantee. However, supporting documents including a breakdown/ schedule of how this amount was utilized were not provided for audit.

b) Funds Utilized by KBC from Internal Sources

- 3.3.9 Documents provided for audit including payment vouchers and expenditure schedule revealed that Kshs.120,472,095 from internal sources was utilized by KBC to facilitate completion of the primary infrastructure under the Project after exhausting the Kshs.89,615,876 meant for the primary infrastructure works by October, 2016 before the Project was complete.
- 3.3.10 KBC requested for funds from the PS- MOICT, through the MD vide letter dated 1 February 2016 Ref: KBC/MD/14/2/A/25/2/C. The funds requested for, were to facilitate clearance of goods at the port of Mombasa, warehousing and transportation to the earmarked Project sites.
- 3.3.11 The Ministry advised KBC vide letter Ref MIT/G/11/3 dated 16 February 2016, to finance the expenditure from the allocation of Kshs.467,279,432, being KBC's development budget for 2015/2016.

3.3.12 However, supporting documents including reallocation approvals were not provided for audit, contrary to Section 48 (1) of the Public Finance Management (National Government) Regulations, 2015 which states that, *“For purposes of section 43(3) of the Act, Accounting Officers, may authorize reallocation of funds within programmes or sub-votes”*

DTT (DVB-T2 Total Project Expenditure

3.3.13 Review of documents provided for audit including expenditure list, payment vouchers, invoices and subsistence allowance vouchers revealed that the total expenditure incurred by KBC on the primary infrastructure works and other expenses amounted to Kshs.210,735,511.

3.3.14 This comprised of Kshs.89,615,876 being the amount disbursed to KBC by APD, Kshs.120,472,095 being funds utilized by KBC from internal sources and Kshs.647,539 being expenses unrelated to the DTT (DVB-T2) Project, as summarized below;

Table 5: Project Expenditure Breakdown

Expenditure Item	Amount in Contract/ LPOs	Vouchers Provided	Vouchers not Provided	Total Expenditure as per Documents Provided
Primary Infrastructure				
Acquisition of land		1,350,000.00	1,100,000.00	2,450,000.00
Construction of access roads to the sites	7,090,300	6,651,761.00	2,000,000.00	8,651,761.00
Design and construction of stand-by power generators shelters on site		-	-	-
Design and installation of electrical power supply on the sites	37,301,070	6,648,452.03	2,105,262.49	8,753,714.52
Design, construction and equipping of amenities		22,968,123.90	33,756,342.40	56,724,466.30
Landscaping of the sites		-	-	-
Acquisition and installation of stand-by power generators on the sites	35,913,700	35,913,700.00	-	35,913,700.00
Remodelling and improvement of existing structures on the sites to suit DVB-T2 systems installation requirement	-	-	-	-
Design and construction of warehouses on 10 sites	5,040,000	3,877,281.55	-	3,877,281.55
Hiring of security services for the ten sites	-	144,000.00	-	144,000.00
Sub-Total	85,345,070	77,553,318.48	38,961,604.89	116,514,923.37
Expenses not within Primary Infrastructure				
Domestic travels and subsistence allowance		17,428,905.00	10,430,411.00	27,859,316.00
Environmental Impact Assessment	2,412,800	2,412,500.00	-	2,412,500.00
Storage, clearing and transportation of transmitter equipment's	14,175,500	58,805,782.00	3,884,700.00	62,690,482.00
Diesel Purchase for Generators	-	161,750.00	49,000.00	210,750.00
Aviation and Clearance	-	400,000.00	-	400,000.00
Sub-Total	16,588,300	79,208,937.00	14,364,111.00	93,573,048.00
Total	101,933,370	156,762,255.48	53,325,715.89	210,087,971.55

Unrelated Expenditure				647,539.69
GRAND TOTAL	101,933,370	156,762,255.48	53,325,715.89	210,735,511.24

Unaccounted for Expenditure

- 3.3.15 Out of the Kshs.210,735,511, Kshs.156,762,255 was supported by payment vouchers while payment vouchers for Kshs.53,325,715 were not provided for audit, and therefore unaccounted for.

Expenditure on Delay in Clearing of Equipment

- 3.3.16 The Audit Team noted that Kshs.62,690,482 was paid to Convectional Cargo Conveyors for storage, clearing and transportation of the equipment received in kind.
- 3.3.17 According to letter Ref: MICT/CONF.18/01/5 VOL.B/27 dated 25 April 2016, it was noted that the containers carrying the Project equipment arrived at the port of Mombasa on 28 January 2016 when the 10 sites were not ready for installation of the equipment.
- 3.3.18 The containers were therefore, retained at the custom warehouse in Mombasa and released to Convectional Cargo Conveyors on 17 March 2016 which was approximately one and a half months after arrival in Mombasa.
- 3.3.19 Retaining the equipment at the port of Mombasa, resulted in accumulated demurrage and shipping line charges, amounting to Kshs.34,048,886, as shown in the table below;

Table 6: Demurrage and Shipping Line Charges

	Description	Amount (Kshs)
1.	MSS levy	38,250
2.	Shipping line charges	9,032,422
3.	CFS charges	22,856,533
4.	Customs warehouse rent	2,121,681
		34,048,886

- 3.3.20 The Kshs.34,048,886 may have been as a result of poor planning and failure to clear the equipment in good time from the port of Mombasa to the Project sites.

Expenditure Unrelated to the Project

- 3.3.21 Kshs.647,539.69 included in the DTT (DVB-T2) Project expenditure, was not related to the Project and therefore overstated the overall Project expenditure as detailed below;

Table 7: Expenditure Unrelated to the Project:

Expenditure Date	Nature of Expenditure	Amount (Kshs)
30/09/2016	Site survey for re-location of Mwatu FM	4,200.00
13/10/2016	Kuruga CD launch at hotel Turacco – Juja	7,500.00
28/06/2018	Payment of power connection at Migori DVBT 2	207,595.50
28/06/2018	Payment of power connection at Kakamega DVBT 2	239,534.19
28/06/2018	Payment of power supply plot no.1331 Kipchimchim-Ainamoi-Kericho site	188,710.00
TOTAL		647,539.69

Expenditure Past Project Extension Period

- 3.3.22 Included in the total Project expenditure of Kshs.210,735,511 is Kshs.10,758,897 incurred when the Project period was extended by approximately one and a half years from 30 April 2018 deadline to 29 October, 2019 as earlier mentioned.
- 3.3.23 Although the Kshs.10,758,897 was incurred in 2018/2019 financial year, the 2018/2019 financial statements for the Project were neither prepared nor disclosed in the main KBC 2018/2019 financial statements.

Failure to Remit Withholding Taxes

- 3.3.24 A review of documents provided for audit revealed that the Management made payments to Suppliers/Contractors of taxable goods and services amounting to Kshs.55,773,739 within the Project period and withheld taxes amounting to Kshs.2,884,849 or approximately 5%.
- 3.3.25 However, documents to support that the Kshs.2,884,849 was remitted to Kenya Revenue Authority (KRA) were not provided for audit.
- 3.3.26 Failure to remit withheld taxes contravened Section 42(1) of the Finance Act, 2016 which states that "*The Commissioner may appoint a person to withhold six per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner*". It further contravenes Section 42A (4B) of the Tax Procedures Act, 2015 which states that "*The tax withheld under this section shall be remitted to*

Commissioner on or before the twentieth day of the month following the month in which the deduction is made”.

3.4 Procurement and Other Related Issues

Procurement Process at KBC DTT Project

3.4.1 According to Clause 5.1.3 of the Contract between MOICT and APD, EUR 822.144 (approximately Kshs.89,615,876) was apportioned towards primary infrastructure on the 10 sites. Clause 6.1. listed a total of 10 primary infrastructure works, that were to be undertaken. Further, Clause 7.1 indicated that, KBC as the end user, shall implement the works listed in Clause 6.1. Based on the abovementioned Clauses, KBC was to procure the goods, services and works, for the KBC Digital Terrestrial Television- DVB (T2) Project as detailed below;

- i) Acquisition of land
- ii) Construction of access roads
- iii) Design and Construction of stand-by power generators shelters on sites
- iv) Design and installation of electrical power supply on the sites
- v) Acquisition and installation of stand-by power generators on the sites
- vi) Design, construction and equipping of amenities
- vii) Landscaping of the sites
- viii) Remodeling & improvement of existing structures on the sites to suite DVB-T2 system installation requirements
- ix) Design and construction of warehouses on the 10 sites
- x) Hiring of security services for the ten sites

3.4.2 The procurement process for the KBC Digital Terrestrial Television- DVB (T2) Project's Primary infrastructure was governed by the Public Procurement and Disposal Act of 2005, Public Procurement and Asset Disposal Act of 2015, the Public Procurement and Disposal Regulations of 2006 and Public Procurement and Disposal (Amendments) Regulations of 2013.

3.4.3 A review of documents provided for audit revealed that seven (7) out of the ten (10) primary infrastructure works were undertaken through sixteen (16) procurements relating to construction of access roads, construction of perimeter walls, purchase of generators and purchase of containers. It was further noted that provision of clearing and forwarding services and environmental impact assessment although carried out, were not part of the 10 primary infrastructure works as detailed below;

Table 8: Comparison between Contract Items & Procured Items

Primary Infrastructure	Procured Items	Tender No.	Contractor
Acquisition of land	Not Provided	Not Provided	Not Provided
Construction of access roads	Access Roads	Qtn 55/KBC/17-18	Ebrahim Mohamed Kassam
		Qtn 058/KBC/17-18	Maumba General Contractors
		Qtn 057/KBC/17-18	Netco Investment
Design and Construction of stand-by power generators shelters on sites	Construction of Perimeter Wall	Qtn 44/KBC/17-18	Valeopo General Agency
		19/KBC/2015-16	Ammash Enterprises
Design and installation of electrical power supply on the sites		19/KBC/2015-16	Roken Construction
		24/KBC/2015-16	Valeopo General Agency
Design, construction and equipping of amenities		19/KBC/2015-16	Ammash Enterprises
		19/KBC/2015-16	Mashin Construction
Landscaping of the sites		19/KBC/2015-16	Burder Construction
		Qtn 43/KBC/17-18	Valeopo General Agency
Acquisition and installation of stand-by power generators on the sites	Purchase of Generators	Qtn 37/KBC/17-18	Vinbel International
		Qtn 68/KBC/17-18	Big Bang Engineering
Design and construction of warehouses on the 10 sites	Purchase of Containers	09/KBC/15-16	Enostel International Co Ltd.
		None	Deepsea Shipping Solution
Remodeling & improvement of existing structures on the sites to suite DVB-T2 system installation requirements	Not Provided	None	Containers Africa Ltd
		None	Not Provided
Hiring of security services for the ten sites	Not Provided	Not Provided	Not Provided
Procurements not within Primary Infrastructure			
	Environmental Impact Assessment	187/KBC/15-16	Greendime Consultants Ltd
	Provision of Clearing and Forwarding Services	23/KBC/15-16	Conventional Cargo Conveyors

3.4.4 However, procurement documents for land acquisition, remodeling and improvement of existing structures on the sites and hiring of security services were not provided for audit. Further, the Management explained that land acquisition was handled by the Project Implementation Committee. However, documents on how the procurement process of the land was done by the implementation committee were also not provided for audit.

3.4.5 A review of documents provided for audit revealed that, eight (8) contracts were procured using the open tender method and ten (10) contracts were procured through request for quotation (RFQ) method, as detailed in the table below;

Table 9: KBC Project Procurements

Access Road				
Site	Tender Number	Method of Procurement	Name of Contractor	Contract Amount (Kshs)
Kitui	Qtn 55/KBC/17-18	RFQ	Ebrahim Mohamed Kassam	1,355,000

Kwale	Qtn 058/KBC/17-18	RFQ	Maumba General Contractors	3,460,800
Kilifi	Qtn 057/KBC/17-18	RFQ	Netco Investment	2,274,500
Sub-Total				7,090,300
Construction of Perimeter Wall				
Hola	Qtn 44/KBC/17-18	RFQ	Valeopo General Agency	4,512,690
Lamu	19/KBC/2015-16	Open Tender	Ammash Enterprises	3,206,560
Nyadundo	19/KBC/2015-16	Open Tender	Roken Construction	3,001,625
Siaya	24/KBC/2015-16	Open Tender	Valeopo General Agency	3,053,380
Kitui	19/KBC/2015-16	Open Tender	Ammash Enterprises	3,609,710
Maralal	19/KBC/2015-16	Open Tender	Mashin Construction	3,237,500
Wajir	19/KBC/2015-16	Open Tender	Burder Construction	3,515,400
Kwale	Qtn 43/KBC/17-18	RFQ	Valeopo General Agency	4,602,290
Kilifi	Qtn 37/KBC/17-18	RFQ	Vinbel International	4,961,890
Webuye	Qtn 68/KBC/17-18	RFQ	Big Bang Engineering	3,600,025
Sub-Total				37,301,070
Purchase of Generators				
All	09/KBC/15-16	Open Tender	Enostel International Co Ltd.	35,913,700
Purchase of Containers				
Mombasa		RFQ	Deepsea Shipping Solution	1,200,000
Mombasa		RFQ	Containers Africa Ltd	3,840,000
Sub-Total				5,040,000
Environmental Impact Assessment				
KBC HQs	187/KBC/15-16	RFQ	Greendime Consultants Ltd	2,412,800
Provision of Clearing and Forwarding Services				
All	23/KBC/15-16	Open Tender	Conventional Cargo Conveyors	14,175,500
TOTAL				101,933,370

3.4.6 A further review of documents provided for audit revealed various procurement anomalies as summarized below and detailed in the ensuing paragraphs;

Table 10: Procurement Irregularities for Project

Procurement Process	Irregularity Noted	No. of affected Contracts
1. Procurement Planning	Absence of the Project's work plans	18
	Use of RFQ method from contractors who are not among pre-qualified list of suppliers	02
2. Advertisement	Use of RFQ method for works above Kshs.4,000,000	03
3. Tender Opening and Evaluation	Absence of appointment letter for tender opening committee	07
	Tender opening minutes signed by only two people	07
	Quotation opened by one person	01
	Absence of professional opinion report	02
4. Inspection and Acceptance	Inspection carried by only one person	02
	Absence of interim and/or completion certificate	06
5. Contract	Irregularity in price adjustment of Contract	01
	Failure to Close Out the Contracts	18

Procurement Planning

i) Lack of Work Plans

3.4.7 Documents provided for audit revealed that KBC did not have work plans for the Project. Consequently, it was difficult to confirm the Project's schedule of events.

ii) Failure to Comply with the Procurement Plan

3.4.8 Documents provided for audit revealed that the Management did not comply with the procurement plan in relation to Project procurement. It was noted that items worth Kshs.32,219,995 were procured though not in the procurement plan as detailed below

Table 11: Items as per Procurement Plan Vs Actual Procurements

Financial Year	Item	Amount as per Procurement Plan (Kshs)	Amount Actual Procured Items (Kshs)	Variance (Kshs)	Remarks
2015/2016	Plant equipment and generators	36,000,000	35,913,700	86,300	
	Transmitter sheds, walling/access roads	48,000,000	19,624,175	28,375,825	
	Clearing and forwarding	7,000,000	14,175,500	(7,175,500)	
	Sub – Total		69,713,375		
	Environmental Impact Assessment	0	2,412,800	(2,412,800)	Not in Procurement Plan
2016/2017	Purchase of Containers	0	1,200,000	(1,200,000)	Not in Procurement Plan
2017/2018	Transmitter sheds, walling/ access roads	0	24,767,195	(24,767,195)	Not in Procurement Plan
	Purchase of Containers	0	3,840,000	(3,840,000)	Not in Procurement Plan
	Sub – Total		32,219,995		
Total		91,000,000	101,933,370		

iii) Award of RFQs to Firms not in the Pre- Qualified List of Suppliers

3.4.9 The Audit Team noted that KBC used the Request for Quotation (RFQs) method to procure works for two (2) contracts both amounting to Kshs.3,629,500 in financial years 2017/2018, namely Qtn 55/KBC/17-18 opening of access road at Kitui site awarded to Ebrahim Mohamed Kassam and Qtn 057/KBC/17-18 opening of access road at Kilifi site awarded to Netco Investment. A review of the provided list of pre-qualified suppliers for the period 2015/2018 revealed that, the two contractors were not among the pre-qualified suppliers.

3.4.10 The Management therefore contravened Sections Section 95(3) of the Public Procurement and Assets Disposal Act, 2015, which states that, "A procuring entity shall invite tenders from only the approved persons who have been pre-qualified".

Advertisement / Invitation to bid

Use of RFQ for Works above the Required Threshold

3.4.11 The Audit team noted that the Management procured works worth Kshs.14,076,870 from three contractors as detailed below;

Table 12: Contracts for Works Above Threshold for RFQ

Works- Construction of Perimeter Wall			
Site	Tender Number	Name of Contractor	Contract Amount
Hola	Qtn 44/KBC/17-18	Valeopo General Agency	4,512,690
Kwale	Qtn 43/KBC/17-18	Valeopo General Agency	4,602,290
Kilifi	Qtn 37/KBC/17-18	Vinbel International	4,961,890
Total			14,076,870

3.4.12 However, the procurement for each contractor was above Kshs.4,000,000, contrary to the First schedule for Public Procurement and Disposal (Amendment) Regulations, 2013 thresholds matrix for class A procuring entities that sets the maximum level of expenditure for works under Request for Quotation (RFQ) at Kshs.4,000,000.

Tender Opening and Evaluation

i) Absence of Appointment Letter for Tender Opening Committee

3.4.13 Review of documents revealed that the Project procurement matters were handled by various tender committees. However, the letters of appointment for the committee members who handled the following seven (7) tenders were not provided for audit.

Table 13: Lack of Appointment Letters

Site	Tender Number	Name of Contractor	Description of Works
Hola	Qtn 44/KBC/17-18	Valeopo General Agency	Construction of stone wall, concrete bases, civil works and electrical works
Kwale	Qtn 43/KBC/17-18	Valeopo General Agency	Construction of stonewall fence, civil works, electrical works, razor wire and chain link fence
Kilifi	Qtn 37/KBC/17-18	Vinbel International	Construction of stonewall fence, civil works, electrical works, razor wire and chain link fence
Webuye	Qtn 68/KBC/17-18	Big Bang Engineering	Construction of wall fence, civil works and electrical works
Kitui Access Road	Qtn 55/KBC/17-18	Ebrahim Mohamed Kassam	Opening of access road
Kwale Access Road	Qtn 058/KBC/17-18	Maumba General Contractors	Opening of road and culvert installation
Kilifi Access Road	Qtn 057/KBC/17-18	Netco Investment	Opening of access road

3.4.14 It was not therefore possible to confirm if the Management complied with Section 78(1) of the Public Procurement and Asset Disposal Act, 2015 which

requires an accounting officer of a procuring entity to appoint a tender opening committee specifically for the procurement.

ii) Tender Opening Minutes Signed by Less than Three People

3.4.15 It was established that seven (7) contracts had only 2 members of the tender opening committee who appended their signatures as detailed in the table below;

Table 14: Minutes Signed by Two People

Site	Tender Number	Name of Contractor	Description of Works
Lamu	19/KBC/2015-16	Ammash Enterprises	Construction of perimeter wall, concrete bases and civil works
Nyadundo	19/KBC/2015-16	Roken Construction	Construction of perimeter wall, concrete bases and civil works
Siaya	24/KBC/2015-16	Valeopo General Agency	Construction of perimeter stonewall, concrete bases, civil works and other works
Kitui	19/KBC/2015-16	Ammash Enterprises	Construction of perimeter wall, concrete bases and civil works
Maralal	19/KBC/2015-16	Mashin Construction	Construction of perimeter wall, concrete bases and civil works
Wajir	19/KBC/2015-16	Burder Constructions	Construction of perimeter wall, concrete bases and civil works
All Sites	23/KBC/2015-2016	Conventional Cargo Conveyors	Provision of clearing & forwarding services from port of Mombasa to various stations

3.4.16 Further, quotation Qtn 058/KBC/17-18 on opening of road and culvert installation at Kwale site was opened and signed by one person.

3.4.17 This was contrary to Section 78(1) (a) and Section 78(11) (a) and (b) of the Public Procurement & Asset Disposal Act, 2015 which requires that to acknowledge that the Tender Opening Minutes are true reflection of the proceedings held, each of the members (at least three) of the Tender Opening Committee should; a) Initialize each page of the minutes; and b) Append his or her signature as well as initial to the final page of the Minutes indicating their full name and designation.

iii) Absence of Professional Opinion Report

3.4.18 A review of the procurement files revealed that two (2) contracts namely; Qtn 057/KBC/17-18 for opening of access road at Kilifi site and Qtn 058/KBC/17-18 for opening of road and culvert installation at Kwale site did not have professional opinion reports. This is contrary to Section 84(1) of the Public

Procurement & Asset Disposal Act, 2015 which requires the head of procurement function of a procuring entity to, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement proceedings.

Inspection and Acceptance

i) Inspection Carried Out by One Person

3.4.19 A review of inspection report for works inspected on 06 January, 2018 and 7 March, 2018 at Kilifi and Hola sites respectively revealed that, the inspection Committee had only one officer from KBC whose appointment details were not provided for audit. The composition of the Committee was therefore contrary to Section 48(2) of Public Procurement and Assets Disposal Act, 2015 that requires the inspection and acceptance committee be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.

ii) Absence of Interim/Completion/Inspection Certificates

3.4.20 A review of the Project procurement documents revealed that six (6) contracts had no interim and/or completion certificates, contrary to Section 48(4)(e) of the Public Procurement & Assets Disposal Act, 2015 which requires the inspection and acceptance committee to issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract. The four contracts are as detailed below;

Table 15: Contracts without Interim/Inspection/Completion Certificates

Site	Tender Number	Name of Contractor	Description of Works
Kitui	19/KBC/2015-16	Ammash Enterprises	Construction of perimeter wall, concrete bases and civil works
Wajir	19/KBC/2015-16	Burder Construction	Construction of perimeter wall, concrete bases and civil works
Nyadundo	19/KBC/2015-16	Roken Construction	Construction of perimeter wall, concrete bases and civil works
Kilifi	Qtn 057/KBC/17-18	Netco Investment	Opening of access road
All 10 Sites	Not Provided	Deepsea Shipping Solution	procurement of ten (10) 20ft empty containers
All 10 Sites	Not Provided	Containers Africa Ltd	procurement of twenty-four (24) 20ft empty containers

3.4.21 Consequently, the quality and quantity of the containers could not be confirmed

Contract Management

i) Irregular Contract Variation

- 3.4.22 Under the Special Conditions of the contract between KBC and Enostel International Company Ltd for Supply, Installation, Testing and Commissioning of 8NO 35KVA and 4NO 50KVA Standby Auto Controlled Silenced Generators dated December 2015, it was indicated that the delivery of equipment, documents and installation of the same, shall be done within 6 weeks of signing the contract and issuance of the order by KBC to the supplier.
- 3.4.23 Further, clause 4.13.2 of the General Conditions of the contract required that price variations shall not be allowed for contracts not exceeding one year.
- 3.4.24 It was observed that KBC issued an LPO amounting to Kshs.3,000,000 on 24 March 2021, being a variation of the initial contract sum of Kshs.35,913,700 to Kshs.38,913,700. The LPO was therefore issued more than five (5) years after signing of the contract in December, 2015 contrary to the Special and General conditions of the Contract. However, no evidence was provided for audit to support any extension of the contract. The extension of the period was therefore in breach of the contract.
- 3.4.25 Further, the variation did not meet conditions stated in Section 139 (4) (a) and (d) of the Public Procurement and Assets Disposal Act, 2015 which requires any variation of a contract to only be considered after twelve months from the date of signing the contract and to only be considered if the following are satisfied;
- (a) the price variation is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya;
 - (d) the price or quantity variation is to be executed within the period of the contract.

ii) Failure to Close Out the Contracts

- 3.4.26 The Audit Team noted that KBC did not undertake close outs for all contracts in the DTT (DVB-T2) Project, contrary to Section 154(a) of the Public Procurement and Assets Disposal Act, 2015, which requires an accounting officer of a procuring entity to close out a procurement contract immediately

after completion and the close out should involve the head of procurement function issuing a certificate to the contractor confirming delivery and acceptance of goods, works and services, where the contract is not complex and specialized.

3.5 Asset Management, Physical Verification and Current Status of the Project

- 3.5.1 In order to confirm how KBC managed the assets and the current status of the Project, the Audit Team applied two approaches as follows:
- a) Review of documents at the HQs and the 10 transmission sites
 - b) Physical verification at the 10 transmission sites.
- 3.5.2 The sites' verification exercise was to confirm that each of the 10 transmission sites were installed with both the primary and secondary infrastructures as required by the Contract.
- 3.5.3 As at the time of the verification in February 2022, all the transmission sites verified by the audit team were operational, with output power as shown in the table below;

Table 16: Transmission Sites and Output Power

No.	Transmission Site	Output Power (Kws)	Output at Optimum Capacity (KW)	Under Performance (KW)
1.	Siaya	1.9	2.3	0.4
2.	Webuye	2.0	2.3	0.3
3.	Nyadundo	2.1	2.3	0.2
4.	Maralal	1.9	2.3	0.4
5.	Kitui	2.2	2.3	0.1
6.	Kwale	1.8	2.3	0.5
7.	Kilifi	1.5	2.3	0.8
8.	Lamu	2.3	2.3	0
9.	Hola	1.9	2.3	0.4
10.	Wajir	1.2	2.3	1.1

- 3.5.4 The Audit Team noted that the Siaya, Maralal, Kwale, Kilifi, Hola and Wajir sites had low output power less than 2.0 KWs, due to failure of transmitters, UPSs, cooling system and lack of spare parts. Further, there was delay in replacing/repairing the faulty components, leading to further failure of other units within the transmitters.

- 3.5.5 The audit findings for the primary and secondary infrastructure are as explained in the ensuing sections of the report;

Secondary Infrastructure

- 3.5.6 According to the Contract agreement between the MOICT and Algoritmos, Procesos y Disenos (APD) dated 11 November, 2013, APD was to install the necessary equipment and infrastructure to set up ten (10) sites to broadcast TV signals in DVB-T2.
- 3.5.7 The installation of the equipment entailed the installation of DVB-T2 transmitters, radiating systems, feeders, and auxiliary equipment including shelter, satellite, and towers. The supplied secondary infrastructure (also referred to as terrestrial equipment and accessories) were valued at Kshs.892,988,931, including services.

a) Review of Documents on Assets Management and Project Status

- 3.5.8 The following were the irregularities noted after review of the documents provided;

Absence of Policy and Manuals to Guide in Asset Management

- 3.5.9 It was established that there were no policies and manuals, to guide on the management of the terrestrial equipment for the Project, contrary to Section 162 (6) of the Public Procurement and Asset Disposal Act, 2015 which requires a government authority to issue manuals and guidelines regarding all aspects of inventory, stores, and asset management.

Failure to Record Assets Received

- 3.5.10 The Audit Team reviewed the Project documents provided and established that the terrestrial equipment of Kshs.892,988,931 received, was not recorded in the goods received vouchers, contrary to Section 159 (1) of the Public Procurement and Asset Disposal Act, 2015 which requires an accounting officer of a procuring entity to receipt goods, works, and services which have been certified in accordance with Section 159 (1) and 152 of the Act.
- 3.5.11 It was therefore not possible to determine the actual number of equipment received by KBC from the various vendors.

Absence of an Asset Register

- 3.5.12 APD delivered DVB-T2 transmitters, radiating systems, feeders, and auxiliary equipment including shelter, satellite, and towers for the ten (10) sites equipment and services valued at Kshs 892,988,931.
- 3.5.13 A letter dated 25 April, 2016 Ref: MICT/CONF.18/01/5 VOL.B/27 to the Chief Manager Kenya Revenue Authority – Port/CFS, indicated that the Project's equipment cargo containers arrived at the Port of Mombasa on 28 January 2016.
- 3.5.14 However, as at the time of the Audit in February 2022, the equipment were not recorded in an asset register, contrary to Section 162(1) of the Public Procurement and Assets Act, 2015 which states that, "*an accounting officer of a procuring entity shall ensure that all inventory, stores and assets purchased are received, but shall not be used until taken on charge and as a basis for ensuring that all procured items are properly accounted for and put in proper use as intended by the procuring entity*". It was further noted that there was no asset register maintained at the transmission sites for the equipment.
- 3.5.15 It was therefore difficult to confirm the location of each asset, current condition of the assets, expected useful life, depreciation value of the asset and time to replace the assets.

b) Physical verification at the Transmission sites

- 3.5.16 The following are the irregularities noted during site verifications for the secondary infrastructure in the 10 transmission sites carried out in February 2022;

Table 17: Irregularities During Verification of Secondary Infrastructure

Assets	Issues/ Irregularities Noted	Site
1. DVB-T2 Transmitter/ 1+1 Redundancy DVB-T2/ Gateway Satellite System & Accessories.	i.Faulty Units- Amplifiers, UPS, Air Condition	Maralal, Wajir, Hola, Kilifi, Siaya, Kitui & Webuye
2. Radiating system & accessories feeder	i.Weakened connection from shelter to tower	Hola
	ii.Faulty Dehydrator	Kwale
3. 70 Metre Aviation Tower with 10 Metre Spines Plus Works	i.Weaken Aviation Tower (Hola)	Hola
4. Spare Parts for the Project	i.Missing/unaccounted for Spare parts	Kilifi & Ngong
5. Co-siting	i.Strain on APD equipment due to co-siting	Kwale

DVB-T2 Transmitters/ Gateway Satellite System & Accessories

Faulty Units- Amplifiers, UPS and Air Conditioning System

- 3.5.17 As at the time of verification, the transmitters at Maralal, Wajir, Webuye and Kilifi, were not working at optimum capacity (ranged between 1.2 and 1.6 KWs). It was explained that low output power was caused by failed units within the amplifiers. Kilifi site was using the reserve transmitter, which also had some faulty units such as power supplies and pallets.
- 3.5.18 The Uninterruptible Power Supply (UPS) at Wajir, Webuye, Hola, Siaya and Kitui were faulty. A faulty UPS meant that transmission is interrupted immediately when the power goes off, which may lead to damaged equipment.
- 3.5.19 The air conditioning system at Webuye was faulty, thus there was no optimal air circulation to cool the transmitting system, which may damage the equipment over time.
- 3.5.20 The Audit Team noted that there was a challenge of amplifiers failing often and took long before they are repaired/ replaced, as the technicians have to request for the replacement units from Nairobi.

Radiating System & Accessories Feeder

- 3.5.21 **Weakened connection from shelter to tower.** At Hola site, the connection from the transmitting shelter to the tower had weakened, thereby affecting the weather proofing system.
- 3.5.22 **Faulty Dehydrator.** The RFS (Radio Frequency System) Dehydrator at Kwale, serial number 153US011072 was faulty and not in use. No replacement had been done as at the time of the Audit.

70 Meter Aviation Tower with 10 Meter Spines Plus Works

- 3.5.23 **Weakened/ Sunken Aviation Tower.** The Audit Team noted the tower base at Hola site was tilted. It was explained that the tilted base was as a result of rains thus resulting to the low output power of 1.9 KWs.

Spare Parts for the Project

- 3.5.24 According to Clause 17 of the contract between MOICT and APD, APD was to supply spare parts for the equipment for two years after commissioning of the

installations. The spares were to be utilized for repairs arising from equipment failures during the technical warranty period.

- 3.5.25 According to the APD Detail Engineering Report dated 25 August 2015 and the Project Status Outlook dated 23 April 2018, a total of forty-two (42) spare parts amounting to approximately Kshs.13,361,600 were shipped together with the equipment (secondary infrastructure).
- 3.5.26 However, the documents provided to the audit team did not have itemized values of the spare parts. It was therefore difficult to quantify the following issues noted on spare parts.
- 3.5.27 In summary, 42 spare parts were supplied by APD. However, only twenty-seven (27) spare parts were accounted for by the Management, resulting to fifteen (15) spare parts of unknown value not accounted for.

Missing/ Un Accounted for Spare Parts- 15 Units

- 3.5.28 Out of the 42 spares shipped, 41 spare parts could be accounted for at the Kilifi site, resulting to 1 spare part (UHF Amplifier Doherty WB) not accounted for.
- 3.5.29 Out of the 41 spares in the list provided for audit, 2 were issued to Kilifi and Lamu sites each per site, to replace faulty units in the equipment; 35 were collected by the Chief Engineer-KBC, Mr. Christopher Murigu on 21 November 2019. The balance spare parts of 4 shown in the table below, could not be accounted for by the Engineer in charge (EIC)- Kilifi site;

Table 18: Un-accounted For Spare Parts by EIC- Kilifi Site

No.	SPARE PARTS RECEIVED	SERIAL NUMBER	UNITS
1.	Control Unit	431500035	1
2.	UHF Amplifier Doherty WB	431500032	1
3.	DVB-T/T2 Modulator with QoS option	431500025	1
4.	DVB-T/T2 Modulator with QoS option	431500028	1

- 3.5.30 Out of the 35 spare parts collected by Mr. Murigu, 30 spares were received by the engineer in charge Ngong Transmitting Station, Mr. Edward Ndegwa on 22 November 2019. The balance spare parts being 5 power supply modulators/ unit controls could not be accounted for by the Chief Engineer-KBC. In addition, the documents reviewed did not indicate the serial numbers for the power supply modulators.

3.5.31 Documents provided and reviewed at Ngong Station revealed that out of 30 spare parts received in Ngong, 14 had been verified by the audit team as issued, to some of the 10 transmission sites to replace faulty units in the equipment, 1 had been issued to Kisii Site which is not amongst the 10 APD sites and 10 spare parts were still confirmed in store. The balance spare parts of 5 shown in the table below, could not be accounted for by engineer in charge Ngong Station;

Table 19: Un-accounted For Spare Parts by EIC- Ngong Station

No.	SPARE PARTS RECEIVED	DATE RECEIVED	SERIAL NUMBER	UNITS
1.	UHF Amplifier Doherty WB	11/22/2019	43100033	1
2.	UHF Amplifier Doherty WB	11/22/2019	43100030	1
3.	DVB-T/T2 Modulator with QoS option	11/22/2019	431500027	1
4.	Pallet Doherty -AWH	11/22/2019	31510183007382	1
5.	Fans for racks/cabinet(283077)	11/22/2019	No serial Number	1

3.5.32 Further, the Audit Team observed two faulty units in Wajir and Kilifi transmission sites which became faulty within the 2-year warranty period ending 19 April 2020. However, no spares were provided by APD, as summarized below;

No.	LOCATION	ITEM	STATE
1	Wajir	UPS	Faulty from April 2018
2	Kilifi	DVB-T2 Transmitter (Main)	Faulty from February 2020

3.5.33 Failure to replace the faulty units is contrary to a Commitment Undertaking signed on 19 April 2018 between APD (the Contractor), MOICT (the Client) and KBC (Implementing Agency on behalf of Client). According to Clause 4 of the commitment, APD- Spain undertook and committed to provide and deliver all the requisite spare parts within the 2- year warranty period, which was to be when Webuye site was completed and handed over.

3.5.34 The Definitive Reception Certificate (DRC) indicated the site acceptance date for Webuye Site as 19 April 2018. This therefore meant that the 2-year warranty period was to end in 19 April 2020. The faulty units therefore should have been replaced by APD.

Co-siting with other Companies

3.5.35 During verification, the Audit Team noted that Kwale site begun transmission on 14 July 2018. Further, it was observed that the site was co-siting Msenangu

FM, a radio station owned by MediaMax Network Limited. The Msenangu FM equipment was installed in January 2021.

- 3.5.36 A co-siting agreement between KBC and MediaMax signed on 30 March 2021 indicated January, 2021 as the effect date of the contract, which shall run for a period of 5 years.
- 3.5.37 However, the audit team was informed that the co-siting of Msenangu FM equipment was putting a strain on the APD equipment especially the Air Conditioner and Generator, due to the added load.

Primary Infrastructure

- 3.5.38 According to Clause 5.1.3, 6.1 and 7.1 of the Contract between MOICT and APD, KBC was to implement and procure goods, services and works within the 10- item primary infrastructure, for the KBC DTT (DVB-T2) Project. The table below compares the 10 primary infrastructure works and actual works done;

Table 20: Primary Infrastructure Works Vs Actual Works

No	Primary Infrastructure	Actual Goods, Services or Works
1	Acquisition of land	Acquisition of land
2	Construction of access roads	Access Roads
3	Design and Construction of stand-by power generators shelters on sites	Perimeter Fence and Other Works
4	Design and installation of electrical power supply on the sites	
5	Design, construction and equipping of amenities	
6	Landscaping of the sites	
7	Remodeling & improvement of existing structures on the sites to suite DVB-T2 system installation requirements	
8	Acquisition and installation of stand-by power generators on the sites	Generators
9	Design and construction of warehouses on the 10 sites	Warehouses/ Containers
10	Hiring of security services for the ten sites	Security Services

- 3.5.39 As earlier reported, the procured primary infrastructure amounted to Kshs.101,933,370.
- 3.5.40 The Audit Team requested for documents ought to be maintained at the site which include the Engineer's Log, Project Correspondence file, Repairs Book, Inventory Register and the Generator's File. A review of the documents maintained at the site revealed the following;

Table 21: Provided Documents at Transmission Sites

No.	Transmission Site	Documents Provided				
		Engineer's Log	Project File	Repairs Book	Inventory Register	Generator's File
1.	Siaya	Not Provided	Provided	Not Provided	Not Provided	Not Provided
2.	Webuye	Not Provided	Provided	Not Provided	Not Provided	Not Provided

3.	Nyadundo	Not Provided	Provided	Not Provided	Not Provided	Not Provided
4.	Maralal	Not Provided	Provided	Not Provided	Not Provided	Not Provided
5.	Kitui	Not Provided	Provided	Not Provided	Not Provided	Not Provided
6.	Kwale	Provided	Provided	Provided	Provided	Not Provided
7.	Kilifi	Provided	Provided	Not Provided	Not Provided	Provided
8.	Lamu	Not Provided	Provided	Not Provided	Not Provided	Not Provided
9.	Hola	Not Provided	Provided	Not Provided	Not Provided	Not Provided
10.	Wajir	Provided	Provided	Provided	Not Provided	Provided

3.5.41 It was noted that, out of the 10 Transmission sites, though Kwale site maintained an inventory register, it was not updated. The remaining 9 sites did not maintain registers for the primary infrastructure assets.

3.5.42 Failure to maintain assets records makes it difficult to know the current condition of the assets, expected useful life, depreciation value and timing of replacing the assets.

3.5.43 A further review of documents and sites verification, for each of the goods, services, and works (10-item primary infrastructure) in the 10 transmission sites revealed the following irregularities;

Table 22: Irregularities During Verification of Primary Infrastructure

	Assets	Issues/ Irregularities Noted	Site
1.	Land	i. Lack of Proper Planning during Site Identification	Six Sites
		ii. Lack of Valuation Reports	Hola, Lamu, Kilifi & Kwale
		iii. Lack of Ownership Documents	Siaya, Kitui & Kilifi
		iv. Digital Transmission in Existence	Wajir
		v. Variance between Records & Approx. Land Size	Hola & Kwale
		vi. Land Partially Fenced	Lamu
2.	Access Road	i. Irregular Payment for Access Road	Kilifi
		ii. Variance between BQs and Actual Length of Access Road	Kwale
		iii. Non-repair and maintenance of the Access Road	Kwale
3.	Perimeter Wall and Civil works	i. Incomplete and/ or Weak Perimeter Walls	Wajir, Hola, Lamu, Kwale & Webuye
		ii. Civil and Electrical Works not Carried out	Wajir, Kwale, Lamu, Kilifi, Webuye, Nyadundo & Maralal
		iii. Fire extinguishers not supplied/ not seen	Kilifi & Lamu
		iv. Unconstructed Container base/ Generator shed	Webuye & Siaya
		v. Dilapidated/ Collapsed Pit latrine	Wajir & Hola
4.	Generators	i. Non- Supplied Generator Items	All sites
		ii. Broken Down Generators	Wajir, Hola & Maralal
		iii. Irregular Allocation of Generators to non APD Sites	Webuye & Nyadundo
		iv. Generator Serial No. not Confirmed	Hola
5.	Warehouses / Containers	i. Lack of Ownership & Delivery Documents	All sites
		ii. Variance between Containers Purchased and on Site	All sites
		iii. Missing and/or Mishandled Containers	Siaya, Webuye, Kilifi, Kitui, Maralal & Kwale Nyadundo
6.	Security Services	i. Few Security Guards Manning the Sites	Lamu & Kwale
		ii. Salary Arrears	Hola, Kilifi, Kwale, Lamu & Maralal
		iii. Lack of Security Tools	Hola, Kilifi & Nyadundo

Acquisition of Land

- 3.5.44 According to Clause 6 of the Contract between MOICT and APD, KBC was to carry out various primary infrastructure works, which included acquisition of ten (10) DVB-T2 sites for the APD Project.
- 3.5.45 Based on the documents provided for audit on land acquisition, it was noted that out of the 10 APD Transmission sites, KBC purchased parcels of land for four (4) APD sites, namely; Siaya, Nyadundo, Kilifi and Kitui sites. Further, parcels of land for four (4) APD sites, namely Maralal, Hola, Kwale and Lamu were donated. The remaining two (2) APD sites, namely; Wajir and Webuye were on existing KBC land.
- 3.5.46 The following were the irregularities noted after review of the documents provided;

i) Lack of Proper Planning During Identification of Sites

- 3.5.47 Documents relating to how the 10 sites were identified were not provided for audit. The audit team was therefore not able to ascertain how the sites for the Project were identified.
- 3.5.48 A status report dated 23 April 2018 listed the initial 10 sites, namely; Garissa, Kitui, Lamu, Lodwar, Lokichoggio, Maralal, Marsabit, Mbui Nzau, Narok and Wajir. After the commencement of the Project, it was noted that 6 out of the 10 initial sites were found unsuitable for the Project, as shown below

Table 23: Initial and New Sites

No.	INITIAL SITE	NEW SITE NAME	COUNTY (NEW SITE)
1.	Garissa	Hola	Tana River
2.	Marsabit	Kilifi	Kilifi
3.	Lodwar	Webuye	Bungoma
4.	Lamu	Lamu	Lamu
5.	Wajir	Wajir	Wajir
6.	Maralal	Maralal	Samburu
7.	Kitui	Kitui	Kitui
8.	Lokichoggio, Mbui	Nyadundo	Nyandarua
9.	Nzau, Narok	Siaya	Siaya
10.		Kwale	Kwale

- 3.5.49 Lack of proper planning during the selection of the sites may have led to identification of the unsuitable sites. The unsuitable sites and their respective replaced sites are as explained below;

Garissa Site to Hola Site

- 3.5.50 According to the status report, Garissa site had been developed to a DVB-T2 platform under a KBC/ GOtv collaboration, so it was replaced in the DTT (DVB-T2) Coverage roll out Project by Hola site.

Marsabit Site to Kilifi Site

- 3.5.51 According to the status report, all the identified locations in Marsabit were rejected by the Kenya Civil Aviation Authority. It was further noted that Marsabit area was being served by a low- power Digital Terrestrial Transmitter, under a KBC Analogue – Digital Television Migration Project, thus the area already had digital coverage. It was therefore explained that the Implementation Committee opted to replace Marsabit site with Kilifi site.

- 3.5.52 However, the audit could not ascertain the reason why the Committee could not identify sites in nearby Counties.

- 3.5.53 According to the sale agreement, the value of the land parcel for the new site at Chasimba in Kilifi County was Kshs.1,500,000. The Audit Team was informed that there was a dispute within the seller's family which was affecting the processing of the ownership documents.

- 3.5.54 Further, the Audit Team could not ascertain why KBC bought three quarters of an Acre of the land instead of a quarter Acre which had been fenced and where the transmission site was stationed.

Lodwar Site to Webuye Site

- 3.5.55 According to the status report, all the identified locations in Lodwar were rejected by the Kenya Civil Aviation Authority. It was further noted that Lodwar area was being served by low- power Digital Terrestrial Transmitters, under a KBC Analogue – Digital Television Migration Project, thus the area already had digital coverage. It was therefore explained that the Implementation Committee opted to replace Lodwar site with Webuye site.

- 3.5.56 However, the audit could not ascertain the reason why the Committee could not identify sites for instance, outside Lodwar but within Turkana County, or nearby Counties.

Lokichogio Site

- 3.5.57 Simulation tests for the identified Lokichogio site showed that the broadcast signal spills over to Sudan, thus causing interference. In a letter Ref:

MICT/CONF.18/01/5/VOL.C/23 dated 15 December,2017. The Lokichogio site was replaced, though the status report did not indicate the specific site that replaced Lokichogio.

Mbui Nzau Site

3.5.58 Review of the status report revealed that accessing the Mbui Nzau site posed a big challenge to heavy trucks. Further, its development budget was way beyond the Project estimates, though these estimates were not indicated in the status report.

3.5.59 The Mbui Nzau site was therefore replaced, though the status report did not indicate the specific site that replaced Mbui Nzau.

Narok Site

3.5.60 According to the status report, Narok site had been developed to a DVB-T2 platform under a KBC/ GOtv collaboration. It was noted that it was replaced by another site. However, the status report did not mention which site replaced Narok.

3.5.61 The audit team could not ascertain the specific sites between Nyadundo, Siaya and Kwale, that replaced Narok, Lokichogio and Mbui Nzau sites.

ii) Lack of Valuation Reports for 4 Sites

3.5.62 Documents provided for audit revealed that valuation reports for four (4) sites- Hola, Lamu, Kilifi and Kwale sites, were not provided for audit, contrary to Section 10A of the Stamp Duty Act which provides that a registered and practicing land valuer appointed by the Government Chief Valuer should value any immovable property before any conveyance or transfer in order to determine the true market value of such property as at the date of the conveyance or transfer for purposes of ascertaining whether any additional stamp duty is payable. Therefore, the audit team could not ascertain land value of the 4 sites.

iii) Lack of Ownership Documents

3.5.63 The Law Society Conditions of Sale 2015 Section 8.1.1 states that after signing of the sale agreement, a conveyancing process should take 90 days to complete after which the Land ownership documents (title deeds) should be fully processed.

3.5.64 The Audit Team was informed that out of the eight parcels of land acquired, Maralal, Hola, Kwale and Lamu sites were donated to KBC. However, supporting documents to confirm the donations and terms therein were not provided for audit. Further, KBC did not have ownership documents for the four sites alleged to have been donated.

3.5.65 Sale agreements for the Project land in Siaya, Kitui, Nyadundo and Kilifi were dated between years 2015 and 2016. However, it was only Nyadundo site in Nyahururu which had a title for the land

3.5.66 Ownership documents for Siaya, Kitui and Kilifi parcels of land were not provided for audit. Failure to have ownership documents 90 days after signing the sale agreements contravened Section 8.1.1 of the Law Society Conditions of Sale 2015.

3.5.67 The following are the irregularities noted at the site verification, for land acquisition in the 10 transmission sites;

iv) Existing Site with Digital Transmission

3.5.68 The Wajir Site was constructed within the existing Wajir (analog) transmitting station. However, it was observed that Wajir had a digital transmitter 'TEM Transmitter' which had been installed in March 2015, and switched off once the APD transmitter was installed. This therefore meant that Wajir Site had digital coverage, contrary to the DTT (DVB-T2) financial statements for year 2017/2018, which indicated that the KBC DTT (DVB-T2) Project was to provide TV signal to areas where there was no signal coverage.

v) Variance between KBC HQ Records and Approximated Land Size

3.5.69 According to the Project status report dated 15 February, 2019 the land size for Kwale site acquired through the County Government of Kwale was indicated as 0.5 acres. However, the verified land size was estimated at 0.25 acres, resulting to an unexplained variance of approximately 0.25 acres.

3.5.70 As per the Project status report provided at the KBC HQs, land size of the Hola site was 0.5 acres but during field verification, the team measured the size of the land and found it to be approximately 1 acre.

vi) Land Partially Fenced

3.5.71 The Audit Team was informed that, the total land size for Lamu site was approximately 0.5 acres, acquired through County Government of Lamu.

During verification, the audit team approximated the parcel of land fenced with stone wall perimeter fence to be 0.25 acres. The balance of 0.25 acres adjacent to the fenced parcel was unfenced.

3.5.72 There is a risk of KBC losing the unfenced land.

Access Roads

3.5.73 Review of documents revealed that out of the 10 sites, 7 sites did not require construction of new access roads. However, access roads were required and constructed on the remaining 3 sites namely Kilifi, Kwale and Kitui where the following irregularities were noted;

i) Irregular Payment for Kilifi Site Access Road

3.5.74 A review of documents provided for audit revealed that a payment of Kshs.2,274,500 was made to M/S Netco Investment Co. Ltd for opening of the access road to the Kilifi Site. However, BQs for the access road were not provided for audit. It was therefore not possible to ascertain the length of the road which should have been constructed. In addition, documents relating to the construction of the access road were not provided for audit.

3.5.75 During site verification of the Kilifi site, the Audit Team established that the length of the access road was approximately 200M. However, it was explained that the access road was done by the County Government of Kilifi.

ii) Variance between BQs and Actual Length of Kwale Site Access Road

3.5.76 As per the BQs for the Kwale site access road, the length of the road to be constructed by M/S Maumba General Contractors was 2 Kms. During verification, the audit team established that the actual length of the constructed road was approximately 0.6 Kms. The variance of 1.4 Kms was access road paid for but not constructed.

iii) Non-Repair and Maintenance of Access Roads

3.5.77 The team observed that the access road to Kwale site was not maintained; there were overgrown bushes intruding on the road blocking water passage and diverting it on to the road.

Perimeter Fence and Other Works

3.5.78 Review of documents including the LPOs issued by KBC amounting to Kshs.37,301,070 revealed that the construction of perimeter fence and other works included;

- i) Construction of a high natural stone wall fence with 1 gate for each site
- ii) Construction of a generator base and a shed
- iii) Spreading of ballast in the site area not built
- iv) Construction of a pit latrine,
- v) Construction of a container concrete base,
- vi) Installation of electrical works and firefighting equipment.

3.5.79 However, the following irregularities were noted during site verification of the works;

ij) Incomplete and/ or Weak Perimeter Walls

3.5.80 The Audit Team noted that there was no barbed wire installed in half of the perimeter wall in Kwale site while part of the wall had only two rows instead of three rows of barbed wire.

3.5.81 In Webuye, the Bills of Quantities (BQs) specified that the perimeter wall was to be a 2.4-meter-high stone wall. It was however observed that the contractor constructed a one-meter-high stone wall.

3.5.82 In Wajir site, the columns concrete copings were not precast, as per the BQs. In addition, one side of the wall was not straight and the middle part sunk inwards. In Hola and Lamu sites, it was noted that the perimeter walls did not have concrete columns.

3.5.83 The anomalies were an indication of poor workmanship resulting to numerous risks posed by the weak walls.

ii) Civil and Electrical Works not Carried out

3.5.84 As per the BQs, the contractor for Kwale site was required to remove loose soil and compact marram on the position identified as a road. During physical verification the audit team observed that the civil works were not undertaken. Further, the contractor was required to undertake all the electrical works at the site. However, it was explained that, electrical works which included 30 Power installation from Mains; 1 Installation of 200 amps MCCB 4 Pole with enclosures at both ends; 10 cable lugs 25mm Sq. to terminate the main cable on both sides of MCCB; and 3 phase metre box size 1000*1000*300mm, was carried out by KBC.

- 3.5.85 As per the BQs, the contractor for Kwale site was required to install 4 bulkhead fitting and 2 transparent gate lights. During verification, none of the lights were in working condition. Further, the 2 gate lights had fallen off.
- 3.5.86 In Lamu site, the electric power cables supplying power from the 3 Phase-Metre Box were supposed to be enclosed in a metallic trunk. It was observed that the metallic trunk had no cover, resulting to various risks posed by exposed electric power cables.
- 3.5.87 In Wajir, Kilifi, Lamu, Kwale, Webuye, Nyadundo and Maralal, it was noted that ballast was spread on approximately 50% of unbuilt area instead of the entire unbuilt area as per the BQs specifications. The rest of the area did not have ballast.
- 3.5.88 In Webuye site, the contractor was to fix a gate. However, it was observed that a steel gate was fabricated but not fixed. The gate was lying on the ground and had rusted. The site was thus exposed to security risks due to easy access.

iii) Fire Extinguishers Not Supplied/ not seen

- 3.5.89 The Bill of quantities (BQs) required the contractor to supply and install one piece each for 5KG- CO2 and 9KG- dry powder fire extinguishers. In Kilifi and Lamu, it was confirmed that none of the fire extinguishers were on the site.

iv) Unconstructed Container Base and/or Generator Shed

- 3.5.90 In Siaya and Webuye sites, it was observed that container base and generator shed had not been constructed.

v) Unusable Pit Latrine

- 3.5.91 In Wajir, the pit latrine constructed during the Project was not in use as the doors had fallen off due to strong wind. The walls were also occupied by wasps, making it unusable or dangerous to use.
- 3.5.92 In Hola, a two-door pit latrine that had been constructed, collapsed in January 2019, a year after the site acceptance test had been done.

Stand-By Power Generators

i) Non- Supplied Generator Items

- 3.5.93 According to the contract between KBC and Enostel International Co. Ltd (the supplier for the generators), Enostel was required among other things, to supplier a 72 Hour external fuel storage tank, maintenance tool kit and spare

parts. Site verification by the audit team confirmed that the above items were not delivered in all the 10 sites.

ii) Broken Down Generators

3.5.94 The generator in Wajir site was not operational, since 31 August 2021 resulting to non-transmission in cases of power outage. In Maralal and Hola sites, though functional, units within the generators (i.e. the contactor) were faulty and needed replacement.

iii) Irregular Allocation and Idle Generators

3.5.95 According to the procurement documents reviewed, KBC acquired twelve (12) cummins stand-by power generators for the 10 APD sites through contract no. 09/KBC/15-16 amounting to Kshs.35,913,700. Further review of the documents revealed that the 12 generators were delivered and received by the CTO-Lang'ata Transmitting station, as detailed in the table below;

Table 24: 12 Stand-By Generators Delivered and Received

Delivery Note No.	Serial No.	Date of Delivery
087	K15I133725	9 May 2016
088	K15I133566	31 Aug 2016
091	B161211009	7 Sep 2016
091	B161211010	7 Sep 2016
091	B161211026	7 Sep 2016
091	L151210796	7 Sep 2016
091	K15I133726	7 Sep 2016
091	K15I133573	7 Sep 2016
086	K15I133570	9 May 2016
082	K15I133574	11 Jul 2016
081	K15I133568	10 Jun 2016
081	K15I133851	10 Jun 2016

3.5.96 During the site visit at Lang'ata station in February 2022, the Audit Team confirmed that the 12 generators were received at the station out of which 10 generators were delivered to 8 APD transmission sites and 2 generators serial Nos. B161211026 and K15I133570 were irregularly delivered to Kericho and Homabay sites, which were not amongst the 10 APD sites. The balance of 2 generators with serial Nos. L151210796 and B161211009 have been lying in a

store at the Lang'ata station for more than five (5) years, resulting to no value for money to the public.

3.5.97 Delivery of the 2 generators to Kericho and Homabay sites meant that KBC irregularly utilized funds for primary infrastructure works, in non- APD sites.

iv) Generator Serial no. not Confirmed

3.5.98 In Hola, the generator was on site but the serial number could not be confirmed, since the label that had the number had been removed from the generator.

Warehouses on the Ten Sites (Containers)

3.5.99 According to Clause 6 of the Contract between MOICT and Algoritmos, Procesos Y Disenos (APD) S.A on Primary Infrastructure Works, KBC was to carry out various primary infrastructure works, which included design and construction of warehouses for the ten (10) DVB-T2 sites.

3.5.100 The Audit Team noted that KBC did not design and construct warehouses on the ten sites. Instead, KBC procured 34- 20ft containers for use at the sites as warehouse. The following were the irregularities noted after review of the provided documents;

i) Lack of Ownership & Delivery Documents

a) Lack of Ownership Documents for 26 Containers

3.5.101 According to provided documents, KBC procured a total of thirty-four (34) 20ft containers. These containers were to be used as warehouses in the 10 DVB-T2 sites for the APD Project. Requisition for the containers was done in two batches.

3.5.102 For the first batch of ten- 20ft containers, the requisition was made by the technical department on 21 June 2016 and their intended purpose was to be used as warehouses in the 10 APD sites. The request was approved by the Managing Director (MD) on 24 June 2016 through an internal Memo Ref No. KBC/MD/14/2/A/25/2/C.

3.5.103 According to the professional opinion dated 18 July 2016 and approved by the MD on 19 July 2016, the containers were to be acquired from Deepsea Shipping solution at a cost of USD 1,200 each (Approximately 1 USD=Ksh.100). Therefore, the approximate total cost of the 10 containers was Kshs.1,200,000.

As per a letter dated 12 October 2016, Deepsea Shipping Solution sold and

transferred ownership of a total of 8 containers to KBC. Therefore, the letter represented an ownership document for the 8 containers listed therein. Out of the total 10 containers procured, the ownership status of the balance of 2 containers could not be ascertained.

3.5.104 The acquisition of the second batch of 24 Containers was initiated through an internal memo Ref No. KBC/MD/12/10/C VOL.IV/47 dated 17 August 2017 and approved by the MD on the same day. The containers were to be acquired from Container Africa at a total cost of Kshs.3,840,000, inclusive of transport.

3.5.105 The Audit Team was not provided with documents to support the procurement of the 24 containers. However, a payment voucher of Kshs.3,877,281.55, in favor of Container Africa was provided, an indication that the 24 containers were purchased. The total cost of the 34 empty containers was therefore Kshs.5,077,281.55.

3.5.106 Further, the Ag. MD vide a letter Ref. No: KBC/MD/14/2/A/25/C Vol. VII dated 01 November 2017, stated that KBC had finalized procuring containers and had stored materials and equipment from the clearing and forwarding warehouse in to the containers. This statement indicated that KBC procured the containers mentioned in the above sections of the report.

3.5.107 The Audit Team was not provided with ownership documents for the 24 containers. It was therefore not possible to establish whether the said containers were delivered to KBC or not.

3.5.108 Therefore, a total of 26 containers, (2 in 1st batch and 24 2nd batch) did not have ownership documents. There is a risk of theft of the containers, since KBC has no ownership documents for the containers. Further, verification of the containers posed as a challenge due to lack of ownership documents. In the event of disposal of the assets, KBC may not be able to sell the containers without the ownership records.

b) Lack of Delivery Notes for 26 Containers

3.5.109 The Audit Team requested delivery documents for the abovementioned containers and out of the 34 procured, delivery documents for 8 were provided. The provided payment voucher for the 24 containers (2nd batch), did not have delivery notes as supporting documents. It was therefore not possible to establish which container(s) were taken to which site.

3.5.110 There is a likelihood of loss of containers since it was not possible to establish whether they were received by KBC, and the sites they were delivered to.

3.5.111 The following were the irregularities noted during verification in the 10 transmission sites, for the containers;

ii) Variance between Containers Procured and on Site: 26 Containers

3.5.112 Out of the batch of 10 containers procured, it was confirmed that 6 were in the APD sites namely; Siaya, Nyadundo, Hola, Lamu, Kitui and Webuye sites; 1 had been delivered to Kwale site but had since been auctioned by a 3rd party; 1 was said to have been delivered to a non- APD site- Marsabit/ Lang'ata. The audit team could not ascertain whether the balance of 2 containers valued at Kshs.240,000 were delivered to KBC, by Deepsea Shipping Solutions.

3.5.113 Out of the batch of 24 containers valued at Kshs.3,877,281.55, it was established that none of the containers were delivered to the 10 APD sites. Therefore, a total of 26 containers procured, were not seen on site during verification.

iii) Missing and/or Mishandled Containers

3.5.114 During site verification, the audit team established that the equipment (secondary infrastructure) for the 10 APD sites, were delivered using 20ft. containers. Out of the 10 sites, the audit team confirmed that 7 sites had a total of 25 empty containers.

3.5.115 The containers that delivered the equipment and what was verified in each site is as shown in the table below;

Table 25: Containers at Transmission Sites

No.	Transmission Site	Containers that Delivered Equipment	Containers verified	Variance/Remarks
1.	Siaya	05	02	03 missing
2.	Webuye	05	04	01 missing
3.	Nyadundo	05	02	03 missing
4.	Maralal	05	00	05 missing
5.	Kitui	05	04	01 missing
6.	Kwale	05	00	05 auctioned
7.	Kilifi	05	03	02 missing
8.	Lamu	05	05	00
9.	Hola	05	05	00
10.	Wajir	05	00	05 returned
Total		50	25	25

3.5.116 The 25 verified containers were idle and placed on an open ground resulting to deterioration/corrosion. Out of the 25 containers, 6 containers (3 in Kitui and 3 in Kilifi) were on a private land which may result in compensation obligation.

3.5.117 Out of the variance of 25 containers, the Audit Team established the following;

- 5 Containers from Wajir site were Returned to the shipping line.
- 5 Containers from Kwale site were allegedly Auctioned by a third party
- 15 Containers from various sites were Unaccounted for

a) Containers Returned- 5 Containers

3.5.118 According to an internal memo Ref No. KBC/MD/14/2/A/25/2/C dated 24 June 2016, the 5 containers were returned to the shipping line, after offloading the cargo at the Wajir site.

b) Containers Auctioned by a 3rd Party- 5 Containers

3.5.119 During verification in Kwale site by the Audit Team, the team observed that no containers were on site. It was explained that the 5 containers were auctioned by a third party. However, no evidence on the action taken by the Management against the third party was provided for audit.

c) Containers Unaccounted for- 15 Containers

3.5.120 Fifteen (15) containers comprising of 3 in Siaya, 1 in Webuye, 3 in Nyadundo, 5 in Maralal, 1 in Kitui and 2 in Kilifi were not verified by the Audit Team.

3.5.121 From the foregoing, a total of 46 empty containers comprising of 26 procured and not delivered to the sites, 5 that were alleged to have been auctioned and 15 that were missing, could not be accounted for. However, no evidence was provided to the Audit Team on the action taken by the Management to recover the containers.

Security Services for the Ten Sites

i) Few Security Guards Manning the Sites

3.5.122 As at the time of the verification it was noted that all 10 Transmission sites were manned by security guards from a Company named Base Security. For Siaya, Webuye, Nyadundo, Maralal, Kitui, Hola and Kilifi sites, the Audit Team noted that these sites had four security men who would guard the site day and night.

Lamu had three and Kwale had two security guards. Wajir site was being guarded by both the Administration Police and internal (KBC) security officers.

3.5.123 For Lamu and Kwale sites, the above observation contravened the contract between KBC and BASE Security Ltd, signed on 01 June 2021 which provided that each site should have four security guards. Lack of adequate number of security guards is a security risk to the Project's properties.

ii) Salary Arrears

3.5.124 The Hola, Kilifi, Kwale, Lamu and Maralal security officers claim not to have been paid their salaries (between 5 and 7 months' arrears).

iii) Lack of Security Tools

3.5.125 The Hola, Kilifi and Nyadundo Security officers did not have uniforms for easy identification. Further there were no shelter for the security guards thus posing a security risk of having non- staff members getting into the site.

Personnel Issues Noted at Transmission Sites

3.5.126 The Audit Team was informed that according to KBC's organizational structure, officers in charge of a transmission site, should either be a Principal Technical Officer (PTO) or Chief Technical Officer (CTO). The table below shows the designation of the officers in charge;

Table 26: Designation of Engineers In Charge of Sites

No.	Transmission Site	Name	Designation
1.	Siaya	Justus Ochieng	Senior Inspector Electronics
2.	Webuye	Preston Kipinge	Asst. Inspector Electronics
3.	Nyadundo	Michael Wandati	Senior Inspector Electronics
4.	Maralal	David Kariuki Mbogo	Superintendent Electronics
5.	Kitui	Christopher Mburu	Ag. Chief Technical Officer
6.	Kwale	Matu K. Gichuki	Senior Inspector Electronics
7.	Kilifi	Charles Wanjohi	Ag. Chief Technical Officer
8.	Lamu	Daniel Munga	Senior Inspector Electronics
9.	Hola	Jambo Dume	Senior Inspector Electronics
10.	Wajir	David Waithaka	Superintendent Electronics

3.5.127 From the table, it was noted that out of the 10 officers in charge, only 2 officers were in line with the organizational structure.

3.5.128 The officers in charge for Hola, Lamu and Kilifi sites were nearing retirement age (approximately within 1.5 years) and there are no officers who have been taken to the sites for training, to ensure smooth transition.

3.5.129 There are no technical officers permanently stationed at Kilifi Transmission Site. Further there were no shelter and offices for the officers in charge.

4.0 IRREGULARITIES AND RECOMMENDATIONS

4.1.1 The following irregularities and weaknesses, persons responsible and corresponding recommendations were identified by the Audit Team:

Table 27: Irregularities and Recommendations Matrix

	Irregularities and Weaknesses	Amount Involved (Kshs)	Responsibility	Recommendations
1.	Inadequate Planning at the preliminary and feasibility stages of the Project	N/A	PS- MOICT	Proper planning and involvement of all parties in the Project, prior to implementation
2.	Signing of Contract Agreement Prior to Signing of Loan Agreement	N/A	PS- MOICT	Agreements on implementation of Projects should be entered into once funding has been secured
3.	Non- Disbursement of Funds for Works and Services	157,285,485	PS- The National Treasury	Management should follow up on the amount from the Spanish firm (APD)
4.	Violation of Bilateral Agreement on selection of Spanish firm (APD)	N/A	PS- MOICT	Management should ensure that international firms are selected as per Agreements and procurement Laws
5.	Non- compliance with the Contract on funding of Training Expenses	2,510,090	MD- KBC	Management should follow up on the amount from the Spanish firm (APD)
6.	Non Payment of Loan Amount and Interest three months after falling due	45,362,121	PS- The National Treasury	The PS should ensure that contractual obligations are met within the required timelines
7.	Violation of Public Finance Management Regulations on Project Budget	10,758,897	Head of Finance & Administration-KBC	Management should have a budget specifically for each Project within the entity, and ensure that all Project expenses are budgeted for and comply with the Laws
8.	Unaccounted for Funds- Guarantee for 2 years	149,785,620	PS- MOICT	Management should follow up on the amount from the Spanish firm (APD)
9.	Utilisation of internal funds without approvals	120,472,095	Head of Finance & Administration-KBC	Management should ensure that all reallocated amounts are authorised and approved prior to utilisation
10.	Unsupported Expenditure	53,325,715	Head of Finance & Administration-KBC	Management should ensure that all expenditure is recorded and documents properly maintained
11.	Expenditure not related to the Project	647,539.69	Head of Finance & Administration-KBC	Management should ensure that all Project expenditure is accurately captured and recorded
12.	Failure to Remit Withheld Taxes	2,884,849	Head of Finance & Administration-KBC	Management should remit withheld taxes so as to avoid penalties
13.	Violation of Procurement Laws on tender opening, evaluation, inspection, award and contract variation	32,219,995+ 14,076,870+ 3,000,000+ 3,629,500 = 52,926,365	Head of Procurement- KBC	Management should review its Project procurement procedures to ensure they comply with the Laws

14.	Absence of Project's Policy and Manuals to Guide in Asset Management	N/A	Head of Finance & Administration- KBC	Management should in future develop policies and manuals for any Project and communicate to all the stakeholders.
15.	Poor record keeping at both KBC HQs and transmission sites	N/A	Manager, Technical Services- KBC	The officers in charge in all sites should maintain and update all site documents
16.	Un Accounted for Spare Parts- 15 Units	N/A	Manager, Technical Services- KBC	Management should carry out further investigations on the spare parts and ensure recovery of the same. All sites should maintain and update asset registers.
17.	Low output power and transmission interruptions due to faulty equipment, delay in repair/ replacing spare parts and power outages	N/A	Manager, Technical Services- KBC	Management should ensure constant availability of spare parts, provision of tools for repair, faster response to repair requests and that all generators are in good working condition. Management should set up functional monitoring and evaluation teams
18.	Poor working conditions at the Transmission Sites, inadequate security personnel, security tools and salary arrears	N/A	Manager, Technical Services- KBC	Management should provide the staff on site with shelter, proper sanitation and continuous staff training. Management should ensure that the firm procured to offer security services complies with the Contract in all aspects including salary payments.
19.	Violation of Asset Regulations on land acquisition	N/A	Corporation Secretary- KBC	Management should ensure that all ownership documents for land acquired are processed and the land is well secured
20.	Unaccounted for (46 Missing/ auctioned) Containers	3,877,281 + 240,000 = 4,117,281	Manager, Technical Services- KBC	Management should carry out further investigations on the missing and auctioned containers with a view of ensuring public assets (containers) are recovered

5.0 CONCLUSION

- 5.1.1 The objective of the Audit was to establish the overall status of the KBC Digital Terrestrial Television (Dvb-T2 Platform) Coverage Roll Out Project. The Audit Team noted lack of adequate planning at the Project inception stage resulting to under budgeting thus making KBC utilize internal funds for the Project without approvals/ authorizations for reallocation.
- 5.1.2 Further, the Audit Team noted that the Project was undertaken and financed by Spanish Companies, APD and ICO, respectively. However, documents to support the basis on which Spain and the two Companies were identified were not provided for audit. The Audit Team noted that the Project was extended by one and a half years without authority for the extension.
- 5.1.3 The Project cost was EUR 10,388,903 (Kshs.1,132,390,427) which was a loan from ICO in Spain. Out of the EUR 10,388,903, EUR 8,192,551 (Kshs.892,988,931) was disbursed to APD for equipment while EUR 822,144 (Kshs.89,615,876) was disbursed to KBC for primary infrastructure works.

However, the balance amounting to EUR 1,374,208 (Kshs.149,785,620) meant for the Project were not disbursed to KBC. The Contract between MOICT and APD indicated that the EUR 1,374,208 was for two years guarantee of the equipment. However, the EUR 1,374,208 remained unaccounted for.

5.1.4 Project assets that included spare parts and containers could not be accounted for by the KBC Management. The Audit Team further noted frequent transmission interruptions due to faulty equipment. The problem is further worsened by inadequate spare parts for the faulty equipment.

5.1.5 Further, there was a risk that the sites would be managed by untrained/unexperienced staff due to a noted lack of succession plan. It was further noted that the Project equipment may be in a risk of theft due to ineffective monitoring and supervision and non-payment of required salaries to the security guards.


CPA Nancy Gathungu, CBS

AUDITOR-GENERAL

8 August, 2022

6.0 APPENDICES

Appendix I: List of Documents Not Provided

S No.	Document	Date Requested
1.	Project Financial Statements for 2018/2019	08 December 2021
2.	KBC Policy Documents and Circulars relating to the Project	02 & 04 November 2021; 28 March 2022
3.	KBC Digital Terrestrial TV Project Agreements	02 & 04 November 2021; 28 March 2022
4.	Documents relating to identification of Spain as a financier	07 December 2021; 25 March 2022
5.	Documents relating to selection of APD	07 December 2021; 25 March 2022
6.	Government Guidelines, Circulars and Memos Relating to the Project	02 & 04 November 2021; 25 March 2022
7.	Project Feasibility Study Reports	02 & 04 November 2021; 25 & 28 March 2022
8.	Project Files (Factors that triggered the need for the project and activities to be undertaken during project implementation)	02 & 04 November 2021; 25 & 28 March 2022
9.	Project's Strategic Documents	02 & 04 November 2021; 25 & 28 March 2022
10.	Approved Project Annual Budgets 2018/2019	02 & 04 November 2021; 07 December 2021; 28 March 2022
11.	Approved Project Work Plans	02 & 04 November 2021; 07 December 2021; 28 March 2022
12.	Funding Documents	02 & 04 November 2021; 25 & 28 March 2022
13.	Funding Documents Beyond the Project Completion Period	02 & 04 November 2021; 22 December 2021; 25 & 28 March 2022
14.	Project Cash Books and Expenditure Schedules	02 & 04 November 2021; 28 March 2022
15.	Project Payment Vouchers	02, 04 & 24 November 2021; 08 December 2021; 22 December 2021; 28 March 2022
16.	Project Loan Disbursement Schedules	02 & 04 November 2021; 07 December 2021; 25 & 28 March 2022
17.	Project Bank Accounts, Bank Reconciliation Statements, Ledgers, Trial Balance, Vote Books	02 & 04 November 2021; 28 March 2022
18.	Project VAT Assessment Reports	02 & 04 November 2021; 28 March 2022
19.	Procurement Correspondence Files and Procurement Documents/ Records	02 & 04 November 2021; 25 & 28 March 2022

20.	Assets Registers	02 & 04 November 2021; 28 March 2022
21.	Sale Agreements for Land	07 & 22 December 2021; 25 & 28 March 2022
22.	Current Status and Valuation Report of the Project and its Assets	02 & 04 November 2021; 22 December 2021; 28 March 2022
23.	Project's Stores Documents	02 & 04 November 2021; 28 March 2022
24.	Ownership Documents for Project's Assets	02 & 04 November 2021; 07 & 22 December 2021; 11 January 2022; 28 March 2022

