



Audit Brief

Analysis of the Special Audit Report on Utilization of Covid-19 Funds by Kenya Medical Supplies Authority (KEMSA) for the Period 13th March- 31st July 2020

A. Introduction

This special audit was undertaken following a request by the Senate Ad Hoc Committee on Covid-19, the Senate Health Committee and the Public Investment Committee of the National Assembly. The request followed public uproar after media reports on alleged misuse of Covid-19 funds by the Kenya Medical Supplies Agency. The committees of the Senate and the National Assembly required the Auditor General to determine whether KEMSA adhered to the Public Procurement and Asset Disposal Act 2015 in the procurement of medical supplies to combat the Covid-19 pandemic, whether KEMSA adhered to the Public Finance Management Act, 2012 and whether there was value for money in the procurement of medical supplies.

B. Summary of Audit Findings

1. Irregular utilization of Universal Health Coverage (UHC) and capital Budget to fund Covid-19 related procurements.

The CEO of KEMSA wrote to the PS at the Ministry of Health seeking approval to utilize Universal Health Care Funds to pay for Covid-19 related procurements under KEMSA's capital budgets. The request was declined by the PS at the Ministry of Health in the letter referenced MOH/FIN/1/4 vol III (77). Contrary to the advisory and declined the request, KEMSA went ahead and utilized Universal Health Coverage to fund the Covid-19 related procurements. No evidence was provided that the KEMSA budget utilized was approved by the Ministry of Health, and/or National Treasury as required.

2. Irregular use of Retrospective Direct Procurement Method

The Auditor-General established that KEMSA used the Direct procurement method to source for Covid-19 related items. Commitment letters were issued to suppliers and then the procurement process was to follow after deliveries had been made. Procurement regulation requires that Direct Procurement can only be used under circumstances of urgency and the purpose of using direct procurement should not be to avoid competition.

- i. Direct procurement requires that acquisition price be fair and reasonable and compares well with known prices of goods and services. The special audit report notes that no market survey was done to form a basis for price negotiation and commitment letters only indicated volumes. Letter of intent indicated price proposal to be negotiated by the evaluation committee.
- ii. The special audit established that the Management of KEMSA commenced procurement of Covid-19 related items without putting in place systems and procedures to guide the use of retrospective Direct Procurement contrary to section 69(2) and section 45(1) of Public Procurement and Asset disposal Act 2015.
- iii. The Special audit notes that these guidelines called for unsolicited procurements that tend to be supplier driven rather than demand-driven contrary to section 73 of the Public Procurement Asset Disposal Act. Regulation 22(1) requires that procurements must be triggered by user needs.
- iv. Commitment letters worth Ksh 3,996,636,560 were irregularly issued to various suppliers of Covid19 items without putting in place systems and procedures for guiding retrospective direct procurement contrary to section (1) and (2), and section 45(1) of the Public Procurement Assets and disposal act of 2015.
- v. Even after the guidelines for retrospective direct procurement were instituted, there was no evidence of a market survey to establish if prices were fair, reasonable and comparable well with known prices of goods.

3. Commencing Covid-19 related procurement processes without Approved Budgets

KEMSA issued commitment letters worth Ksh 7,780,281,788 despite having no budget allocation for Covid-19 related procurements. Section 53(8) of the Public Procurement and Asset Disposal Act requires that accounting officers do not commence any procurement proceedings until satisfied that sufficient funds to meet obligations of the contract are reflected in its approved budget. Section 43(b) of the public finance management regulations 2015 requires that accounting officers only utilize public funds for the purpose for which they are appropriated.

4. Failure to integrate Covid-19 related procurement plan to the Budget Process

A procurement plan of Ksh 5,096,027,600 for Covid-19 health products was approved to be funded using KEMSA capital. There was no approved budget allocation for the procurement plan that was higher than the KEMSA capital budget. This implies that the procurement plan was not integrated with the applicable budget process contrary to section 53(5) of the Public Procurement and Asset Disposal Act, 2015.

5. Inefficient stock management procedures at KEMSA

The special report made a finding that stock valued at Ksh 6,279,531,019 out of the total stock of Ksh 7,632,068,588 was still lying at KEMSA when the special audit was conducted¹. This stock was procured using retrospective direct procurement between 13th March and 31st July 2020. On inefficient stock management procedures, the following findings were made;

- i. While these goods were procured under the basis of urgency, a larger share of about 82% of goods was still unused which implies there was no justification for procuring items on basis of urgency.
- ii. From a market survey done by KEMSA, the stock if sold at the current market prices would only realize Ksh 4,008,523,203 which would imply that KEMSA would make a loss of Ksh 2,338,261,175.
- iii. Age analysis of the stock conducted by the special audit team shows that 97% of Covid-19 items had been at KEMSA for more than 3 months which means that KEMSA procured more Covid-19 related stock without an objective assessment and forecasting of the existing demand of the products.

6. Red flags indicating procurement fraud

- i. Firms that had been in existence for less than a year before being awarded contracts that could not be deemed to have the necessary qualification and experience in the supply of specialized medical equipment's and products.
- ii. No evidence that the initiation of the procurement process for Covid-19 related items under the KEMSA capital budget was triggered by needs assessment to establish demand for these products.

¹Stock verification done as at September 18, 2020

7. Case of overpricing items by suppliers

A sample pricing review for a supplier shows that KEMSA negotiated from Ksh 4750 to Ksh 4500 for a box of 50 pieces of surgical face mask ear loop.

- i. The supplier had indicated the wish to supply the box of 50 pieces of facemasks at Ksh 3183 (\$30).
- ii. The supplier was awarded a contract to supply masks at 4500 which is Ksh 1317 more than the supplier's price, which makes the supply 30,000 units of surgical masks questionable.
- iii. Analysis of the price on the letter of intent and the award price reveals that public funds of up to Ksh 39,510,000 were potentially lost.

C. Audit Queries

For all the procurement undertaken by Kenya Medical Supplies Agency, there was no market survey done contrary to public procurement and disposal regulations. In doing so, the agency's quality assurance department failed to test samples before issuing commitment letters.

Table 1: Violations touching on all Covid-19 Procurement

Irregularity	Amount	Law/Regulation/Policy Violated
1. Failure to conduct market survey for items procured	8,388,872,706	Section 8(2) of the Public Procurement and Disposal Regulations 2006
2. Failure to test samples by Quality Assurance Department before issuance of Commitment Letter		Internal Memo from Director of Procurement dated 24 April 2020. No 1 of the technical evaluation criteria of the invitation of tender document number

Source: Special Audit Report on Utilization of Covid-19 Funds by Kenya Medical Supplies Authority for the Period 13th March- 31st July 2020

Audit Queries Relating to Procurement

The major audit queries range from pre-tendering, tendering to post tendering issues. Pre-tendering issues include prequalifying suppliers without evaluation and approval, engagement in business for which the supplier is not incorporated, and engaging un-prequalified suppliers. Tendering issues include engaging suppliers who are financially incapable and inexperienced to supply medical commodities. Post tendering issues include irregularly extension of delivery times, delivery of products past agreed on timelines without approval.

Table 2: Audit Queries Relating to Procurement

	Irregularity	Amount	SLaw/Regulation/Policy Violated
1.	Irregular extension of delivery times	632,535,000	PPAD Act, 2015. Section 88(1). Internal Memo from Director of Procurement dated April 2020
2.	Delivery of products past agreed on timelines without approval	223,000,000	Public finance Management National Government Regulations 2015 Section 53(1) & 2
3.	Engagement in business for which supplier is not incorporated for	871,640,000	Section 46(4)a of PPAD,2015: Section 71(2)b of PPAD 2015
4.	The supplier being financially incapable to execute the contract		Section 46(4)a of PPAD,2015: Section 71(2)b of PPAD 2015
5.	Director(s) technically incapable and inexperienced to supply medical commodities		Section 46(4)a of PPAD,2015: Section 71(2)b of PPAD 2015
6.	The supplier having inadequate experience in the market/Industry		Section V of the invitation to tender document
7.	Engaging un-prequalified suppliers		Section 57(1) of PPAD,2015: Section 46(4)a of PPAD,2015: Section 71(2)b of PPAD 2015
8.	Prequalifying suppliers without evaluation and approval	140,000,000	Section 46(4)a of PPAD,2015: Public Procurement and Disposal Regulations 2006 Section 25(1)

Source: Special Audit Report on Utilization of Covid-19 Funds by Kenya Medical Supplies Authority for the Period 13th March- 31st July 2020

Audits Queries Relating to Managerial Responsibility

The special audit identified irregularities relating to managerial responsibilities. These irregularities are the responsibility of the management of the Kenya Medical Supplies Agency.

Table 3: Irregularities relating to Managerial Responsibilities

	Irregularity	Law Violated/Risk	Amount(Ksh)
1.	Utilization of UHC & Capital Budget to fund Covid-19 related Procurements without Authority	Section 68(1) of PFMA 2012	7,632,068,588
2.	Irregular use of Retrospective Direct Procurement Method	Section 69(2),103 & 104(c) of PPDA 2015 requires approval on the use of the Method	8,388,872,706
3.	Commencing Covid19 related procurement processes without approved budgets	Section 53(8) of (PPDA, 2015) requires Accounting Officers of procuring entities not to commenced any procurement proceedings until satisfied that sufficient funds to meet obligations of the resulting contract are reflected in the Budget in its approved budget estimates	7,780,281,788
4.	Failure to integrate Covid19 related procurement plan to the budget process	Section 53(5) of PPDA, 2015 requires procurement planning to be integrated into budgeting process	7,780,281,788
5.	Inefficient stock management procedures exposing KEMSA to value for money risk	Section 139(2) of the PFM Regulations 2015 requires accounting officers to ensure that processes and procedures are in place for effective, efficient, economical and transparent use of government assets	6,346,784,383
6.	Failure to ensure procurements under KEMSA Capital Budget was guided by adequate market forecasting		
7.	Awarding tenders to companies that have been in existence in less than one year. Such companies cannot have the necessary qualification and experience to supply specialized medical supplies.	Risks and Red flags for procurement and contract frauds	1,013,979,000

Source: Special Audit Report on Utilization of Covid-19 Funds by Kenya Medical Supplies Authority for the Period 13th March- 31st July 2020

Opportunity Costs

i. Masks

To demonstrate the opportunity costs, we provide the case of overpricing of surgical masks and possible implications. In that instance, a firm requested to supply masks at \$ 30 per box of masks (each has 50 pieces of surgical masks). The Kenya Medical Supplies Agency offered a price of Ksh 4500 for the same box of surgical masks. That amounts to a price overpay of Ksh 1317. If KEMSA had paid at market prices for 25,000 boxes of masks, it would cost Ksh 79.58 million. However, KEMSA bought the box of masks at Ksh 4500, amounting to a total of Ksh 112.5 million. The difference of Ksh 32.93 million would have paid for 10,344 additional masks.

Table 4: Opportunity costs of buying Surgical Masks at Higher Prices

	Scenarios	Market Price (Ksh)	Offered Price (Ksh)	Price Overpay	No. of boxes Surgical Masks lost (if bought at Market Prices)
1.	1 unit	Ksh 3183	Ksh 4500	Ksh 1317	
2.	25,000 units	79.58 million	112.50 million	Ksh 32.93 million	10,344 units

Source: Authors own calculations, price data from Special Audit Report on Utilization of Covid-19 Funds by Kenya Medical Supplies Authority for the Period 13th March- 31st July 2020

ii. Loss of Ksh 2,338,261,175

The items at KEMSA warehouse that were procured at higher price as compared to the market price. The special audit report estimates that if goods were sold at the market price, a loss of Ksh 2,338,261,175 would be realized. If the loss had not occurred, the amount of Ksh 2,338,261,175 would have allowed the Ministry of Health to buy 29,228 medical cylinders at price of Ksh 80,000(\$730) . This would have increased the capacity of medical oxygen provision to meet the oxygen demand that resulting from the Covid-19 pandemic.

²US 1\$= Ksh 109.59

³David Herbling, “Kenya Hoard Oxygen Cylinders, Starving Hospitals of Gas,” Bloomberg.com, March 30, 2021, <https://www.bloomberg.com/news/articles/2021-03-30/kenya-hoard-oxygen-cylinders-starving-hospitals-of-the-gas>.

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