
SPECIAL AUDIT REPORT ON

UTILIZATION OF COVID-19 FUNDS

BY KENYA MEDICAL SUPPLIES AUTHORITY

(KEMSA)

FOR THE PERIOD 13 MARCH - 31 JULY 2020

COVID-19

SEPTEMBER 2020

VISION

Accountability and effective management of public resources

MISSION

To audit and report on the management of public resources for improved service delivery to the Kenyan people.

CORE VALUES

Integrity
Objectivity
Professionalism Competence
Innovation
Team Spirit

MOTTO

Enhancing Accountability

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ABBREVIATIONS

Abbreviation	Full Name
CEO	Chief Executive Officer
CHERP	COVID Emergency Response Project
KEMSA	Kenya Medical Supplies Authority
MOH	Ministry of Health
PFMR	Public Finance Management Regulations
PFMA	Public Finance Management Act
PPADA	Public Procurement & Asset Disposal Act
THS	Transforming Health Project
UHC	Universal Health Care

1. EXECUTIVE SUMMARY

1.1 Introduction

1.1.1 The Auditor-General received three requests from; the Senate Ad Hoc Committee on COVID -19, the Senate Health Committee and the Public Investment Committee of the National Assembly to conduct Special Audits on Utilization of COVID -19 Funds as follows:

	Date	Source of request	Scope
1	23 July, 2020, Letter Referenced SEN/DCO/CORR/SCH/02/003/2020 (1)	Senate Health Committee	<ul style="list-style-type: none">• Special Audit on Accounts of KEMSA for the period 2017/2018-2019/2020.• Utilization of COVID -19 Funds by County Governments.
2	4 August, 2020 Letter Referenced SEN / 12/4/ AC-COVID 19/ 2020 (57)	Senate Ad Hoc Committee on COVID -19 Situation	<ul style="list-style-type: none">• Utilization of COVID -19 Funds by County Governments.
3	31 August, 2020 Letter Referenced NA/DC/PIC/2020 (87)	Public Investment Committee	<ul style="list-style-type: none">• KEMSA Procurement process.• Utilization of COVID -19 Funds.

1.1.2 Following consultations, the Senate Standing Committee on Health and the Senate Ad Hoc Committee on the COVID-19 jointly requested the Auditor-General vide a letter Referenced: SEN / SCH / KEMSA /CORR/ 2020/09/ (1), dated 15 September, 2020, to conduct a forensic audit on the procurements undertaken by the Kenya Medical Supplies Authority (KEMSA) in response to COVID-19 Pandemic.

- 1.1.3 In particular, the Committees required the Auditor-General to conduct the audit and report to them on whether:
- a. KEMSA adhered to the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) in the procurement of medical supplies for purposes of combating the COVID-19 pandemic;
 - b. KEMSA adhered to the Public Finance Management Act, 2012 (PFMA, 2012) in the procurement of medical supplies; and
 - c. There was value for money in the procurement of medical supplies through KEMSA, for purposes of combating the pandemic.

1.2 Objectives

- 1.2.1 The objective of the special audit is to confirm whether public funds utilized by KEMSA for procurement of medical supplies for purposes of combating the COVID-19 pandemic were used in a manner that is lawful and effective.

1.3 Terms of Reference

- 1.3.1 The special audit was covered by the following Terms of References:
- a. Review the budgeting & financing process at KEMSA in relation to procurement of medical supplies for purposes of combating the COVID-19 pandemic;
 - b. Establish expenditure incurred by KEMSA including accountability for donations received for combating the COVID-19 pandemic; and
 - c. Review the procurement process of expenditures incurred by KEMSA in relation to medical supplies for combating the COVID-19 pandemic
- 1.3.2 For each of the aforementioned Terms of Reference, the special audit is to confirm whether the process complied with the Constitution of Kenya, the Public Finance Management Act, 2012 and the Public Procurement and Asset Disposal Act, 2015.

1.4 Scope of Work and Limitations

- 1.4.1 The Special Audit Report covers utilization of COVID-19 funds and donations by KEMSA for the period from 13 March, 2020 to 31 July, 2020.
- 1.4.2 In the interest of timely reporting, some of the evidence obtained and relied on to report on the findings articulated in this special audit report were based on emails and copies of correspondence which were not verified for authenticity.

1.4.3 The following items have not been covered by this special audit report but will be considered in the Special Audit Report for Utilization of COVID-19 funds by other Government Entities to be issued at a later date:

- Receipt and distribution of non-cash COVID-19 related donations by KEMSA on behalf of the Ministry of Health; and
- Receipt and distribution of World Bank funded procured COVID-19 related items by KEMSA on behalf of the Ministry of Health.

1.5 Structure of the Report

1.5.1 The special audit report has three sections; the executive summary, the detailed approach and the detailed findings. The report should be read in its entirety in order to comprehend fully the approach and the findings.

1.5.2 The report has reported on facts as understood, with the aim of informing the Senate Standing Committee on Health, the Senate Ad Hoc Committee on the COVID-19 and the Public Investment Committee, on their deliberations and decision-making taking cognizance of any limitations raised.

1.6 Key Findings

Preamble

1.6.1 In summary, the special audit established the following:

	Statutory Requirement	Summary of Findings
1	Adherence to the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015)	Management of KEMSA, Violated provisions of the PPADA, 2015 in all material aspects.
2	Adherence to the Public Finance Management Act, 2012 (PFMA, 2012)	The budgetary process for capital budgets did not comply with PFMA, 2012
3	Value for Money	Given the inefficiencies in the procurement process and the fact that 97% of supplies procured were still in KEMSA warehouses as at the time of audit, there was no value for money realized.

BUDGET MANAGEMENT FOR COVID-19 RELATED EXPENDITURES

Irregular Utilization of Universal Health Coverage (UHC) and Capital Budget to fund COVID-19 related procurements

- 1.6.2 The special audit established that Kenya Medical Supplies Authority (KEMSA), had various sources of funding for COVID -19 related spending for the period from 13 March, 2020 to 30 June, 2020. These were; the Universal Health Coverage (UHC) funds, KEMSA capital funds and other programme funds appropriated by the Ministry of Health.
- 1.6.3 This was noted in a letter Referenced KEMSA/CEO/ADM/2020/115, dated 20 August, 2020, where the Chairman of KEMSA wrote to the Cabinet Secretary at the Ministry of Health, indicating that KEMSA had utilized the Universal Health Coverage Budget (UHC) to fund the COVID -19 related procurements.

- 1.6.4 The Ministry of Health also additionally allocated through supplementary budgets to KEMSA a total of Kshs.3,013,530,583, to finance procurement of COVID-19 related items under the World Bank and Government of Kenya funded programmes.
- 1.6.5 It was also established that, during the financial year 2019/2020, the Board of KEMSA approved a total capital budget of Kshs.4,655,709,000 on 24 January 2019, vide minute number 4/FB/2019, based on the procurement plan for financial year 2019/2020 to finance procurement of pharmaceuticals commodities valued as Kshs.2,935,424,524 and non-pharmaceuticals commodities valued at Kshs.1,720,284,476.
- 1.6.6 Utilization of KEMSA capital budget is guided by the Public Finance Management Act, 2012, the Public Procurement & Asset Disposal Act, 2015 and the Standard Operating Procedures for Finance and Procurement developed in March 2018 by KEMSA Management. However, there was no evidence that these budgets were approved either by the Ministry of Health and/or the National Treasury as required.
- 1.6.7 There was no evidence that Management and the Board of KEMSA either re-allocated any of the capital budget amount of Kshs.4,655,709,000 or requested for a supplementary capital budget to cater for the emerging COVID-19 related procurements. Therefore, the KEMSA capital budget for financial year 2019/2020 did not have allocation for COVID-19 related procurements.
- 1.6.8 The special audit notes that UHC funds are specific programme funds planned and budgeted for by the Ministry of Health for Universal Health Coverage in Counties. The funds therefore, do not form part of KEMSA capital budget. However, in a letter dated 12 June, 2020, referenced KEMSA/CEO /DFS /19/20/6/11/ (2), the Chief Executive Officer of KEMSA, Dr. Jonah Manjari, wrote to the Principal Secretary at the Ministry of Health, seeking for approval to utilize Universal Health Coverage (UHC) funds to pay for COVID-19 related procurements under KEMSA capital budgets. This request was declined by the PS at the Ministry of Health in her letter referenced MOH/FIN/1/4 VOL III (77) to KEMSA Chief Executive Officer, Dr. Jonah Manjari.
- 1.6.9 Contrary to the decline and advisory by the PS at the Ministry of Health, the Chairman for KEMSA, wrote to the Cabinet Secretary for the Ministry of Health in a letter Referenced KEMSA/CEO/ADM/2020/115 dated 20 August, 2020,

indicating that KEMSA had utilized the Universal Health Coverage Budget (UHC) to fund the COVID -19 related procurements.

- 1.6.10 The special audit noted that reports from KEMSA indicated that the procurements amounting to Kshs.7,632,068,588 were funded from KEMSA capital budget out of which Kshs.4,712,869,916 had been paid. This was a clear indication of comingling of Universal Health Coverage (UHC) funds and KEMSA capital funds, and both of which were irregularly used to fund COVID-19 related expenditures.
- 1.6.11 Due to comingling of funds and the limited time, the special audit team could not establish how much was irregularly used from each of the aforementioned funds. The Management of KEMSA therefore contravened Section 68 (1) of the Public Financial Management Act, 2012 that requires Accounting Officers to ensure resources within their entities are used in a lawful, effective, efficient, economical and transparent manner. It is recommended that the KEMSA Management conduct a reconciliation of the UHC and capital budgets expenditures to establish the level and infractions in the utilization of COVID-19 funds.

Source of funds for Covid-19 related procurements by KEMSA

- 1.6.12 It was established that during the period under review, the Ministry of Health allocated funds to KEMSA to finance COVID -19 related expenditures and Universal Health Care (UHC) programme as follows:

	Particulars	Amount (Kshs)
1	Universal Health Care (UHC) programme	13,047,073,119
2	Procurement of COVID-19 related activities	3,013,530,583
3	Amount received for KEMSA Tax on USAID procured HPTs	333,470,837
		16,394,074,539

- 1.6.13 The Ministry of Health allocated through supplementary budgets, an amount of Kshs.3,013,530,583 to KEMSA to finance procurement of COVID-19 related items.

1.6.14 The World Bank funds were also disbursed through the Ministry of Health and received by KEMSA in Kenya Shillings. Both the Ministry of Health and World Bank funding for COVID - 19 expenditure amounted to Kshs.2,181,934,518. The details are as follows:

	Source of Funds	Sub Head	Allocation to KEMSA (Kshs)	Amount Received	Recipient Bank Account
1	World Bank	CERC-Transforming Health Systems Project (THS)	758,690,583	304,160,118	EQUITY BANK KEMSA Trade Account number 014002613 98514
2	World Bank	Kenya COVID-19 Emergency Response Project (CHERP)	454,840,000	77,774,400	EQUITY BANK KEMSA Trade Account number 014002613 98514
3	Government of Kenya	Procurement of Test kits and reagents	1,500,000,000	1,500,000,000	EQUITY BANK Warehouse Construction Account number 140026442 6362
4	Government of Kenya	Supply of Facemasks to vulnerable groups	300,000,000	300,000,000	NATIONAL BANK OF KENYA KEMSA Operations Account number 100300912 500
			3,013,530,583	2,181,934,518	

- 1.6.15 In addition, it was established that the Ministry of Health allocated an amount of Kshs.13,047,073,119 to KEMSA to finance Universal Health Care Coverage (UHC) out of which only Kshs.8,520,232,791 was received on 11 March, 2020 and 11 June, 2020 by KEMSA during the period under review. The balance of Kshs.4,526,840,328 had been requested by KEMSA for purchase of Medical Equipment under UHC but the Ministry of Health deferred the request to financial year 2020/2021.
- 1.6.16 Though records at the National Treasury indicated that an amount of Kshs.4,819,321,350 (comprising the Kshs.2,682,852,853, Kshs. 1,802,997,660 and Kshs. 333,470,837) had been disbursed to the Ministry of Health for Covid-19 related activities at KEMSA, records at KEMSA and the Ministry of Health indicated the funds were disbursed for UHC and KEMSA Tax on USAID procured HPTs. The special audit team is following up on this conflicting information and the findings will be presented in the Special Audit Report on Utilization of Covid-19 funds in Kenya to be released at a later date.

PROCUREMENT PROCESS FOR COVID-19 RELATED EXPENDITURES

Irregular use of Retrospective Direct Procurement Method

- 1.6.17 The special audit established that KEMSA used Direct Procurement method to source for COVID -19 related items. It was noted that commitment letters were issued to suppliers and then the procurement process was to follow after deliveries were made.
- 1.6.18 Section 103 and 104 (C) of the Public Procurement & Asset Disposal Act, 2015 provides that Direct Procurement can be used under the following circumstances:
- a. Under circumstances of urgency. We noted that this was also emphasized in the Solicitor-General's advisory of 17 April, 2020 and the Public Procurement and Regulatory Authority Circular NO.02/2020 of 27 March, 2020 to Accounting Officers;
 - b. Provided that the acquisition price is fair and reasonable and compares well with known prices of goods and services. We note that there was no market survey done to form a basis for price negotiation. Commitment letters only indicated volumes. Letters of intent indicated price proposal to be negotiated by the evaluation committee;

- c. The purpose of using Direct Procurement is not to avoid competition; and
 - d. Appropriate approvals are sought before using the method. We note that the Public Procurement and Asset Disposal Act, 2015 is not explicit on who should approve the procurement methods but Section 44(1) provides that the Accounting Officer is responsible for ensuring compliance with the Act. In KEMSA the Head of Procurement seeks approval for Direct Procurement and the Accounting Officer approves.
- 1.6.19 The special audit established that that the Management of KEMSA commenced procurement of COVID-19 related items on 18 March, 2020 using retrospective Direct Procurement method 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 the PPADA, 2015.
- 1.6.20 Section 69 (2) of the Public Procurement and Asset Disposal Act, 2015 allow the use of retrospective Direct Procurement method, under circumstances of urgency, on condition that this method is properly approved by the Accounting Officer. While the approval was sought by the Director of Procurement and approved by Accounting Officer, this occurred retrospectively.
- 1.6.21 Section 45 (1) of the PPADA, 2015 requires that, for the purpose of ensuring that the Accounting Officer's decisions are made in a systematic and structured way, an Accounting Officer, shall establish systems and procedures to facilitate decision making for procurement and asset disposal.
- 1.6.22 On 24 April, 2020, the Director of Procurement at KEMSA issued an internal memo to all Heads of Departments, outlining the procedures to be followed in procuring COVID-19 related items. The memo, required that, prospective suppliers were to submit letters of intent to supply goods to KEMSA, provide a sample that would be evaluated for conformity to the required technical specifications and that the procurement be within the approved budget.
- 1.6.23 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 PPADA, 2015 and Regulation 22(1) that requires that procurements must be triggered by user needs. It is the responsibility of the Accounting Officer to ensure compliance with the PPADA, 2015. The Chief Executive Officer therefore ought to have ensured that there was communication

procurement procedures to all stakeholders including suppliers. There was no evidence that such communication was made to suppliers.

1.6.24 It was also observed that, pre-delivery samples were evaluated by Inspection and Acceptance Committee and communication given to suppliers to schedule delivery to KEMSA warehouses if accepted. There were however, no controls and procedures undertaken to confirm availability of budgets before committing the suppliers.

1.6.25 According to an internal memo issued by the Director of Finance on 24 April, 2020, by the time KEMSA developed and issued the guidelines on use of retrospective Direct Procurement method on 24 April, 2020, commitment letters amounting to Kshs.3,996,636,560 had been issued to various suppliers of COVID-19 items. These commitment letters were therefore irregularly issued without putting in place systems and procedures to guide the use of retrospective Direct Procurement contrary to sections 69 (1), (2) and Section 45 (1) of the PPADA, 2015. Even after the guidelines were put in place, these were not adhered to because there was no evidence of a market survey to establish if the prices were fair, reasonable and compared well with known prices of goods.

1.6.26 The special audit therefore established that a total of Kshs.8,388,872,706 COVID-19 related items were irregularly procured using retrospective Direct Procurement since the guidelines were not adhered to as follows:

	Source of funds	Name of project	Approved Covid-19 Budget (Kshs)	Amount incurred (Kshs)	Amounts Paid (Kshs.)
1	KEMSA Universal Health Care (UHC) & KEMSA Capital Budget	Universal Health Care (UHC) & KEMSA Capital budget	0	7,632,068,588	Kshs.4,712,869,916
2	World Bank	CERC-Transforming Health Systems Project (THS)	758,690,583	304,160,118	Kshs.304,160,118
	World Bank	Kenya COVID-19 Emergency Response Project	454,840,000	452,644,000	0

Source of funds	Name of project	Approved Covid-19 Budget (Kshs)	Amount incurred (Kshs)	Amounts Paid (Kshs.)
	(CHERP)- Purchase of Abbott-Time SARS-COV-2 test Kits and PCR tests & extraction kits and virus transport media			
			8,388,872,706	5,017,030,034

The special audit therefore confirmed that out of the total amounts incurred of Kshs.8,388,872,706, Kshs.5,017,030,034 was already paid. This therefore resulted on pending bills amounting to Kshs.3,371,842,672.

Commencing Covid-19 related procurement processes without approved budgets

1.6.27 Despite KEMSA having no budget allocation for Covid-19 related procurements, KEMSA issued commitment letters amounting to Kshs.7,780,281,788 on COVID-19 related procurements yet there was no capital budgetary allocation for the same as detailed below:

	Particulars	Amount (Kshs)
1	Commitment letters issued	7,780,281,788
2	Valued of goods received	7,632,068,588
3	Amount paid to suppliers	4,712,869,916
4	Amount outstanding to suppliers	2,919,198,672

1.6.28 The KEMSA Management therefore violated Section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) that requires Accounting Officers of Procuring Entities not to commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates. This also contravenes Section 43 (b) of the Public Finance Management Regulations (PFMR), 2015 that requires Accounting Officers to ensure public funds are only utilized for the purpose to which they were appropriated. In addition, KEMSA

may not be in a position to efficiently and effectively implement the UHC programme given that some of the funds have been irregularly utilized in procurement of COVID-19 items.

Failure to integrate Covid-19 related procurement plan to the budget process

- 1.6.29 The special audit established that the Chief Executive Officer for KEMSA approved a Procurement Plan totaling to Kshs.5,096,027,600 for COVID-19 Health Products and Technologies (HPT's) to be funded using KEMSA capital budget. This amount was higher than the available capital budget.
- 1.6.30 Though the procurement plan indicated that the procurements were to be funded by KEMSA capital budget, there was no approved budget allocation for Covid-19 related procurements in both the KEMSA Capital Budget and the Universal Health Coverage (UHC) Budget. The amounts of Kshs.5,096,027,600 indicated in the procurement plan was also higher than the actual Capital Budget. Therefore, the above procurement plan was not integrated with the applicable budget process for Covid-19 expenditures contrary to Section 53 (5) of the Public Procurement and Asset Disposal Act, 2015.
- 1.6.31 Section 53 (5) of the Public Procurement and Asset Disposal Act, 2015 requires procurement and asset planning to be based on indicative or approved budgets which shall be integrated with applicable budget process.

Inefficient stock management procedures at KEMSA

- 1.6.32 The special audit established that the total acquisition value of Covid-19 related stock received at KEMSA warehouses during the period under review was Kshs.7,632,068,588 , out of which stock valued at Kshs.6,279,531,019 was still lying in KEMSA Warehouses as at 18 September, 2020. This is despite the items having been procured using Direct Procurement method on the basis of urgency. Out of the stock valued at Kshs.7,632,068,588 procured, an amount of Kshs.4,712,869,916 had been paid for while Kshs.2,919,198,672 had not been paid due to lack of funds while in other circumstances LPOs had not been issued. This is an indication that there was no justification for procuring the items on the basis of urgency.

- 1.6.33 Section 139 (2) of the Public Finance Management Regulations, 2015, requires Accounting Officers to ensure that processes and procedures are in place for effective, efficient, economical and transparent use of government assets.
- 1.6.34 In a letter referenced KEMSA / CEO/ADM/2020/115 dated 20 August, 2020, the Chairman for KEMSA, wrote to the Cabinet Secretary for the Ministry of Health indicating that, if KEMSA was to liquidate the above stock through sale so as to release the cash towards off-setting liabilities, the selling price would have to be marked down to match the current market prices which was based on a KEMSA internal assessment whose independence could not be verified. With the declining demand for Covid-19 related items, it is unlikely that KEMSA will be able to liquidate the stock and therefore KEMSA is exposed to the risk of holding the stock to expiry.
- 1.6.35 From the market survey done by KEMSA on the affected stock items, the stock, if sold at current market prices, will only realize Kshs.4,008,523,203 realizing a loss of Kshs.2,338,261,175.
- 1.6.36 On 18 September, 2020, the special audit team conducted a stock take exercise at three KEMSA warehouses at Embakasi, Annex and Sunflag. The objective of the exercise was to determine the actual receipt value of stock, the value of stock issued out so far, the value of stock still being held at the warehouses and the duration the stock has been held from the time it was delivered.
- 1.6.37 The special audit team conducted an age analysis of stock held at KEMSA as at 18 September, 2020 to establish how long the stock had been at the warehouses and established that 97 per cent of COVID-19 items have been at the KEMSA warehouses for more than 3 months. It is therefore clear that KEMSA over procured COVID-19 related stock without an objective assessment and forecasting of the existing demand for the products.
- 1.6.38 Consequently, the products remain un-utilized at the warehouses tying up the KEMSA Working capital. This will adversely affect KEMSA's liquidity and therefore increase its going concern risks. Given the strategic role of KEMSA in supply chain management of medical supplies at both National and County Governments levels, the Universal Health Care programme, Vision 2030 and the one of the "Big Four Agenda" objectives might be exposed to sustainability risks.
- 1.6.39 The special audit therefore notes that KEMSA's Management failed to comply with Section 139 (2) of the Public Finance Management Regulations, 2015 that

requires Accounting Officers to ensure that, processes and procedures are in place for effective, efficient, economical and transparent use of Covid-19 related stocks.

Red flags indicating potential procurement fraud

1.6.40 The special audit established circumstances where Companies that had been in existence in less than 1 year, were awarded contracts to supply Covid-19 related items as follows:

	Name	Date of registration	Contract details	Contract value (Kshs)	Remarks
1	Shop 'N' Buy Ltd	14 February, 2020	KN95 Facemasks and Personal Protective Equipment (PPEs)	900,070,000	Items were delivered at KEMSA warehouses on 22 June, 2020. Payment is still pending.
2	Kilig Ltd	22 January, 2020	Personal Protective Equipment (PPEs)	9,000,000	Items were delivered at KEMSA warehouses on 22 June, 2020. Payment is still pending.
3	Nanopay Ltd	22 August, 2019	KN95 Facemasks	349,790,000	Items delivered and paid on 6 August 2020.
				1,258,860,000	

1.6.41 The special audit notes that these Companies had been in existence for less than a year before being awarded the contracts and cannot therefore be deemed to have the necessary qualification and experience in supply of specialized medical equipment/products.

1.6.42 It was also established that there was no evidence that the initiation of procurement process for Covid-19 related items under KEMSA capital budget was triggered by a need assessment to establish the demand for these products. This is evidenced by initiation of procurement process without planning and budgeting, use of Direct Procurement in disguise of urgency when indeed the products are still lying at KEMSA Warehouses for as long as 6 months. The procurements were therefore not conducted in the best interest of KEMSA and

the public but could have been influenced by suppliers and Management of KEMSA. There is need for further investigations on all companies engaged by KEMSA to establish acts of procurement frauds and collusion.

Initiation of procurement process

1.6.43 The special audit noted a chronology of the initiation of the procurement process as below:

1.6.44 It was established that, on diverse dates as listed in the table below, Ms. Susan Mochache, the Principal Secretary at the Ministry of Health, wrote to the Chief Executive Officer of KEMSA requesting for urgent procurement of COVID-19 related items based on recommendations by the National COVID-19 Task Force projections:

	Date	Letter Reference	Remarks
1	18 March, 2020	MOH / ADM/1/1/2	<ul style="list-style-type: none"> • 25,000 Personal Protective Equipment • 10,000 pieces of N 95 Masks • 6,000 laboratory Sample Transport Collection Consumable Kits
2	19 March, 2020	MOH /ADM/ 1/ A VOL II	60000 Laboratory test kits
3	23 March, 2020	MOH / DC/9/1/33	30 Ventilators

1.6.45 Upon follow-up by the PS at the Ministry of Health, Ms. Susan Mochache, Mr. Eliud Mureithi, the Director of Commercial Services at KEMSA wrote an email on 01 April, 2020, to the Principal Secretary at the Ministry of Health submitting a status report indicating that KEMSA had ordered Covid-19 related items amounting to Kshs.2,184,998,962 out of which Kshs.149,075,296 had been delivered. The status report by KEMSA to the Ministry of Health had names of suppliers, prices of the items and quantity to be delivered. It was noted that the quantity reported by KEMSA as having been ordered to the Ministry of Health was more than what the Ministry of Health had requested.

1.6.46 Subsequently, on 07 April, 2020, Mr. Eliud Mureithi, the Director of Commercial Services at KEMSA wrote an email to Ms. Susan Mochache, the Principal Secretary at the Ministry of Health submitting a rationalized list of the items to be procured. The email referred to a meeting held on 06 April, 2020, between

KEMSA and the Ministry of Health where the budget was rationalized. The email had an attachment of details of commodities to be procured, prices and suppliers.

- 1.6.47 On 15 April, 2020, through a letter Referenced MOH/ADM/1/1/171 Vol.1 (196), Ms. Susan Mochache, the Principal Secretary at the Ministry of Health, informed the Chief Executive Officer of KEMSA, Dr. Jonah Manjari that World Bank Funded Transforming Health Systems Project (THS-UCP) through the Contingency Emergency Response Component (CERC) would support the COVID-19 response activities through procurement of critical goods and services.
- 1.6.48 In the same letter, Ms. Susan Mochache, the Principal Secretary also informed the Chief Executive Officer for KEMSA, that various items had been identified and approved by the World Bank for procurement by KEMSA. The Principal Secretary thus approved the procurement of goods by KEMSA worth Kshs.758,690,583 as was detailed in an Annexure attached to the request. The Annexure contained descriptions of items to be procured, the unit of measure, supplier, quantity and unit price as had been indicated in the email of 07 April, 2020 from Mr. Eliud Mureithi, the Director of Commercial Services at KEMSA to Ms. Susan Mochache, the Principal Secretary at the Ministry of Health.
- 1.6.49 In the interest of timely reporting, these email correspondences and copies of letters were not verified for authenticity.

Case of overpricing items by Suppliers

- 1.6.50 A sample review on pricing by a supplier, M/s. Gladlab Supplies Limited noted that the company's letter of intent to supply surgical face mask ear loop was at a price of Kshs.95 a piece as at 8 April, 2020. The facemasks were received at KEMSA on 9 April, 2020. This therefore means a pack of 50 pieces would cost Kshs.4,750.
- 1.6.51 On the same day, 9 April 2020, a letter was received by KEMSA from the supplier stating that they would like to supply the surgical face mask ear loop with the price of 30 USD per box of 50 pieces, therefore, the price per box of 50 pieces would translate to Kshs.3,183.
- 1.6.52 In a letter Referenced KEMSA/PROC/DP136/2019-20 of 19 May, 2020, M/s. Gladlab Supplies Limited was invited to tender for the supply of surgical mask

disposable 3 ply ear-loop, Tender number KEMSA/DP136/2019-20 with a closing date of 21 May, 2020.

- 1.6.53 The Evaluation Committee's minutes of 22 May, 2020 indicate that they negotiated from Kshs. 4,750 to Kshs. 4,500. The supplier was awarded to supply the masks at Kshs.4,500 which is higher than the agreed price of 30 USD or Kshs.3,183 in a letter to the Accounting Officer dated 9 April, 2020 hence a pricing difference of Kshs.1,317 per box of 50 pieces.
- 1.6.54 It was also not clear why the Accounting Officer in a letter dated 21 May, 2020 from the Director of Procurement gave authority to procure using Direct Procurement method quoting an estimated cost of Kshs.90 per piece or Kshs.4,500 while there was an agreed upon price of USD30 (Kshs.3,183).
- 1.6.55 In view of the above significant inconsistencies, the price determination for the supply of 30,000 units of surgical mask disposable 3 ply ear-loop is questionable. An analysis of the price on the letter of intent of 9 April, 2020 and the award price reveals that public funds of up to Kshs.39,510,000 were potentially lost.

Violations to the Public Procurement and Disposal Act, 2015

- 1.6.56 The special audit identified additional violations to the Public Procurement and Asset Disposal Act, 2015 as follows:

S/No.	Irregularity noted	Amount	Section of law violated
1.	Failure to conduct market survey for items being procured	8,388,872,706	Section 8(2) of the public Procurement and Disposal Regulations 2006.
2	Failure to test samples by Quality and 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
3.	Irregular extension of delivery timelines	632,535,000	PPAD Act, 2015, Section 88(1) Internal Memo from Director of Procurement dated 24 April, 2020
4.	Delivery of products past agreed timelines without approval	223,000,000	Public Finance Management -National Government Regulations 2015 Section 53(1) & (2)

S/No.	Irregularity noted	Amount	Section of law violated
5.	Engagement in businesses for which the supplier was not incorporated for.	871,640,000	Section 46 (4)(a) of PPAD, 2015. Section 71(2) (b) of PPAD, 2015.
6.	The Supplier being financially incapable to execute the contract		Section 46 (4)(a) of PPAD, 2015 Section 71(2) (b) of PPAD, 2015.
7.	Director(s) technically incapable and inexperienced to supply medical commodities		Section 46 (4)(a) of PPAD, 2015 Section 71(2) (b) of PPAD, 2015.
8.	The supplier having inadequate experience in the market /industry		Section V of the invitation to tender document
9.	Engaging un pre-qualified suppliers		Section 57 (1) of PPAD, 2015 Section 46 (4)(a) of PPAD, 2015 Section 71(2) (a) and (b) of PPAD, 2015.
10.	Pre-qualifying suppliers without evaluation and approval	140,000,000	Section 46 (4)(a) of PPAD Act, 2015 The public procurement and disposal Regulations 2006 Section 25(1)

1.7 Managerial Responsibility

1.7.1 The special audit identified the following irregularities & managerial responsibilities:

Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
1 Utilization of Universal Health Coverage (UHC) and Capital Budget to fund COVID-19 related procurements without authority.	Section 68 (1) of the Public Financial Management Act, 2012 that requires Accounting Officers to ensure resources within their entities are used in a lawful, effective, efficient, economical and transparent manner.	7,632,068,588	Chief Executive Officer and Management of KEMSA
2 Irregular use of retrospective Direct Procurement method.	Sections 69 (2), 103 and 104 (C) of the Public Procurement & Asset Disposal Act, 2015 that requires among others prior approval on use of the method.	8,388,872,706	Chief Executive Officer and Management of KEMSA
3 Commencing COVID-19 related procurement processes without approved budgets.	Section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) that requires Accounting Officers of Procuring Entities not to commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.	7,780,281,788	Chief Executive Officer and Management of KEMSA

	Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
4	<p>Failure to integrate COVID-19 related procurement plan to the budget process.</p>	<p>Section 53 (5) of the Procurement and Asset Disposal Act, 2015 that requires procurement planning to be integrated to budgeting process.</p>	7,780,281,788	Chief Executive Officer and Management of KEMSA
5	<ul style="list-style-type: none"> Inefficient stock management procedures exposing KEMSA to value for money risk. Failure to ensure procurements under KEMSA Capital Budget were guided by adequate market forecasting. 	<p>Section 139 (2) of the Public Finance Management Regulations, 2015, requires accounting officers to ensure that processes and procedures are in place for effective, efficient, economical and transparent use of government assets.</p>	6,346,784,383	Chief Executive Officer and Management of KEMSA
6	<p>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.</p>	<p>Risks and red flags for procurement and contract frauds.</p>	1,258,860,000	Chief Executive Officer and Management of KEMSA

	Irregularity	Law violated /Risk	Amount at risk (Kshs)	Responsibility
7	Various procurement malpractices detailed in section 1.6.40.	Violations of PPADA ,2015 and PFMA, 2012 as detailed in section 1.6.42.	As detailed in Section 1.6.42	Chief Executive Officer and Management of KEMSA

1.8 Conclusion and Recommendations

1.8.1 During the period under review, KEMSA irregularly utilized Universal Health Coverage and Capital Budget to procure COVID-19 related items worth Kshs.7,632,068,588 without evidence of approval of the budgets by relevant authorities. The procurement process was not initiated based on need assessment and planning resulting in over procurement of Covid-19 related stock worth Kshs. 6,346,784,383 that is still being held at KEMSA warehouses. 97 per cent of the stock has been in the KEMSA Warehouses for more than 3 months implying inadequate market forecasting and planning practices at KEMSA. The items were procured at a higher price as compared to the current market pricing implying that KEMSA may realize a loss of Kshs.2,338,261,175 if the products are to be sold at the current market price.

1.8.2 It is recommended that:

- Further investigations be conducted by the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruptions Commission (EACC) to establish criminality on procurement process for COVID-19 related items and possible collusion between the management and the companies that supplied the items;
- The Management of KEMSA should withhold any further processing of COVID-19 related claims until an independent audit is done to confirm legitimacy of the claims. This should include reconciliation of the procurements made under Capital and UHC budgets to establish eligibility of the claims;
- The KEMSA Board should consider overhauling the business model which has failed to ensure a robust supply chain management system that is efficient, effective, economical and transparent; and
- Appropriate action should be taken on those found culpable, or responsible for actions as indicated in this special audit report.


NANCY GATHUNGU
AUDITOR - GENERAL
29 September, 2020

2. INTRODUCTION, METHODOLOGY & SCOPE

2.1 Background

2.1.1 The Kenya Medical Supplies Authority (KEMSA) is a state corporation under the Ministry of Health established under the KEMSA Act, 2013 whose mandate is:

- Procure, warehouse and distribute drugs and medical supplies for prescribed public health programs, the national strategic stock reserve, prescribed essential health packages and national referral hospitals;
- Establish a network of storage, packaging and distribution facilities for the provision of drugs and medical supplies to health institutions;
- Enter into partnership with or establish frameworks with County Governments for purposes of providing services in procurement, warehousing, distribution of drugs and medical supplies;
- Collect information and provide regular reports to the National and County Governments on the status and cost effectiveness of procurement, the distribution and value of prescribed essential medical supplies delivered to health facilities, stock status and on any other aspects of supply system status and performance which may be required by stakeholders; and
- Support County Governments to establish and maintain appropriate supply chain systems for drugs and medical supplies.

2.2 Introduction

2.2.1 The Auditor-General received three requests from; the Senate Ad Hoc Committee on COVID -19, the Senate Health Committee and the Public Investment Committee of the National Assembly to conduct Special Audits on Utilization of COVID -19 Funds as follows:

	Date	Source of request	Scope
1	23 July, 2020, Letter Referenced SEN/DKO/CORR/SCH/02/003/2020 (1)	Senate Health Committee	<ul style="list-style-type: none">• Special Audit on Accounts of KEMSA for the period 2017/ 2018-2019/2020.• Utilization of COVID -19 Funds by County Governments.

2	4 August, 2020 Letter Referenced SEN / 12/4/ AC-COVID 19/ 2020 (57)	Senate Ad Hoc Committee on COVID -19 Situation	<ul style="list-style-type: none"> Utilization of COVID -19 Funds by County Governments.
3	31 August, 2020 Letter Referenced NA/DC/PIC/2020 (87)	Public Investment Committee	<ul style="list-style-type: none"> KEMSA Procurement process. Utilization of COVID -19 Funds.

2.2.2 On 15 September, 2020, the Senate Standing Committee on Health and the Senate Ad Hoc Committee on the Covid-19 Situation jointly requested the Auditor-General vide a letter ref: SEN / SCH / KEMSA /CORR/ 2020/09/ (1) to conduct a forensic audit on the procurements undertaken by Kenya Medical Supplies Authority (KEMSA) in response to Covid-19 Pandemic.

2.2.3 In particular, the Committees required the Auditor-General to conduct the special audit and report on whether:

- a. KEMSA adhered to the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) in the procurement of medical supplies for purposes of combating the COVID-19 pandemic;
- b. KEMSA adhered to the Public Finance Management Act, 2012 (PFMA, 2012) in the procurement of medical supplies; and
- c. There was value for money in the procurement of medical supplies through KEMSA, for purposes of combating the pandemic.

2.3 Objective of the Audit

2.3.1 The objective of the special audit is to confirm whether public funds utilized by KEMSA for procurement of medical supplies for purposes of combating the COVID-19 pandemic were used in a manner that is lawful and effective.

2.4 Terms of Reference

2.4.1 The special audit covered the following Terms of References:

- a. Review the Budgeting & financing process at KEMSA in relation to procurement of medical supplies for purposes of combating the COVID-19 pandemic;
- b. Establish expenditure incurred by KEMSA including accountability of donations received for combating the COVID-19 pandemic; and

c. Review the procurement process of expenditures incurred by KEMSA in relation to medical supplies for combating the COVID-19 pandemic

2.4.2 For each of the aforementioned Terms of Reference, the special audit is to confirm whether the process complied with the Constitution of Kenya, the Public Finance Management Act, 2012 and the Public Procurement & Asset Disposal Act, 2015.

2.5 Scope of Work and Limitation

2.5.1 The Special Audit Report covered utilization of Covid-19 funds and donations by KEMSA for the period from 13 March, 2020 to 31 July, 2020.

2.5.2 The following items have not been covered by this special audit report but will be considered in the Special Audit Report for Utilization of Covid-19 funds for other Government Entities to be issued at a later date:

- Receipt and distribution of non-cash Covid-19 related donations by KEMSA on behalf of the Ministry of Health; and
- Receipt and distribution of World Bank funded procured Covid-19 related items by KEMSA on behalf of the Ministry of Health.

2.6 Audit approach and methodology

2.6.1 The special audit adopted the following methodology in evidence gathering, analysis and reporting:

Document Examination

2.6.2 The special audit team reviewed and examined documents which include Public Finance Management Act, 2012, Public Procurement and Disposal Act, 2015, Public Procurement & Disposal Regulations, procurement records and budgets among others. This was done to ensure objectivity of the assignment and to provide practical recommendations towards the special audit.

Analytical Review

2.6.3 Information from procurement records for the period under review was analyzed and the results used to arrive at conclusions.

Interviews

2.6.4 The special audit team interviewed the following Officers involved in various operational processes and their response have been incorporated in this report.

Table 1: Persons Interviewed

	Name	Designation	Organization
1	Edward Njoroge	Acting Chief Executive Officer	KEMSA
2	Nahashon Waiganjo	Director of finance	KEMSA
3	Edward Buluma	Acting Director of Procurement	KEMSA
4	Caroline Anunda	Finance Manager	KEMSA
5	Catherine Maingi	Planning and Continuous Improvement Manager	KEMSA
6	Susan Mochache	Principal Secretary	Ministry of Health
7	Denis Agango	Distribution Manager	KEMSA
8	Vitalis Shikhulu	Inventory Supervisor	KEMSA
9	Beatrice Rosana	Warehouse Supervisor	KEMSA
10	Dr. John Aduda	Quality Assurance & Inspection	KEMSA
11	Valentini Tindi	Assistant Warehouse Manager	KEMSA

3. DETAILED FINDINGS

3.1 BUDGET MANAGEMENT FOR COVID-19 RELATED EXPENDITURES

Irregular utilization of Universal Health Coverage (UHC) and Capital Budget to fund Covid-19 related procurements contrary to section 68 (1) of the Public Financial Management Act, 2012

- 3.1.1 The special audit established that Kenya Medical Supplies Authority (KEMSA), had various sources of funding for COVID -19 related spending for the period from 13 March, 2020 to 30 June, 2020. These were; the Universal Health Coverage (UHC) funds, KEMSA capital funds and other programme funds appropriated by the Ministry of Health.
- 3.1.2 In a letter Referenced KEMSA/CEO/ADM/2020/115, dated 20 August, 2020, the Chairman of KEMSA, wrote to the Cabinet Secretary for the Ministry of Health indicating that KEMSA had utilized the Universal Health Coverage Budget (UHC) to fund the Covid -19 related procurements. In addition, it was established that the Ministry of Health, allocated Kshs.3,013,530,583 to KEMSA through supplementary budgets, to finance procurement of Covid-19 related items under the World Bank and Government of Kenya funded programmes.
- 3.1.3 It was also established that, during the financial year 2019/2020, the Board of KEMSA approved a total capital budget of Kshs.4,655,709,000 based on the procurement plan for financial year 2019/2020 to finance procurement of pharmaceuticals commodities (Kshs.2,935,424,524) and non-pharmaceuticals commodities (Kshs.1,720,284,476). The budget was to be financed by sale of pharmaceuticals and non-pharmaceuticals commodities. The Board approval was made on 24 January, 2019 vide minute number 4/FB/2019. There was however no evidence that these budgets were approved by the Ministry of Health and the National Treasury.
- 3.1.4 There was no evidence that upon the outbreak of the Covid-19 Pandemic in Kenya, the management and Board of KEMSA either re-allocated any of the Capital Budget amount of Kshs.4,655,709,000 or requested for a supplementary capital budget to cater for the emerging Covid-19 related procurements. Therefore, the KEMSA capital budget for the financial year 2019/ 2020 did not have allocation for Covid-19 related procurements.
- 3.1.5 In a letter dated 12 June, 2020 Referenced, KEMSA/CEO/DFS/19/20/6/11/(2), the Chief Executive Officer of KEMSA, Dr. Jonah Manajari, wrote to the Principal Secretary, Ministry of Health seeking for approval to utilize Universal Health Coverage

funds to pay for expenses incurred on emergency procurements for Covid-19 related procurements. This request was declined by the PS in her letter referenced MOH/ FIN/1/4 VOL III (77) to KEMSA Chief Executive Officer, Dr. Jonah Manajari.

- 3.1.6 However, in a letter referenced KEMSA/CEO/ADM/2020/115, dated 20 August, 2020, the Chairman for KEMSA, wrote to the Cabinet Secretary for the Ministry of Health indicating that KEMSA had utilized the Universal Health Coverage Budget (UHC) to fund the Covid -19 related procurements. Reports from KEMSA Financial Information Systems indicated that the procurements were funded from KEMSA capital budget.
- 3.1.7 This was therefore a clear indication of comingling of UHC and KEMSA capital funds both of which were irregularly used to fund Covid-19 related expenditures. The management of KEMSA therefore contravened Section 68 (1) of the Public Financial Management Act, 2012 that requires Accounting Officers to ensure resources within their entities are used in a lawful, effective, efficient, economical and transparent manner.
- 3.1.8 The special audit established that during the financial year 2019/2020, procurements undertaken by KEMSA in response to Covid-19 Pandemic were funded as follows:

Source of funds for Covid-19 related procurements by KEMSA

- 3.1.9 During the period under review, the Ministry of Health allocated funds to KEMSA to finance Covid -19 related expenditures and Universal Health Care (UHC) programme as follows:

Table 2: Budget for Covid-19 related procurements and Universal Health Care

	Particulars	Amount (Kshs)
1	Universal Health Care (UHC) programme	13,047,073,119
2	Procurement of Covid-19 related activities	3,013,530,583
3	Amount received for KEMSA Tax on USAID procured HPTs	333,470,837
		16,394,074,539

- 3.1.10 The Ministry of Health allocated through supplementary budgets, an amount of Kshs.3,013,530,583 to KEMSA to finance procurement of Covid-19 related expenditure as follows:

Table 3: Supplementary Budget for procurement of Covid-19 related activities

	Source of Funds	Sub Head	Allocation to KEMSA (Kshs)	Amount Received (Kshs)	Recipient Bank Account
1	World Bank	CERC- Transforming Health Systems Project (THS)	758,690,583	304,160,118	EQUITY BANK KEMSA Trade Account number 01400261398514
2	World Bank	Kenya COVID-19 Emergency Response Project (CHERP)	454,840,000	77,774,400	EQUITY BANK KEMSA Trade Account number 01400261398514
3	Government of Kenya	Procurement of Test kits and reagents	1,500,000,000	1,500,000,000	EQUITY BANK Warehouse Construction Account number 1400264426362
4	Government of Kenya	Supply of Facemasks to vulnerable groups	300,000,000	300,000,000	NATIONAL BANK OF KENYA KEMSA Operations Account number 100300912500
			3,013,530,583	2,181,934,518	

3.1.11 In addition, the Ministry of Health allocated an amount of Kshs.13,047,073,119 to KEMSA to finance Universal Health Care Coverage (UHC) as follows:

Table 4: Budget for Universal Health Care

	Particulars	Amount (Kshs)	Date received	Recipient Bank Account
1	Amount received for UHC	4,034,382,278	11 March, 2020	EQUITY BANK KEMSA Trade Account number 01400261398514
2	Amount received for UHC	2,682,852,853	11 June, 2020	EQUITY BANK KEMSA Trade Account number

	Particulars	Amount (Kshs)	Date received	Recipient Bank Account
				01400261398514
3	Amount received for UHC	1,802,997,660	11 June, 2020	EQUITY BANK KEMSA Trade Account number 01400261398514
	Total received for UHC	8,520,232,791		EQUITY BANK KEMSA Trade Account number 01400261398514
4	Amount requested by KEMSA for purchase of Medical Equipment under UHC but declined by Ministry (MOH deferred the request to financial 2020/2021)	4,526,840,328	Not received	Not applicable
		13,047,073,119		

3.1.12 Though records at the National Treasury indicated that an amount of Kshs.4,819,321,350 (comprising the Kshs.2,682,852,853, Kshs.1,802,997,660 and Kshs.333,470,837) had been disbursed to Ministry of Health for Covid-19 related activities at KEMSA, records at KEMSA and Ministry of Health indicated the funds were disbursed for UHC and KEMSA Tax on USAID procured HPTs. The special audit team is following up on the two conflicting information and the findings will be presented in the Special Audit Report on Utilization of Covid-19 funds in Kenya to be released at a later date.

3.2 PROCUREMENT PROCESS FOR COVID-19 RELATED EXPENDITURES

Irregular use of retrospective Direct Procurement method

- 3.2.1 The special audit established that KEMSA used Direct Procurement method to source for Covid -19 related items. it was noted that commitment letters were issued to suppliers and then the procurement process was to follow after deliveries were made.
- 3.2.2 Section 103 and 104 (C) of the Public Procurement and Asset Disposal Act, 2015 provides that Direct Procurement can be used under the following circumstances:

- a. Under circumstances of urgency. This was also emphasized in the Solicitor General advisory of 17 April 2020 and Public Procurement & Regulatory Circular NO.02/2020 of 27 March, 2020 to Accounting Officers;
 - b. Provided that the acquisition price is fair and reasonable and compares well with known prices of goods and services. There was no market survey done to form a basis for price negotiation. Commitment letters only indicated volumes. Letters of intent indicated price proposal to be negotiated by evaluation committee;
 - c. The purpose of using Direct Procurement is not to avoid competition; and
 - d. Appropriate approvals are sought before using the method. The Public Procurement & Asset Disposal Act, 2015 is not explicit on who should approve the procurement methods but Section 44(1) provides that the Accounting Officer is responsible for ensuring compliance with the Act. In KEMSA The Head of Procurement seeks approval for Direct Procurement and Accounting Officer approves.
- 3.2.3 It was established that that the management of KEMSA commenced procurement of Covid-19 related items on 18 March, 2020 using retrospective Direct Procurement method without putting in place systems and procedures to guide the use of retrospective Direct Procurement contrary to Sections 69 (2) and 45 (1) of the PPADA, 2015
- 3.2.4 Section 69 (2) of the Public Procurement and Asset Disposal Act, 2015 allow the use of retrospective Direct Procurement method, under circumstances of urgency, on condition that this method is properly approved by the Accounting Officer.
- 3.2.5 Section 45 (1) of the PPADA, 2015 requires that, for the purpose of ensuring that the Accounting Officer's decisions are made in a systematic and structured way, an Accounting Officer, shall establish systems and procedures to facilitate decision making for procurement and asset disposal.
- 3.2.6 On 24 April, 2020, the Director of Procurement at KEMSA, issued an internal memo to all Heads of Departments, outlining the procedures to be followed in procuring Covid- 19 related items. The memo, required that, prospective suppliers were to submit letters of intent to supply goods to KEMSA, provide a sample that will be evaluated for conformity to the required technical specifications and that the procurement should be within the approved budget.

- 3.2.7 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 PPADA, 2015 and Regulation 22(1) that requires that procurements must be triggered by user needs.
- 3.2.8 According to an internal memo issued by the Director of Finance on 24 April, 2020, by the time KEMSA developed and issued the guidelines on use of retrospective Direct Procurement method on 24 April, 2020, commitment letters amounting to Kshs.3,996,636,560 had been issued to various suppliers. This commitment letters were therefore irregularly issued without putting in place systems and procedures to guide the use of retrospective Direct Procurement contrary to Sections 69 (2) and 45 (1) of the PPADA, 2015. The Chief Executive Officer therefore ought to ensure there is communication of procurement procedures to all stakeholders including suppliers. There was no evidence that such communication was made to suppliers.

Procurement process for Covid-19 related expenditures under various budget items

- 3.2.9 Pursuant to Articles 252(1) and 229 (6) of the Constitution of Kenya, this section presents special audit report findings on procurement process for Covid-19 related expenditures by KEMSA for the period from 13 March, 2020 to 31 July, 2020. The report highlights the various violations to the Public Procurement & Asset Disposal Act, 2015 and other related irregularities.
- 3.2.10 Our findings are presented as follows:

Table 5: Procurement process for Covid-19 related expenditures

	Source of funds	Name of project	Approved Covid-19 Budget (Kshs)	Amount incurred (Kshs)	Remarks
1	KEMSA Universal Health Care (UHC) & KEMSA Capital Budget	Universal Health Care (UHC)	0	7,632,068,588	Kshs.4,712,869,916 had been paid
2	World Bank	CERC-Transforming Health Systems Project (THS)	758,690,583	304,160,118	Kshs.304,160,118 paid to supplier
3	World Bank	Kenya COVID-19 Emergency	454,840,000	452,644,000	Purchase of Abbott-Time SARS-

	Source of funds	Name of project	Approved Covid-19 Budget (Kshs)	Amount incurred (Kshs)	Remarks
		Response Project (CHERP)			COV-2 test Kits and PCR tests & extraction kits and virus transport media
4	Government of Kenya	Grants for Procurement of Test kits and reagents	1,500,000,000	0	Amount not spent as at 31.07.2020. Held in Equity Bank A/C NO. 1400261398514
5	Government of Kenya	Grants Supply of Facemasks to vulnerable groups	300,000,000	0	Amount not spent as at 31.07.2020. Held in Equity Bank A/C NO. 1400261398514

The special audit therefore confirmed that out of the total amounts incurred of Kshs.8,388,872,706, Kshs.5,017,030,034 was already paid. This therefore resulted on pending bills amounting to Kshs.3,371,842,672.

1. COVID-19 RELATED PROCUREMENTS IRREGULARLY FUNDED FROM UNIVERSAL HEALTH CARE (UHC) AND CAPITAL BUDGETS

Commencing Covid-19 related procurement processes without approved budgets

- 3.2.11 Despite KEMSA having no budget allocation for Covid-19 related procurements, KEMSA issued commitment letters amounting to Kshs.7,780,281,788 on Covid-19 related procurements yet there was no capital budgetary allocation for the same as detailed below:

Table 6: Covid-19 related procurements without budgets

	Particulars	Amount (Kshs)
1	Commitment letters issued	7,780,281,788
2	Value of goods received	7,632,068,588
3	Amount paid to suppliers	4,712,869,916
4	Amount outstanding to suppliers	2,919,198,672

- 3.2.12 The KEMSA Management therefore violated Section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 that requires Accounting Officers of Procuring Entities not to commence any procurement proceeding until satisfied that sufficient funds

to meet the obligations of the resulting contract are reflected in its approved budget estimates. This also contravenes Section 43 (b) of the Public Finance Management Regulations (PFMR), 2015 that requires accounting officers to ensure public funds are only utilized for the purpose on which they were appropriated. In addition, there is a risk that KEMSA may not be in a position to efficiently and effectively implement the UHC programme given that some of the funds have been irregularly utilized in procurement of Covid-19 items.

Failure to integrate Covid-19 related procurement plan to the Budget process

3.2.13 The special audit established that the Chief Executive Officer for KEMSA approved procurement plans totaling to Kshs.5,096,027,600 for COVID-19 Health Products and Technologies (HPT's) using KEMSA funds as detailed below:

Table 7: KEMSA Capital Budget procurement plan Covid-19 related expenditures

Project Name	Financial year	Procurement Method	Source of funds	Amount (Kshs)	Approval dates
Supply of Red Top Plain Tubes 4ml and vortex mixer	2019/2020	Direct procurement	KEMSA Capital	477,600	29 April 2020
Supply of Covid 19 HPT's	2019/2020	Direct procurement	KEMSA Capital	5,095,550,000	27 May 2020

3.2.14 Though the procurement plan indicate that the procurements were to be funded by KEMSA's capital, there was no approved budget allocation for Covid-19 related procurements in both the KEMSA Capital Budget and the Universal Health Coverage (UHC) Budget. Therefore, the above procurement plan was not integrated with applicable budget process for Covid-19 expenditures contrary to Section 53 (5) of the Procurement and Asset Disposal Act, 2015.

3.2.15 Section 53 (5) of the Procurement and Asset Disposal Act, 2015 requires procurement and asset planning to be based on indicative or approved budgets which shall be integrated with applicable budget process.

Inefficient stock management procedures at KEMSA

- 3.2.16 Stock management records at KEMSA indicate that as at the time of audit, Covid-19 stock procured at Kshs.6,346,784,383 was still being held at KEMSA warehouse as at 31 August, 2020 despite it having been procured on the basis of urgency. This implies that there was no justification for procuring the items on the basis of urgency.
- 3.2.17 Section 139 (2) of the Public Finance Management Regulations, 2015, requires accounting officers to ensure that processes and procedures are in place for effective, efficient, economical and transparent use of government assets.
- 3.2.18 In a letter referenced KEMSA/CEO/ADM/2020/115 dated 20 August, 2020, the Chairman for KEMSA, wrote to the Cabinet Secretary for the Ministry of Health indicating that if KEMSA was to liquidate the above stock through sale so as to release the cash towards off-setting liabilities, the selling price will have to be marked down to match the current market prices. With the declining demand for Covid-19 related items, it is unlikely that KEMSA will be able to liquidate the stock and therefore KEMSA is exposed to the risk of holding the stock to expiry.
- 3.2.19 From the market survey done by KEMSA on the affected stock items, the stock if sold at current market prices, will only realize Kshs.4,008,523,203, thus a realized loss of Kshs.2,338,261,175.
- 3.2.20 On 18 September, 2020, the special audit team conducted a stock take exercise at KEMSA warehouses in Embakasi, Annex and Sunflag. The objective of the exercise was to determine the actual receipt value of stock, the value of stock issued out so far, value of stock still being held at the warehouses and the duration the stock has been held.
- 3.2.21 The special audit team established that the total value of Covid-19 related stock received at KEMSA warehouses during the period under review was Kshs.7,632,068,588, out of which stock valued at Kshs.6,279,531,019 was still in KEMSA warehouses as at 18 September, 2020 as detailed in APPENDIX I.
- 3.2.22 The team further conducted an age analysis of stock held at KEMSA as at 18 September, 2020 to establish how long the stock has been lying in the Warehouses and established the following:

Table 8: Age analysis of stock as at 18 September, 2020

Value of Stock at hand in (Kshs)	Quantity held (%)	Duration in Warehouse
192,920,363	3	6 Months
1,601,488,855	26	5 months
3,257,909,010	52	4 months
1,035,454,200	16	3 months
128,758,590	2	2 months
63,000,000	1	0 months
6,279,531,018	100	Total

3.2.23 From the above analysis, 97 per cent of COVID -19 items have been in the warehouses for more than 3 months. It is therefore clear that KEMSA over procured Covid-19 related stock without an objective assessment and forecasting of the existing demand for the products. Consequently, the products are un-utilized in the warehouses tying up KEMSA's working capital. This will adversely affect KEMSA's financial performance in terms of liquidity and therefore increases the going concern risks. Given the strategic role of KEMSA in supply chain management of medical supplies at both National and County Governments levels, the Universal Health Care programme, Vision 2030 and Agenda four objective might be exposed to sustainability risks.

3.2.24 The KEMSA management therefore failed to comply with Section 139 (2) of the Public Finance Management Regulations, 2015 that requires Accounting Officers to ensure that, processes and procedures are in place for effective, efficient, economical and transparent use of Covid-19 related stocks.

Red flags indicating potential procurement fraud

3.2.25 The special audit established circumstances where Companies registered in less than one year, were awarded contracts to supply Covid-19 related items as follows:

Table 9: Companies in existence for less than one year

	Name	Date of registration	Contract details	Contract value (Kshs)	Remarks
1	Shop 'N' Buy Ltd	14 February, 2020	KN95 Facemasks and Personal Protective Equipment (PPEs)	900,070,000	Items were delivered at KEMSA warehouses on 22 June, 2020.

	Name	Date of registration	Contract details	Contract value (Kshs)	Remarks
					Payment is still pending
2	Kilig Ltd	22 January, 2020	Personal Protective Equipment (PPEs)	9,000,000	Items were delivered at KEMSA warehouses on 22 June, 2020. Payment is still pending
3	Nanopay Ltd	22 August, 2019	KN95 Facemasks	349,790,000	Items delivered and paid
				1,258,860,000	

3.2.26 The special audit notes that the above firms had been in existence for less than one year before being awarded the contracts and cannot therefore have the necessary qualification and experience in supply of specialized medical supplies. There is need for further investigations on this companies to establish risks of procurement fraud and collusion.

3.2.27 The special audit established that there was no evidence that the initiation of procurement process for Covid-19 related items under KEMSA capital budget was triggered by a need assessment to establish the demand for these products. This is evidenced by initiation of procurement process without planning and budgeting, use of Direct Procurement in disguise of urgency when indeed the products are still lying at KEMSA Warehouses for as long as 6 months. The procurements were therefore not conducted for the best interest of KEMSA but could have been influenced by suppliers. There is need for further investigations on all companies engaged by KEMSA to establish acts of procurement fraud. Consequently, KEMSA is exposed to realizing a possible loss of Kshs.2,338,261,175 being the value of stock that will be sold lower than the acquisition prices.

Overpricing tender number KEMSA/DP 136/2019-20 Gladlab Supplies Limited

3.2.28 Gladlab Supplies Limited was awarded a tender to supply surgical mask disposable 3 ply ear-loop at a cost of Kshs.135,000,000 and paid vide Cheque number 000223 on 26 June, 2020. The following was observed: The company's letter of intent to supply Surgical Face Mask Ear loop at a price of Kshs.95 a

piece was dated 8 April, 2020 and received at KEMSA on 9 April, 2020. A pack of 50 pieces would cost Kshs.4,750. On the same day, 9 April 2020, a letter was received by KEMSA from the supplier stating that “As per our agreement yesterday, we would like to supply the surgical face mask ear loop with the price of 30 USD per box of 50 pieces”. From the Central Bank website, the exchange rate on 9 April 2020 was Kshs.106.1 therefore price per box of 50 pieces translates to Kshs.3,183. It was not clear how the price negotiations took place with the Accounting Officer and not the evaluation committee contrary to section 104(b) of the PPAD Act, 2015.

3.2.29 In a letter reference KEMSA/PROC/DP136/2019-20 of 19 May 2020, Gladlab Supplies Limited was invited to tender for the supply surgical mask disposable 3 ply ear-loop tender number KEMSA/DP136/2019-20 with a closing date of 21 May, 2020.

3.2.30 The evaluation committee’s minutes of 22 May, 2020 indicate that they negotiated from Kshs. 4,750 to Kshs. 4,500. The supplier was awarded to supply the masks at Kshs.4,500 which is higher than the agreed price of 30 USD or Kshs. 3,183 (CBK ER Kshs. 105) in a letter to the accounting officer dated 9 April 2020 hence a pricing difference of Kshs.1,317.

3.2.31 It was also not clear why the Accounting Officer in a letter dated 21 May, 2020 from the Director of Procurement gave authority to procure using Direct Procurement quoting an estimated cost of Kshs.90 per piece or Kshs.4,500 while there was an agreed upon price of USD30 (Kshs.3,183).

3.2.32 In view of the above significant inconsistencies, the price determination for the supply of 30,000 units of supply surgical mask disposable 3 ply ear-loop is questionable. An analysis of the price on the letter of intent of 9 April, 2020 and the award price reveals that public funds of up to Kshs.39,510,000 was potentially lost as shown below:

Table 10: Overpricing of tender number KEMSA/DP 136/2019-20 Gladlab Supplies Limited

Description	Price (Kshs)	Unit	Amount (Kshs)
Supplier price as per letter of intent dated 9 th April, 2020. USD 30 @ Kshs. 106.1 per box of 50	3,183	30,000	95,490,000
Price awarded on 3 rd June 2020	4,500	30,000	135,000,000
Difference (Potential loss)	(1,317)	30,000	(39,510,000)

3.2.33 In a letter, reference KEMSA/QA/20/851 dated 14 May, 2020 the Inspection and Acceptance Committee wrote to the supplier indicating that they have tested the product (pre-delivery sample) and found it acceptable and supplier should liaise with the warehouse manager for delivery. However, a scrutiny of the delivery notes below reveal that the supplier had already delivered at the time of the letter as shown below:

Table 11: Deliveries of tender number KEMSA/DP 136/2019-20 Gladlab Supplies Limited

Delivery Date	Units Delivered
29/04/2020	9,990
29/04/2020	780
05/05/2020	9,292
07/05/2020	9,938
Total	30,000

Other violations to the PP&ADA, PFMA & KEMSA Internal Circulars

3.2.34 The special audit identified the following other violations to the Public Procurement and Asset Disposal Act, 2015:

Table 12: Other violations to the PPADA, PFMA and KEMSA Internal Circulars

S/No.	Irregularity noted	Amount (Kshs)	Section of law violated	Reference
1.	Failure to conduct market survey for items being procured	8,388,872,706	Section 8(2) of the public procurement and disposal Regulations 2006	APPENDIX II
2	Failure to test samples by Quality and Assurance Department before issuance of commitment letter		Internal Memo from Director head of procurement dated 24 April 2020, No.1 of the technical evaluation criteria of the invitation of tender document number	
3.	Irregular extension of delivery timelines	632,535,000	PP &AD Act 2015, Section 88(1) Internal Memo from Director head of	APPENDIX III

S/No.	Irregularity noted	Amount (Kshs)	Section of law violated	Reference
			procurement dated 24 April 2020	
4.	Delivery of products past agreed timelines without approval	223,000,000	Public Finance Management -National Government Regulations 2015 Section 53(1) & (2)	APPENDIX IV
5.	Engagement in businesses for which the supplier was not incorporated for.	871,640,000	Section 46 (4)(a) of PPAD,2015. Section 71(2) (b) of PPAD,2015.	APPENDIX V
6.	The Supplier being financially incapable to execute the contract		Section 46 (4)(a) of PPAD,2015 Section 71(2) (b) of PPAD,2015.	
7.	Director(s) technically incapable and inexperienced to supply medical commodities		Section 46 (4)(a) of PPAD,2015 Section 71(2) (b) of PPAD,2015.	
8.	The supplier having inadequate experience in the market /industry		Section V of the invitation to tender document	
9.	Engaging un pre-qualified suppliers		Section 57 (1) of PPAD,2015 Section 46 (4)(a) of PPAD,2015 Section 71(2) (a) and (b) of PPAD,2015.	
10.	Pre-qualifying suppliers without evaluation and approval	140,000,000	Section 46 (4)(a) of PPAD Act,2015 Section 25(1) of the Public Procurement and Disposal Regulations 2006.	APPENDIX VI

2. COVID-19 RELATED PROCUREMENTS FUNDED BY THE WORLD BANK

3.2.35 The World Bank financed Covid -19 related procurements as follows:

Table 13: World Bank funded Covid-19 procurements

	World Bank Project	Budget (Kshs)	Amount incurred (Kshs)	Remarks
1	CERC- Transforming Health Systems Project (THS)	758,690,583	304,160,118	Kshs.134,540,680 paid to the supplier
2	Kenya COVID-19 Emergency	454,840,000	452,644,000	Purchase of Abbott-Time SARS-COV-2 test Kits and

World Bank Project	Budget (Kshs)	Amount incurred (Kshs)	Remarks
Response Project (CHERP)			PCR tests & extraction kits and virus transport media
Total	1,213,530,583	756,804,118	

1. CERC- Transforming Health Systems Project (THS)

3.2.36 The special audit established that, the Principal Secretary to the Ministry of Health, on diverse dates wrote to the Chief Executive Officer of KEMSA, Dr. Jonah Mwangi, requesting for urgent procurement of Covid-19 related medical supplies as follows:

Table 14: Procurement requests for the Transforming Health Systems Project

	Date of the letter	Reference	Particulars
1	18 March, 2020	Ref: MOH/ADM/1/1/2	<ul style="list-style-type: none"> Urgent procurement of 25,000 Personal Protective Equipment kits (PPEs), 10,000 N95 pieces of masks and 6,000 laboratory sample transport collection consumable kits. Specifications & distribution list was to follow later
2	23 March, 2020	Ref: MOH/ADM/1/2	Urgent procurement of laboratory supplies and commodities

3.2.37 On 8 April, 2020, the Head of Intergovernmental Relations Department at the Ministry of Health, Dr. Stephen Muleshe, wrote a memo to the Principal Secretary, Ministry of Health, requesting for approval to utilize Kshs.935,056,847 for Transforming Health Systems (THS) Universal Care. The memo also indicated that the Contingency Emergency Response Component (CERC) had allocated Ksh.1 billion towards the Covid-19 response. The memo further informed the Principal Secretary, that the Covid-19 implementation plan was developed by the Ministry of Health in accordance with the CERC Manual and approved by the World Bank.

3.2.38 The Principal Secretary to the Ministry of Health approved the Memo on 8 April, 2020 and allocated KEMSA Kshs.729,770,583 out of the Kshs.935,056,847 requested as follows:

Table 15: Amount of Kshs.729,770,583 allocated to KEMSA

	Description	Budget (Kshs)
1	Personal Protective Equipment (PPEs)	132,595,000
2	Lab equipment	301,455,795

	Description	Budget (Kshs)
3	Roche test kits	196,924,208
4	Equipment	98,795,580
	Total	729,770,583

- 3.2.39 On 01 April, 2020, Mr. Eliud Mureithi, the Director of Commercial Services at KEMSA wrote an email to the Principal Secretary to the Ministry of Health submitting a status report indicating that KEMSA had ordered Covid-19 related items amounting to Kshs.2,184,998,962 out of which Kshs.149,075,296 had been delivered. The status report by KEMSA to the Ministry of Health indicated names of suppliers, price of the items and quantity to delivered. It was noted that the quantity reported by KEMSA as having been ordered by was more than what the Ministry of Health had requested.
- 3.2.40 On 07 April,2020, Mr. Eliud Mureithi, the Director of Commercial Services at KEMSA wrote an email to the Principal Secretary to the Ministry of Health submitting a rationalized list of items to be procured. The email referred to a meeting held on 06 April, 2020 between KEMSA and the Ministry of Health where the budget was rationalized. The email contained an attachment with details of commodities to be procured, prices and suppliers.
- 3.2.41 On 15 April 2020 through a letter Referenced MOH/ADM/1/1/171 Vol.1 (196), the Principal Secretary, to the Ministry of Health informed the Chief Executive Officer of KEMSA, Dr. Jonah Manjari, that World Bank Funded Transforming Health Systems project (THS-UCP) through the Contingency Emergency Response Component (CERC) would support the Covid-19 response activities through procurement of critical goods and services.
- 3.2.42 In the letter, the Principal Secretary to the Ministry of Health also informed the Chief Executive Officer for KEMSA, that various items had been identified and approved by the World Bank for procurement by KEMSA. The Principal Secretary approved the procurement of goods by KEMSA worth Kshs.758,690,583 that was detailed in an Annexure attached to the request. The Annexure contained description of items to be procured, the unit of measure, supplier, quantity and unit price as had been indicated in the email of 07 April, 2020 from Mr. Eliud Mureithi, the Director of Commercial Services at KEMSA to the Principal Secretary to the Ministry of Health.

Commencing procurement process without approved budgets

3.2.43 It was established that, on 16 April, 2020, Dr. Elizabeth Wangia, the Project Manager at the Ministry of Health wrote an email to Jane Chuma of World Bank. According to the email, the Project Manager was requesting the World Bank to give a no objection to budget changes summarized below:

Table 16: No objection by World Bank

Description	Budget (Kshs)	Comment	Revised Budget (Kshs)
PPEs	132,595,000	Already procured	132,595,000
Lab equipment	301,175,795	Already procured	330,375,795
Roche test kits	196,924,208	Already procured	196,924,208
Equipment	98,795,580	Already procured	98,795,580
Total	729,490,583		758,690,583

3.2.44 On 17 April, 2020, Jane Chuma of World Bank via an email sent to Dr. Elizabeth Wangia, the Project Manager, replied back saying “This is approved”.

3.2.45 The aforementioned email by Dr. Elizabeth Wangia, the Ministry of Health Project Manager to World Bank indicated that KEMSA had already procured the items before approval from the World Bank and the Principal Secretary to the Ministry of Health.

3.2.46 This implies procurement process of these items by KEMSA was initiated without first seeking approval on availability of funds contrary to Section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 (PPADA, 2015) that requires Accounting Officers of Procuring Entities not to commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates

3.2.47 On 28 April, 2020, the Chief Executive Officer for KEMSA, Dr. Jonah Manjari through a letter REF: KEMSA/DFS/19/20/4/28(1) to the Principal Secretary to the Ministry of Health confirmed that KEMSA had issued letters of commitment for procurement of the items to suppliers worth Kshs.758,690,583 and that deliveries were ongoing. Dr. Jonah Manjari was therefore requesting for remittance of funds to facilitate settlement of suppliers’ payments once deliveries are complete.

- 3.2.48 The Project Manager, Dr. Wangia Elizabeth sent an email to the Chief Executive Officer of KEMSA on 19 May, 2020 requesting for critical information that was to be used to facilitate payment by contingency component of World Bank Funded Transformation Health Systems Project. She requested for the following information: The list indicating the description of all items procured, including name and quantities, cost and procurement method used and the dates when contracts were signed.
- 3.2.49 The KEMSA Acting Procurement Manager for Contracts Management responded to the email on 21 May, 2020 submitting a procurement status report of COVID-19 items procured by KEMSA under the World Bank Funded Project.
- 3.2.50 The Head of Department of Intergovernmental Relations at the Ministry of Health, Dr. Stephen Muleshe through a memo Ref: MOH/ADM/1/1/171 Vol I(221) dated 29 May, 2020 informed the Principal Secretary to the Ministry of Health that the World Bank had given a 'No Objection' to undertake the activities under the Contingence Emergence Response Component (CERC) of the Transforming Health System (THS) component. The letter was therefore to request the PS to approve the work plan and procurement plan worth Kshs 1,000,000,000 and to disregard all other approvals relating to CERC as of 15 April, 2020. According to the memo, KEMSA was allocated a budget of Kshs.758,690,583 for various activities.

Pricing of Covid-19 related items without evidence of a market survey

- 3.2.51 On 18 June, 2020 the Chief Executive Officer (CEO) for KEMSA Dr. Jonah Manjari wrote a letter REF: KEMSA/CEO/19/20/6/18(1) to the Principal Secretary to the Ministry of Health to inform her that the identified items were procured and delivered to KEMSA Supply Chain Centre totaling to Kshs.471,576,571 and therefore the CEO was requesting disbursement of Kshs. 471,576,571 to facilitate payment of the items.
- 3.2.52 On 19 June, 2020, the Principal Secretary to the Ministry of Health sent a letter Ref No. MOH/ADM/1/1/171 Vol.I (266) to KEMSA Chief Executive Officer Dr. Jonah Manjari requesting him to furnish the Ministry of Health with necessary documents including, delivery notes and contracts for the commodities delivered amounting to Ksh.304,160,118.

- 3.2.53 On 19 June 2020, the Chief Executive Officer for KEMSA, Dr. Jonah Manjari wrote a letter REF: KEMSA/CEO/19/20/6/19(1) to the PS to the Ministry of Health submitting a reviewed invoice from Kshs.471,576,571 to Kshs.304,160,118.
- 3.2.54 According to an email sent by KEMSA Acting Procurement Manager, Mary Kitaka, they reviewed price for ventilators according to the approved budget which was the cause of the difference. There was no evidence that pricing and review of prices for the commodities was objectively guided by a market survey to ensure acquisition price is fair and reasonable and compares well with known prices of goods and services contrary to Section 3 (Z) of the repealed Public Procurement and Disposal Regulations, 2006.
- 3.2.55 On 22 June, 2020, the Project Manager Dr. Elizabeth Wangia wrote a memo REF: MOH/ADM/1/1/171 Vol I (289) to the Principal Secretary of the Ministry of Health to request for approval of payment of Kshs.304,160,118 to KEMSA under the Contingency Response Project (CERP). The PS approved the memo on 26 June, 2020 and an amount of Kshs.304,160,118 was paid to KEMSA on 29 June, 2020 vide payment voucher number 2392 to pay suppliers as summarized below:

Table 17: Approval to procure using CERP funds

	Item	Amount (Kshs)
1	Face Mace Masks	19,150,0000
2	Personal Protective Equipment (PPEs)	102,870,000
3	Laboratory items	98,330,214
4	Cobas SARS-COV-2 192 T	36,630,223
5	Equipment	47,179,680
		304,160,117

- 3.2.56 The special audit established that Kshs.134,540,680 had been paid to suppliers who made deliveries for Covid-19 items under the World Bank Transforming Health Systems (THS) project. However, it was noted that payment totaling Kshs.127,735,000 was made before Kshs.304,160,118.10 was received on 9 July, 2020. Therefore, KEMSA had paid Kshs.127,735,000 to suppliers who made deliveries for Covid - 19 items under the World bank THS program using KEMSA capital funds.
- 3.2.57 As at the time of audit, out of Kshs.304,160,118.10 a total expenditure of Kshs.134,540,680.00 had been paid to suppliers resulting to unspent balance of

Kshs.169,619,438.10. The special audit could not ascertain validity of unspent balance in the bank since KEMSA does not maintain separate bank accounts for different programmes.

3.2.58 A summary of funds received, payment made from MOH and KEMSA capital and outstanding balances is documented in the table below:

Table 18: Summary of funds received, payment made from MOH and KEMSA capital

Particulars	Amount (Kshs)
Budgeted amount	758,690,583.25
Funds received from WB	304,160,118.10
Balance from MOH	454,530,465.15
Payment made	134,540,680.00
Balance of funds	169,619,438.10

2. KENYA COVID-19 EMERGENCY RESPONSE PROJECT (CHERP)

3.2.59 The World Bank Kenya Covid-19 Emergency Response Project (CHERP) financed Covid-19 related procurements as follows:

Table 19: World Bank CHERP procurements

	Particulars	Budget (Kshs)	Amount incurred (Kshs)	Remarks
1	Procurement of Abbott-Time SARS-COV-2 test Kits	365,940,000	365,940,000	Amount not paid as at time of completion of audit on 24.9.2020
2	Purchase of PCR tests & extraction kits and virus transport media	88,900,000	86,704,000	Amount not paid as at time of completion of audit on 24.9.2020
	Total	454,840,000	452,644,000	

Procurement of Abbott-Time SARS-COV-2 test Kits

Initiation of procurement process

3.2.60 On 8 May, 2020, the Principal Secretary to the Ministry of Health wrote a letter REF: MOH/ADM/1/2/16 VOL.1(98) to Chief Executive Officer (CEO) of KEMSA Dr. Jonah

Manjari authorizing him to undertake procurement of Abbott Real-Time SARS-COV-2 test kits at a cost of Kshs.365,940,000. The procurement of test kits was captured in the CHERP work plan at a cost of Kshs.365,940,000.

- 3.2.61 On 11 May 2020, the Principal Secretary to the Ministry of Health wrote another letter REF: MOH/ADM/1/2/16 VOL.1(98) to the Chief Executive Officer of KEMSA, Dr. Jonah Manjari informing him that the Ministry of Health had received some funding from the World Bank under Covid-19 Health Emergency Response Project (CHERP) and that part of the funding was to be applied for procurement of Abbott Real-Time SARS-COV-2 test kits as indicated:

Table 20: Abbott Real-Time SARS-COV-2 test kits

Item name and description	Unit of Issue	Est Unit Price (Kshs)	Quantity	Total Cost (Kshs)
Abbott Real-Time SARS-COV-2 test (2X24 tests per kit)	Kit (2X24 tests)	97,584	3,750	365,940,000

- 3.2.62 On 13 May, 2020 Acting Procurement Manager for KEMSA, Mary Kitaka, wrote an email to Abbott GmbH Ltd requesting them to urgently provide a pro-forma invoice for supply of 180,000 tests of Abbott SARS 2 COVID test kits to enable processing of purchase order. Abbott GmbH Ltd replied the same day informing Mary Kitaka that they cannot deliver all the items at once but they will provide a delivery schedule once they receive the Purchase Order.
- 3.2.63 On 13 May, 2020, Abbott GmbH Ltd sent to KEMSA a proposal and pro- forma invoice totaling to USD 3,833,812.90. Acting Procurement Manager for KEMSA, Mary Kitaka received the proposal and informed Abbott GmbH Ltd that KEMSA had a budget allocation of USD 3,452,264.00 for supply of 180,0000 tests of Abbott SARS 2 COVID test kits and requested them to line the pro- forma invoice to the allocated budget. Abbott GmbH Ltd submitted their final Pro- Forma Invoice for 180,000 tests at a cost of USD 3,452,059.87 (Kshs.365,940,000).
- 3.2.64 Section 103 (b) of the Public Procurement & Asset Disposal Act, 2015 (PPADA) allows use of Direct Procurement under the following circumstances:
- Under circumstances of urgency
 - Provided that the acquisition price is fair and reasonable and compares well with known prices of goods and services

- c. The purpose of using Direct Procurement is not to avoid competition
- d. Appropriate approvals are sought before using the method.

- 3.2.65 In addition, Section 69 (2) of the PP&ADA, 2015 allows the use of retrospective Direct Procurement under circumstances of urgency on condition that this method is properly approved by the accounting officer. It was noted that KEMSA issued a Purchase Order to Abbott GmbH on 13 May, 2020 before the Chief Executive Office approved the use of Direct Procurement method for purchase of Abbot Real-Time SARS-COV-2 on 14 May, 2020 contrary to Sections 69 (2), 103 of the Public Procurement & Asset Disposal Act, 2015.
- 3.2.66 Further, there was no evidence that KEMSA Management had done a market survey to ensure the acquisition price is fair and reasonable and compares well with known prices of goods and services contrary to Section 103 (e) of the Public Procurement & Asset Disposal Act, 2015.

Tender processing, deliveries and payment to supplier

- 3.2.67 According to tender opening minutes, tender opening was done on 3 June, 2020 however, a review of the form of tender indicated that Willem Opperman, Senior Ambassador East Africa Abbott GmbH signed the document on 5 June, 2020. This implies that tender opening was done before submission of the bid document. Tenders were evaluated and on 12 June, 2020, the technical and financial evaluation committee recommended the tender to be awarded to Abbott GmbH at USD 3,452,059.87 (Kshs.365,940,000) following negotiation meeting held on 11 June 2020.
- 3.2.68 A contract agreement between KEMSA and Abbott GmbH was signed on 23 June, 2020 for a sum of USD 3,452,059.87 (Kshs.365,940,000). According to the delivery notes reviewed, Abbott GmbH delivered the items between 5 June, 2020 and 21 June, 2020. The items were inspected by the KEMSA inspection and acceptance committee and distributed as per the distribution list provided by the Ministry of Health.
- 3.2.69 As at the time of completion of the special audit on 24 September, 2020, Abbott GmbH had not been paid by KEMSA.

Purchase of PCR Tests & Extraction Kits and virus Transport Media

- 3.2.70 The special audit established that the Ministry of Health allocated Kshs.88,900,000 from the World Bank COVID-19 Emergency Response Project (CHERP) for purchase of PCR tests & extraction kits and virus transport media. This was after the World Bank gave a no objection on the same vide an email dated 30 April 2020 by Jane Chuma of World Bank.
- 3.2.71 On 4 May, 2020, The Principal Secretary to the Ministry of Health wrote a letter REF: MOH/PROC/6/3/1 to the Chief Executive Officer of KEMSA Dr. Jonah Manjari. The purpose of the letter was to request KEMSA to commence procurement of tests and extraction kits and virus transport media at a cost of Kshs.88,900,000 as detailed below:

Table 21: Procurement of tests and extraction kits and virus transport media

	Item description	Quantity	Cost per Unit (Kshs)	Total Cost (Kshs)
1	SD Biosensor STANDARD M n Real-Time Detection kit (96 PCR tests/kit)	300 kits	1830	54,900,000
2	SD Biosensor STANDARD M SPIN-X Viral RNA Extraction kit (100 extractions per kit)	300 kits	600	18,000,000
3	To do scan virus transport package with NP swab, OP swab, 5ml tube,3ml VTM, biohazard bag Catalogue L0803030	50000 pcs	320	16,000,000
TOTAL				88,900,000

- 3.2.72 On 26 May, 2020 the Chief Executive Officer of KEMSA, Dr Jonah Manjari wrote a commitment letter referenced KEMSA/CEO/PROC/ADM/2020 to the Director Steplabs Technical Services Ltd requesting for delivery of the commodities detailed below on or before 10 June, 2020 and that the procurement process was to commence thereafter:

Table 22: Requests for tests and extraction kits and virus transport media

	Item Description	Unit Pack	Quantity
1	SD Biosensor STANDARD M n Real-Time Detection kit (96 PCR tests/kit)	Kit X 96	300 kits
2	SD Biosensor STANDARD M SPIN-X Viral RNA Extraction kit (100 extractions per kit)	Kit X 100	300 kits
3	To do scan virus transport package with NP swab, OP swab, 5ml tube,3ml VTM, biohazard bag Catalogue L0803030	Piece	50,000

3.2.73 Steplabs Technical Services Ltd delivered the items on 8 June, 2020 vide delivery note number 3212 as follows:

Table 23: Delivery of tests and extraction kits and virus transport media

Item	Description	Unit of Issue	Batch No	Qty Per Batch
08LBL588	SD Biosensor STANDARD M SPIN-X Viral RNA Extraction kit	Kit X 100 tests	2001D	300
08LBL587	SD Biosensor STANDARD M NCOV Real-Time Detection kit	Kit X 96 tests	MNCO0120016	300

3.2.74 According to the tender evaluation report dated 12 June, 2020, Steplabs Technical Services Ltd was recommended for award of tender a cost of Kshs.86,704,000 having been found responsive for both technical and financial evaluation.

3.2.75 On 22 June 2020 the Chief Executive Officer for KEMSA, Dr. Jonah Manjari and Director Steplabs Technical Services Ltd signed a contract for Supply of PCR tests & extraction kits and virus transport media as detailed below:

Table 24: Contract for tests and extraction kits and virus transport media

Item No.	Item Description	Unit of measure	Quantity Ordered	Rate (Kshs)	Total Amount (Kshs)
1	SD Biosensor STANDARD M NCOV Real-Time Detection kit	Kit X 96 Tests	300	17,568	52,704,000
2	SD Biosensor STANDARD M SPIN-X Viral RNA Extraction kit	Kit X 100 Tests	300	60,000	18,000,000
3	Virus transport package with NP swab, OP swab, 5ml tube,3ml	Piece	50,000	320	16,000,000

Item No.	Item Description	Unit of measure	Quantity Ordered	Rate (Kshs)	Total Amount (Kshs)
	VTM, biohazard bag Catalogue L0803030				
	Total				86,704,000

3.2.76 The contract indicated that Items 1 and 2 were already delivered to KEMSA and that item 3 was to be delivered on or before 06 July 2020.

Irregular use of retrospective Direct Procurement method

3.2.77 A review of the procurement process established that KEMSA used Direct Procurement method retrospectively in acquiring PCR tests & extraction kits and virus transport media.

3.2.78 Section 103 and 104 (C) of the Public Procurement & Asset Disposal Act, 2015 provides that Direct Procurement can be used under the following circumstances:

- a. Under circumstances of urgency.
- b. Provided that the acquisition price is fair and reasonable and compares well with known prices of goods and services.
- c. The purpose of using Direct Procurement is not to avoid competition.
- d. Appropriate approvals are sought before using the method.

3.2.79 In addition, section 69 (2) of the Public Procurement & Asset Disposal Act, 2015 allow the use of retrospective Direct Procurement method, under circumstances of urgency, on condition that this method is properly approved by the accounting officer.

3.2.80 Though KEMSA management issued a commitment letter to the supplier indicating that procurement process will follow later, there was no evidence inform of a market survey to proof that the acquisition price of Kshs. 86,704,000 was fair and reasonable and compares well with known prices of goods and services contrary to section 103 (e) of the Public Procurement & Asset Disposal Act, 2015.

3.2.81 Except for the Virus transport package amounting to Kshs.16,000,000, the rest of the items were received in KEMSA on 26 June, 2020 as detailed below:

Table 25: Delivery of tests and extraction kits and virus transport media

Item Description	Unit of measure	Quantity Ordered	Quantity received	Rate (Kshs)	Total Value (Kshs)
SD Biosensor STANDARD M NCOV Real-Time Detection kit	Kit X 96 Tests	300	300	17,568	52,704,000
SD Biosensor STANDARD M SPIN-X Viral RNA Extraction kit	Kit X 100 Tests	300	300	60,000	18,000,000
TOTAL					70,704,000

3.2.82 On 30 June, 2020 KEMSA CEO, Dr. Jonah Manjari wrote a letter REF: KEMSA/FIN/1/THSUC/19/20/001 to the Principal Secretary of the Ministry of Health, Susan Mochache requesting for transfer of Kshs. 77,774,400 to pay the supplier of PCR tests& extraction kits and virus transport media and also KEMSA management fees as follows:

Table 26: Transfer to KEMSA for payment of tests and extraction kits

Supplier	Invoice	LPO	S12 No	GRN No.	Description	Amount Kshs.
Steplabs Technical Services Ltd	1325	826782	1813613	EMB-1-005489/2019/2020	NCOV Real-Time Detection	52,704,000
					Spin X Viral RNA Extraction kit	18,000,000
Sub-Total						70,704,000
10% Management Fees						7,070,400
Total						77,774,400

3.2.83 The request was approved on 2 July 2020 and disbursement was made from Ministry of Health to KEMSA on 9 July 2020. Steplabs Technical Services Ltd was paid Kshs.70,704,000 by KEMSA on 10 July 2020 for NCOV Real-Time Detection and Spin X Viral RNA Extraction kits.

3.2.84 Section 146 of the Public Procurement and Asset Disposal Act, 2015 provides that no works, goods or services contract shall be paid for before they are executed or delivered and accepted by the accounting officer of a procuring entity or an officer authorized by him or her in writing except where so specified in the tender documents and contract agreement. Such an advance payment shall not be paid

before the contract is signed. However, on 13 July, 2020, Steplabs Technical Services Ltd requested for advance payment to enable them make payment for taxes and clearance of Virus transport package. The request was approved on 14 July, 2020 and payment of Kshs.16,000,000 was made contrary to Section 146 of the Public Procurement and Asset Disposal Act, 2015

- 3.2.85 The special audit established that, Steplabs Technical Services Ltd was paid Kshs.16,000,000 on 15 July, 2020. it is not clear why KEMSA paid Steplabs Technical Services Ltd using its funds without a budget yet funding was provided under the CHERP program.
- 3.2.86 Delivery of virus transport media was made on 16 July 2020. KEMSA received virus transport package with NP swab, OP swab, 5ml tube, 3ml VTM, biohazard bag Catalogue on 16 July 2020 which was a late delivery since the commitment letter deadline was 10 June 2020 and contract deadline of 06 July, 2020.

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