

REPORT OF THE AUDITOR-GENERAL ON ATHI WATER WORKS DEVELOPMENT AGENCY FOR THE YEAR ENDED 30 JUNE, 2023

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for the intended purpose.
- C. Report on the Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, risk management environment and internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations and that its internal controls, risk management and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Athi Water Works Development Agency set out on pages 1 to 54, which comprise of the statement of financial position as at 30 June, 2023, and the statement of financial performance, statement of changes in net assets, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations, which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the Athi Water Works Development Agency as at 30 June, 2023, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis), and comply with the Water Act, 2016 and the Public Finance Management Act, 2012.

Basis for Qualified Opinion

1. Outstanding Long-Term Receivables from Exchange Transactions

The statement of financial position reflects long-term receivables from exchange transactions balance of Kshs.4,486,048,000 and as disclosed in Note 20(b) to the financial statements. Included in the balance is Kshs.392,404,708 owed by various water service providers which has been outstanding for more than three hundred and sixty-five (365) days. Further, included in the balance is Kshs.4,317,945,792 owed to the Agency by Nairobi City County Water and Sewerage Company which has been outstanding for several years. However, the records of the Company reflects payables of Kshs.3,175,550,618 resulting in a variance of Kshs,1,142,395,174. In addition, the provision for bad and doubtful debts of Kshs.224,302,400 has remained static from previous year and may be considered inadequate for these long outstanding debtors.

In the circumstances, the accuracy, completeness and full recoverability of Kshs.4,486,048,000 could not be confirmed.

2. Lack of Land Ownership Documents

The statement of financial position reflects property, plant and equipment balance of Kshs.105,495,471,346 and as disclosed in Note 16 to the financial statements. Included in the balance is work in progress balance of Kshs.81,147,378,510 out of which Kshs.5,136,667,327 relates to land compensation paid to land owners over a year ago. However, despite the beneficiaries having been paid their monies, the Management has not transferred the parcels of land to the Agency.

In addition, and as reported in the previous years, the land on which the Athi Water Plaza is built does not have an ownership documents, despite a court case having been concluded and a ruling made in favor of the Agency on 23 July, 2019, which is more than four (4) years ago.

In the circumstances, the accuracy, completeness and ownership of the property, plant and equipment balance of Kshs.105,495,471,346 could not be confirmed.

3. Default in Loans Repayment

The statement of financial position reflects loan balances of Kshs.77,984,907,940 and as disclosed in Note 27 to the financial statements. Included in the balance are two (2) loans of Kshs.2,881,503,879 and Kshs.14,523,822,608 from KFW- Nairobi City Water Distribution Network Modifications Project and Water and Sanitation Services Improvement Project respectively both amounting to Kshs.17,405,326,487 which

remained static from the previous year. However, the interest accruing from the non-payment has not been disclosed in the financial statements. In addition, the Agency risks penalties and litigations due to non--repayment of loans.

In the circumstances, the accuracy and completeness of the loan balance of Kshs.17,405,326,487 could not be confirmed.

The audit was conducted in accordance with the International Standards for Supreme Audit Institutions (ISSAIs). I am independent of the Athi Water Works Development Agency Management in accordance with ISSAI 130 on the Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matter

Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matter described in the basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Termination of Contract for Construction of Ruiru II Dam Water Supply Project

A contract for construction of Ruiru II Dam Water Supply Project was awarded by Athi Water Works Development Agency on 30 May, 2017 at a contract sum of Euros 169,443,711(Kshs.22,874,900,985). The contract commencement date was 26 April, 2021 and the works were projected to be completed by 30 June, 2024.

On 19 July, 2021, the contractor suspended works due to expiry of the availability period for the financing. The availability period of the financing was extended to 14 December, 2024 by The National Treasury and an International Bank. However, the contractor issued a notice of termination to the Agency on 21 October, 2022 which became effective on the 8 November, 2022 but which the Agency disputed the contents on the notice and called on the advance payment and performance guarantee noting that the validity period of both guarantees was lapsing on 31 December, 2022. The Agency had made an advance payment of Euros 31,730,181 (Kshs.4,283,574,453) while the amount certified but not paid to the contractor amounted to Euros 8,887,373 (Kshs.1,199,786,468), resulting to a refund of advance payment balance of Euro 22,842,808 (Kshs.3,083,777,717) to the Agency on 5 February,2023.

In the circumstances, the expenditure of Euros 8,887,373.23 (Kshs.1,199,795,386.05) paid to the contractor has not achieved value for money and no report on current status of the project was provided for audit.

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the matters described in the basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that nothing else has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

1. Understaffing

The Agency's approved staff establishment allows for employment of a total number of 119 members of staff for the Authority to effectively carry out its duties and obligations as envisioned in the constitution of Kenya and the Irrigation Act 2019. However, out of the approved number of one hundred and nineteen (119) employees, the Authority has only eighty-one (81) employees, thus having an understaffing of thirty-one (31) employees.

In the circumstances, the effectiveness of service delivery to the public and stakeholders could not be confirmed.

2. Unconfirmed Control of Motor Vehicles

Review of motor vehicles fleet records provided for audit revealed that the Agency had not repossessed eighteen (18) vehicles from the contractors upon the completion of

projects. Although, the Agency had recorded the vehicles in its records, the vehicles continued to be under the custody and use by the contractors despite the projects having been completed. Further, the Agency was in possession and control of other fifteen (15) vehicles which were handed over after projects were completed. However, the ownership documents had not been transferred in the name of the Agency and the number plates remained civilian instead of the required blue number plates.

In the circumstances, the control and safe custody of the motor vehicles could not be confirmed.

The audit was conducted in accordance with ISSAI 2315 and ISSAI 2330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and overall governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and Board of Directors

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards Accrual Basis and for maintaining effective internal control as Management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the Agency's ability to continue to sustain its services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of the intention to terminate the Agency or to cease operations.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

The Board of Directors is responsible for overseeing the Agency's financial reporting process, reviewing the effectiveness of how the Management monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance audit is planned and performed to express a conclusion about whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them and that public resources are applied in an effective way, in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from

fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the Management's use of the applicable basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Agency's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Agency to cease to continue to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Agency to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide Management with a statement that I have complied with relevant ethical requirements regarding independence and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and where applicable, related safeguards.



FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

15 May, 2024