

CAB/CS/F/09

RECORD SECTION
COUNTY ASSEMBLY OF BUNGOMA
08 APR 2025
RECEIVED
P O Box 1886 50200, BUNGOMA

COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
08 APR 2025
TABLED
By: Hon. Frankia Simotwa

For Jailing
28/3/25

**COUNTY ASSEMBLY OF BUNGOMA
OFFICE OF THE CLERK**

THIRD ASSEMBLY
FOURTH SESSION

COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
08 APR 2025
NOTICE ISSUED
By: Hon. Frankia Simotwa

COMMITTEE ON ROADS, TRANSPORT, INFRASTRUCTURE AND PUBLIC WORKS

REPORT ON THE STATUS OF COMPLETION OF THE MISIKHU- NAITIRI-
BRIGADIER ROAD IN BUNGOMA COUNTY

Clerk's Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA

MARCH, 2025

Contents	
LIST OF ABBREVIATIONS AND ACRONYMS	4
CHAPTER ONE.....	5
1.1 Preamble	5
1.2 Committee Mandate	5
1.3 Committee Membership	6
1.4 Terms of Reference	7
1.5 Methodology	7
1.6 Objectives of the Fact Finding Visit.....	8
1.7 Acknowledgement	8
CHAPTER TWO	10
2.1 The Misikhu - Naitiri -Brigadier Road Project	10
2.2 Introduction	10
2.3 Budgetary Summary for the Project	10
2.4 De-scoping of Works.....	11
2.5 PHASE I OF THE PROJECT.....	12
2.5.1 Project Data.....	12
2.5.2Project Scope of Works	13
2.5.3 Financials	15
2.5.4 Challenges.....	17
2.6 PHASE II OF THE PROJECT	18
2.6.1 Project Data.....	19
2.6.2 Project Scope of Works	20
2.6.3 Physical Progress of Works	20
2.6.4 Financials.....	22
2.6.5Challenges.....	22
CHAPTER THREE.....	23
3.1 Committee’s Findings, Observations and Recommendations.....	23
3.1.1 Findings	23
3.2 Committee’s Observations	29
3.3 Committee’s Recommendations.....	30
3.4 Project Pictorials.....	32
4.0 ADOPTION SCHEDULE	41

ANNEXURES 42

LIST OF ABBREVIATIONS AND ACRONYMS

AC- Asphalt Concrete

BoQ- Bill of Quantities

CECM- Chief Executive Committee Member

CIT- Contract Implementation Team

C.O- Chief Officer

FIDIC- International Federation of Consulting Engineers

FY- Financial Year

IPC- Interim Payment Certificate

KeNHA- Kenya National Highways Authority

MOTIHUD- Ministry of Transport, Infrastructure, Housing, and Urban Development

MoU- Memorandum of Understanding

PPADA- Public Procurement and Asset Disposal Act

CHAPTER ONE

1.1 Preamble

Honorable Speaker,

I am pleased to present this Report by the Committee on Roads, Transport, Infrastructure and Public Works on the Status of Construction of the status of completion of the Misikhu- Naitiri - Brigadier Road. The information and insights contained in this report have been gathered through oral submissions, site visits and analysis of documents submitted by the County Executive Department of Roads, Transport Infrastructure and Public Works.

1.2 Committee Mandate

Honorable Speaker,

The mandate of the Committee is derived from Part II of the Fourth Schedule of the Constitution of Kenya, 2010 and further as contemplated under Standing Order No. 217 (5) of the County Assembly of Bungoma Standing Orders.

The functions of a Sectoral Committee shall be to;-

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- (b) Consider quarterly reports of the assigned departments and report to the house within twenty one sitting days upon being laid
- (c) Study the programme and policy objectives of departments and the effectiveness of the implementation;
- (d) Study and review all county legislation referred to it;
- (e) Study, access and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- (f) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;

- (g) To vet and report on all appointments where the constitution or any law requires the County Assembly to approve, except those under Standing Order 208 (Committee on Appointments); and
- (h) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.
2. In accordance with the Second schedule of the Bungoma County Assembly Standing Orders, the Committee is mandated to deal with all matters related to County Transport; Including County roads, street lighting, traffic and parking, public road transport; firefighting services and disaster management and County Public Works Services.

1.3 Committee Membership

Honorable Speaker,

The Committee on Roads, Transport, Infrastructure and Public Works as currently constituted comprises the following Members:

1. Hon. Franklin	Simotwo	Chairperson
2. Hon. Polycarp	Kimeta	Vice Chairperson
3. Hon. Stephen	Kaiser	Member
4. Hon. Jerusa	Aleu	Member
5. Hon. Meshack	Simiyu	Member
6. Hon. Hentry	Nyongesa	Member
7. Hon. Johnston	Ipara	Member
8. Hon. Everton	Nganga	Member
9. Hon. Godfrey	Mukhwana	Member
10. Hon. Job	Mukoyandali	Member
11. Hon. Ali	Machani	Member
12. Hon. Charles	Nangulu	Member
13. Hon. Everlyne	Mutiambu	Member
14. Hon. Idd	Owongo	Member
15. Hon. Violet	Makhanu	Member

1.4 Terms of Reference **Honorable Speaker,**

In preparation of this report, the Committee was guided by;

1. The status report as submitted by the County Executive Committee Member;
2. Data gathered during the fact finding visit.
3. The insights from the consultative meeting with the Department.
4. The Committee also made reference to records of evidence adduced, documents received from the Department and the various legislation that guided the understanding of the implementation of this project.

Details from these parameters formed the basis of observations and recommendations as outlined in the report.

1.5 Methodology

The Committee, while executing its oversight functions; and as purposed under its annual work plan for the year 2024/25, resolved under minute **MIN.RPW.6/14/01/2025** to take stock of the status of completion of the Misikhu- Naitiri- Brigadier road project.

Through the office of the Clerk of the County Assembly, the Committee vide correspondence to the CECM for Roads, Transport, Infrastructure and Public Works referenced CAB/CC/SECT/9VOL. IV (40) requested for a status report to guide its undertakings on this matter.

The information was received on 20th January, 2025 and was guided by the following:

1. Budgetary allocation
2. Payments made and pending payments since inception of the project
3. Details of the contractor
4. Program for completion of the project.

5. Extension period, reasons for extension and variations (if any)
6. Bills of Quantities.
7. Contract agreement

Upon review of the information provided, the Committee made further correspondence requesting for submission of additional documentation and for the appearance of the CECM and technical officers assigned to the project. They were to clarify on some of the areas that the Committee felt that the initial documents provided and data gathered during the fact finding activity on the project site could not conclude upon.

The CECM and his technical officers appeared before the Committee on 17th February, 2025 where he was able to provide additional insights on the project of which the Committee relied upon in the preparation of this report.

1.6 Objectives of the Fact Finding Visit

The Committee visited the project site on 14th February, 2025

The objectives of the Committee during the visit were;

1. To ascertain whether the status of the project was consistent with the implementation status indicated in the status report as submitted by the Department.
2. To ascertain whether the contractual documents (BQs) were adhered to and whether the project specifications were met.
3. To ascertain whether the contract has been executed within the contract period and the implication thereof; and
4. To familiarize with project challenges (if any) that could hamper the implementation of subsequent projects by the Department.

1.7 Acknowledgement

Honorable Speaker,

On behalf of the Honorable Members of the Sectoral Committee on Roads, Transport, Infrastructure and Public Works, I wish to convey my gratitude to all Members of the

Committee for their invaluable input throughout the proceedings up to the conclusion of this report.

The Committee is equally grateful to the County Executive Department for availing documented information on the project, accompanying the Committee during its field visits on the project site and for appearing in person to provide crucial information as regards the contents that have formed part of the narrative and findings of this report.

The Committee further appreciates the offices of the Honorable Speaker and Clerk of the County Assembly for the support received as it prepared this report.

It is therefore my privilege to table this report for consideration and adoption by this Honorable House.

Signed  Date..... 24/03/2025,

(Hon. Franklin Simotwo, MCA-Chepyuk Ward)

Chairperson, Sectoral Committee on Roads, Transport, Infrastructure and Public Works

CHAPTER TWO

2.1 The Misikhu - Naitiri -Brigadier Road Project

2.2 Introduction

Honourable Speaker,

Originally, the Misikhu-Naitiri-Brigadier Road project with coverage of the Webuye East and Tongaren Sub-Counties spanned 39 km and was intended as a capital project of the first regime of the County Government of Bungoma; that was at the helm from 2013- 2017.

The road is classified into categories: D1826 from Misikhu to Naitiri and part of C635 road from Naitiri market to River Nzoia in Soysambu/Mitua Ward. Bungoma County first budgeted for the works in the financial year 2016/2017 and entered into a “gentleman’s arrangement” with the national government on the co- funding of the project works. No MoU was officially signed.

From the agreement, the project was to be co-funded by the County and National Government; but due to the bureaucracy involved and lack of a framework in the releasing of the funds to the County Government, it was impossible to execute the arrangement. The County Government proceeded independently and de-scoped the project works to cover only the Naitiri- Brigadier stretch i.e. Naitiri Market- Nasianda- Kiminini Bridge- Makhonge- Nzoia River- Corner section; a distance of 20.8 Km.

2.3 Budgetary Summary for the Project

Honorable Speaker,

The County Assembly has appropriated a total sum of Kshs1, 399,856,728 for the Misikhu-Naitiri-Brigadier road project since its inception in the FY 2016/17 as summarized in the table below.

ANNUAL BUDGETARY ALLOCATIONS FOR MISIKHU - BRIGADIER ROAD		
Financial Year	Approved Budgetary Allocations	
	Phase 1	Phase 2
2016/17	172,500,000.00	
2017/18	457,356,728.00	
2018/19	150,000,000.00	
2019/20	100,000,000.00	
2020/21	100,000,000.00	
2021/22	60,000,000.00	
2022/23	100,000,000.00	
2023/24	140,000,000.00	
2024/25	12,528,000.00	107,472,000.00
TOTAL SUM	1,292,384,728.00	107,472,000.00

The first supplementary budget for the F/Y 2024/25 has proposed an additional sum of Kshs250, 000,000 for the road project.

2.4 De-scoping of Works

"De-scoping of works" refers to the act of removing or omitting a part of the work originally assigned to a contractor within a construction project; essentially reducing the scope of work they are required to complete, often done through a "variation clause" in the contract. It is considered a "negative variation" where the employer instructs the contractor to remove certain elements from the project, potentially leading to adjustments in the contract price due to the reduced work scope.

The Scope of works for the entire Misikhu- Naitiri- Brigadier road project was:

1. Site clearance
2. Preparation of the sub grade including improved sub grade in some sections to receive pavement layers as per the standard specifications
3. Provision of 200mm thick gravel sub base
4. Provision of 150mm thick cement improved base to carriageway
5. Provision of Double surface dressing pre coated chippings to carriageway
6. Provision of vehicle accesses and access culverts from road side properties
7. Provision and installation of road furniture as specified
8. Installation of erosion and erosion protection works

De-scoping of the works was done after a meeting held on 7th September, 2020 between the National and County Government Officials (*Annexure 1: Minutes of the joint meeting*). It was agreed in this meeting that the County Government of Bungoma issues a termination notice to the contractor to wind up works on the existing contract upon which the County Department was expected to furnish the MOTIHUD (Ministry of Transport, Infrastructure, Housing, and Urban Development) with termination documents and a package of balance of works on the project.

From this package, the Ministry was expected to float an open tender for the remaining works and finance the project through Treasury allocations.

The Contractor (Midland construction Co. Ltd) expressed willingness to negotiate exit terms once all the outstanding contractual matters were agreed upon and settled by the two parties in line with the existing contract.

The County therefore advised the contractor to concentrate on the de- scoped works between Naitiri and River Nzoia.

The County portioned the de- scoped project works into two phases.

2.5 PHASE I OF THE PROJECT

2.5.1 Project Data

1	Project Title	Upgrading of Misikhu – Naitiri – Brigadier Road
2	Contract No.	BGM/CNTY/OIT/01/2016-2017
3	Employer	County Government of Bungoma
4	Employer Representative	CECM – Roads, Infrastructure, and Public Works
5	Supervisor	Chief Officer - Roads, Infrastructure, and Public Works
TIME MANAGEMENT		
6.1	Letter of Award Date	4 th November, 2016
6.2	Contract Signing Date	21 st November, 2016
6.3	Site Handover Date	19 th December, 2016
6.4	Contract Commencement Date	19 th December, 2016

6.5	Contract Period	Twenty Four (24) Months
6.6	Contract Completion Date	18th December 2018
6.7	1 st Extension of Time granted	12 Months
6.8	2 nd Extension of Time granted	16 Months
6.9	3 rd Extension of Time granted	24 Months
6.10	Revised Completion Date	18 th June, 2023
6.11	Defects Liability Period	Twelve (12) months
6.12	Expected Completion Date	17 th June 2024
FINANCIALS		
6.13	Contract Amount	Kshs 1,115,939,198.00
6.14	Approved Variations to Date	Kshs 0
6.15	Revised Contract Amount	Kshs 1,115,939,198.00
6.16	Payments to Date	Kshs 822,910,367.31
6.17	Maximum Retention to be held	5% of the contract sum
6.18	Liquidated Damages	10% of the contract sum

2.5.2 Project Scope of Works

The tender was advertised in 2016 for upgrading of Misikhu- Naitiri – Brigadier road under the contract no. BGM/CNTY/OIT/01/2016- 2017. The tender was processed and awarded to Midland Construction Limited of P.O Box 4- 50100, Kakamega. The contract agreement was entered on the 21st November, 2016. The total contract sum was Kshs 1,115,939,198.00/= (one billion, one hundred and fifteen million, nine hundred and thirty nine thousands, one hundred and ninety eight shillings only. The contract was to be executed within a period of 24months.

During the engagement with the Committee, the Department reported that this phase of the project was complete and had involved the execution of the following works:

- Equipping of the County Materials Laboratory at Webuye.
- Site clearance
- Earthworks
- Excavation and filling of drainage structures
- Culverts and drainage structures

- Natural sub-base and base material
- Cement/ lime treatment of the base material
- Bituminous surface treatment and surface dressing
- Construction of 2 No. bridges
- Purchase of 2 No. double cab vehicles

The table below summarizes the extent of works undertaken under phase one

Item No.	Description	Unit	Quantity of Works	Completed Works
1	Site Clearance/ Topsoil stripping	Km	39	39
2	Earthworks – includes cut to spoil, fill in soft material, cut in hard material, Fill in hard material and sub grade layer	Km	39	27
4	Excavation and Filling for structures (Stone pitching)	M ²	1000	6489
5	Culverts (600 mm diameter)	M	1896	666
6	Culverts (900 mm diameter)	M	500	260
7	Sub base and Base layers	Km	39	20.7
8	Cement stabilized base	Km	39	17.5
9	Double seal surface dressing	Km	39	17.5
10	Bridges	No.	3	0
11	Road Markings	M ²	11700	0
12	Speed Humps	M	400	0
13	Road signs	No.	30	0
14	Road Kerbs	M	2000	0
15	Road Channels	M	2000	0

Due to the de-scoping of the works from Misikhu- Naitiri- Brigadier to Naitiri- Brigadier and completion of the works that were already in progress, the items 11-15 that were in the contract were implemented under a separate contract (Phase two). This is as a result of the closing out on the initial contract.

2.5.3 Financials

Payments status under phase I of the project

From the contract figure of Kshs.1, 115,939,198.00, total payments made to the Contractor amounts to Kshs**842, 026,563.23**. This excludes claims payment.

The table below highlights the status of payment made in Phase I of the project

COUNTY GOVERNMENT OF BUNGOMA DEPARTMENT OF ROADS, INFRASTRUCTURE AND PUBLIC WORKS MISIKHU - BRIGADIER PHASE 1 PAYMENT RECORDS				
Date	Certificate No.	Advance Payment	Claims	Amount Paid
3-Jan-17	Cert 1	111,593,919.80		
1-May-17	Cert 2			59,475,876
1-Jun-17	Cert 3			46,560,438
Feb. 2018	Cert 4			46,407,192
Feb. 2018	Cert 5			39,933,624
1-May-18	Cert 6a			33,726,327
1-May-18	Cert 6b			32,139,343
Nov-18	Cert 7			79,177,291
Feb-19	Cert 8A			53,389,167
Apr-19	Cert 8B			34,578,877
	Claim Cert		155,561,216	71,920,000
	Claim Cert		150,127,039	-
	Claim Cert		114,341,014	-
	Claim Cert		317,826,898	-
Jun-19	Cert 11A			16,018,736
Jun-19	Cert 11B			32,000,000
Oct-19	Cert 11C			20,655,860
Feb-20	Cert 12A			42,384,877
Feb-20	Cert 12B			35,809,404
Jan-21	Cert 13			24,922,313
14-Jun-23	Claim Cert		107,946,648	26,589,794
14-Jun-23	Cert 15			63,315,962
10-Nov-23	Cert 16			76,509,173
8-Feb-24	Cert 17			51,864,703
19-Apr-24	Cert 18			40,629,000
19-Apr-24	Cert 19			12,528,000
TOTAL				940,535,956
Contract Sum		1,115,939,198		940,535,956

Claims

Honorable Speaker,

A "claim" in a construction contract is a formal request made by one party (usually the contractor) to the other party for additional compensation or an extension of time, due to unforeseen circumstances or a perceived breach of contract terms that have impacted their ability to complete the project as originally agreed upon. Essentially, it is a request to be reimbursed for extra costs or time needed because of issues not anticipated in the initial contract.

The contractor, Midland Construction Co. Ltd has made claims as summarized below due to suspension of the works arising out of delayed payments and de-scoping of the works:

Claim No.	Amount of Claim	Amount Paid	Remarks
CLAIM NO.1	155,561,216.13	71,920,000.00	Evaluated
CLAIM NO.2	150,127,039.36	-	Not yet to be evaluated
CLAIM NO.3	114,341,014.00	-	Not yet to be evaluated
CLAIM NO.4	317,826,898.18	-	Not yet to be evaluated
CLAIM NO.5	107,946,648.41	26,589,794.00	Evaluated
TOTAL	845,802,816.07	98,509,794.00	

From the table above, only claim Nos. 1 and 5 totaling to Kshs**98, 509,794.00** were evaluated and paid for.

Variations

From the Department's submission;

- No contract variation of price has been carried out on the project.
- Time variations were carried out on the project arising from a number of factors.

A total of three extensions on time (variations) were made i.e. by 12 months, 16 months and 24 months respectively; thus altering the expected completion period from 18th December, 2018 to 17th June, 2024.

The factors under time delays were stated as follows:

- a. **Delayed payments of IPCs;**
- b. **Covid-19 Pandemic**
- c. **De-scoping of the works**

The table below outlines the delays (days) per certificate

IPC No.	No. of days delayed
2	204
3	120
4	50
5	121
6a	94
6b	152
7	209
8a	64
8b	123
11b	118
12	43
13	359
Total Number of days delayed	1657 days

2.5.4 Challenges

The following are some of the major issues that were cited by the Department as limitations to the timely execution of the contract;

1. Covid-19 Pandemic

This was a global pandemic that affected many projects worldwide, including this one. Due to government's directives aimed at curbing the spread of the disease; there was an ultimate delay in the project implementation.

2. De-scoping of the Works

At the start of the project in FY 2016/2017, there was a verbal agreement between the County Government and National Government for the co-funding of the works. The contractor was therefore awarded the works from Misikhu- Brigadier; a total length of 39Kms. However due to bureaucracies involved; a termination agreement with the contractor for the section between Misikhu- Naitiri was agreed upon. The negotiations for the mutual termination of the portion of works took a lot of time, further delaying the project.

3. Delayed payments of IPCs

Delayed payments resulted in the suspension of works by the contractor. The employer was unable to pay the contractor timely due to budgetary constraints.

The amounts allocated for the project within the financial year were not adequate enough to cover the certified works done.

2.6 PHASE II OF THE PROJECT

The tender was advertised in 2023 for - completion of Naitiri – Brigadier – R. Nzoia road, Contract No: BGM/CNTY/RPW/OT/023/2023 -2024.

The works for Completion of Naitiri – Brigadier – R.Nzoia Road were awarded to **Midland Construction Co. Ltd** through a letter dated 18th March 2024 at a contract price of **Kshs525,999,390.00**. The contractor's letter of acceptance was dated and received on 21st March, 2024. The contractor agreement was signed by the parties on 8th April, 2024. The commencement date for the works as agreed by both parties was 14th April, 2024. The contract period is 24 months with the defects liability period of 12 months.

The contractor commenced the execution of the works as agreed and there has been noticeably progress.

2.6.1 Project Data

1	Project Title	Completion of Naitiri – Brigadier – R.Nzoia Road
2	Contract No:	BGM/CNTY/RPW/OT/023/2023-2024
3	Employer	County Government of Bungoma
4	Employer Representative	CECM – Roads, Infrastructure and Public Works
5	Supervisor	Chief Officer - Roads, Infrastructure and Public Works
TIME MANAGEMENT		
6.1	Letter of Award Date	18 th March 2024
6.2	Contract Signing Date	8 th April 2024
6.3	Site Handover Date	14 th April 2024
6.4	Contract Commencement Date	14 th April 2024
6.5	Contract Period	Twenty Four (24) Months.
6.6	Contract Completion Date	13 th March 2026
6.7	Defects Liability period	Twelve (12) Months.
6.8	Expected Completion Date	12 th March 2027
FINANCIALS		
6.13	Contract Amount	Kshs. 525,999,390.00
6.14	Approved Variations to Date	Kshs.0
6.15	Revised Contract Amount	Kshs.525,999,390.00
6.16	Payments to Date	Kshs. 115,571,206.00
6.17	Maximum Retention to be held	5% of the contract sum
6.18	Liquidated Damages	10% of the contract sum

2.6.2 Project Scope of Works

The major works to be executed under the contract comprise mainly of the following:

- a) Site clearance
 - b) Preparation of the sub grade including improved sub grade in some sections to receive pavement layers as per the standard specifications
 - c) Provision of 200mm thick cement improved gravel sub base
 - d) Provision of 150mm thick cement improved base to carriageway
 - e) Provision and laying Asphaltic Concrete pavement layer.
 - f) Provision of vehicular accesses and access culverts from road side properties
 - g) Provision and installation of road furniture as specified
 - h) Installation of erosion and erosion protection works
- g) Any other activity not listed above but may be deemed necessary and instructed by the Engineer.

2.6.3 Physical Progress of Works

Preliminary and General Items

This section is dedicated to the costs under Bill I that cannot be attributed to the specific measured work items, but are necessary for the construction of the works successfully. Under this item the contractor hasn't done any works.

Earthworks

The works carried out under this Item is the fill in hard material at the approaches of River Kiminini Bridge. The Committee, during its fact finding, established that the contractor has completed the works on this section of the project.

Excavation and Filling for structures

The works carried out under this item is stone pitching of the open drains on both sides of the road at selected areas. This was necessary to safeguard the road from being eroded. Under this item the contractor has not done any works.

Culverts and Drainage Structures

The works involved under this item is the installation of the culverts at selected points along the road. Under this item the contractor has not done any works.

Shoulder Repairs

The works involved under this Item is the repair and gravelling of the road shoulders in order to safeguard the road pavement. Under this item the contractor has not done any works.

Bituminous Mixes

The works involved under this item are the pothole patching and provision of AC overlay. Under this item, pothole patching has been done from Chainages 0+ 000 to Chainages 4+500; whereas AC overlay has been carried out from chainages 0 + 000 to chainages 5+000.

Summary of Work Done

Bill No.	Description	Weightage (%)	Works Done (%)
1	General office administration, overheads and preliminaries	12.12	-
5	Earth works	0.01	4.24
7	Excavation and Filling for structures	2.76	-
8	Culverts and Drainage Works	1.50	-
9	Passage of Traffic	0.01	-
11	Shoulder Maintenance and Repairs	0.93	0.69
12	Natural material base and sub base	0.00	2.05
14	Cement and Lime Treatment	-	0.05

15	Bituminous Surface Treatment and Surface dressing	0.99	0.6
16	Bituminous Mixes	73.48	24.07
20	Road Furniture Repair and Maintenance	5.88	-
26	Street Lighting	2.32	-
	TOTAL	100.00	31.70

Overall progress of works stands at 31.70%.

2.6.4 Financials

Payment Certificates

A total of Kshs **115, 571,206** has been paid to the contractor for this phase as summarized below.

IPC (CERT) No.	Amount Certified	REMARKS
1	70,468,666.00	IPC Cert.No.1 – paid
2	45,102,540.00	IPC Cert. No.2 – paid
3	22,320,720.00	IPC Cert. No.3 – yet to be paid
4	17,980,417.60	IPC Cert. No.4 – yet to be paid

2.6.5 Challenges

There Department reported no serious challenges since the project started.

CHAPTER THREE

3.1 Committee's Findings, Observations and Recommendations

3.1.1 Findings

I) **Analysis of the Bills of Quantities, the Payment Certificates and submitted documents**

Honorable Speaker,

Upon review of the Bills of Quantities, the Payment Certificates and submitted documents, the committee raised a number of concerns with the Department to which the following justification was presented;

1. The Committee sought to understand why the totals for Bills 1 to 20 for Phase I was Kshs.849,167,100.00; being Kshs.266,772,098.00 less than the contract figure of Kshs.1,115,939,198.00

The Department submitted that total of Bills from the contractor's summary page is Kshs.874,425,500.00 and that the addition of the contingencies and VAT is what gives the contract figure of Kshs.1,115,939,198.00

2. The Committee observed from the submitted copies of BQs for Phase II; Bill 01-50-14 and 01-50-016 (preliminaries) catered for provision of two project vehicles while the same items (Two vehicles) were provided for under Phase I of the project in bill 1 (preliminaries 01-50-014 and 01-50-016).

The Department submitted that both contracts had provision of the two project vehicles that would revert back to the employer after the completion of works. For the first phase, the contractor supplied two No. double cabin vehicles that are now stationed at Kanduyi roads office.

For Phase II, the Contractor has not been issued with instructions for the purchase of new vehicles since the vehicles acquired under Phase I and those from the C33- dual carriageway project are still in good condition; and therefore available for use on the project.

3. The Committee inquired about Bill No.01 -50-010 on laboratory furniture and equipment billed at Kshs.500, 000.00 and bill 01-50-012 on survey equipment at Kshs.500,000 while the same had been provided for under Phase I of the projects in Bill 1 (Preliminaries 01-50-010) at a cost of Kshs.20M.

The Department submitted that Bill item 01-50-010 provided for under Phase II is for purchasing of laboratory furniture, reagents and chemicals necessary for the testing of the works on site.

That Bill item 01 -50-010 under Phase I was for equipping the materials lab with the required equipment. The laboratory at Webuye (Roads and Public Works Office) was also being utilized by the County on the implementation of other projects like CEF, RMLF and building works.

4. The Committee raised concerns from the listed scope for Phase II where there was a Bill for earthworks, excavations and fillings for structures. The Committee interpreted that these were basic elements that ought to be taken care of during the initial phase of the project (Phase I). The Department was put to task to elaborate how again they appeared under Bill 07-60-005 at Kshs.11.9 million. This element includes stone pitching.

In the Departments response, the Bill item 07-60-005 provided for under Phase II is for stone pitching along the road on both sides towards River Kiminini and River Mabusi bridges. That it was necessary to protect the road shoulders from wearing out caused by surface water.

That stone pitching was done along the road under Phase I was around Sosyambu and Brigadier area.

5. The Committee Inquired about an element of bitumen surface treatment captured as Bill No.15 (Kshs.4.2M), yet it also appears in the scope of works for Phase I under Bill 15(Kshs.152.7M); and sought to establish under what phase it was undertaken.

The Department submitted that the element of bitumen surface treatment under Phase II is for the prime coat that will be utilized in the repair of the potholes and repair of the road shoulders before the laying of asphaltic concrete pavement (AC). That this is the correct procedure required and therefore necessary. That what was provided in the first phase was for the prime coat, bitumen 80/100 penetration grade and surface dressing.

6. The Committee questioned the specifics under the financial data sheet (financials 6.16). Total payments on phase one is Kshs.842, 910,367.31 while summary certificates indicates Kshs.842, 026,563.23 (after lessening the recovered advance). This excludes Kshs.98M paid as claims. Total phase one payments together with paid claims is Kshs.940M. Therefore, how can payment of above 90% on the original contract sum yet the de- scoping of works reduced the scope of works of works from 39Km to 19Km.

The Department averred that Payments made are based on the actual works carried out. The contractor had been awarded the entire road of 39Kms but after de-scoping the County remained with 20.8Kms of the road. At the time of de- scoping, the contractor had carried out the following works which included the section between Misikhu to Naitiri:

Item No.	Description	Unit	Quantity of Works	Completed Works
1	Site Clearance/ Topsoil stripping	Km	39	39
2	Site clearance and top soil stripping	Km	39	39
3	Earthworks	Km	39	27
4	Excavation and Filling for structures(Stone pitching)	M ²	1000	6489
5	Culverts (600 mm diameter)	M	1896	666
6	Culverts (900 mm diameter)	M	500	260
7	Sub base and Base layers	Km	39	20.7
8	Cement stabilized base	Km	39	18.65
9	Double seal surface dressing	Km	39	18.65
10	Bridges	No.	3	2
11	Road Markings	M ²	11700	0
12	Speed Humps	M	400	0
13	Road signs	No.	30	0
14	Road Kerbs	M	2000	0

15	Road Channels	M	2000	0
----	---------------	---	------	---

The amounts paid in claims were not part of the actual works to be executed by the contractor; but came about as a result of the employer's failure to meet his contractual obligations on time and thus the losses.

7. On Certificate No.13 the Committee sought to understand the rationale as to why on the budget utilization summary it is shown that the certificate is costed at Kshs 20,484,735.79 while the second summary of payment certificates indicates a figure of Kshs.24, 922,313.00; to which the Department clarified that the correct amount of payment made for Interim certificate No.13 was Kshs. 24,922,313.00

8. The Committee inquired whether there was an advance payment made for Phase II of the project to which the Department stated that there was none. This explains why the Department did not submit the advance payment certificate and bank guarantee.

A bank guarantee is a requirement for advance payment together with an authenticating letter from the Head of Procurement as per Sections 146&147 of PPDA, 2015 and Regulation 136(a) of PPDA Regulations 2020.

9. The Committee interrogated the rationale behind the disparity in the first bundle of documents showing certificate No.16 at Kshs.63, 315,962.90 (materials certificate recovered in grand total) while the second bundle of documents did not have certificate No.16. (However certificate No.15 is complete with the retention amount of 10 per cent and has the same figure of Kshs.63, 315,962.00). The Committee questioned whether it eventually treated as a normal certificate.

The Department owned up to a mix up in the submission of the summary report on the payments made. That Interim Payment Certificate No.16 is the one that was paid amounting to Kshs.63, 315,962.90. That Certificate No.15 was submitted by the contractor and is for claim No.4 amounting to Kshs.317, 826,898.18 as a result of the de-scoping of the works.

Additionally, the payment for materials delivered on site certificate; but not yet built into the works is permitted under the contract – sub clause 39 of the Conditions of Particular Application (Interim Payments) and clause 60.1 of the Fidic conditions of contract.

II) Findings from the fact-finding activity

- i. The distance from Naitiri to Nzoia River where the County project terminates is 20.8Kms
- ii. Of the 20.8Kms, 16.2Kms was not upgraded. This section lacks an overlay and the tarmac layer was done in the Phase 1 (Nasianda- Kiminini Bridge- Makhonge- Nzoia River- Corner)
- iii. 4kms of this road had been upgraded and with an overlay
- iv. No works have been done on 1Km each for Kiminini River, Makhonge River and Nzoia River
- v. The two bridges- Kiminini River and Makhonge River are complete; though the guardrails had not been installed. At the time of the Committee’s visit, river trailing was on going on at the Kiminini River
- vi. No works have been done on the part/ stretch for the national government (Misikhu- Naitiri) and the section was in a bad state; though motorable.

III) CLAIMS

From the documents submitted, the following were the major reasons for claims:

- Covid 19 protocol issued by the government
- Delayed payments
- Suspension of works arising from de-scoping of the works

The contractor submitted 5No. Claims for payment and so far only two have been analyzed and settled. The total Number of days that payments delayed is indicated as 1657 days.

Contractual claims on delayed payments are provided for under clause 60.7 of the contract (Over-due payments).

“Unless otherwise stated in the appendix, interest shall be paid on the overdue amounts and the interest to be paid shall be in accordance with prevailing commercial bank rates”

Further to that, Section 140(a) of the Public Procurement and Assets Disposal Act (PPADA), 2015 under provides that “unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts”

The payment becomes overdue when it is not made within 28 days from the date it was certified by the project manager as provided for under the Appendix to the conditions of contract.

3.2 Committee's Observations

Honorable Speaker Sir, from the foregoing, the Committee made the following deductions;

1. **That** the County Assembly of Bungoma has appropriated a total sum of Kshs1, 399,856,728 for the Misikhu-Naitiri-Brigadier road project since the project's inception in the FY 2016/17 to date
2. **That** the County Government of Bungoma had intended to undertake as a capital project of first regime the upgrade the 39KM stretch of the Misikhu- Naitiri- Tongaren road to Asphalt Concrete (AC) standards at a contract sum was Kshs 1,115,939,198.00/=; to cater for the increased loading that could not be sustained by the status of the road at earlier designed.
3. **That** there is no formal basis of engagement for partnership between the National Government's Ministry of Transport (MOTIHUD) and the County Government of Bungoma on this project.
4. That that total of Bills of Quantities (estimates) for the project in the first phase was Kshs.874, 425,500.00 and that the addition of the contingencies and VAT is what gives the contract figure of Kshs.1, 115,939,198.00.
5. That the total Payments to the Contractor for the first phase of the project is **842,026,563.23**; this excludes claims payment.
6. **That** the first phase of the project has five claims totaling Kshs**845, 802,816.07** Of these, only claim No. 1 and No. 5 totaling to Kshs **98,509,794.00** were evaluated and paid for.
7. **That** the total Number of days delayed on the IPCs on the first phase of this project is 1657 days.
8. That the client and contractor have closed out on the first phase of this project.

9. **That** the second phase works for Completion of Naitiri – Brigadier – River Nzoia Road, were awarded to **Midland Construction Co. Ltd** through a letter dated 18th March 2024 at a contract price of **Kshs. 525,999,390.00**. Of this amount, a total of **Kshs115, 571,206** has been paid to the contractor and works progress valued at 31.70 per cent.

3.3 Committee's Recommendations

Honorable Speaker,

The Committee therefore recommends;

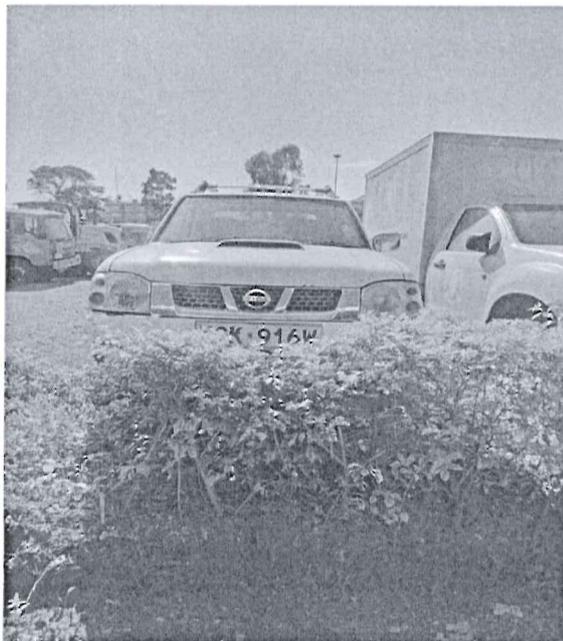
1. **That** the County Government Department of Roads, Transport, Infrastructure and Public Works should pursue further discussions with the MOTIHUD as per their commitment made on September 7th, 2020 during the joint meeting between the national and county government officials regarding the completion of works on the 19KM stretch from Misikhu- Naitiri which remains in bad state. A status report should be filed with the County Assembly sector Committee within 90 days upon adoption of this report for consequent action.
2. **That** the analysis/evaluation of the claims should be done as provided for under the contract. Claims on Delayed payments should be based on the number of days delayed beyond the days stipulated under Appendix to the conditions of contract (28 days plus 1). The Department should therefore counter check the 1657 days of delayed payments.
3. **That** claims on delays in works resulting from Covid- 19 protocol working arrangements should be shared between the County Government and the contractor. The County can plead a ***force majeure*** on Covid- 19.
4. Further the Committee recommends that the Department also considers counter claims against the contractor (eg. Delayed performance as provided for under Section 140(b) of PPADA 2015) for purpose of bargaining downwards the total claims (**Kshs845, 802,816.07**) as they analyze the claims:

140(b) “The contractor shall be liable to liquidated damages for delayed performance”

5. That the County Departments of Roads and Finance should put in place systems and procedures to ensure that IPCs are paid within the time limits set out in the conditions of contract; to avoid unnecessary claims that diminish the county’s resource basket. These include; signing of contracts only when there is enough budgetary provision on projects and negotiate the duration for honoring certificates from 28+1 days to 60 +1 days for major projects.

3.4 Project Pictorials

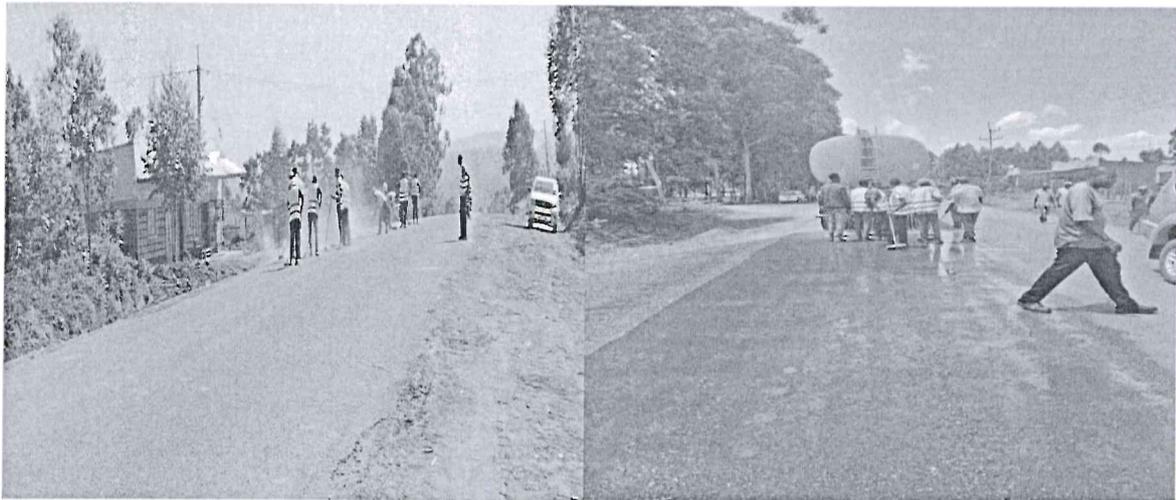
Project Vehicle

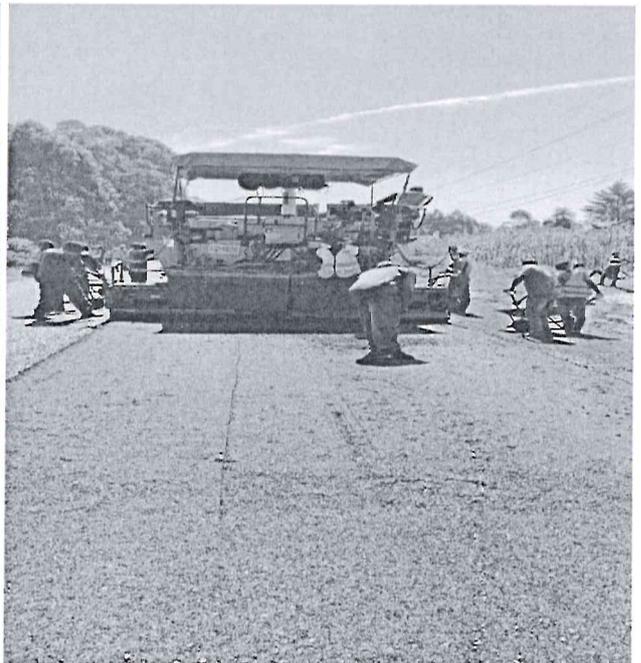
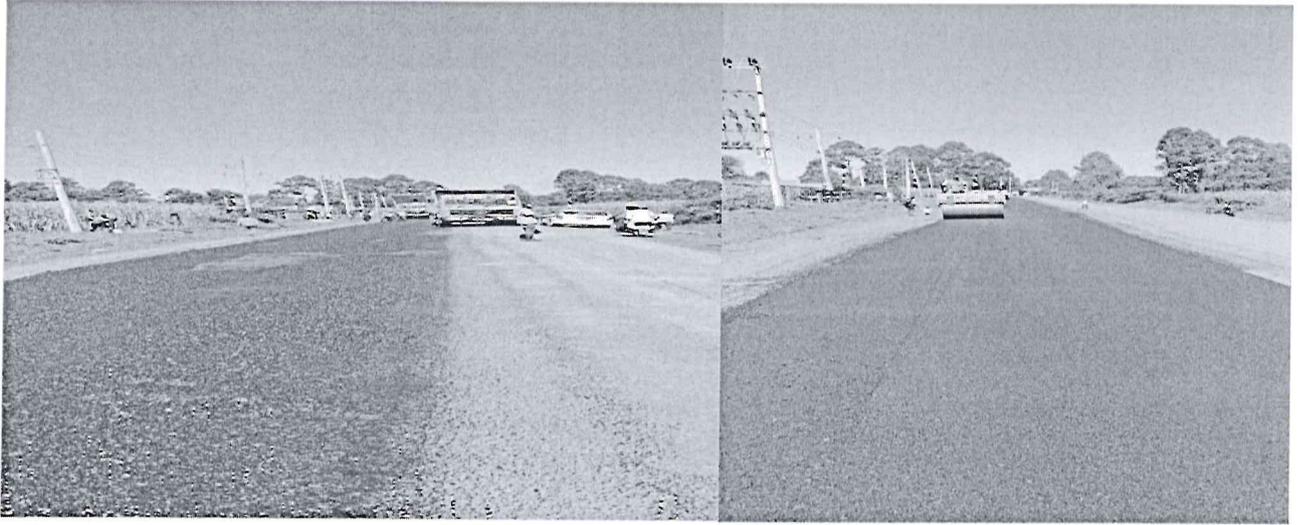


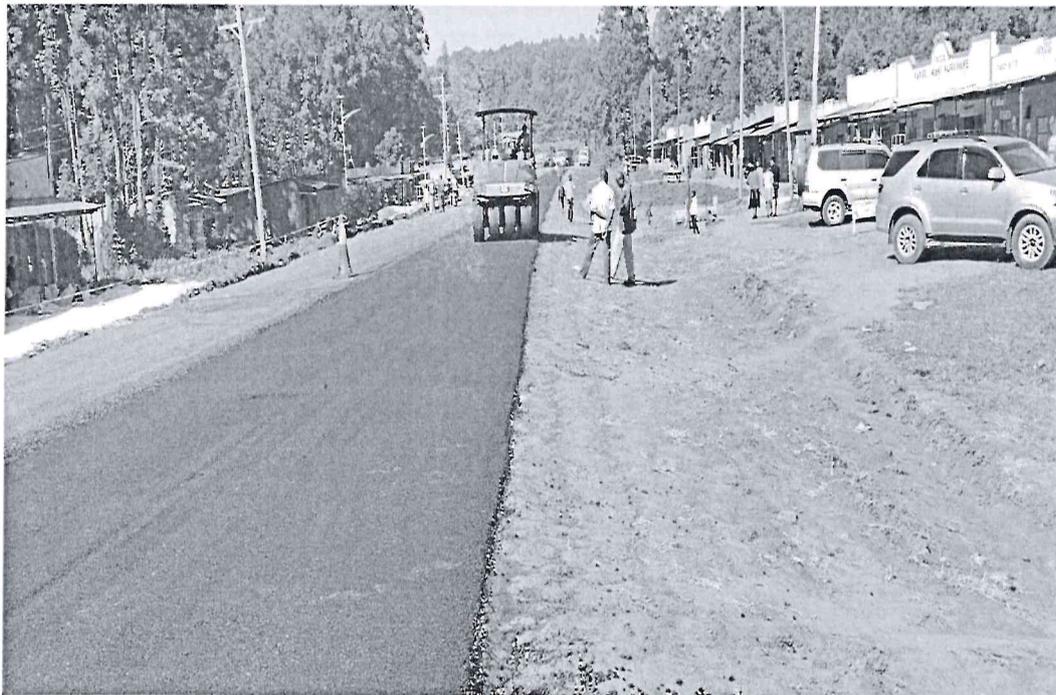
Stone Pitching

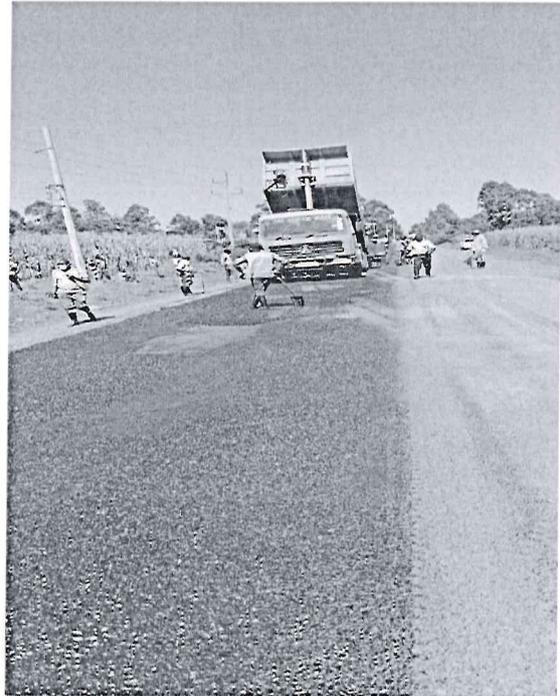


Ongoing Works





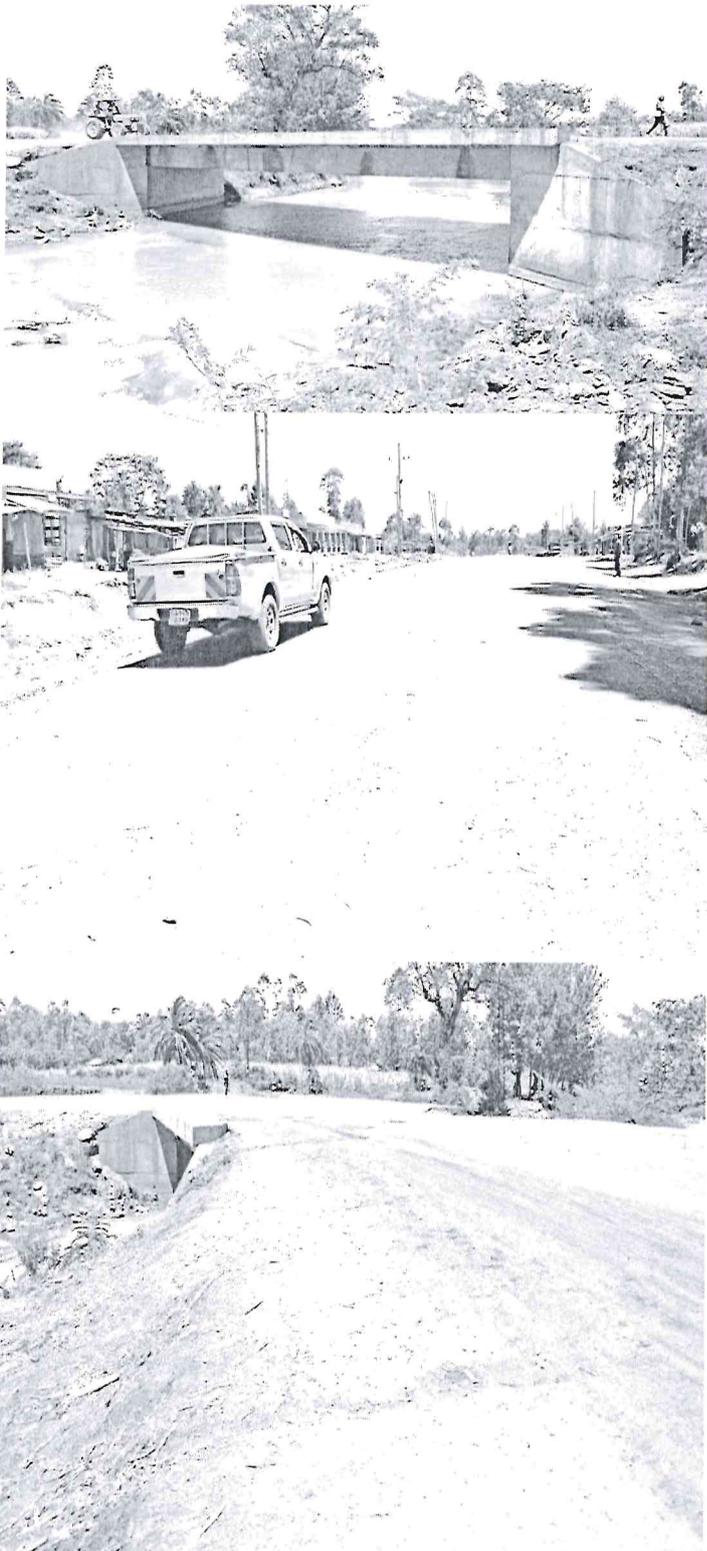




Laboratory



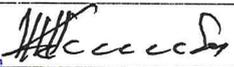
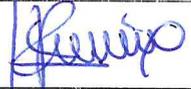
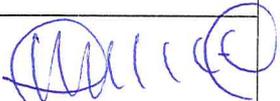
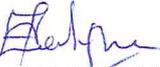
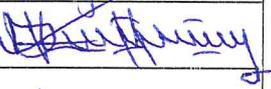
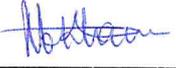
Bridges





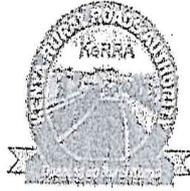
4.0 ADOPTION SCHEDULE

We the undersigned Committee members hereby append our signatures in agreement with the contents of this report.

No.	Name	Designation	Signature
1	Hon. Franklin Simotwo	Chairperson	
2	Hon. Polycarp Kimeta	Vice Chairperson	
3	Hon. Stephen Kaiser	Member	
4	Hon. Jerusa Aleu	Member	
5	Hon. Meshack Simiyu	Member	
6	Hon. Hentry Nyongesa	Member	
7	Hon. Johnston Ipara	Member	
8	Hon. Everton Nganga	Member	
9	Hon. Godfrey Mukhwana	Member	
10	Hon. Job Mukoyandali	Member	
11	Hon. Ali Machani	Member	
12	Hon. Charles Nangulu	Member	
13	Hon. Everlyne Mutiambu	Member	
14	Hon. Iddi Owongo	Member	
15	Hon. Violet Makhanu	Member	

ANNEXURES

1. Minutes of the meeting held on September 7th, 2020
2. Summary of BQS for phase I and II of the project



KENYA RURAL ROADS AUTHORITY

Tel: 020-8013846, 2710451, 2710464, 0724733568/
0733619197/0771451679

Email: kearra@kenya.gov.ke / desk@kearra.gov.ke

Website: www.kearra.gov.ke

Fax: 2710442

Barabara Plaza, Block B,
Airport South Road,
Opp KCAA Building
P.O. Box 48151-00100,
NAIROBI, KENYA

Ref: KeRRA/06/1/4692

2nd November, 2020

HE Governor Wycliffe Wangamati
County Government of Bungoma
P.O Box 437-50200
BUNGOMA.

Dear Sir,

RE: MANAGEMENT MEETING MINUTES.

Forwarded herewith, please find the minutes for the management meeting for the proposed Improvement to Bitumen Standard of Naitiri – Makunga – Misikhu Brigadier – Matunda Roads held on 7th September, 2020 in the office of the Cabinet Secretary – Transport, Infrastructure, Housing & Urban Development.

Yours faithfully,

Eng. Philemon K. Kandie.
Ag. DIRECTOR GENERAL.

Encl.

Cc.: Mr. James Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure,
Housing & Urban Development
P. O. Box 52692 – 00100,
NAIROBI

Prof. Arch. Paul Maringa Mwangi, CBS
Principal Secretary,
State Department for Infrastructure,
Ministry of Transport, Infrastructure, Housing,
Urban Development & Public Works
P.O Box 30260 - 00200
NAIROBI.

MINUTE	ACTIVITY	ACTION
Min 01/29/08/2020	<u>ASSEMBLY AT CS OFFICE (TRANSCOM HOUSE)</u>	
1.1	The participants congregated at Cabinet Secretary's office in Transcom House at 3:30 pm on 7 September 2020. The C.S Mr. James Macharia welcomed the participants to the management meeting.	Info.
Min 02/29/05/2020	<u>INTRODUCTION</u>	
2.1	Members introduced themselves after which the agenda of the meeting was presented and adopted.	Info.
Min 03/29/05/2020	<u>PROJECT OVERVIEW</u>	
3.1	The C. S (MOTIHUD) informed the meeting that a request has been made by the County Government of Bungoma to the National Government through His Excellency the president towards assisting the county of Bungoma complete the upgrading to bitumen standard of Matunda—	Info
3.2	Brigadier – Naitiri Misikhu road. He thereafter requested the Governor, Hon Wangamati to brief on the status of the road.	Info.
	The following was the reported status: -	
3.3	1. The county government of Bungoma has an ongoing contract with Midland Construction Co Ltd for the section from River Nzoia Bridge to Misikhu with a total length of 39km	Info.
	2. To date the works are ongoing and nearing completion between Nzoia river bridge and Naitiri, a section of 19km	
3.4	3. Due to resource challenges, it is not possible to complete the works within the contractual timelines and therefore the County Government is seeking help from the national government to complete the balance of 20km and also the 9km from Nzoia river bridge to Matunda junction	Info.
	<u>DELIBERATIONS</u>	
3.5	In response to the above request, the C. S. MOTIHUD confirmed that the president had given no objection to the request. He also reported that an allocation of KSh 200,000,000 (Two Hundred Million) through Kenya Roads Board (KRB) as seed money has been set aside. He requested for comments from the Director General KeRRA on how to go about the change in jurisdiction and financing.	Info.
	The director general KeRRA advised that, the County government of Bungoma will have to agree with M/S Midlands Construction Co Ltd to windup the existing contract and furnish the Ministry of Transport, Infrastructure, Housing and Urban Development with the termination documents.	

BILL No.	DESCRIPTION	MEASURED/CONTRACT QUANTITY	PHASE ONE		DE-SCOPING	PHASE TWO
			ACTUAL/DONE QUANTITY			MEASURED/ CONTRACT QUANTITY
Bill No. 01	Preliminaries and General Items. Construct and equip laboratory Project vehicles (2No.) Construct and furnish RE office	92,870,000.00	Lumpsum Lumpsum Lumpsum			52,352,000.00
Bill No. 02						
Bill No. 03						
Bill No. 04	Site Clearance and Demolitions Earth works	2,466,000.00 80,000,000.00	entire 39km entire 39km	39 27	No savings savings on 12km	51,500.00
Bill No. 05	Fill in soft materials spoil in soft materials sub-grade material		15,000 m3 25000m3 40000m3			
Bill No. 06						
Bill No. 07	Excavations and Filling for structures: stone pitching Stone pitching	2,500,000.00	1000sqm	6489sqm	exceeded measured works	11,940,000.00
Bill No. 08	Culvert and Drainage works	34,573,600.00				6,471,200.00
	600mm culverts		1896m	only 666m	savings by more than 50%	
	900mm culverts		500m	only 260m	savings by about 40%	
	other works: eg scour-checks		1716 No.			
Bill No. 09	Passage of Traffic	5,000,000.00	Lump sum			27,000.00
Bill No. 10						
Bill No. 11	shoulder maintenance					
Bill No. 12	Natural Material Base and Sub Base Gravel for sub-base	172,575,000.00				3,996,000.00 7,800.00
Bill No. 13			115,050m3 for 39km	only 20.7km	Savings by 19km	
Bill No. 14	Cement and Lime Treatment	216,492,500.00	entire 39km	only 19km	savings by more than 50%	
	Lime treated material		2600 ton			
	Cement treated material		2800ton			
Bill No. 15	Bitumenous Surface treatment and surface dressing	152,750,000.00	entire 39km	only 19km	savings by more than 50%	4,296,000.00
Bill No. 16	Bitumen mixes					
Bill No. 17	Concrete Mixes: Bridge works	75,000,000.00	3No.			317,305,800.00
Bill No. 18				0	100% savings	
Bill No. 19						
Bill No. 20	Road Furniture	14,940,000.00		0	100% savings	25,407,700.00
Bill No. 21						