

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON THE REPORT OF THE AUDITOR-GENERAL FOR 2005 ON THE ADMINISTRATION OF SELECTED CONTRACTS IN THE MINISTRY OF WORKS AND SUPPLY FOR THE FIRST SESSION OF THE TENTH NATIONAL ASSEMBLY APPOINTED BY THE RESOLUTION OF THE HOUSE ON 10TH NOVEMBER 2006

Consisting of:

Mr C L Milupi, MP (Chairperson); Mrs E M Banda, MP; Mr E M Hachipuka, MP; Mr V Mwale, MP; Mr L M Mwenya, MP; Mr B Y Mwila, MP; Mr M Ndalamei, MP; Mr P Sichamba, MP and Mr D M Syakalima, MP.

The number of Members in your Committee was reduced when Mr M Ndalamei, MP was appointed Deputy Minister.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee have the honour to present their Report on the Report of the Auditor-General for 2005 on the Administration of Selected Contracts in the Ministry of Works and Supply.

Functions of the Committee

2 The functions of your Committee are to examine the accounts showing the appropriation of sums granted by the National Assembly to meet the public expenditure, the Report of the Auditor-General on these accounts and such other accounts, and to exercise the powers that may be conferred on them under Article 117(5) of the Constitution of the Republic of Zambia.

Meetings of the Committee

3. Your Committee held twelve (12) meetings to consider the Auditor-General's Report on the Administration of Selected Contracts in the Ministry of Works and Supply.

Procedure adopted by the Committee

4. With assistance from the Auditor-General and the Accountant-General, your Committee considered both oral and written submissions from controlling officers who were invited to appear before them. In order to appreciate further on how contracts are awarded and supervised and contract documents drawn, your Committee requested submissions from the Zambia National Tender Board, the National Council for Construction and the Ministry of Justice.

This Report contains the observations and recommendations of your Committee and include, in some cases, proposed remedial measures to correct the irregularities highlighted in the Auditor-General's Report.

BACKGROUND AND SUMMARY OF AUDIT FINDINGS

Auditor-General's Comments

Paragraphs 1 – 4

5. The Auditor-General reported that the Report on the administration of selected contracts in the Ministry of Works and Supply was submitted to the President for tabling in the National Assembly in accordance with the provisions of Article 121 of the Constitution of Zambia and the Public Audit Act, Cap 378 of the Laws of Zambia.

The Report covers building projects under the Buildings Department, namely, Katima Mulilo Bridge Border Infrastructure, the New Chirundu Bridge Infrastructure and roads construction projects under the Roads Department, namely, Kaputa – Mununga Road, Chipata – Lundazi Road, Choma – Chitongo Road, Chitongo – Namwala Road, Kasama – Luwingu Road, Mongu – Kalabo Road and Nakonde – Kanyala Road.

Audit Objective

The objectives of the audit were, among others, to ascertain whether projects were administered in accordance with contract agreements and whether the expenditure was in conformity with the laws of Zambia.

Scope and Methodology

The Report was a result of an audit carried out at the Ministry of Works and Supply. The audit was planned and performed in such a way that sufficient evidence, explanations and all necessary information were obtained to reach reasonable conclusions. In conducting the audit, tests of accounting records maintained at the Ministry, such as accounting documents, tender documents, contracts, certificates of completed works, progress reports and other relevant records were reviewed.

In the course of preparing the Report, the Controlling Officer of the Ministry of Works and Supply was required to confirm the correctness of the facts presented. Where comments received varied materially with the facts presented, the relevant items were amended appropriately.

Summary of Findings

Paragraph 5

6. The Ministry of Works and Supply was responsible for, among other things, the effective facilitation of construction and maintenance of government infrastructure such as roads and buildings. It carried out this function through its Buildings and Roads Departments. During the period 2000 to 2005, the Ministry through Buildings and Roads Departments, entered into contracts with various contractors for various works. From the sample of contracts examined, it was observed that the management and administration of these contracts was poor in that budgetary allocations and releases towards these works were often inadequate to meet contractual obligations during the period of project implementation. Consequently, contracts which could have been discharged at lower costs ended up being discharged at higher costs due to variations and fluctuations in labour and material costs and other contractors' claims such as interest on delayed payments, fluctuation in plant, foreign cost adjustments, and suspension entitlements, among others.

The variations and fluctuations on the projects in question resulted in additional commitments to Government totalling K110,678,772,372 as shown in the table below:

Name of Project	Original Contract Price	Revised Contract Price/Obligations	Variance
	K	K	K
Construction of Freight Terminal-Chirundu	13,422,476,130	14,491,079,063	1,068,602,933
Construction of Passenger Control Building - Chirundu	5,216,631,609	5,216,631,609	
Construction of Road Works - Chirundu	10,564,580,588	43,504,145,233	32,939,564,645
Water Treatment Plant - Chirundu	871,471,082	1,686,157,170	814,686,088
Sewerage Disposal System - Chirundu	5,335,814,744	5,824,069,388	488,254,644
Construction of Border Infrastructure – Katimamulilo	14,561,051,235	14,561,051,235	-
Rehabilitation of Kaputa-Mununga Road –Supreme Construction Ltd.	692,112,600	692,112,600	
Rehabilitation of Kaputa-Mununga Road - Frog Enterprises Ltd	692,366,400	692,366,400	
Rehabilitation of Nakonde-Kanyala Road	1,232,493,154	1,248,113,169	15,620,015
Rehabilitation of Chipata-Lundazi Road Lot 1	7,061,152,340	8,258,218,018	1,197,065,678
Rehabilitation of Chipata-Lundazi Road Lot 2	14,122,281,406	17,236,416,052	3,114,134,646
Construct of Chitongo-Namwala Road	9,983,275,612	66,025,945,665	56,042,670,053
Reconstruct and Realignment of Kasama-Luwingu	<u>110,400,347,386</u>	<u>125,398,521,054</u>	<u>14,998,173,668</u>
Total	<u>194,156,054,286</u>	<u>304,834,826,657</u>	<u>110,678,772,372</u>

Details of the variations and fluctuations in the contracts were as shown below:

Type of Variation/Fluctuation	Amount (K)
Scope of work	13,875,307,689
Fluctuation in material costs	7,078,904,017
Fluctuation in labour costs	1,816,113,507
Fluctuation in Plant	11,100,242,191
Interest on late payment	1,649,689,125
Standby charges	6,725,379,155
Extension in time	146,884,615
Foreign cost adjustment	20,957,821,530
Changes in low cost	431,215,261
Unexplained charges	<u>16,897,215,298</u>
Total	<u>110,678,772,372</u>

The above variations and fluctuations could have been avoided, had obligations been fulfilled by parties to the contracts. Therefore, the payments of these variations and fluctuations were not a fair charge to public funds. There were other charges which could not be explained for lack of documentation.

CONSIDERATION OF SUBMISSIONS

A. CONTRACTS UNDER BUILDINGS DEPARTMENT

Audit Query

Paragraph 6

Construction of Border Facilities – Katima Mulilo

7. The Auditor-General reported that the construction of the Katima Mulilo Bridge Border infrastructure was commissioned in 2004 in order to provide an efficient flow of people and enhance trade and socio-economic cooperation between Zambia and Namibia that share the boundary at this point.

On 29th November 2004, the Zambia National Tender Board (ZNTB) conveyed its authority to the Ministry for the award of a contract to Nanshinga Construction Company Limited /Emsworth Investments Limited (Joint Venture) for the construction of the border facilities at Katima Mulilo Border Post at a contract price of K14,561,051,235, inclusive of VAT, with a completion period of fifty (50) weeks. The contract was signed on 20th December 2004 and was to start on 7th February 2005 and end on 23rd February 2006.

The scope of work comprised the construction of one (1) office block, two (2) guard houses, external works, drive ways, car park, boundary walls, storm water drainage and water reticulation, among others.

In 2004 and 2005, provisions were made in the Estimates of Revenue and Expenditure to cater for the project as follows:

	Provision	Releases	Variance
	K	K	K
2004	3,060,180,000	2,049,159,794	1,011,020,206
2005	<u>5,566,785,000</u>	<u>1,450,000,000</u>	<u>4,116,785,000</u>
Total	<u>8,626,965,000</u>	<u>3,499,159,794</u>	<u>5,127,805,206</u>

As can be seen, the project was under-funded due to inadequate provisions and releases. In particular, the releases of K3,499,159,794 against the provisions of K8,626,965,000 were less by K5,127,805,206. Further, a comparison of the total releases against the contract price of K14, 561,051,235 revealed a shortfall of K11, 061,891,441.

The matters set out hereunder were also observed.

- a) The Ministerial Tender Committee, which evaluated the bids, had recommended Yangts Jiang Enterprise at a tender sum of K16, 869,128,281 inclusive of VAT, as the most economically competitive bidder of those that were responsive in all stages of evaluation. Contrary to the recommendation by the Ministerial Tender Committee, the ZNTB awarded the contract to Nanshinga/Emsworth Joint Venture at the contract sum of K14, 561,051,235 inclusive of VAT.

Nanshinga/Emsworth Joint Venture was initially found non-responsive to the tender by the Ministerial Tender Committee due to the fact that they were in a lower category, Group IV, of contractors rather than Group V, as specified in the bid document.

The awarding of the contract to Nanshinga/Emsworth Joint Venture, a bidder who was not eligible, was irregular.

- b) The Ministry paid the contractor a total sum of K3,045,000,000 comprising an advance payment of K2,200,000,000 and K1,045,000,000 towards interim payment certificates issued by the contractor as detailed below:

Certificate No.	Date	Value of certificate	Amount Paid (K)
Advance 01	25/01/2005	2,200,000,000	2,200,000,000
2	2/6/2005	492,781,175	45,000,000
2	12/12/2005		270,389,501
3	12/12/2005	529,610,499	529,610,499
Totals		<u>3,222,391,674</u>	<u>3,045,000,000</u>

Interim completion certificate number 02 dated 19th May 2005 revealed that the value of executed works amounted to only K950,977,088 despite the advance payment of K2,200,000,000 having been paid to the contractor in January 2005, sixteen (16) weeks after the advance payment had been made.

- c) A site inspection carried out in February 2006, revealed that despite the contractor having been on site for more than fifty (50) weeks (the full contract period), only earth works had been done.

The contractor's inability to complete the works confirms the Ministerial Tender Committee's recommendation that the contractor did not qualify for the works.

Controlling Officer's Submission

The Controlling Officer in response submitted that:

- a) The Ministerial Tender Committee accepted the tender evaluation report as submitted by the Buildings Department recommending Messrs Yangts – Jiang Enterprises, the second lowest bidder for the award of the contract at the sum of K16, 869, 128, 281 (VAT Inclusive) after concluding that the lowest bid submitted by Nashinga / Emsworth Joint Venture was not responsive because only one of the two firms, Nashinga Construction, was registered in Category V as required by the tender documentation qualifications, while Messrs Emsworth Ltd did not meet this criterion as they were registered in the lesser Category IV.

However, the Zambia National Tender Board, upon consideration of the Ministerial Tender Committees' application, concluded and decided that since one of the bidders was registered in Category V, then the bid had met the required criteria and, therefore, authorised award of the contract in favour of Messrs Nashinga /Emsworth Joint Venture in the sum of K14, 561,051,235 (VAT inclusive) to which the Department complied.

- b) By 12th December 2005, a total of K3, 045,000,000 had been paid to the contractor on the project as advance and interim payments. However, the following needed to be noted:
- i) payment certificates are not issued by a contractor, but by a Quantity Surveyor who recommends for payment and the Architect or Engineer who counter checks the submission and approves for payment according to the works done; and

ii) the correct sequence and amounts paid against the certificates issued was as follows:

Certificate No	Date of Certificate	Value of Certificate	Amount Paid	Date Paid
Advance	11/01/2005	K2,200,000,000	K2,000,000,000	26/01/05
Balance (01)	11/01/2005		K 200,000,000	10/06/05
Interim (02)	19/05/2005	K492,781,174.67	K 45,000,000	10/06/05
Balance	12/12/2005		K270,389,500.54	14/12/05
Balance	12/12/2005	-	-	
Certificate (03)	30/11/2005	K529,610,499.46	<u>K529,610,499.46</u>	14/12/05
Total			<u>K3,045,000,000.00</u>	

A total of K3,222,391,674 was certified, out of which a total of K3,045,000,000 was paid to the contractor, leaving an outstanding amount of K177,391,674 as of the date of audit.

Payment certificate no. 2 in the sum of K492,781,174.67 was recommended for payment against work done in the amount of K950,977,088.17 and materials on site in the sum of K16,800,000 totalling up to K967,777,088.17 (exclusive of VAT). The difference between this amount and that recommended for payment went towards partial recovery of the advance payment which was a normal contract procedure. It was not strange that at this stage the work done amounted to K950, 977,088.17 exclusive of VAT because the advance payment also catered for the transfer of personnel and equipment from contractors' offices to wherever the physical site was located.

c) Due to delays in payment, the contractor had only managed to complete the earthworks and commence on the foundation works as of February 2006 when the audit inspection was carried out.

The Controlling Officer, during the oral presentation, informed your Committee that the contract with Nashinga/Emsworth Joint Venture was terminated and a new contract was awarded to Yangts Jiang Enterprises. When asked why the contract with Nashinga/Emsworth Joint Venture was terminated, and whether any funds had been recovered, the Controlling Officer submitted that Nashinga was not registered with the National Council for Construction (NCC). In addition, the contractor failed to perform despite having been paid 15 percent as advance payment because they had problems with the consultant. He confirmed that at the time the contract was awarded, the Ministry was not aware of any adverse reports on the contractor and poor works that they had undertaken. He further informed your Committee that the company had since been placed under receivership. The Ministry became aware of the receivership in September 2005.

On possible recoveries, your Committee were informed that upon termination, K1, 133,333,333.30 was recoverable. The matter was being pursued by the Attorney-General's Chambers.

When asked how the Ministry of Works and Supply prepared draft contracts, the Controlling Officer informed your Committee that the Ministry did not employ any lawyers and depended on the Ministry of Justice for any legal advice. The Ministry, however, had expertise in the design of projects. He also stated that contractors did not prepare draft contracts for the Ministry.

Submission by the Director General – Zambia National Tender Board

In response to the query, the Director-General stated that while the Controlling Officer, Ministry of Works and Supply, found the bid from Nashinga Construction Company Limited and Emsworth Investment Limited non-responsive because one of the partners, Emsworth Investment Limited, was registered with the Building Departments under Category GIV, the Tender Board Secretariat, however, noted that the partner in charge, Nashinga Construction Company Limited, was registered in Category GV and being the lead partner, with 60 percent stake in the joint venture, made the joint venture responsive.

There was no provision in the tender document to prevent a Category GV contractor from entering into a joint venture agreement with a non-Category GV registered contractor.

During the oral submission, the Director-General further informed your Committee on as set out hereunder.

i) Liaison with Procurement Entities

The Zambia National Tender Board did liaise with procurement entities on decisions that were made on tenders. With respect to the matter under consideration, the Ministry of Works and Supply was informed of the Board's decision and the reasons for it.

ii) Evaluation and Award of Tenders

- The Zambia National Tender Board used the elimination method in the selection process for procurement of goods and services. Three types of evaluations were performed and bidders that did not meet the prescribed criteria were eliminated. The evaluation processes were:

- *Preliminary evaluation;*
- *Technical evaluation.* The Board did not place any weighting on the various items of the bid. Consideration was made on issues such as major plant and equipment, human resource, previous value of works in the last three years, and work methodology. The Board did not counter-check the previous works, though this would be the ideal situation; and
- *Commercial evaluation.* The tendency was to award tenders to lower bidders as long as their estimates were within the allowable plus or minus 25 percent of the engineers estimate.

Experience had shown that there were instances when the lowest bidders performed well on projects. The major problem was with local contractors. More effort was needed to change the mindset of local contractors, particularly, now that citizen's empowerment legislation was in place.

- The Board relied on information provided. Their belief was that when a bidder was registered with a regulator such as the National Council for Construction, that bidder's technical competence would already have been assessed.

Observations and Recommendations

a) Your Committee resolve to close the matter following cancellation of the contract with Nashinga/Emsworth Joint Venture.

b - c) Your Committee note the submission and advise the Controlling Officer to submit details of the recovered amount and the value of work done by the previous contractor to the Auditor-General for reconciliation. They further urge him to report progress on the recovery of the K1.3 billion from the previous contractor.

Audit Query

Paragraph 7

New Chirundu Bridge Infrastructure

9. The Auditor-General reported that the construction of the New Chirundu Bridge Infra-structure was commissioned in June 1999 in order to provide an efficient flow of people and enhance trade and socio-economic cooperation between Zambia, Zimbabwe and other countries that would directly or indirectly use the infrastructure. The construction of the bridge border support infrastructure was part of the agreement that was made between the Governments of Zambia, Japan and Zimbabwe.

The Japanese Government constructed the bridge through a grant to the Governments of Zambia and Zimbabwe and the recipient countries were, according to the agreement, required to undertake the construction of the border support infrastructure and these should have been completed at the time of commissioning the bridge in 2002.

During the financial years ended 31st December 2004 and 2005, provisions of K32,651,020,000 and K27,359,990,298 were made in the Estimates of Revenue and Expenditure for the New Chirundu Bridge Infrastructure to cater for the construction of various facilities of which amounts totalling K19,628,593,444 and K26,640,169,959 were released respectively, as shown below:

	Provision K	Releases K	Variance K
2004:			-
Construction of Freight Terminal	12,025,340,000	5,357,662,411	6,667,677,589
Construction of Passenger Control Building	4,527,440,000	4,273,735,082	253,704,918
Construction of Road Works	11,017,800,000	8,573,435,353	2,444,364,647
Water treatment Plant	780,440,000	227,994,832	552,445,168
Sewerage Disposal System	4,300,000,000	1,195,765,766	3,104,234,234
	<u>32,651,020,000</u>	<u>19,628,593,444</u>	<u>13,022,426,556</u>
2005:			-
Construction of Freight Terminal	6,469,974,500	6,669,011,067	(199,036,567)
Construction of Passenger Control Building	5,226,000,000	4,771,305,720	454,694,280
Construction of Road Works	12,012,000,000	11,168,374,340	843,625,660
Water treatment Plant	304,735,250	524,645,275	(219,910,025)
Sewerage Disposal System	3,347,280,548	3,506,833,557	(159,553,009)
	<u>27,359,990,298</u>	<u>26,640,169,959</u>	<u>719,820,339</u>

As can be seen, there were shortfalls in funding of K13,022,426,556 in 2004 and K719,820,339 in 2005. Consequently, there were additional claims made due to delays in effecting payments to contractors caused by inadequate funding, as evidenced in this report. It was not clear why inadequate funds were released to cater for the works. It was also not clear as to why some projects like construction of freight terminal, water treatment plant and sewerage disposal system were over-funded in 2005.

Controlling Officer's Submission

The Controlling Officer submitted that the construction of the New Chirundu Support Infrastructure was not commissioned in June 1999 as reported in the Audit Report. The misconception may have arisen out of the fact that the Buildings Department did award several contracts to consultancy firms for the purpose of designing, preparing all the necessary drawings, specifications and bills of quantities necessary for the construction of the border support infrastructure. The physical works, thus, could only commence after the completion and receipt of the necessary specifications.

The authority to award the contract for consultancy services was granted in March 1999.

Your Committee were informed that fund releases at the time were not for specific activities. Whenever the Controlling Officer was allowed to make variations, but the system has since been changed in that funds are released for specific activities.

When asked how consultancy fees were determined, the Controlling Officer replied that the current arrangement is that between 4 to 6 percent of the value of the contract is paid as consultancy fees.

Observations and Recommendations

Your Committee note the submission.

A) CONSTRUCTION OF FREIGHT TERMINAL BUILDING

10. On 8th December 2003, the Zambia National Tender Board (ZNTB) conveyed its authority to the Ministry of Works and Supply for the award of a contract to China Jiangxi Corporation for the construction of a Freight Terminal at a contract price of K13,422,476,130, for a period of 46 weeks which was later revised to 62 ½ weeks. The contract was signed on 19th January 2004.

The terms of the contract and scope of works included the following conditions:

- i) the project was to start on 5th May 2005;
- ii) the project was to be completed on 30th March 2006, and
- iii) the construction of a warehouse, customs offices, clearing agents' offices and a bank.

It was observed that the works only commenced on 6th June 2005, while the completion date was revised to 29th January 2007.

It was not clear why, contrary to the Appropriation Act, the Ministry budgeted for an activity in 2004 which was only going to commence in 2005. It was also not clear why the commencement of the works was delayed by seventeen (17) months. As a result of the delays in commencing the works, the contractor made claims in labour and material fluctuations amounting to K894,118, 717.

In his response dated 4th October 2006, the Controlling Officer stated that there was no specific release of any funds whatsoever towards this project in 2004.

Contrary to what the Controlling Officer stated, the funding profiles examined revealed that a total sum of K8,042,157,637 (K5,357,662,411 released in 2004 from GRZ and K2,684,495,226 released in March 2005 under the Japanese Government JNPGA Funds) was funded.

As of December 2005, the contractor had received payments in amounts totalling K6,569,628,977 as compared with the total releases towards the project of K14,711,168,704 (K5,357,662,411 in 2004, K6,669,011,067 and K2,684,495,226 (from JNPGA) in 2005) which was K1,288,692,574 in excess of the contract price of K13,422,476,130.

Although amounts totalling K14, 711,168,704 had been released to the project during the period under review, it was not clear why works had not progressed much despite the contractor being on site for 104 weeks against the agreed duration of 62 1/2 weeks. As of February 2006, the warehouse was at the foundation stage, while the customs and clearing agents' office and the bank building were at wall plate level.

Controlling Officer's Submission

The Controlling Officer submitted that contrary to the Report, the project was to start 4 weeks after the signing of the contract on 19th January 2004 which would have been some time in mid February 2004 and not in May 2005. The four weeks mentioned was the nominal mobilisation period.

Had the contract commenced in February 2004, the completion date would have been end of January 2005 after taking into consideration the mandatory 2 -3 weeks Christmas industrial break and the contract period of 46 weeks and not March 2006.

The contract was limited to the construction of a warehouse, customs offices and a bank building. It did not include customs clearing agents' offices.

Though the contract had been signed and the works were to commence in mid February 2004, the project did not take off as expected because after signing the contract, the Government decided to source funding through the Build – Operate and Transfer (BOT) method. To this end, a tender for the BOT was floated in the national press in March 2004.

The tender process for the BOT lasted up to April 2005 when it was finally abandoned as untenable.

During the seventeen months period, no works whatsoever were undertaken regarding this and other new contracts at Chirundu as Government had tied the projects into the BOT tender.

The works only commenced after the intervention of the Japanese Government who provided advance payments in the amount of K2, 684,495,226.0 which was 20 percent of the contract sum.

The K14, 711,168,704 reported in the audit report included the sum of K5, 357,662,411 that was released in 2004 when the Freight Terminal Project had not commenced and, therefore, could not indicated as having been spent on the construction of these works. Furthermore, the 104 weeks mentioned as the period that the contractor had been on site by the time of audit was not correct because the works commenced on 6th June 2005. This meant that the contractor had been on site for only 36 weeks. The stage of work on the customs office and the bank which were at wall plate level and the warehouse which was at foundation stage was at that time satisfactory.

The K5,357,662,411 reported as released in 2004 for payment towards the freight terminal buildings was actually paid out as part of the K20,500,000,000 that was received and paid out to cover payments for other projects that were already running at that time and costs towards consultancy services that had already been provided for under Chirundu infrastructure.

In 2004, the funds were released as tabulated below:

	Date of release	Amount
1.	9 th February 2004	K3,000,000,000
2.	23 rd April 2004	K3,500,000,000
3.	16 th July 2004	K5,000,000,000
4.	12 th October 2004	<u>K9,000,000,000</u>
		<u>K20,500,000,000</u>

The expenditure details were as follows:

C.1 Disbursement No. 1 of 9th February 2004 – K3.0 Billion

Description	Amount
Apollo Enterprises – civil works	K2,000,000,000
Met-Weld Fabrication – construction of 25 houses	K300,000,000
Consultants and other expenses	<u>K700,000,000</u>
Total	<u>K3,000,000,000</u>

C.2 Disbursement No. 2 of 23rd April 2004 K3.5 billion

Description	Amount
Apollo Enterprises Limited	K2,000,000,000
Met-Weld Fabrication Limited-	K1,310,000,000
Consultants and Fuel	<u>K190,000,000</u>
	<u>K3,500,000,000</u>

C.3 Disbursements of 16th July 2004 – K5,000,000,000.00

	Description	Amount
1.	Apollo Enterprises Limited-civil works	K2,500,000,000
2.	Met-Weld Fabrication Ltd construction of 25 houses	K782,225,131
3.	Electrical Techniques Ltd for Installation of telephone lines and trunking at Government Complex (borrowed to be returned)	K1,500,000,000
4.	Consultants and Fuel	<u>K217,774,869</u>
		<u>K5,000,000,000</u>

C.4 Disbursement of 12th July 2004 – K9,000,000,000.00

	Description	Amount
1.	Apollo Enterprise Ltd - civil works	K5,500,000,000
2.	Met-Weld Fabrication Ltd - construction of 25 houses	K488,000,000
3.	Met-Weld Fabrication – Bridge hand rails	K370,000,000
4.	Katima Mulilo Project	K1,000,000,000
5.	Consultants and other expenses	<u>K1,642,000,000</u>
		<u>K9,000,000,000</u>

When asked what the status of the Freight Terminal Building was, the Controlling Officer stated that a lot of progress had been made and distributed the latest photos to your Committee showing the stage of the construction works.

When asked to elaborate more on the BOT, the Controlling Officer submitted that under the proposed BOT, the arrangement was such that the new partner would take over existing contracts and, therefore, no contracts were terminated. There had been growing anxiety within Government as there were no adequate funds to fulfil Zambia's obligation under the agreement on the Chirundu Bridge and donors were disappointed. Against this background, the BOT method, at the time, was the best option.

On why they did not terminate the initial contract to save on costs, the Controlling Officer informed your Committee that, on the contrary, it was cheaper to keep the contract running than to terminate it.

Observations and Recommendations

Your Committee observe that the mismatch between the time of the release of funds from the Treasury and when certified completion certificates are made ready, is costing Government a lot of money through interest payments.

They further observe that the attempt to finance the Chirundu Bridge infrastructure through the BOT method was a bad decision pointing to poor planning and lack of clear direction on the matters considering that the Government had just entered into a contract which was immediately abandoned. The result was a loss of K894 million through extra claims by the contractor and lost revenue inflows that would have resulted from having improved facilities.

Your Committee advise the Secretary to the Treasury to treat treasury reforms as an emergency so that a more efficient system is put in place within the shortest possible time. They further urge him to see to it that projects of such magnitude are professionally planned and appraised. There is a serious need to improve in-house management of public projects.

Your Committee advise the Controlling Officer to submit expenditure details for 2004 and contracts documents to the Auditor-General for verification.

B) CONSTRUCTION OF PASSENGER CONTROL BUILDING

11. The Auditor-General reported that on 13th January 2004, the Zambia National Tender Board (ZNTB) conveyed its authority to Ministry of Works and Supply for the award of contract to Met-Weld Fabrication Limited for the construction of a Passenger Control Building at a contract price of K5,216,631,608 for a period of fifty-two (52) weeks. The contract was signed on 20th January 2004.

According to the contract, the works were to commence on 31st March 2005 and to be completed on 9th June 2006. The scope of works included:

- i) site preparation, road works and paving, water and drainage services, boundary walls, electrical installations and landscaping;
- ii) construction of a passenger control building and vehicle theft unit building together with the associated facilities;
- iii) construction to be generally in concrete brickwork for the foundations, blocks and fair face brick work for the super structure and slate tiled roofing on the timber structure;
- iv) finishing, including terrazzo tile flooring, plaster and paint to walls and suspended mineral fibre board ceilings; and
- v) electrical, air- conditioning services, plumbing and drainage services.

It was not clear why the Ministry budgeted for an activity in 2004 which was only going to commence in 2005. It was further not clear why funds totalling K4, 273,735,082 were released towards the project in 2004 which did not take off during that year. Further, although the contract price was K5,216,631,608, a total authorised provision of K9,753,440,000 was made and a total amount of K9,045,040,802 was released, resulting in excess funding of K3,828,409,194 over the contract price.

As at February 2006, certified works amounted to K3, 503,102,882. Out of the certified works, only K2, 857,952,939 had been paid to the contractor as the funds released for this project had been diverted to other projects.

The diversion of the funds was contrary to the Appropriation Act.

A scrutiny of the progress report and a physical inspection of the project carried out in February 2006 revealed that progress was very slow on the works.

Controlling Officer's Submission

The Controlling Officer submitted that the construction of the Passenger Control Buildings, which was expected to commence in mid February 2004, was also affected by the Government's decision to finance the works through the BOT method. These works commenced on 31st March 2005 after it had become evident that the BOT method of procurement of works was not going to succeed on this project.

All moneys that may have been released in the year 2004 towards payment for the construction of the passenger control building were disbursed towards the running projects and consultancy services at Chirundu as was done for the Freight Terminal Building.

Observations and Recommendations

Your Committee note the submission and advise the Controlling Officer to submit expenditure details for 2004 to the Auditor-General for verification.

C) CONSTRUCTION OF ROAD WORKS

12. The Auditor-General reported that on 22nd October 2001, ZNTB conveyed its authority to the Ministry for the award of a contract to Apollo Enterprises Limited for the construction of roads, foot paths, cycle tracks, and related civil works under Chirundu Bridge infrastructure development. In this regard, the Ministry entered into a contract with the company on 12th December 2001 at a contract sum of K10,564,580,588 with a completion period of forty five (45) weeks commencing 12th December 2001. A scrutiny of Certificate of Site Possession revealed, however, that the contractor took possession of the site on 26th November 2001, before the contract was signed.

In this regard, budget provisions of K13,008,000,000 and K14,013,910,788 in 2002 and 2003, respectively, were made under Sub-Head 64/02/502/017 - Chirundu Bridge Infrastructure Development comprising, among others, this project under review. However, there was no breakdown given to show the budget component for the project for 2002 and 2003. Consequently, it was not possible to ascertain the amounts released specifically for the project during the two financial years.

It was observed that the completion of the project was delayed for over four (4) years, thereby causing the original contract price to be revised on four (4) occasions as shown in the table below:

Date	Original contract price as per contract document (K)	New contract price as per ZNTB Authority (K)
12-Dec-01	10,564,580,588	10,564,580,588
30-Oct-02		12,134,173,220
28-Jul-03		20,134,173,220
10-May-04		31,151,973,220
27-Jun-05		43,504,145,233

It was evident from the above that the contract revision resulted in an upward adjustment of over 311 percent (K32,939,564,645) from the original contract price of K10,564,580,588 which was made up as follows:

Description of cost	K
Fluctuations in plant	10,992,524,071
Fluctuations in labour	3,476,583,496
Variation in scope of work	2,173,088,592
Fluctuations in material	1,333,961,166
Standby charges	940,940,766
Interest on delayed payments	534,526,309
Unexplained Charges	13,487,940,246
Total	<u>32,939,564,645</u>

As can be seen, out of the K32,939,564,645, K10,992,524,071 was in respect of fluctuations in plant and K13,487,940,246 was in respect of unexplained charges. The basis on which the contractor claimed these amounts was not clear.

The failure by the Ministry to provide adequate financial resources to the project resulted in wasteful expenditure arising from interest charges as well as fluctuations in prices of materials, labour, plant and standby charges.

Controlling Officer's Submission

The Controlling Officer submitted that the Certificate of Site Possession was only one of the many formalities that were followed after the receipt of any authority to award a contract to a chosen contractor and, in this case, there was nothing unusual in that at the time of signing the Certificate of Site Possession, the contractor had already received the formal letter of notice of award of contract and had accepted the offer by returning the "Appendix E" form sent out together with the notice of award of contract. The contract at this stage had been activated and other formalities such as the pre-contract site meeting was a contractual requisite at which time the certificate of site possession may be signed after site inspection to ascertain that there were no encumbrances on site which may affect the contractor's commencement of the works. The signed Certificate of Site Possession was then included and bound with other documents into a binding contract document. The most critical undertaking at the pre-contract stage was the "date of commencement of the works" which took place only after the establishment of all other contractual formalities including the payment of the advance if applicable in the contract.

The provision of K13, 008,000,000 in 2002 was not directed at the construction of the road works only but included the water treatment plant and construction of fifty houses and the police station which were at the time running contracts.

In 2003, the budget provision as per their records was K6, 013,910,788 and not K14, 013,910,788. This allocation included funds for the construction of fifty houses, police station and water treatment plant which were active projects at the time.

In 2002 and 2003, budgetary provisions and disbursements for the Chirundu projects did not indicate definite amounts targeted and disbursed towards individual activities, but were made in lump sum thus not easy to ascertain what funding was released for a particular project. Payments for the different projects were made towards which ever certificates were available for payments in proportionate amounts as deemed prudent by the Department of Buildings in consultation with the Controlling Officer.

It was correct that the contract rose from the initial amount of K10, 564,580,588 at 31st December 2001 to K43,504,143,233 as at 27th June 2005. The break down of the cost escalations and the reasons as tabulated by the project Quantity Surveyor, which was also provided to the audit team, was as follows:

Description	Amount (K)	Remarks
Civil works		
Lot A and B in progress	10,314,925,100.00	extra earth works on Lot A B, C cost on extra K8,479,000,000
Lot C	6,230,441,920.00	
<u>Authorised Instruction Works</u>		
Guard houses, boundary wall, gates etc	1,588,655,771.90	New works not in original contract
Site electrical reticulation	428,333,844.10	New works not in original Contract
Additional Electrical Reticulation	463,788,312.37	New works not in original contract
Water and sewer reticulation	252,172,995.00	New works not in original Contract

Sewer Reticulation - Plant Form 1 and 2	24,207,760.95	New works not in original contract
<u>Contract Provision</u>		
Project Vehicle	143,000,000.00	-
<u>Contract Claims</u>		
Stand by charges	431,538,724.45	Arising out of charges for the equipment during work stoppages
Extensions of time up to April 2005	2,144,029,504.76	Preliminary and general items chargeable during work and other reasons for extension of time
<u>Fluctuations to date</u>		
Material	1,376,545,752.49	Escalation due to increased cost on the market during the contract period
Labour	851,796,372.68	Escalations due to increased cost of labour during the contract price
Construction Plant and equipment	9,594,165,576.00	Increased cost of hired equipment chargeable to the contract
Interest on delayed payment	191,044,896.54	Interest charged on delayed payments
Anticipated fluctuations	2,251,901,023.06	Fluctuations projected up to the Contract completion based on market trends
Disbursement to Employers Personnel	6,500,000.00	Maintenance of resident engineers
Maintenance and fuel for Project vehicle	227,950,301.41	-
Anticipated disbursement to Employers personnel	2,400,000	Disbursement to resident engineers projected up to the end of the project
Anticipated maintenance and fuels for projects vehicle	3,200,000.00	Expenditure for project vehicle to the end of the project
Residual contingencies	500,754,874.00	Anticipated extras
Sub-Total	37,027,357,730.51	
<u>Add VAT – 17.5%</u>	6,479,787,607.83	
Grand Total projected for 2005	<u>43,507,145,333.30</u>	

There were no unexplained charges totalling up to K13, 487,940,246. It was imperative to mention that the increased volumes of earth works after re-measurement, on lots A and B and C, all new works which had to be incorporated into the road works contract, were unavoidable in order to achieve the desired end product because the works provided the subterranean service lines which would later provide electricity, water, sewerage and telephone lines into both the Passenger Control and Freight Terminal buildings.

The other charges were a result of extensions of time, material and labour fluctuations, interest claims on delayed payments and supervisory costs.

Considering the increase in costs of over 300 percent, your Committee asked the Controlling Officer why the works were not re-tendered. The Controlling Officer in reply stated that the actual contractual charges only accounted for 22 percent of the increase. This, therefore, did not require retendering.

When further asked why the contractor was not requested to demobilise when the BOT decision was made, the Controlling Officer informed your Committee that according to their analysis then, it would have been more costly to demobilise.

Your Committee, taking advantage of the presence of the consultant, enquired on the way forward on Government projects which many a time ended up more costly. The consultant submitted that the element of funding was critical. To avoid cost overruns, it was imperative that the Government should make funding available as and when required on projects. The road works in question would have cost K16 billion at the most if all funding was made available when required.

Observations and Recommendations

Your Committee observe that going by the way projects were being managed, it was safe to conclude that there was no deliberate mechanism in place to safeguard Government interests. To this effect, they requested the Secretary to the Treasury to ensure that contracts for public projects, at all times, were structured in such a way that the exposure of Government is minimised. This means that contracts should be drawn based on the prevailing socio-economic situation.

They further request the Controlling Officer to resubmit cost escalation tabulations to the Auditor-General for verification.

D) CONSTRUCTION OF WATER TREATMENT PLANT

13. On 7th October 2002, the ZNTB conveyed its authority to the Ministry for the award of a contract to Apollo Enterprises Limited for the construction of a water treatment plant at Chirundu Border Post at a contract price of K871,471,082 with a completion period of twenty six (26) weeks. The contract was signed on 5th March 2003 and was to end on 3rd December 2003. The completion date was revised to 3rd August 2005, and then later changed to 2nd February 2006.

The scope of works comprised the construction of clarifier, intake structure, treatment works, reticulation, sluice scour and air valve chambers, marker posts, waste disposal, manholes, alum tank and house, sand filters, line dosing structures and pump house.

In this regard, a budget provision of K14, 013,910,788 was made in the Estimates of Revenue and Expenditure for the year 2003 under Sub-Head 64/02/502/017- Chirundu Bridge Infrastructure Development comprising, among others, this project under review.

The following were observed:

- i) while the initial contract price was K871, 471,082, with a completion period of twenty six (26) weeks, there was no breakdown given to show the budget component for this project in 2003. Consequently, it was not possible to ascertain the amounts released specifically for this project during the financial year of project implementation;
- ii) the contractual obligations were not fully met resulting in claims in labour and material fluctuations arising from the delay in the completion of the project. Subsequently, the Ministerial Tender Committee, in their letter dated 5th August 2004, approved an increment of a K679,000,000 in contract price and thus bringing the revised contract price to K1,550,471,082;
- iii) there were delays in paying interim payment certificates by the Ministry as evidenced by the fact that the advance certificate number 1, issued on 18th November 2002 was only fully paid on 24th June 2003, while certificate numbers 5, 6 and 7 issued between October and December 2003, were only paid on 12th February 2004. This resulted in delays in the completion of the

project. Consequently, the Ministry made further provisions in the years 2004 to 2005 to meet the revised contract price of K1,550,471,082;

- iv) the project was only completed in August 2005, resulting in a delay of eighty (80) weeks; and
- v) a site inspection of the works carried out in February 2006 revealed that:
 - there were defects which had not yet been attended to by the contractor, though the defects were observed and reflected in the completion certificates;
 - the floatable crane on which the pump was mounted on was faulty as it was not buoyant and the pump could submerge when the water level rose; and
 - the water treatment plant was out of use due to under ground water pipe leakages, which were spewing out large quantities of water.

Controlling Officer's Submission

The Controlling Officer submitted as set out below.

- i) It was not possible to ascertain the amounts released to each activity because, at that time, there was no activity-based itemised disbursement of funds.
- ii) The Ministry applied in August 2004 and received authority to vary the contract sum by another K679, 000,000 from K871, 471,082 to K1, 550,471,082, not only because of labour and material fluctuations, but also due to the increased scope of work.
- iii-v) The project was finally completed in August 2005 and was handed over to Southern Water and Sewerage Company who were mandated to run such facilities. The long delay in completion was attributed to delayed release of funds to meet contractual obligations and as such the project experienced work stoppages.

All the defects listed were recognised and included on the list of defects which the contractor had to rectify before the end of the contractual defects liability period. The defects had been rectified and the system was fully functional.

Observations and Recommendations

Your Committee note the submission and resolve to close the matter subject to verification of the completed works and rectification of defects.

E) CONSTRUCTION OF SEWERAGE DISPOSAL SYSTEM

14. On 8th March 2004, ZNTB conveyed its authority to the Ministry for the award of a contract to Apollo Enterprises Limited for the construction of the sewerage reticulation at Chirundu Border Post at a contract price of K5, 335,814,744 with duration of thirty six (36) weeks. The contract was signed on 7th September 2004 and the works were to start on 8th April 2005 and end on 15th December 2005. The completion date was however, revised to 28th July 2006.

The scope of works in this contract comprised the construction of trunk sewer, sewer reticulation to Police Camp, Pump Station 1, Pump Station 2, sewerage treatment ponds, and power supply to pump stations.

In addition to the funding received from the Government, amounting to K4,702,599,773, the Ministry, in February 2005, also received a grant of K1,067,162,499 from the Japanese Government, thus bringing the total funding for the two (2) years 2004 and 2005 to K5,769,762,272

The following were observed:

- i) despite the authority for the award of the contract having been conveyed in March 2004, the contract was only signed in September 2004, and there were no reasons given to justify the delay. The time lag resulted in fluctuations in labour (K6,397,133) and material (K141,134,207) costs, and other claims amounting to K167,294,248 bringing the total claims to K314,825,588 as per the interim payment certificate number 5 dated 5th November 2005; and
- ii) although the contract was signed in September 2004, the advance payment amounting to K1,067,162,949 was only made on 28th February, 2005, despite a release of an amount of K1,195,765,766 in the year 2004. It was also observed that the interim payment certificates numbers 2 and 3 issued between June and July 2005, were only paid in November 2005.

In his response, the Controlling Officer stated that the construction works only started in 2005, without justifying the delay since money to start the project had already been released in 2004.

A physical inspection carried out on 1st March 2006 revealed that the works had not been completed despite the project being funded in full.

Upon further enquiry, it was explained that there was a dispute over the land which had not been resolved at the time of inspection.

Controlling Officer's Submission

The Controlling Officer submitted that the Ministry of Works and Supply did not receive any money at the beginning of 2005 towards the construction of the sewerage disposal system from the Ministry of Finance and National Planning until the intervention of the Japanese Government which provided a total of K7,831,658,174 as a grant to jump start three projects at Chirundu of which the sewer disposal system received K1,067,162,499 which was the required 20 percent advance.

The funds that were released in 2004 when the Project was on hold as part of the BOT tender were applied towards other deserving payments on the then running contracts and consultancy charges.

He further submitted as set out hereunder.

- i) The delay was as a result of the BOT Decision.
- ii) There were no funds that were carried over from 2004 to any project at Chirundu which commenced in the year 2005. All disbursements for Chirundu were expended on other running projects.

The delays in paying certificates numbers 2 and 3 indicated the low and erratic levels of funding which were common at that time on these projects which led to extensions of contract period and related cost escalations.

- iii) At the time of the audit inspection, the Project was still running and the sewer reticulation had reached up to the Government compound from its origin at the Freight Terminal buildings.

The pipes and other materials that were found at the site offices during the inspection could not be incorporated into the works at that time because the Ministry was trying to resolve the relocation of the oxidation ponds after the original site had been taken over by private developers and squatters with the knowledge of the District Council. The said dispute had not been resolved by the time of the inspection and continued for some time which led to the termination of the contract until an alternative site was found.

Observations and Recommendations

Your Committee note the submission and urge the Controlling Officer to provide an update on the construction of the sewerage disposal system.

B) PROJECTS UNDER THE ROADS DEPARTMENT (ROAD DEVELOPMENT AGENCY)

Kaputa – Mununga Road Lot 1

Paragraph 8

15. The Auditor-General reported that in the Estimates of Revenue and Expenditure for the financial years ended 31st December 2004 and 2005, amounts of K500,000,000 and K800,000,000 were provided for the maintenance of Kaputa – Mununga Road, respectively. The whole budgeted amount for 2004 was released, while nothing was released in 2005. The releases represented 38 percent of the budgeted amount.

The following were observed:

a) Contract with Supreme Construction Ltd

On 16th December 2003, the Ministry of Works and Supply Ministerial Tender Committee awarded Supreme construction Ltd the contract for works at a tender sum of K692,112,600. The contract, whose completion period was not indicated, was signed on 16th December 2003. The construction works covered a stretch of 86kms, and involved reshaping of the road, re-graveling, vegetation control and drainage works.

Although only 33kms of the contracted 86kms was done (from Mununga to Kaputa), the stage completion certificate number 3 dated 2nd August 2005 revealed that the value of certified works as claimed by the Contractor was K625,461,461 out of the total value of work of K674,943,500, covering a stretch of 60kms out of which K237,404,660 was paid. In his response to the inspection report, the Controlling Officer indicated that the contractor had done 60kms of light grading and 2kms of re-gravelling and he further indicated that the contractor had almost substantially completed the works.

Further inquiries revealed that the contract with Supreme Construction Ltd was terminated on 5th April 2005 following advice from the Anti Corruption Commission to the Ministry in their letter dated 23rd March 2005.

As of February 2006, the 33 km stretch from Mununga to Kaputa had already exposed sharp rock out crops on the whole stretch hardly six (6) months after the works were certified.

a) Contract with Frog Enterprises

Although in his response the Controlling Officer indicated that the contractor had done 60kms of light grading and 2kms of re-gravelling and that the contractor had almost substantially completed the works, it was observed that the Ministerial Tender Committee, through a letter dated 7th April 2005, awarded the contract for the same works (86km stretch, reshaping of the road, re-gravelling, vegetation control and drainage works) to another contractor (Frog Enterprises) at a contract price of K692,366,400. The contract was signed on 10th May 2005. The start and completion dates were again not indicated. The contractor started the project works from Kaputa to Mununga.

It was not clear why the Ministry awarded Frog Enterprises the contract which was more than the original contract price awarded to Supreme Construction Ltd when, according to the Controlling Officer, most of the works had been done by Supreme Construction Ltd.

As of September 2005, Frog Enterprises had been paid K376,017,280 through interim payment certificates numbers 1 and 2 for the works done on the 31 km stretch of the road.

An inspection of the works carried out in February 2006 revealed that the works had not been completed.

Controlling Officer's Submission

The Controlling Officer in response submitted as set out below.

- i) The maintenance works and not construction works as indicated in the Report covered only the heavy grading of 60kms as indicated in the Bill of Quantity. The contract duration was six months. The length of the project road was 110km. The contractor carried out heavy grading of 60km of the project length of 110km.

The contract signed with Messrs Supreme Construction was terminated on 7 April 2005 following investigations by the Anti-Corruption Commission. The Zambia National Tender Board and the Anti-Corruption Commission had carried out an investigation into the award of the contract for the maintenance of Mununga-Kaputa Road. The investigations concluded that the award of the contract to Messrs Supreme Construction was wrong and instead should be awarded to Messrs Frog Enterprises.

- ii) ***Contract with Messrs Frog Enterprises***

In 2005, the Ministry Tender Committee, as directed by the Zambia National Tender Board and Anti-Corruption Commission, wrote to the Road Development Agency stating that the remaining works on the 110km Mununga-Kaputa Road would be carried out at the unit rates prepared by Messrs Frog Enterprises in their tender. The remaining works were to be executed at the contractor's tendered rates and prices. It was, however, not stated that Messrs Frog Enterprises were awarded the contract at an amount of ZMK692, 366,400.

The Ministry was directed to terminate the contract with Messrs Supreme Construction through a letter from the Anti-Corruption Commission. According to the investigations carried out by Zambia National Tender Board and Anti-Corruption Commission, the contract should have been awarded to Messrs Frog Enterprise and not Messrs Supreme Construction Limited.

At the time of inspection in February 2006, a period covering 10 months (April 2005 and February 2006) and one rain season had passed since the works were carried out by Messrs Supreme Construction. The contract signed with Supreme Construction was terminated on 7 April 2005. It was not, therefore, six months between the carrying out of works and date of inspection.

On the rock outcrop over a distance of 33km that was observed, the section required re-gravelling to cover the rocks. However, only heavy grading was carried out which resulted in partially covering the rock outcrop.

In the contract with Messrs Frog Enterprises, the Luapula Province Tender Committee varied the works to include 12km of re-gravelling.

Submission by the Director General – Zambia National Tender Board

In his response to the observations, the Director-General submitted that the Zambia National Tender Board conducted investigations to establish how the contract for the maintenance of Mununga-Kaputa Road was awarded. The investigations were conducted from 28th to 30th July 2004 after receiving complaints from Frog Enterprises. Frog Enterprises had alleged that they were recommended for the contract by the Luapula Provincial Tender Committee but later disqualified when the tender documents, together with the evaluation report, were submitted to the Ministry of Works and Supply, Roads Department in Lusaka.

The investigations by the Zambia National Tender Board revealed the following:

- a) the Provincial Tender Committee had recommended Frog Enterprise for the award of contract at a tender sum of K692,238,000;
- b) however, the Ministry of Works and Supply directed the Permanent Secretary, Luapula Province, to award the tender to Supreme Construction at a corrected sum of K692,112,600. The figure at tender opening read K799,470,000 but was later corrected to read K692,112,600.00;
- c) the Tender Evaluation Report was availed to Frog Enterprises by the Provincial Roads Engineer; and
- d) the work progress was very slow and not impressive.

When the Zambia National Tender Board wrote to the Permanent Secretary, Ministry of Works and Supply on 17th May 2004 and 13th July 2004 to rescind the decision for the award of the contract to Supreme Construction, it was late as the contractor had already started the works.

The Zambia National Tender Board made the following recommendations:

- a) reprimanding the Provincial Roads Engineer for revealing confidential information to a contractor contrary to the provisions of Section 13 of the Zambia National Tender Board Act;
- b) reporting the matter to the Anti-Corruption Commission because of the highlighted corrupt issues; and
- c) directing Supreme Construction to speed up rehabilitation works or face blacklisting of its company.

Observations and Recommendations

Your Committee observe that the two contracts on the Kaputa – Mununga Road were poorly handled.

The contract with Supreme Construction was to cover 86 kms only. The contract with Frog Enterprises was for work on the remaining works but starting from Kaputa, technically this meant that only 26 kms (86km – 60km) were to be worked on. Furthermore, there was no variation in the contract for works to be done on the whole 110 km stretch.

Your Committee are of the opinion that, for purposes of transparency, the Zambia National Tender Board and the Anti-Corruption Commission, upon establishing that Supreme Construction was irregularly awarded the contract and other issues surrounding the Project, the tender should have been re-advertised.

They urge the Secretary to the Treasury to see to it that the new contract with Frog Enterprise is in order with respect to the following:

- i) the contract should expressly state that the contract is for the whole 110 km stretch; and
- ii) the contract amount and duration of the project are stated.

They further advise the Controlling Officer to provide an update on the maintenance works.

Audit Query

Paragraph 9

Nakonde – Kanyala (Malawi Border) Road

16. In the 2003, 2004 and 2005 Estimates of Revenue and Expenditure, provisions were made for the maintenance of Nakonde – Kanyala Road, against which releases were made as shown below:

	Provision	Releases	Variance
	K	K	K
2003	500,000,000	250,000,000	250,000,000
2004	1,200,000,000	1,200,000,000	-
2005	400,000,000	400,000,000	-
Total	<u>2,100,000,000</u>	<u>1,850,000,000</u>	<u>250,000,000</u>

The contract was awarded to ABS Distributors Limited by the Northern Province Tender Committee at a tendered sum of K1, 232,493,154 and was signed on 22nd October 2003. The contract was to start on 29th November 2003 and was expected to end on 29th July 2004.

The scope of works included reshaping and re-gravelling of the road, vegetation control and drainage works and was to cover a stretch of 85Kms from Nakonde to Kanyala (Malawi border).

The following were observed:

- a) as of 31st December 2005, the contractor had been paid amounts totalling K570,107,643 through certificate numbers 1,2,3 and 4 although the works done were not commensurate with the amounts paid as evidenced in the progress report dated October 2005;
- b) out of the stretch of 85Kms from Nakonde to Kanyala, only a 22 Km stretch was passable due to the bad state of the road. The quality of the works was not according to the specifications in the contract as vegetation control was scantily done while road formation was only done on a stretch of 6Kms from Nakonde, resulting in water passing through the road causing erosion and culvert wash aways. The main culvert wash-aways were observed at 12Kms, 14Kms and an impassable ditch at 22Kms (Malawi Stream) from Nakonde Boma.

Although the estimated completion date was 25th May 2004, as at February 2006, which was 192 days after the completion date, the works done were negligible and of poor quality and the contractor had since abandoned the site.

Controlling Officer's Submission

In response, the Controlling Officer submitted as set out below.

The contract awarded to ABS for the maintenance of Nakonde-Kanyala road was for a period of 8 months. The works commenced the following year in 2004 upon receipt of advance payment in December 2003. The length of the project road was 85kms of re-gravelling and 6kms of road realignment with associated drainage and drainage facilities.

- i) As of 31st December 2005, the contractor had carried out 25kms of heavy grading, 4kms of bush clearing valued about K570,000,000 inclusive of VAT. The construction of the drainage and drainage facilities was poorly carried out. To this end, the Regional Engineer for Northern Province did not approve much of the drainage works carried out by the contractor.
- ii) The activities in the contract did not cover the entire 85 km stretch. The section of 25kms that received heavy grading remained in fair condition. The condition of the remaining section of the project road deteriorated even further as maintenance was limited to certain sections of the road.

It was not correct that only 6kms had been worked on as per certificate No. 03 dated 5th August 2004 and 15kms of heavy grading had been carried out. Another 10kms was eventually carried out later. The construction of culverts was generally poorly carried out as stated earlier. As per

certificate No. 03, only 23 percent of culvert construction had been certified for payment. The poor workmanship on the culverts led to the erosion of the road in some sections.

The works did not commence on 29th November 2003 as the advance payment claim was made in December 2003. Further, it was going to be difficult to carry out the works during the rain season. The works only started in April 2004. The revised intended completion date was 29th December 2004. The contractor could not have done much in May 2004 when works commenced in April 2004.

The contractor could not continue carrying out the works due to lack of funds in 2004. Although it was reported that ZMK1, 200,000,000 was released, the records at the Ministry indicated that there were no funds released for the maintenance of Nakonde-Kanyala Road for the year ended 31st December 2004.

The maintenance of the road was currently under the European/Zambian Government financed programme which comprised the light rehabilitation of the project road for the first six months followed by three and half years of unbroken maintenance. The project commenced on 30th June, 2006.

When asked to clarify further on the K1, 200,000,000 which the Auditor-General reported as having been released in 2004, the Controlling Officer submitted that he was aware of fraudulent activities that had taken place in 2004 involving the same funds. An investigation had been undertaken then and it was established that the Ministry of Works and Supply did not receive the money.

In a later submission, the Controlling Officer maintained that the Ministry of Works and Supply did not receive K1.2 billion in favour of the Nakonde-Kanyala Road in 2004.

He further stated that slip No. 0328 was a fraudulent one which was presented to the Ministry by the former Provincial Deputy Minister for Northern Province. The genuine funding slip was number 328.

Submission by the Permanent Secretary (Budget and Economic Affairs) – Ministry of Finance and National Planning

Your Committee requested the Permanent Secretary (BEA) in the Ministry of Finance and National Planning to confirm whether or not the Ministry of Works and Supply was funded to carry out works on the Nakonde-Kanyala Road.

The Permanent Secretary, in his reply, stated that according to their database for the 2004 national budget, the Nakonde-Kanyala Road was funded K1.2 billion *vide* funding slip No. 0328 dated 12 May 2004. He further submitted a copy of the letter of instruction to the Bank of Zambia for the transfer of the funds.

Observations and Recommendations

Your Committee are abhorred over the insistence by the Controlling Officer that the Nakonde-Kanyala Road was not funded during the period under review despite the overwhelming evidence showing that the Ministry of Finance and National Planning did release the funds.

They, therefore, urge the Secretary to the Treasury to look into the matter. In order to ensure that thorough investigations are done, state investigative wings should be involved. The Secretary to the Treasury is further advised to report progress on the matter.

Audit Query**Paragraph 10****Kasama-Luwingu Road**

17. On 26th October 2001, the Ministry signed a contract with Sable Transport Limited for the reconstruction and realignment of 153Km stretch Kasama-Luwingu Road at a contract price of US\$28,453,698 (K110, 400,347,386) for a duration of twenty-four (24) months starting from 24th November 2001 to 24th November 2003.

During the financial years 2002 to 2005, amounts totalling K52, 500,191,625 were provided in the Estimates of Revenue and Expenditure and releases made for the works as shown below:

	Provision K'	Releases K'	Variance K'
2002	4,000,000,000	5,500,000,000	(1,500,000,000)
2003	25,000,000,000	1,000,000,000	24,000,000,000
2004	12,000,000,000	17,000,000,000	(5,000,000,000)
2005	<u>11,500,191,625</u>	<u>11,500,383,250</u>	<u>(191,625)</u>
Total	<u>52,500,191,625</u>	<u>35,000,383,250</u>	<u>17,499,808,375</u>

The following were observed:

- a) although the contract price for the works was US\$28,453,698 (K110,400,347,386), only K29,000,000,000 was provided for in the Estimates of Revenue and Expenditure for the years 2002 (K4,000,000,000) and 2003 (K25,000,000,000) out of which amounts totalling K6,500,000,000 (K5,500,000,000 in 2002 and K1,000,000,000 in 2003) was released it is evident that the amounts budgeted for and the amounts released were inadequate to meet the contractual obligations in the two (2) years of project implementation;
- b) the original contract price was revised from US\$28,453,698 to US\$30,187,321 to include the rehabilitation of three roads namely; Zambian Road, Mukulumpe Road and the Airport Road at an amount of US\$1,724,623. As of February 2006, the contractor had been paid amounts totalling K86,112,840,023 (US\$18,424,487) from Ministry of Works and Supply and direct payment of US\$ 9,645,984 (K34,243,242,099) from Ministry of Finance and National Planning, bringing the total paid to the contractor to US\$28,070,471 (K120,356,082,122);
- c) there were claims for interest on delayed payments involving an amount of US\$8,375,608 and contingencies involving an amount of US\$283,776 which could not be substantiated as per certificate No. 23 dated June 2005;
- d) although the total value of completed and certified works was US\$27,080,561 representing 89.7 percent of the total revised contract price, the works were far from completion in that out of the 153 Km stretch, 71 Km representing 46.4 percent of the total works was still not done. 82Kms was partly done and there were dams of gravel over a stretch of 6Kms which had not yet been spread on the road surface;
- e) a stretch covering a distance of 18km of the formed road had not yet been stabilized and due to heavy rains, the gravel had been washed away; and

- f) Sable Transport later subcontracted part of the works to Tarcon Construction which tarred a stretch of 31Kms from Kasama, while Sable Transport started from Luwingu and tarred 20Kms. Tarcon Construction, however, pulled out due to non payment.

As of February 2006, the tar on some parts of the road done by Tarcon Construction had already started coming out.

Despite the extension in completion dates, the works had not yet been completed as of February, 2006 and the contractor had partially demobilised.

Controlling Officer's Submission

The Controlling Officer submitted as set out hereunder.

- a) The Ministry made effort to allocate sufficient funds to the project to meet the cash flow requirements in accordance with the programme of the works but due to low budget ceilings for the Ministry, only those provisions indicated in the Report were approved and authorised.
- b) The first variation to the contract amounted to US\$2,113,090 for the time-related items due to extension of time. The second variation order amounted to US\$1,724,623.32 for the rehabilitation of Kasama Township roads bringing the total revised contract amount to US\$32 310 811.10 and not US\$30,187,321.
- c) The Ministry appointed an independent private consultant to review the contract and determine payments made to Messrs. Sable Transport Limited for the construction of Kasama-Luwingu Road. The consultant was requested to examine and analyse all progress claims, payments, interest claims and any other claims made by the contractor in relation to the provisions of the contract. The consultant was requested to also review the bills of quantity in the contract.

The independent consultant had substantiated all payable claims and concluded that the contractor was owed an amount of ZMK15.1 Billion. However, an additional US\$2.9 million for extension of time with costs was approved and not paid yet (for the extension of the period from 2003 to 2004).

- d - f) The total value of completed and certified works amount of US\$27 080 561 did not represent 89.7 percent of the total revised contract amount. The US\$27 080 561 was inclusive of interest amounts arising from late payments and not works carried out. The value of works carried out on the Kasama Township roads was included in the amount of US\$27 080 561.00 but the total length completed was restricted to the main project road of 153Km in length.

At the time of inspection, 6 Km of dumped base material was ready for stabilising and spreading. However, due to cash flow constraints this could not be carried out. The contractor had since carried out the works.

The implementation of the project was initially carried out from two fronts, Kasama and Luwingu, respectively. In order to accelerate the rate of progress of the works, Messrs Sable Transport Limited hired plant and Equipment from Messrs Tarcon Construction Limited to carry out works from the Kasama front.

All defects that were noted had been remedied. The contractor had not partially demobilised but all plant and equipment belonging to Messrs Tarcon Construction had been removed from site since the funding to the project could not sustain such mobilisation of plant and equipment as most of it would have been standing idle on site.

The contract was still facing financial difficulties. However, there was a provision of K20 billion in the 2007 Budget for the Road.

During his appearance before your Committee, the Controlling Officer informed them that K17 billion had been released and was to be used to off-set the outstanding amount with Sable Transport Limited.

Observations and Recommendations

Your Committee observe that there is either lack of commitment to complete projects or Government, through the Ministry of Works and Supply, is too ambitious and over committing itself on road projects. The Kasama-Luwingu Road, a 153 km stretch, was to be completed in 2003 according to the initial contract. However, four years later in 2007, less than 50 percent of rehabilitation works have been done.

Your Committee wish to advise the Secretary to the Treasury to look into the issue of funding capital projects. The increasing number of incomplete projects are a source of concern, not to mention the forgone development opportunities.

On the specific matters, they request the Controlling Officer to submit to the Auditor-General documents relating to the first and second variations and the Report of the Independent Consultant, ZMCK for reconciliation and verification.

They further request the Controlling Officer to report progress on the rehabilitation works.

Audit Query

Paragraph 11

Chipata – Lundazi Road

18. In paragraph 41 of the Auditor-General's Report on the Accounts for the Financial Year ended 31 December 2003, mention was made about the irregularities associated with the handling of the contracts for the rehabilitation of the Chipata- Lundazi Road.

A recent review of the financial records and a site inspection of the Road Project in February 2006 revealed that the situation had not improved as evidenced by the following:

- a) although the contract price for Lot 1 was K7,061,152,340, only a provision of K4,000,000,000 was made in the Estimates of Revenue and Expenditure for 2003, out of which only an amount of K1,000,000,000 was released; both the amount budgeted for and the amounts released were inadequate to meet the contractual obligations;
- b) another contract for Lot 2, involving an amount of K14,122,281,406, was entered into in 2004 thus bringing the total contractual obligation to K21,183,433,746;
- c) although the Ministry of Finance and National Planning released funds which had accumulated to K22,806,676,000 for the two projects during the period between November 2003 and July 2005, the contractor was only paid amounts of K8,215,520,892 for work on Lot 1 and K12,882,259,190 for work on Lot 2 bringing the total payments towards the project to K21,097,780,082 leaving an outstanding balance of K85,653,664 as of February 2006;
- d) records showed that completion certificates for certified works issued for Lot 1 was K8,764,910,684, and for Lot 2 K16,829,350,071 bringing the total certified works to K25,594,260,755, against total contract price K21,183,433,746 out of which total payments of K21,097,780,082 had been made. As of February 2006, the works certified were in excess of the total contract price by K4,410,827,009;
- e) the contractor had stopped work in mid January 2005 during the execution of Lot 2 due to non payment and later resumed work on 12th May 2005 after Government cleared the outstanding payments on 11th April 2005; however, the contractor claimed interest on the delayed payments amounting to K363,091,879 which was paid on 24th May 2005; and

- f) the contractor claimed standing time costs amounting to K2,751,042,767 for the same period from January to April 2005 which had not yet been paid as of February 2006.

A site visit in February 2006 of Lots 1 and 2 of the road revealed the following:

Lot 1

Although the contract was varied to include a slurry seal as per the Public Accounts Committee recommendation, as of February 2006, this had not been done and the potholes had continued emerging on the road.

Lot 2

Only 56Kms had been worked on representing 70 percent of the contracted work in contrast to 91.2 percent of the contract price paid to the contractor. It was, however, observed that culverts in some places had been blocked while one section had a big metal culvert vandalised causing the road to curve in, resulting in the contractor having to re-do the road work.

It was further observed that the base of the road from a 156km point from Chipata to Lundazi was damaged.

Controlling Officer's Submission

The Controlling Officer submitted that the title of the Project should read the Emergency Maintenance of the Chipata - Lundazi Road and not the Rehabilitation of the Chipata - Lundazi Road as no rehabilitation was intended to be carried out by the Ministry due to lack of funds.

The Controlling Officer informed your Committee that the contract for Lot 01 did not cover any section for reconstruction because the contract covered only pothole patching, edge repairs and shoulder reinstatement. However, the contract was later varied to include 10km of slurry sealing costing K 1, 197,064,678.00.

He stated that the intention of the Ministry was to carry out emergency maintenance in six months and cover all existing potholes to prevent the road from further deterioration, but due to inadequate funding, the objective of the maintenance was not achieved as the duration of contract was extended from six months. During the extended period, more potholes emerged on the road that had not been patched. At this time, full maintenance, assessed at K40, 000,000,000 was required to patch up all the existing potholes and cover the entire project with a single seal. However, this could not be carried out due to financial constraints.

The Controlling Officer submitted that the option proposed in the Report, of down grading the existing paved road to a gravel standard, was not a cost effective solution because the maintenance cost for a gravel road was too high for the current traffic volume on the road. He said the cost - benefit analysis showed that the present traffic on Chipata - Lundazi Road called for maintaining the current tarred standard. In addition, the cost of downgrading could be very high.

He informed your Committee further that his Ministry could not vary the existing contract to include the slurry sealing of the 180km road because additional expenditure would have been more than 400 percent above the original contract amount of Lot 01 and Lot 02. He informed the Committee that the vandalised culverts had since been repaired by the contractor at a cost. The Ministry advised against down-grading roads because of the higher recurrent cost for the maintenance of the graded roads. He contended that the best solution was to carry out regular maintenance of all roads to avoid wasteful expenditure arising from delayed maintenance.

Your Committee heard that the Ministry regretted that due to inadequate provisions in the annual budgets due to budget constraints, only amounts far much less than what the Ministry desired were approved. Further, the Ministry of Finance and National Planning did not release the full amounts provided in the

budgets. The outstanding balance of K85, 653,664 was spent on the monitoring and inspection of the road project. He said the project was budgeted under the Poverty Reduction Programme, which allowed for 5 percent of the released amount to be spent on monitoring of road projects.

According to records at the office which were made available to the officers from the Auditor-General, the contract for Lot No. 01 was revised from K7, 061,152,340 to K8, 258,219,019 to cater for 10 Km of slurry sealing. The contract for Lot No. 02 was revised from KI4, 122,281,406 to K25, 075,557,614.60 to cater for additional works involving the reconstruction of 2.8 Km, construction of culverts and additional pothole patching. The revised total contract amount for Lot No. 01 and Lot No. 02, he said, was K33, 283,876,628.60 and not the amount of K21, 183,433,746 mentioned in the Report.

The Controlling Officer submitted that the standing time of K2, 751,042,767 had since been paid. The Ministry wished to bring to the attention of your Committee that at an additional cost the contractor repaired all vandalised culverts.

He contended that the picture showing the purported vandalised metal culvert was in fact a section of the road that was being reconstructed. Further, the other picture showing the section believed to have been completed and later damaged was actually a section that had not yet received maintenance.

Observations and Recommendations

Your Committee note the submission and advise the Secretary to the Treasury to urgently revise the current method of funding capital projects. According to the Controlling Officer's submission, a full maintenance of the road was initially assessed at K40 billion albeit with a single slurry seal. In 2007, the revised contracts value for Lots 1 and 2 for "emergence maintenance" amounted to K33.3 billion, signifying that Government should have gone for full maintenance in the first place.

On other matters, they recommend the following:

- i) revised contracts for Lots 1 and 2 should be submitted to the Auditor-General for reconciliation of figures and verification; and
- ii) payment details for the standing time changes amounting to K2,759,042,767 should be submitted to the Auditor-General for verification; it is unfortunate that Government is paying such amounts for absolutely nothing.

Audit Query

Paragraph 13

Choma-Chitongo-Namwala Road

19. In paragraph 89 of the Auditor-General's Report on the Accounts for the Financial year ended 31st December 2000, mention was made of the construction of Choma – Chitongo – Namwala road which was later split into two projects namely; Chitongo – Namwala and Choma – Chitongo.

A review of the status of the project in February 2006 revealed the following:

a) *Budget Provisions for the Project*

There were no separate budgetary provisions towards the project over the years.

Although the total contract price for the two roads was K22,782,124,192, only provisions totalling K2,356,329,000 were made for the years 1995 and 1996. The amounts budgeted for were therefore, inadequate to meet the contractual obligations in the two (2) years of project implementation.

b) Choma – Chitongo Road (Southern Province)

On 16th December 1994, the Ministry entered into a contract with Astaldi International Inc for the construction of the Choma - Chitongo road covering a stretch of 89km for a contract sum of K12,879,799,000. The contract was for a period of 18 months from January 1995. The works involved gravel surfacing to Class 1C bituminous surface and road re-alignment.

An examination of records pertaining to the project and a site inspection carried out revealed that there were no separate budgetary provisions towards this project over the years apart from those for Choma – Namwala as detailed in the table below:

Year		Provision (K)
1995	Choma - Namwala	1,356,329,000
1996	"	1,000,000,000
1997	"	6,000,000,000
1998	"	6,000,000,000
1999	"	5,500,000,000
2000	"	4,000,000,000
2001	"	5,000,000,000
2002	"	4,000,000,000
2003	"	6,000,000,000
2004	"	4,000,000,000
2004	Choma - Chitongo	4,600,000,000
2005	"	11,000,000,000

However, in 1995 the Ministry requested the contractor to omit the road re-alignment part of the contract in order to reduce construction costs, which the contractor was not willing to do and this, coupled with lack of funds for the project resulted in the termination of the contract in May 1996. The Contractor was paid a sum of US\$2,440,495 as settlement for breach of contract.

c) Contract with Basil Read (Z) Limited

In November 1997, the Ministry entered into another contract with Basil Read (Z) Ltd for the same project at the contract sum of US\$17,214,556.72. The project was for a period of 26 months commencing July 2000.

The contract for the construction of 77kms of the Chitongo - Namwala Road to Class 1C standard at an original contract price of K14,071,304,120 was later revised to exclude the construction of bridges at Kabulamwanda spillway and Naminwe causeway. Accordingly, the contract price was reduced to K9, 983,275,612 *vide* an agreement signed in May 1995 for a period of 18 months from March 1995. The works were to be supervised by a consulting engineer engaged by the Ministry.

It was observed, however, that contrary to the agreement; the contractor only took possession of the site on 23rd June 2000 two and half years later. It was further observed that the contractor did not shift the camp at Kabulamwanda used for Chitongo – Namwala to a new location as agreed in the contract.

It was further observed that the contractor had only done 50km of bush clearing by August 2000 and in December 2000, they demobilised and abandoned the project. It was not possible to ascertain the certified works done by the contractor in the absence of progress reports and certificates for payments.

As at February 2006, the road was in a deplorable state.

From the foregoing it was evident that:

- a) the payment of US\$2,440,495 to Astaldi International was a waste of public funds as the contractor did not do any work but just mobilised and later demobilised;
- b) the Ministries of Works and Supply and Finance and National Planning did not commit adequate funds towards the project to ensure its execution within the contract period; it was also noted in this respect that during the period under review, the Ministry of Works and Supply made budgetary provisions towards the project, which funds were diverted to paying the outstanding bills on the Chitongo – Namwala road; and
- c) the Ministry showed lack of control over the project because when it became clear that the contractor was not executing the work and had abandoned the site, they did not terminate the contract and instead left it valid for six (6) years without any work taking place; and
- d) the contract with C.A. Brand was later awarded to Basil Read (Z) Ltd on request by the holding company, Draggers et Travaux Publics (DTP). Mention was also made that the total cost of this road project had risen to K50,220,520,568 as of October 2000 out of which an amount of K33,661,903,131 had been paid to Basil Read as of December 2000, leaving a balance of K16,558,617,437.

d) *Over Payments to the Contractor and Consulting Engineers*

Although the agreed contract duration was eighteen (18) months commencing March 1995, the contract instead took sixty (60) months to complete. It was also observed that there were forty six (46) certificates issued for payment on the project between 1996 and June 2000 totalling K43,042,683,428. However, the computation by the consulting engineers showed a total claim of K46,370,565,528, resulting in an excess claim of K3,327,882,100 which had not been adjusted as of February.

A further analysis of the claims by the consulting engineer revealed the following:

- i) the claims for foreign cost adjustment, interest on overdue payments, suspension entitlement claims, and changes in legal costs claims as reflected above were a waste of public funds as they could have been avoided had the Ministry exercised its rights and obligations as provided for in the contract;
- ii) the authenticity of the claim for foreign cost adjustment amounting to K20,957,821,530, which is higher than the original contract price, was questionable.
- iii) the rise and fall in material and labour costs totalling K3, 113,222,634 would have been minimised if the contract execution was done within the contract period of twelve (12) months instead of the sixty months;
- iv) subsequent claims certified by the resident engineer on the project as of September 2005 totalled K66,025,945,665 out of which the Ministry had paid a total of K40,306,254,112 leaving an outstanding amount of K25,719,691,554 made up of K21,589,932,283 interest and K4,129,759,271 principal;
- v) also claimed on the project were fees for the consulting engineer, Sheladia Associate, Inc. amounting to K8,298,526,446 as at 31st, May 2005; and

- vi) as of 30th December 2005, the contractor claimed a total of K66,025,945,665 as can be seen from the table below:

	Amount
	K
Certified amounts	43,577,341,382
Variation order	858,672,000
Interest	<u>21,589,932,283</u>
Total Claimed	66,025,945,665
Total paid	<u>40,306,254,111</u>
Outstanding amount	<u>25,719,691,554</u>
Outstanding amount broken down as follows:	
Principal	4,129,759,271
Interest	<u>21,589,932,283</u>
	<u>25,719,691,554</u>

It was evident from the above that the project was poorly managed in that the cost of the project increased from the original contract amount of K9,983,275,612 to K66,025,945,665 as claimed by the contractor.

Controlling Officer's Submission

The Controlling Officer informed your Committee that his Ministry had noted the request made by the Public Accounts Committee to submit progress on efforts made towards the completion of the project and full discharge of Government's obligation. He said the balance of K16, 558,617,437 that remained as at October 2000 had been reduced to K4, 900,000,000 as of 31st December 2006 and that the full principal amount of K9, 939,133,554 as of October 2000 had been paid in full. The remaining balance of K4, 900,000,000 comprised interest only. He said the Chitongo – Namwala Road construction to bitumen standard was completed to specifications and standards in December 1999.

Contract with Basil Read (Z) Limited.

As regards the above project, the Controlling Officer confirmed that the narration given in the Report reflected the correct position of the contract details.

He said the name of the project was the construction of the 170km Choma -Namwala Road to Bitumen standard. He said the project was divided into two, for the purpose of implementation only. For the above reason, there were only single budgetary provisions for the two sections of the road during the years of implementation. However, upon completion of the Chitongo – Namwala Road, it was resolved that, for the sake of emphasis, the completed portion of the road should not be part of the project. The project was henceforth called as the Choma -Chitongo Road construction.

The Ministry received the cash flow requirements from the two contractors to complete both sections of the road project within the specified 18 months duration. The Ministry accordingly allocated the full amounts required in each year to meet the cash flow requirements for the road project according to the works programme for each section of the road. However, due to budgetary constraints, the amounts provided in the budget were reduced drastically. The final figures provided in the annual budgets did not reflect the actual amounts required and requested.

The rate of progress of works, he said, was principally dependent upon the in flow of cash to the project. The contractor prepared a programme of works and its cash flow requirements. He said the programme of works was revised several times to accommodate the available resources of the project each year. The inadequate payments led to extension of time and corresponding increase in the project costs. The Ministry had noted that the Report gave a figure of ZMK43, 042,683,428 as the total amount certified up to and including combined certificate 45 and 46. However, there was no such compilation to show how the above-mentioned figure was arrived at. The correct figure of the amount certified up to and including certificates Nos. 45 and 46 was K46,370,505,528.

Analysis of Claims

- (a) The Ministry had exercised its rights and obligations as provided for in the contract in implementing the project. The completed road had been constructed in conformity to specifications and had met the standards prescribed in the contract. The availability of funds was beyond the control of the Ministry. The Ministry of Finance and National Planning was responsible for the provision and release of funds. The Ministry of Works and Supply should therefore, not be blamed for penalties suffered because of the Ministry of Finance and National Planning's failure to provide sufficient funds to sustain the progress of the works.
- (b) The contract included a formula for ascertaining foreign cost adjustments and his Ministry could not determine foreign cost adjustment by any other means other than what was provided for in the contract. The Ministry was, however, willing to receive advice on the matter.
- (c) The Ministry agreed with the observation that changes in prices of materials could have been minimised if the contract duration had remained 18 months. However, due to extensions of time due to late payments and inadequate funding to the project, prices of materials rose over the sixty months of project implementation.
- (d) It should be noted that had it not been for the efforts of the Ministry to ensure that project costs were minimised by allocating all payments to the reduction of principal amounts, the interest amount would have been quite high.
- (e) Similarly, the Engineer's establishment was reduced on site in order to cut down on project costs since the rate of progress of work had been reduced due to inadequate funding.
- (f) The project was not poorly managed but was poorly funded. The constructed road had met all specifications. The workmanship of the finished work was satisfactory. Indeed, the management of the project involved cost, time and budget, which were later interdependent. The Ministry could not handle issues of the budget on its own.

Choma-Chitongo Road Contract

The Controlling Officer informed your Committee that the construction of the Choma –Chitongo Road involved the upgrading of the existing gravel road to bitumen standard and not to construct it to gravel surface as the report indicated.

Further, the contract for the upgrading of the 80km stretch between Choma and Chitongo to bitumen standard was signed in November 1997. At that time, the contractor had not yet completed the construction of Namwala-Chitongo Road but was about 40 percent complete. It was, therefore, agreed that the other project would only start upon completion of the Chitongo- Namwala Road. The Ministry realised that it would not start another major project when Government was finding it difficult to meet its financial obligations of settling certified amounts within a given specified period.

He informed your Committee that the contractor could not mobilise to the new camp because Government owed him a substantial amount of money. Further, the Government had failed to give him the advance payment for the construction of the Choma-Chitongo Road. It was, therefore, resolved that the contractor would continue to use the same camp until he had received the advance payment claim in full.

The Controlling Officer further informed your Committee that the contractor started carrying out the works using his own resources but suspended the works because Government faltered yet again on its obligation to pay for the works already carried out. Further, the Government still owed the contractor K14,308,

662,379 from the previous contract. He went on to submit that Government actually requested the contractor to remove most of his equipment from site to avoid unnecessary expenditure in form of standing time costs, time related costs, etc. subsequently, the contract was fully suspended and all equipment, plant, labour and material were removed from site.

He informed your Committee that the Ministry actually carried out the maintenance of the Choma-Chitongo Road from the ZMK 2,000,000,000 that was available in the 2005 Budget and that the Ministry intended to carry out and complete the construction of the first 10 km of the 80km of the road to bitumen standard. There was a provision of ZMK 18,000,000,000 in the 2007 Budget.

Observations and Recommendations

Your Committee observe that the construction of Choma-Namwala Road has dragged on for 12 years. While appreciating the completion of the Namwala-Chitongo (90km) part of the project which took 5 years, the remaining 80 km stretch has been on paper for the past 7 years.

Your Committee reiterate their earlier recommendations that funding of capital projects should be revised. There is no need for the Government to embark on projects without the required capacity to complete thereby raising people's expectations in the process. The K21.5 billion that is being claimed as interest could have enabled the Government make considerable progress on the project.

They further recommend that these matters should form part of the basis in treasury management reforms that the Ministry of Finance and National Planning has embarked upon.

They request the Controlling Officer to provide an update on the liquidation of all outstanding claims and progress on the Road Project.

Audit Query

Paragraph 14

Mongu-Kalabo Road

20. In paragraph 40 of the Auditor General's Report on the accounts for the financial year ended 31st December 2003, mention was made of the construction of the Mongu – Kalabo Road which Government embarked on to provide an all weather road between Mongu and Kalabo. In particular, mention was made about payments to Consolidated Contractors Company which the Controlling Officer confirmed as K81,492,915,065 out of the contracted amount of K135,646,112,006 (US\$37,401,251) for the works which were considered as a waste of public funds since the 34Kms of the road that passes through the Zambezi flood plain was severely damaged by the floods of the 2003/2004 rain season.

A review of the records pertaining to the project and a site inspection conducted in March 2006 revealed the following:

i) Project Status

A progress report dated February 2006 by the Roads Department revealed that the contractor's working method contributed to the damages of the road as he left the works in the flood plain unprotected and concentrated on facilitating the movement of the plant and equipment to the other side of the Zambezi River and subjected the embankments to damages through the wash-aways.

ii) Insurance Cover

A site visit made in February 2006 revealed that the damages had not been rectified.

Further, as of the time of audit, the insurance policy had not been made available for audit scrutiny contrary to Financial Regulations.

iii) *Payments to the Contractor*

As of November 2005, the contractor had issued twenty nine (29) interim payment certificates valued at K136,864,817,474, out of which a total of K112,138,296,410 had been paid leaving a balance of K24,726,521,064:

iv) *Interest on Delayed Payments*

A scrutiny of interim certificate number 31 of February 2006 revealed that interest claims by the contractor had risen from K2,269,415,232 to K3,143,697,831, an indication that there were still delays in effecting payments to the contractor's claims contrary to the recommendations of the Public Accounts Committee.

v) *Disputes and Attempted Termination of Contract by the Contractor*

A scrutiny of the February 2006 report by the Director, Road Development Agency revealed that there was a dispute between the contractor and the employer due to non settlement of the contractor's claims by the employer. Although the employer later on settled the claims, the contractor insisted on terminating the contract. The report further indicated that the contractor demobilised on 29th November 2004 by removing plant and equipment from the project site enroute to Namibia without authority from the employer. However, the Police intercepted and impounded eight (8) of his trucks.

When the contractor was requested to resume work, he demanded to be paid an amount of US\$5 million as money required to remobilise by bringing his equipment back to the contract site. However, the consultant settled for US\$2.6 million (K9.7 billion) as money for remobilisation. Although the US\$2.6 million had been agreed, it had not yet been paid as of February 2006. In view of the fact that the contractor demobilised without authority, the claim for remobilisation was highly questionable and should not have been accepted.

vi) A site inspection of the project carried out in February 2006 revealed that the 34kms from Tapo - Kalabo and the Kalabo access road were 100 percent completed.

However, the section of the road from Tapo village to the Mulamba Harbour, which lies in the Zambezi Flood Plain and was washed away by the floods of the 2003/2004, remained damaged and got worse over the years with grass growing in some parts as it awaited the construction of the bridges in this flood plain.

Due to disruptions of works in 2004, the completion date for the 41km Kalabo - Tapo road section was revised to December 2005 (and this had since been completed), while the 34km lying mainly in flood plain was to be redesigned and was to be completed by December 2007.

Controlling Officer's Submission

The Controlling Officer submitted that, as reported in their previous submission, the contractor was liable to carry out the repairs of the damaged embankment across the 34km flood plains. The contractor had an insurance policy to cover for any possible damage to the works carried out. The contractor had not carried out the repair of the damaged embankment because there had been changes in the design of the road through the flood plains. The study to review the design of the road through the flood plains recommended the use of bridges with longer spans in order to increase the hydraulic capacity of the drainage structures.

He informed the Committee that the detailed engineering design for the construction of the embankment in the flood plains had recommended using 27 bridges spanning 40 to 60 metres. The re-design was expected to be completed soon. He said the contractor would start to work as soon as the portable bridges were procured.

The Ministry had had discussions with the Ministry of Finance and National Planning over the delayed release of funds to the project. He said it was gratifying to note that most of the payments had been made on time since then.

(i) Project Status

The observation made was correct.

(ii) Insurance Cover

As regards Insurance Cover, the position of the Ministry still remained the same. However, the repairs to the damaged embankment had not been carried out as explained above. The contractor was waiting for the re-design for the construction of the road through the flood plains to be completed. Works would only start upon completion of the re-design and purchase of portable bridges.

(iii) Payment to the Contractor

The Controlling Officer informed your Committee that the officers from the Auditor General's Office did not return certificate No. 29 upon perusal. However, at certificate No. 30, the total value of works certified was only K132 752 793 100.00, which was still, less than K136 864 817 474.00 alleged to be the amount in Certificate No.29.

(iv) Interest on Delayed Payments

The Controlling Officer submitted that the interest accrued of K3 143 697 831.00 as per Certificate No. 31 was attributed mostly to the late payments by the co-financiers towards settling their portions of certified works. According to the Financing Agreement, the co-financiers were not obliged to pay interest amounts accrued from delayed payments but the Zambian Government was obligated to pay for interest accrued on any portion of the funding whether for co-financiers or Government. The Zambian Government had since then settled the above amount.

(v) Disputes and Attempted Termination of Contract

The Controlling Officer informed your Committee that the contractor did not illegally remove plant and equipment from site. The claim he made was genuine and contractual. The dispute arose because of the amount claimed. The negotiated amount of US\$2 600 000.00 was deemed fair by the contractor and the Zambian Government.

(vi) Tapo-Mongu Stretch

The Controlling Officer stated that the 34km section of the road through the flood plains remained the same as earlier stated. The section would only be repaired upon completion of the re-design of the construction of the road through the flood plains.

Observations and Recommendations

i) Project Status

Your Committee observe that the then Roads Department had concluded that the working methods of the contractor contributed to the damages on some sections of the constructed parts of the Road. Considering the above and other shortcomings, your Committee are not comfortable with the same contractor proceeding with the works.

ii) Insurance Claim

Your Committee resolve to await an update on the repair works.

iii) *Payments to the Contractor*

Your Committee observe that, despite the slight adjustment in the value of certified works, the final position is that Government still owes the contractor K20,614,496,690. The Controlling Officer should report progress on the payment of the outstanding dues.

iv) *Interest on Delayed Payments*

Your Committee observe that the design of the financing arrangements places Zambia at a disadvantage if there is a delay in the release of funds. To minimise chances of the country having to pay interest, your Committee urge the Secretary to the Treasury to be settling in full all interim payments and get reimbursements from the co-financiers in situations where there are delays in releases.

v) *Disputes and attempted Termination of Contract*

Your Committee note the submission.

vi) *Tapo – Mongu Stretch*

Your Committee resolve that the Controlling Officer report progress on the road works.

Audit Queries

Paragraphs 15 -16

Outstanding Bills to Road Contractors and General Remarks

21. The Auditor-General reported that, generally, the Ministry accumulated outstanding bills in favour of road contractors for contracts entered into for construction or rehabilitation of roads in the country over the years. These outstanding bills were made up of the unpaid principal contract prices and interests accrued on unpaid certified works.

It was, however, noted that the details of these outstanding bills to contractors maintained at the Ministry's Accounts Department were different from those maintained at Roads Department and Ministry of Finance and National Planning. Whereas the records maintained by Accounts Department showed the outstanding bills as at 31st December 2005 of K239,977,187,081 inclusive of interest, the records at Roads Department and Ministry of Finance National Planning showed an amount of K427,619,752,844 inclusive of K79,923,914,612 accrued interest on unpaid certificates. The differences in records between the Ministry and those held by Roads Department and Ministry of Finance National Planning was highly irregular and evidence of weakness in control over outstanding bills.

General Remarks

From the various projects audited, it was evident that the projects were not being administered in accordance with contract agreements. It was also evident that the budgetary provisions and the associated releases were inadequate to meet contractual obligations during the project implementation period. Consequently, the Government suffered substantial losses of money arising from interest charges on delayed payments, variations in scope of work, fluctuations in prices of materials and labour and other claims.

It was necessary that Government took control measures to ensure that internal control systems were put in place to encourage efficient and economical use of scarce resources and prevent abuse and mismanagement of public funds.

Controlling Officer's Submission

The Controlling Officer submitted that the Ministry of Finance and National Planning usually obtained a record of outstanding bills from Roads Department upon request. The outstanding bills maintained at the then Roads Department was the un-audited record. On the other hand, the Ministry's record showed the audited outstanding bills. The records held by the Ministry and Road Development Agency had since been reconciled after auditing the bills.

Observations and Recommendations

- i) Your Committee recommend that the Controlling Officer should submit the reconciled outstanding bills to the Auditor-General for verification.
- ii) Your Committee, based on the various submissions, wish to emphasise the following:
 - there is need to urgently revise the funding arrangements for capital projects to avoid having a huge "inventory" of incomplete projects across the country;
 - Treasury reforms should be implemented as a matter of urgency so that the above can be taken into account;
 - the Government should simply avoid embarking on projects where the requisite funding is not available; notwithstanding their economic and social importance, some projects were merely embarked on for political expediency, but have proved to be too costly in the final analysis; and
 - there is need, as part of the treasury reforms, to evolve a system that will ensure that all capital projects or components thereof budgeted for in a particular financial year are implemented in that year. In order for this to happen, the capital project component of the national budget must, on a yearly basis, be funded separately and not from revenues arising that year. One way that Government should consider is to direct loans and cooperating partners direct budget support towards capital projects.

SUBMISSIONS BY SELECTED STAKEHOLDERS

22. Your Committee, in an effort to get insights on what measures the Government was planning to put in place to resolve projects funding problems, drawing of contracts and project management in the public sector, invited the Secretary to the Treasury, the Permanent Secretary – Ministry of Justice and the Director – National Council for Construction to comment on the audit findings. Their respective comments are given below.

Secretary to the Treasury's Submission

The Ministry of Finance and National Planning agreed with the findings of the Auditor-General regarding the poor management and administration of contracts under the Ministry of Works and Supply. The following specific issues were of concern to the Ministry:

- i) the under-funding and untimely provision of resources to projects / works under the Ministry of Works and Supply that had resulted in delayed works and increased costs;
- ii) the provision and release of funds in financial years where no works had commenced;
- iii) the award of contracts to firms that were not capable of doing the works. These are contractors that were cheaper but were categorised in lower grades and therefore not eligible to be awarded contracts; and
- iv) the execution of works beyond the agreed time frame resulting in the escalation of project costs. In some instances, the cost increased four times more than the original cost such as in the construction road works under the Chirundu Border Project whose cost increased from K10.5 billion in December 2001 to K43.5 billion in January 2005 due to delays in completion of the project for over 4 years.

The above situation could not be left to continue unattended to as the amount of public funds spent on most of these projects was too high and did not reflect the value that the Government got from the projects. In view of the above, the Ministry of Finance and National Planning had started engaging Controlling Officers to find lasting institutionalised solutions to some of these problems. The following measures were being implemented:

- a) the monitoring and evaluation capacity of the Ministry of Finance and National Planning was being strengthened through the establishment of the Planning Division. This involved the development of monitoring tools that had clear key result areas. It was hoped that the measure would cause the Ministry to be aware of projects that had commenced, delayed or were being poorly executed. This would then be reflected in funding profiles for works;
- b) the Ministry of Finance and National Planning was requesting all ministries to put in place budget plans that were aligned to procurement plans. This would ensure the timely provision of funds to projects at every stage of implementation unlike the current situation where full amounts were requested and remained unused in the ministries;
- c) the Ministry of Finance and National Planning was in the process of establishing a Treasury Department that would improve the management of government cash that lies idle in ministries accounts on specific lines waiting for certificates of completion. Under the Department, funds would only be released to a Ministry upon production of a payment certificate. This would ensure availability of funds in the Treasury as opposed to the current scenario where funds lie idle in some ministries while others do not have funds to meet payment of matured certificates of works;
- d) the Ministry of Finance and National Planning would advise the Ministry of Works and Supply to put in place administrative inspection teams to verify certifications of works before they are presented for payment;

- e) the Ministry of Finance and National Planning was liaising with the Ministry of Works and Supply, in the meantime, to determine the feasibility of it being allowed to vary funds on specific works whose certificates were not ready to those whose certificates had matured;
- f) the Ministry of Finance and National Planning would encourage the Ministry of Works and Supply to report to the National Council for Construction, any contractor who performed below the required standard and recommend them for downgrading or deregistration. It was hoped that this would bring about discipline in contractors engaged in implementing public works. This would also discourage lower grade contractors from applying for works they could not undertake. This was one of the resolutions of Controlling Officers at the workshop conducted in mid July 2007; and
- g) since the Ministry of Works and Supply had indicated in its report to your Committee that they had no capacity to verify foreign denominated costs, the Ministry of Finance and National Planning would advise the Ministry to be cautious when signing contracts that were denominated in foreign currencies.

It was the hope of the Ministry of Finance and National Planning that once these measures were put in place, delays in execution of contracts would be minimised and so would the costs related to contracts. The quality of contract implementation would also be improved.

Submission by the Permanent Secretary – Ministry of Justice

The Ministry of Justice, through the office of the Attorney-General, was charged with the responsibility of providing legal advice on all contracts that the Government enters into.

The Ministry was aware that contracts for construction works were generally in standard form. They invariably provided for revision upwards of contract sums where there were changes in circumstances such as inflation rates and delays in payments.

The format of the contracts did not, as a matter of design, favour contractors. General principles were taken into account when drafting contracts, therefore, the design was fair. There were, however, areas which could be improved upon such as advance payments and certification of completed works. The Director, Buildings Department had intimated to the Ministry that the Department, through the Permanent Secretary, Ministry of Works and Supply, would make a submission to the Ministry of Justice recommending that Government should not pay interest for delayed payment. The Ministry of Justice had been told that the Government had lost a lot of money through interest and penalties on delayed payments.

The Director, Buildings Department, further, intimated that the Ministry of Works and Supply would recommend an increase in the period for honouring certificates from 21 to possibly 90 days.

The Ministry of Justice referred client ministries to Cabinet Circular No. 4 of 2004 which stipulated requirements for approval of contracts. The Ministry only advised each client Ministry on the legalities of the documentation that was presented to it. The role of the Ministry was, therefore, advisory. It was a preserve of the client Ministry to accept (wholly or in part) or refuse the advice given by the Ministry of Justice. This applied not just to construction contracts but contracts from other ministries.

When asked if there were specific clauses that protected Government interest that the Ministry looked out for in contracts and whether there were any follow ups to contracts after signing, the Permanent Secretary submitted that the Ministry of Justice relied on the expertise from client ministries. The ministries provided the information that the Ministry of Justice based its decisions on. If full information was not provided, this affected the reliability of the advice. The Ministry had a duty to protect Government interests and did not approve contracts where this was in doubt. With respect to payments, the Ministry was usually satisfied when a client ministry assured them that funds would be made available and because they were provided for in the budget.

The Ministry of Justice did not, however, make follow ups on contracts. This was because it was not a signatory to the agreements and it was up to the client Ministry to ensure that all parties were fulfilling their contractual obligations. Your Committee learnt that ministries did go back to the Ministry of Justice to seek advice when they either defaulted or the other party defaulted.

As a way forward, the Ministry of Justice had embarked on a programme to resensitise Government institutions on how to draw up contracts that ensure that Government interests were protected.

Submission by the Director – National Council for Construction

The National Council for Construction (NCC) is a statutory corporate body set up by an Act of Parliament to regulate and build capacity in the local construction industry. Pertinent to the issue at hand, the NCC was mandated to register all contractors wishing to conduct construction business in Zambia. To this end, the NCC had been registering all contractors in the country. Suffice to say, there were still a large number of contractors who opted not to comply and register with the NCC.

Contractor Registration

The NCC officially started registering construction contractors in 2004. Prior to this date, all building contractors were registered at Buildings Department, whilst road based contractors were registered at the then Roads Department (Roads Development Agency) both under the Ministry of Works and Supply.

Contractors were required to demonstrate their capacity in the areas of finance and human resources, plant and equipment, their gained practical experience including reference from consultants who supervised them in their previous jobs. To ensure transparency and to benefit from the experiences and knowledge of other key stakeholders in the industry, the NCC had devised a contractor registration evaluation system that included officials from the Roads Development Agency, Buildings Department, Association of Building and Civil Engineering Contractors, and National Association of Medium and Small-scale Contractors in Provincial Contractor Registration Committees. The Provincial Registration Committees received all applications for contractor registration on behalf of the NCC, scrutinised the applications and verified all information contained in the contractor's application and made their recommendations to the NCC in Lusaka for final registration.

Construction Consultant's Affiliation

Architects, engineers and surveyors are governed by specific laws with respect to their professional business conduct and practice. These professionals were not regulated by the NCC. However, given the very close working relations between contractors and consultants in the industry, the NCC Act provides that all construction based engineers, architects and surveyors should be affiliated to the NCC and went further to include these professionals on the NCC Board. This, therefore, means that the afore-mentioned professionals continue to be regulated by way of professional registration, deregistration, professional conduct and practice by their respective bodies.

Inspection of Contractors Works

In the strictest sense, the NCC was not mandated to inspect contractor's works on a day-to-day basis. The design and eventual supervision of any construction project was the designated responsibility of the appointed consultant. It was further the responsibility of design construction consultant having had the privileged knowledge of the project design, specifications, materials and the agreed scope of work, who was ordinarily and further charged with the responsibility of certifying works for eventual payment to the contractor. The consultant was appointed and paid by the client. However, the NCC, in its role as the construction regulator, did carry out random countrywide inspections at various construction sites to ensure compliance to various Zambian gazetted construction standards and practices, including safety and healthy standards. Findings at sites were passed and shared with all the relevant consulting bodies and contracting bodies. Defaulting or erring contractors as well as clients were immediately punished by the NCC, by a way of a fine, deregistration or downgrading as the case may be. In the case, of consultants, the information was passed on to their respective professional bodies for appropriate action.

Certification of Completed Works

The signed contract between the client and the contractor in form of the standard contract for buildings and the FIDIC (International Federation of Consulting Engineers and the European Federation of Construction) contracts clearly stated that the contractors would be paid through interim payments and the final payment to the contractor. Obligations of the contractor in the afore-mentioned contract were to carry out the agreed construction works to the satisfaction of the supervising consultant (Architect/Engineer) as detailed in the contract, contract drawings, bills of quantities and detailed specifications. This ensured that matters of quality of work, cost, including interest, construction and completion time and fluctuations were clearly defined and subsequently agreed to by all the parties prior to starting works.

Most importantly, the above signed contract included agreed information on the start and completion dates of the works, periods of interim certificates, the length of the defects liability period which the contractor was responsible for and the rate and period of the retention. The contract went on to state that the contractor would only be paid upon the satisfaction and signing of the payment certificates by the consulting supervisor (Architect/Engineer). The signing of the certificate and subsequent paying of the contractor by the client implied that the client was satisfied, through their consultant, with the quality of work of the contractor.

A typical standard construction contract usually comprised:

- Form of Contract;
- Contractors drawings;
- Bills of Quantity; and
- Specifications.

Interest on Contracts for any Delay in Payment

It must be noted that the typical standard construction contract provided for remedies to both parties; client and contractor, in cases where any party defaulted to honour their agreed obligation(s). For instance, the client was obliged to pay all certified interim certificates by the consultant(s) as failure to honour a certified interim certificate by the client would lead to contract determination by the contractor. It should also be noted that contract determination and re-engaging implied the contractor leaving the site and being recalled when money was made available which could be very costly, especially for rural and remote based projects like schools, hospitals and roads.

Thus, to ameliorate the constant demobilisation and re-mobilisation each time the Government (client) failed to pay the contractor, it was often agreed in the signed contract between the two parties that the Government would pay interest at an agreed rate to the contractor for all outstanding bills. This, therefore, allowed the contractor to continue with the works probably using borrowed funds from the banks to finance the project. The other option was to have the contractor determine the contract upon any delayed payment.

The same standard construction contracts also stated that in the event that the contractor failed to complete the works within the agreed time frame, the contractor would pay liquidated and ascertained damages. Thus, given the many stories about the incompetence of local contractors, one would have expected to hear of a number of cases of Government collecting a lot of money from “shoddy and incompetent contractors,” but this was not the case.

The NCC was strongly of the view that there was nothing wrong with the construction contracts that Government signed with contractors. The only problem was the manner and strictness with which contracts with the Government were administered. If indeed there was anything wrong with the contract form, the same would be occurring in the private sector. The fact that this was not occurring (in the private sector) suggested fundamental structural and operational problems in the public service.

Specific Comments on the Audit Report

(a) Katima Mulilo Bridge Border Infrastructure

The contractor, Nashinga Construction Company limited, that was finally awarded the contract for this project was not and had never been registered by NCC. When this information was communicated to the

Director of Buildings, the contract was eventually terminated. Nashinga Construction Company had since then been trying to register with the NCC, but its application had been rejected owing to the negative reports from their previous supervising consultants and record on sites. Nashinga had since appealed to the Minister of Works and Supply in accordance with the NCC Act.

(b) *Delayed Payments to Contractors (the biggest problem)*

Based on the Audit Report, delayed payments to contractors was the biggest problem facing the Zambian Government's infrastructure and related construction programmes. The Zambian Government was losing money through mobilisation, demobilisations and re-mobilisation costs, interest costs labour, plant and materials cost escalations and so on. It was NCC's considered professional opinion that the Zambian Government would greatly minimise all the above cited unnecessary project cost escalations, only if it honoured its project financial obligations on time.

Admittedly, there were some contractors, such as one working on the Mongu-Kalabo Road Project, who would appear to have failed to honour their signed contractual obligations on site and had managed to get away using the determination clause in the contract, citing failure by the client to pay.

When asked whether the contractors for the Mongu-Kalabo Road were registered with the NCC, the Director submitted that the condition for the award of the contract was that the contractor for the Road did not necessarily have to be registered with the NCC. This was the cooperating partners' condition.

On whether, as NCC, they were concerned with the negative reports on contractors, the Director stated that the possibility of connivance was there, but this was difficult to prove. There was also the question of technical theft. A financial audit could conclude that a project was successfully completed based on physical appearance. However, a building project, as an example, may not have been built according to the agreed and required specifications, only a technical audit could reveal this. He, therefore, suggested that technical audits should be conducted on building contracts. The NCC could not conduct technical audits due to resource constraints.

Submission by the Director General – Zambia National Tender Board

The Director General in his submission on the funding of projects stated that in accordance with the *Public Finance Act* and the *Zambia National Tender Board Regulations and Procedures*, Controlling Officers were mandated to confirm availability of funds prior to tender floatation and subsequent award of contract.

Therefore, if a procurement entity over committed its budgetary provision and did not pay for completed projects or failed to release funds for an on-going project, then the Controlling Officer would be culpable and accountable to the appointing authority.

In the award of tenders, the Tender Board relied on the assurance given by procuring entities that funds were available. It did not demand for proof of availability of funds.

The Director-General further informed your Committee of the following:

i) ***Follow Up after Award of Tender***

The Zambia National Tender Board did make follow ups on selected projects through their Inspection Unit, but it would be appropriate if additional powers could be given to them for post tender follow ups.

Draft legislation was in progress and was going through the normal administrative process. A number of issues had been incorporated therein to enhance the operations of the Tender Board. However, the tender processes should be decentralised. The National Tender Board would be playing a regulatory role as was the practice in other countries.

ii) Advance Payments and Variations of Contracts

The Zambia National Tender Board was equally concerned with the rate of variations on contracts. Discussions were held with the Secretary to the Treasury over the matter and it was agreed in principle that procuring entities should be preparing procurement plans in advance so that selected projects could adequately be provided for in the national budget. This arrangement would be ideal for capital projects in that not all funds would be required within the twelve months.

Observations and Recommendations

Based on the above submissions, your Committee observe that since the Ministry of Justice depends on the information provided by ministries, the contracts are still open to manipulation. There is need for the Government to devise a system that will ensure that contracts, particularly those of a technical nature, are thoroughly scrutinised before they are signed.

Your Committee appreciate the measures the Ministry of Finance and National Planning is putting in place to address the areas of concern in the management of contracts in the Ministry of Works and Supply. They, however, advise the Secretary to the Treasury that:

- i) measures will only be successful if they are implemented and a system put in place to ensure that there is follow-up; this means that any officer found operating outside the system is punished;
- ii) Government is the preferred client for most contractors. Therefore, this position can be capitalised on to draw up contracts that are to the advantage of Government considering its resource constraints; the FIDIC document that is used to draw up contracts provides for specific conditions and, therefore, permits parties to a contract to take into account their current circumstances, e.g., the need for Government to pay advance payments in a number of contracts can be done away with; contractors would then fund the projects from own funds and bank loans and recoup the money on a reimbursable basis;
- ii) provisions in the contracts on advance payments and certification of completed works should be reviewed as they are the major weak links through which Government funds are irregularly accessed; and
- iii) the new legislation on public tenders should have provision for follow up after award of tenders. Under the current arrangement, the Zambia National Tender Board is not compelled to do so as they do this for their own operational purposes on selected projects.

Your Committee request the Secretary to the Treasury to provide updates on the implementation of the listed measures in his submission from (a) to (g).

Conclusion

23. Your Committee wish to express their gratitude to you, Mr Speaker, and the Office of the Clerk for the guidance and support rendered to them throughout their deliberations. They further thank the Secretary to the Treasury, Permanent Secretary-Ministry of Justice, Director-National Council for Construction, Director-General – Zambia National Tender Board, project consultants and all controlling officers who appeared before them for their cooperation.

Finally, they wish to acknowledge and show appreciation for the advice rendered to them by the Office of the Auditor-General and the Accountant-General throughout their deliberations.

C L Milupi, MP
CHAIRPERSON

OCTOBER 2007
LUSAKA