



**NATIONAL AUDIT OFFICE**

**BANJUL REHABILITATION PROJECT**

**FINAL MANAGEMENT LETTER**

**FOR THE PERIOD 1 JANUARY 2019 TO 31 AUGUST 2021**

**National Audit Office  
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The Gambia**

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## **1.0 Introduction**

The provision of a high standard road network which facilitates the free movement of people and goods is a key pre-requisite to socio-economic development of a country. The Government of The Gambia over the past years has been making significant investments in the road sector with assistance from development partners. The bulk of this investment was focused on the reconstruction of primary road network which is the backbone of the country's road network. This has resulted in over 80% of the North Bank and South Bank trunks roads being upgraded to bituminous paved standard. The main challenge now for the road sector is the rehabilitation of urban roads.

While the Government is fully committed to the implementation of the ECOWAS supplementary Act on Axle load Control, it is still recognized that vehicle overloading is a major problem in Banjul. The drainage problems are compounded by non-functioning of the main drain outlets and the ring canal around the Bund Polder Area. There is presently no proper mechanism to evacuate water outside Banjul to the Polder Area especially during high tides and severe rainstorms. The sewage system is in a very bad state due to the non-functioning of the main outlet pipe from the pump house at Box Bar Road to the sea and frequent blockages to the main collector pipes from the compounds to the pump house.

In view of the unique problems associated with the road, drainage and sewage networks of Banjul, Project Proposal has been prepared to comprehensively address the road, drainage and sewage networks of Banjul. The Proposal presents a diagnostic of the current situation and proposes an appropriate intervention which mainly involves upgrading a number of key roads to concrete standard and a complete overhaul of the existing drainage and sewage systems.

### **1.1 Project Background**

The major streets in Banjul particularly those around the commercial areas were built of asphalt concrete and commissioned about 25 years ago and nearly all of them have been damaged now. Some of these streets have been reconstructed with reinforced concrete pavement but many more are still in a very bad state. The life span of these paved roads are very much dependent on timely maintenance, the provision of better drainage and sewage, and acceptable axle loads limits conforming to the design load limit. The effects of extreme weather conditions coupled with inadequate drainage, excessive axle loading, constant saturation of road foundations as a result of frequent outflow of sewage from sewage manholes and the unpredictable fluctuation of the water table have demonstrated that asphalt concrete pavements are less likely to withstand the test of time in Banjul compared to reinforced concrete pavements.

Presently, the conditions of the roads are very poor. In several major streets, the gravel base has been completely washed away whilst in others, large depressions and longitudinal rutting make driving almost impossible except at very low speeds. During rainy seasons, at certain locations, the road becomes impassable due to inadequacy of the drainage and sewage structures. In some areas of the roads, the leakage from the

sewage manholes together with the stagnant rainwater makes it almost impossible for people to walk across the roads.

The main objective of the project is to reconstruct all the major roads to concrete, rehabilitate all the drains, rehabilitate the sewage system and reconstruct the ring canal around the Bund Polder Area. The population occupying the project area could find easy access to the rest of the city. This will have a positive impact both socially and economically on the project region and the city in general particularly main business area. The cost involved in the construction of concrete roads will definitely be higher than the cost of using asphaltic concrete but the maintenance cost of concrete will be much lower than asphalt. Also, concrete (reinforced) is far more durable than asphalt. The issue of overloading will be a thing of the past, once the roads are upgraded to reinforced concrete standard. In the past five years, The National Roads Authority through the Government of The Gambia, completed the construction of concrete pavement on Hagan Street, part of Buckle Street, Box Bar Road through Imam Omar Sowe Avenue to Anglesea Street up to Hagan Street junction. Currently, Gam works Agency through funding from the IDB and the Government of The Gambia, embarked on a project for the construction of reinforced concrete pavement on Primet Street, Peel Street and Spalding Street. These streets that have been reconstructed with concrete have generated a lot of traffic and have further helped ease traffic flow within the business centre of the capital. In that regard, GAI ENTERPRISE has identified 14(fourteen) other roads within the commercial and residential areas which when completed would address nearly all the road problem in Banjul.

## **1.2 Audit Objectives**

The objectives of the audit were to:-

- Assess whether the process leading to the award of contracts was free, fair and transparent
- Establish whether payments were made in accordance with the schedule agreed upon or based on work done and the certificate of payment from the consultant
- Examine whether proper monitoring and supervision was done to ensure that works were executed according to plan and within the timeframe
- Identify any outstanding work to be done as per contract agreement, and
- Check whether the contract agreement contained sufficient indemnity clauses that fairly safeguard the interest of both parties.

## **1.3 Scope of Audit**

We conducted the audit in accordance with International Standards of Supreme Audit Institutions (ISSAIs) issued by the International Organization of Supreme Audit Institutions (INTOSAI). The audit accordingly included such tests of accounting records, internal controls and other procedures as were considered necessary for the due performance of this audit. The audit is limited to the rehabilitation of roads, drains and

sewage systems in Banjul and not any other activity undertaken by the Ministry of Transport, Works and Infrastructure.

Our audit focused on the rehabilitation of roads, drains and sewage systems in Banjul for the period 01 January 2019 to 31 August 2021.

#### **1.4 Structure of the Management Letter**

Each issue which has been included in the management letter has been presented in the format below.

- I. Title
- II. Findings
- III. Implications
- IV. Risk Level
- V. Recommendation
- VI. Management Response

#### **1.5 Acknowledgements**

We wish to place on record our appreciation of the co-operation and assistance received from the Ministry of Transportation, Works & Infrastructure during the course of the audit.

#### **1.6 Priority Ranking of Findings**

Detail findings have been given priority ranking of High, Medium or Low. This grading represents the estimated level of risk resulting from the issues identified.

A summary of the ranking of these findings is provided in the table below.

<b>Priority</b>	<b>No. of Findings</b>
High	8
Medium	0
Low	0

We have also included a section for management comments under each finding. This section is for you to give feedback on the matter. We proposed that you provide your responses in the following format:

Management Response	
Action to be taken	
Officer responsible for remedial action	
Date when situation will be regularised	

## **2.0 Executive Summary**

### **2.1 Contracts awarded without Tender**

Gai Construction was awarded the contract for the rehabilitation of roads, drainage and sewage systems in Banjul amounting to \$35.7 million which is equivalent to D1.8 billion. However, this did not go through tender procedure, instead it was single sourced, which requires it to be published in the gazette but was only gazetted on the 12 February 2021 when works had already started.

The Ministry of Transportation, Works & Infrastructure and Studi International for Africa signed a contract for consultancy services on the 14 May 2019 amounting to **\$1,632,550** which is equivalent to **D83, 260,050** for the supervision of an EPC contract for the rehabilitation of roads, drainage, and sewage systems in Banjul. However, the selection of Studi International for Africa to be the consultant of the project did not go through tendering process, rather it was single sourced without obtaining the approval from GPPA.

### **2.2 Pre-financing**

The contractor offered to pre-finance the project through the letter of intent dated 3<sup>rd</sup> September 2018, addressed to the president of the Republic of The Gambia. A credit facility agreement was signed which detailed out a payment schedule for six years but was later nullified through an addendum to the initial contract which makes provision for interim payment.

We cannot ascertain the benefit of the pre-financing since 63% of the contract price has already been paid to the contractor, even though critical works are still not completed.

### **2.3 Project Commenced before contract signature**

A review of documentation and discussions with officials revealed that the Banjul Drainage, Roads, and Sewage (BDRS) contract was signed on 11 May 2019 and tabled at the National Assembly on 12<sup>th</sup> June 2019. The project was scheduled to be completed by November 2021.

Further review of the consultant's report and inspection of the updated program of work of the project reveals that actual work commenced on 18 March 2019, two months before the contract was signed and submitted to the National Assembly for discussion in June 2019.

## **2.4 Performance Security**

During our review of the contract document, we noted from correspondence that legal opinion was sought on the performance security. When the Ministry of Works wrote to the Ministry of Justice for legal opinion, it was made clear to them that the contractor should provide performance security. The Ministry responded by stating that non-inclusion of the performance security was an omission and they will amend the contract accordingly.

However, up to the time of writing this report no amendment was done to include the Performance Security in the contract and nor was it provided by the contractor

## **2.5 Failure to deduct Withholding Tax**

During our review of the documentations and payments made to the contractor, there was no evidence indicating that withholding tax was being deducted.

## **2.6 Term of Reference for the Engineer**

During our discussion with the personnel of the Ministry, we noted that there was no term of reference for the engineer working with the consultant.

## **2.7 Delay in the submission of Technical and Design Specification and Road Diagram**

During our review of monthly meeting minutes as well as the progress reports, we noted that the contractor only provided Technical and Design Specification and Road Diagram after the contract was signed and when work had already started that was the time the contractor prepared the said documents.

### 3.0 Detailed Findings

#### 3.1 Contracts awarded to Contractor and Consultancy Services without Tender

*Section 12 (1) of the GPPA Regulation 2019 states that, "A procuring organisation shall undertake its procurement in accordance with the thresholds set out in the schedule to these regulations".*

*Section 13 (1) of the GPPA Regulation 2019 further states, "Subject to section 12 (2) of the Act, any proposed contract for procurement with a value of one million dalasi and above shall be submitted to the Authority for its approval, along with the complete contract file and a recommended course of Action in the format prescribed by the Authority."*

Section 44 of the GPPA Bill 2014 further stated that;

*"(1) The single-source procurement method may be used only in the following circumstances*

*(a) where the estimated value of the procurement does not exceed the amount set in the Regulations;*

*(b) where only one supplier has the technical capability or capacity to fulfill the procurement requirement, or the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative exists;*

*(c) where there is an emergency need for the goods, works, consultancy services or services, involving an imminent threat to the physical safety of the population, of damage to property, or in the case of other unforeseeable urgent circumstances not due to the dilatory conduct of the procuring organization, and engaging in tendering proceedings or other procurement methods would therefore be impractical; and*

*(d) where the procuring organization, having procured goods, works, consultancy services or services from a supplier, determines that additional goods, works or services must be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, works or services, taking into account -*

*(i) the effectiveness of the original procurement in meeting the needs of the procuring organization,*

*(ii) the limited size of the proposed procurement in relation to the original procurement,*

*(iii) the reasonableness of the price, and*

*(iv) the unsuitability of alternatives to the goods or services in question;*

*(e) for purchase of perishable commodities such as fresh fruits, vegetables or other similar items which are purchased on competitive market terms.*

*(2) A single-source procurement on the grounds referred to in sub-sections (1)(b), (c) and (d) shall be subject to approval by the Authority, which shall act on requests for approval without delay.*



## Finding

The Government of The Gambia through the Ministry of Transportation, Works & Infrastructure entered into a contract with Gai construction on 11 May 2019 for the rehabilitation of roads, drainage and sewage systems in Banjul at a cost of **\$35.7 million**, which is equivalent to **D1.8 billion**. During our review of the documents in respect of the Project, we noted that there was no tendering process for awarding the contract, instead it was single sourced. This happened after receiving the letter of intent from the contractor dated 3<sup>rd</sup> September 2018 addressed to the president of the republic of The Gambia.

Following the approval of the single source procurement method of award of contract, Gambia Public Procurement Authority (GPPA) in their letter dated 11 February 2019 reference GPPA/MOTWI/TR1/19 emphasized on the GPPA Act 2014 section 20(5) which states that, *“the president may by order published in the gazette, exempt any procuring organization from requiring approval of the authority with respect to any procurement in whole or in part, and in such case the cabinet shall be responsible for given such approvals instead of the authority”*. However, we noted that it was never published in the gazette before the contract was signed, but was only published on February 12, 2021, after the work had already begun. This gazette was backdated to January 8, 2019, which is in violation of the above-mentioned regulation.

In the same vein, the Ministry of Transportation, Works & Infrastructure and Studi International for Africa signed a contract for consultancy services on the 14 May 2019 amounting to **\$1,632,550** which is equivalent to **D83, 260,050** for the supervision of an EPC contract for the rehabilitation of roads, drainage, and sewage systems in Banjul. However, the selection of Studi International for Africa to be the consultant of the project did not go through tendering process rather it was single sourced without obtaining the approval from GPPA.

## Implication

- In the absence of an open tendering process, value for money for these contracts are compromised and this increases the risk of fraud and other financial irregularities.
- There is a risk that contract was awarded to a favoured contractor based on personal relationship, thus defeating the dictates of the GPPA regulation.

## Priority Ranking

High

## Recommendation

Ministry of Works should ensure that due process is being followed whenever awarding contracts of this magnitude.

## Management Response

Management response	<p>The authority relied on Section 44 of the GPPA Bill 2014 (1c) &amp; (1d) which stated that;  <i>“(1) The single-source procurement method may be used only in the following circumstances:  (c) where there is an emergency need for the goods, works, consultancy services or services, involving an imminent threat to the physical safety of the population, of damage to property, or in the case of other unforeseeable urgent circumstances <u>not due</u> to the dilatory conduct of the procuring organization, and engaging in tendering proceedings or other procurement methods would therefore be impractical;</i></p> <p>The drainage and sewage situation in 2019 was a public health hazard and <i>imminent threat to the physical safety of the population, and / or damage to property. The climate change raised concerns of unforeseeable urgent circumstances.</i></p> <p>Management acknowledge NAO’s observation regarding the delayed gazette and this was regularised when noticed. However, all other due processes were complied with up to approval by cabinet and this is allowed by law.</p> <p>The legal advised was adhered to. The award of the contract was gazetted through Legal Notice N0.10 of 2021 – exemption from GPPA approval Order 2021 signed. Gazette N0. G.N N0.22/2021 issued.</p> <p>Studi International for Africa was contracted through single sourcing and indeed obtained GPPA approval through (Ref:GPPA/MOTWI/TR/1/19(LS) DATED: 12/122019)</p>
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

## Auditor’s further comment

In this case, due process was not fully followed because it should have been first published in the gazette as per the above GPPA regulation. Furthermore, the contract was signed two months after the commencement of the project.

With regards to the selection of Studi International for consultancy services, we were later provided with the GPPA approval for single source.

### 3.2 Pre-financing

#### Finding

During our review of the documents such as the letter of intent, minutes of steering committee meetings, we noted that the contractor offered to partly or fully pre-finance the project as his contribution to national development.

Consequently, a credit facility agreement was entered between the Ministry of Finance and the contractor Gai Construction where by a payment schedule for a period of 6 years was agreed upon. However, an addendum was made to the Engineer Procurement Contract (EPC) dated 11 October 2019 nullifying the credit facility agreement, indicating that payment shall be made in annual instalments in accordance with the schedule of payments and also interim payments can be made in accordance with the provisions of clauses 14.3 and 14.6 of the initial contract within the year after certification of work performed and subject to availability of fund.

The contractor was supposed to construct 27 roads with drainage and sewage as per the initial contract, and so far he has completed 21 roads representing 75% of works. Already, 63% was paid to the contractor, while the critical components of the project such as pumping station at Box bar, Bund Road and overhaul of lifting station located at Brikama car park are still outstanding. The amount costed for these works is \$2,471,000 representing 6.9 % of the contract sum.

As a result, we cannot ascertain the benefit of the pre-financing when the contractor was already paid **63%** of the contract price when there is still significant work to be done. Details of the payments are shown in the table below;

Date	IPC	Details	Amount \$	Amount GMD	Remarks
22/01/2020	1	Works executed up to 31 <sup>st</sup> December 2019	7,979,653.75	406,962,341.25	Paid by two instalments dated 11/02/2020 and 19/02/2020 respectively
31/08/2020	2	Works executed up to 31 <sup>st</sup> July 2020	6,402,449.33	326,524,915.83	Paid on the 03/02/2021
08/03/2021	3	Works executed up to 28 February 2021	5,981,016.24	305,031,828.40	Paid on the 15/04/2021 and the

					balance paid on 15/09/2021
01/06/2021	4	Works executed up to 31 <sup>st</sup> May 2021	2,026,194.78	103,335,933.99	Paid on 15/09/2021
<b>Total</b>			<b>22,389,314.10</b>	<b>1,141,855,019.47</b>	

**Implication**

- There is a likelihood that government may end up financing the works instead of it being pre-financed.
- This will favour the contractor who proposed to pre-finance the project that led to the award of the contract without following due process.

**Priority Ranking**

High

**Recommendation**

The Ministry of Works should make thorough review of the payments to avoid paying the whole contract sum before works are completed.

**Management Response**

Management response	The financial progress registered (63%) percent payment made was on certified progress of work. The pre-finance arrangement still applies to the project and is being strictly adhered to. The addendum made changes to the payment schedule from time based to progress based, thereby eliminating the risk of over payment.
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

**Auditor’s further comment**

This contract was conceived on the basis that the contractor would pre-finance the project in its entirety but payments made so far suggests that it is a normal contract where payments were based on certificate of payment based on work done. Payment of 63% of

the contract price to the contractor while critical components of the project are yet to be completed, cannot in any way be considered pre-financing.

### **3.3 Project Commenced before contract signature**

#### **Finding**

During our review of documents and discussions with officials, we noted that the contract was signed on the 11 May 2019 and tabled at the National Assembly on 12<sup>th</sup> June 2019. Furthermore, it was supposed to be completed by November 2021. However, this was extended to November 2022 through the addendum.

It was also noted from the report prepared by the consultant and through the review of the updated program of work of the project that the actual work commenced on 18 March 2019, which was two months before the contract was signed and submitted to the National Assembly for discussion in June 2019.

#### **Implication**

- There is a risk that the contract was awarded to favour the contractor on the basis of personal relationship. This could stifle competition with potential loss of value for money.
- Commencement of work before the contract was signed could imply that it was not binding at the start of the work with little to no legal remedies in case the project failed to meet the intended objectives or targets.
- There is an increased risk that the terms and conditions of the contract were not followed and the contractor cannot be held accountable for any defects or irregularities that occurred during the early stages of the project.
- There is a risk that due processes were not followed during the award and the execution of project.

#### **Priority Ranking**

High

#### **Recommendation**

We request detail explanation and justification from the Ministry of Works, Transport and Infrastructure on the commencement process of the contract leading to the official signing of the contract.

## Management Response

Management response	Generally, the contractor was mainly engaged in the clearing of solid waste and silt in the drainage system as the blockage caused by these materials was the root cause of the damages to the road pavements against the fast-approaching rain. Beside the lapse period coincided with the usual time allowed for mobilization in traditional contracts upon notification of award and commencement order after contract signature which allow us to gain time on the commencement of the physical works. Please note that this works was initiated and done at the contractor's risks bearing in mind that award was already made and a contract negotiated and initialled awaiting final approval. Bearing in mind also the urgency to act by allowing non-technical works stated above to go on along with advance mobilisation.
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

### Auditor's further comment

Starting the contract before it is signed implies that the contract was not binding during the start of the work, and therefore no legal remedies in case the project failed to meet the intended objectives or targets.

### 3.4 Performance Security

#### Findings

Clause 4.2 of the contract document states that, " the contractor shall obtain (as the contract cost) a performance security to secure the contractor's proper performance of the contract, in the amount and currencies stated in the contract data".

During our review of the contract document and discussions with the officials of Ministry of Works, we noted that the Performance Security to be provided by the contractor was waived. However, when the ministry of works wrote to Justice in a letter referenced PDD 172/289/01 Part III (48-AS) dated 20 February 2019 for them to review the contract and express a legal opinion on the contract document submitted by GAI Construction in respect of Banjul Sewage, Drainage and Roads Project, the Ministry of Justice conveyed their legal opinion on the document vide letter referenced AG 313/01/ Part 6 (16), emphasizing the inclusion of Performance Security in the contract.

Consequently, Ministry of Works in their response vide letter referenced PDD 172/289/01 Part III (71-AS ) dated 31 July 2019 stated that the waiving of the Performance Security was an omission in the contract document and promised to include it in the contract. However, up to the time of writing this report no amendment was done to include the Performance Security in the contract and nor was it provided by the contractor.

**Implication**

In the absence of a Performance Security, it will be difficult for Government to exert pressure on the contractor to complete unfinished work as a result of unforeseen circumstances.

**Priority Ranking**

High

**Recommendation**

It is important for the contractor to provide Performance Security so that in the event of any unforeseen negative events, government will fall back to in order to minimize the damage or loss, as a result of non-performance.

**Management Response**

<p>Management response</p>	<p>Clause 4.2 of the EPC condition of contracts States that:  The Contractor shall obtain (at the Contractor’s cost) a Performance Security to secure the Contractor’s proper performance of the Contract, in the amount and currencies stated in the Contract Data. If no amount is stated in the Contract Data, this Sub-Clause shall not apply.</p> <p>On the other hand, Clause, 14.2 of EPC condition states that:</p>
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	<p>Subject to the following provisions of this Sub-Clause, the Employer shall make an advance payment, as an interest-free loan for mobilization and design. The amount of the advance payment and the currencies in which it is to be paid shall be as stated in the Contract Data. If no amount of advance payment is stated in the Contract Data, this Sub-Clause shall not apply.</p> <p>In the contract with GAI Enterprise, the requirement of a performance security and Advance payment were amicably waived by the parties. Whilst the amount associated with Performance security is 10% of the contract amount, the Advance payment is 20%.</p> <p>Moreover, the interval of payments which is yearly after certification and approval of executed works is the usual period set for defect liability period. Therefore, there is a guarantee that any defect that may emerge would be corrected before payment can be effected. Payments are made only after verification, confirmation and certification.</p>
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

**Auditor’s further comment**

The Ministry of Works failed to adhere to the legal advice from the Ministry of Justice with regards to the inclusion of performance security, for which they agreed will be included



but was never. In fact, the interval of payment was interim instead of yearly and there were instances where certifications were done in less than six months period. Performance securities are crucial tools for ensuring a contractor's compliance with the terms and conditions of the contract. It should therefore be provided so that in the event of any unforeseen events, government will always have something to hold on to in order to minimize the damage or loss.

### **3.5 Failure to deduct Withholding Tax**

#### **Finding**

Section 89 (3) of the Income and Valued Added Tax Act states that *“a person who retains the services of a contractor or subcontractor to carry out work, or supply labor or materials for carrying out work shall pay withhold tax at the rate of ten percent of gross fees or other payments made to the contractor in respect of the services”*.

Section (33) of the act relating to the power of the president to exempt tax states that *“The president may, with the approval of the National Assembly, by order published in the Gazettes, exempt any person from income tax if the President considers that the exemption is for the economic benefit of The Gambia.”*

Clause 14.1 (b) of the contract agreement also states, the contractor shall pay all taxes, duties and fees required to be paid by the contractor under the contract, and the contract price shall not be adjusted for any of these costs, except as stated in sub-clause 13.6(Adjustment for changes in Laws).

In the other hand, addendum no. 1 to the EPC contract (IX) modified this clause and stated that;

- (a) The employer shall pay directly or, as the case may be, reimburse to the contractor if the contractor has made any advances thereon, any stamp duty, registration costs and other similar taxes to which this agreement would be subject to.
- (b) The employer undertakes that all payments made under this agreement shall be free of any levies, taxes, duties or withholding taxes, and expressly undertakes to increase the amount of any such payments to such amount which leaves the contractor with an amount equal to the payment which would have been due if no deduction of tax and duties had been required. The employer shall reimburse to the contractor all expenses, taxes and duties to the borne by the employer and which, as the case may be, would have been paid by the contractor, other than levies, taxes and duties payable in The Gambia.

The contractor is exempted from paying taxes as per the addendum to the contract. However, when legal opinion was sought from the Ministry of Justice, they advised Ministry of Works to seek guidance from the Ministry of Finance and the Gambia Revenue Authority on the feasibility of these tax exemptions.

The Ministry of Finance in their letter reference ADM245/126/01 (9) dated 14 October 2020 addressed to the Commissioner General GRA emphasized on the tax exemption clause in the contract addendum. In their response, the Gambia Revenue Authority's letter referenced KB 165/182/01 (28) dated 20 October 2020 stated that "Avenue for granting income tax exemption is through the approval of a Special Investment Certificate (SIC) under the Gambia Investment and Export Promotion". Furthermore, GRA in the same letter quoted above stated that " Considering the fact that the tax exemption article in the contract is at variance with both the IVAT Act (2020) and the GIEPA Act, we cannot allow such exemptions in the computation of the tax liabilities of the contractor".

It is therefore clear from the position of Commissioner General of Gambia Revenue Authority, the contractor is not exempted from paying tax, and as a result the contractor should honour his tax obligations under this contract.

Consequently, the contractor is required to pay withholding tax amounting to **D 114,185,501.95** as per the payments made on the IPCs indicated in the table below;

<b>Date</b>	<b>IPC</b>	<b>Details</b>	<b>Amount GMD</b>	<b>10% Withholding Tax</b>
22/01/2020	1	Works executed up to 31 <sup>st</sup> December 2019	406,962,341.25	40,696,234.13
31/08/2020	2	Works executed up to 31 <sup>st</sup> July 2020	326,524,915.83	32,652,491.58
08/03/2021	3	Works executed up to 28 February 2021	305,031,828.40	30,503,182.84
01/06/2021	4	Works executed up to 31 <sup>st</sup> May 2021	103,335,933.99	10,333,593.40
<b>Total</b>			<b>1,141,855,019.47</b>	<b>114,185,501.95</b>

### **Implication**

This is a total violation of the GRA act stated above and as well not adhering to the legal opinion.

### **Priority Ranking**

High

## Recommendation

The project management should recover tax from payments made to the contractor and also deduct tax from subsequent payments and remit it to Commissioner General Gambia Revenue Authority.

## Management Response

Management response	<p>The contract was priced without tax and duties and signed as such. Payments are equally processed without withholding tax deductions. The project is duty &amp; tax free.</p> <p>The Ministry of Finance reviewed and signed off the financial addendum of the contract. MoJ then advised that the contract iro withholding tax be referred back to MOFEA for further guidance. To date, MOFEA have not advised the contracting authority or treasury to apply WHT.</p> <p>While retroactive application of withholding tax on paid and unpaid sums may be made as instructed by the audit, the contractor would be eligible for reimbursement as a result of the changes made in the treatment of the WHT.</p> <p>.</p>
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

## Auditor's further comment

Since the contractor is not exempted from paying tax by the Commissioner General of Gambia Revenue Authority, he should therefore pay tax. We therefore recommend that the contractor should pay back taxes for payments made to him for which he was not deducted withholding tax and also to pay tax on his subsequent payments.

### **3.6 Delay in the submission of Technical and Design Specification and Road Diagram**

*Clause 5.1 of the contract document states that “The Contractor shall carry out, and be responsible for, the design of the Works and for the accuracy of such Employer’s Requirement (including design criteria and calculations”. Clause 5.2.2 further states that “Review Period” means the period not exceeding 21 days, or as otherwise stated in the Employer’s Requirements, calculated from the date on which the Employer receives a Contractor’s Document and a Contractor’s Notice.” Contractor’s Notice” means the Notice which shall state that the relevant Contractor’s Document is considered by the Contractor to be ready for Review under this Sub-Clause 5.2.2 and for use, and that it complies with the Employer’s Requirements and these Conditions, or the extent to which it does not do so.*

The FIDIC silver book also indicated that;

“These Conditions of Contract for EPC/Turnkey Projects will not be suitable for use if there is insufficient time or information for tenderers to scrutinize and check the Employer’s Requirements or for them to carry out their designs, risk assessment studies and estimating.”

During our review of monthly meeting minutes as well as the progress reports, we noted that the contractor only provided Technical and Design Specification and Road Diagram after the contract was signed and when work had already started that was the time the contractor prepares the drawings. Therefore, the opportunity to assess whether the contractor’s submission meets the technical requirements as well as the cost for the contract was lost. This is a clear violation of EPC/Turnkey Project. The Design and Technical Specification and Road Diagram were submitted later. However, when it was reviewed by Ministry of Works, they detected major omissions in design, construction schedule, and Bill of Quantity (BOQ).

However, there is no evidence to suggest that the deficiencies were corrected. There is no evidence of due diligence being carried out to assess whether the contractor has sufficient financial resources, including technical capability to complete the project.

Technical and Design Specification and Road Diagram in the project is key as it will determine the extent of work to be carried out, which in turn will be a determining factor for the cost involved. Equally any modification to the design may also attract cost.

#### **Implications**

In the event that the contractor could not complete the work, government may incur additional cost to complete the remaining work due to alteration which would have been avoided had it been that due diligence was carried out in ensuring that the contractor has both the technical and financial ability to undertake such a project. Modifications to the design may incur additional costs for the government.

## Priority Ranking

High

## Recommendation

It is important for Technical and Design Specification and Road Diagrams are submitted by contractor and reviewed by the Ministry of Works for them to provide professional advice on the document before government enters into such a contract. By reviewing the design, it would enable government to assess whether those submissions meet the requirements.

## Management Response

Management response	<p>As a rehabilitation project, not all aspects of the works require drawing and specification before execution, such as cleaning drains, desilting sewerage manholes etc. The evaluation of the proposal from GAI Enterprise included confirmation of their technical capacity to execute the works. Moreover, MOTWI supervised the Contractor whilst executing similar works in Banjul.</p> <p>Clause 5.2.2 of the EPC condition of the contract relates to review period of documents submitted to the Employer/consultant which reads: If the Employer's Requirements or these Conditions specify that a Contractor's Document is to be submitted to the Employer for Review, it shall be submitted accordingly, together with a Contractor's Notice.</p> <p>The Employer shall, within the Review Period, give a Notice to the Contractor:</p> <ul style="list-style-type: none"><li>(a) of No-objection (which may include comments concerning minor matters which will not substantially affect the Works ); or</li><li>(b) that the Contractor's Document fails (to the</li></ul>
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	<p>extent stated) to comply with the Employer's Requirements and/or the Contract, with reasons.</p> <p>If the Employer gives no Notice within the Review Period, the Employer shall be deemed to have given a Notice of No-objection to the Contractor's Document (provided that all other Contractor's Documents on which that Contractor's Document relies (if any) have been given, or are deemed to have been given, a Notice of No-objection).</p> <p>If the Employer instructs that further Contractor's Documents are reasonably required to demonstrate that the Contractor's design complies with the Contract, the Contractor shall prepare and submit them promptly to the Employer at the Contractor's cost.</p> <p>Meetings on site are routine control mechanism through which, progress, adherence to requirements and challenges are discussed. The issue of documents was discussed in order to urge the party concern to fulfil the obligations. This was eventually done and a set was provided to Auditors in 2019 and another set was handed to them on the 25<sup>th</sup> January 2021.</p>
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

## **Auditor's further comment**

*Clause 5.1 of EPC states that 'The Contractor shall carry out, and be responsible for, the design of the Works and for the accuracy of such Employer's Requirement (including design criteria and calculations' has been violated. Therefore, the benefits associated in reviewing the design, specification and drawings were lost.*

### **3.7 Site verification**

We conducted site verification of the project site and also made reference to the progress report as at August 2021, we noted the following;

The total length of the roads to be constructed as per the initial contract was 14,614m and an addendum was made increasing the length to 15,216m. However, the actual works completed for the roads as at August 2021 was 12,953m representing 85%.

The progress of works for the drainage as per the deliverables in the contract document includes the completion of the desilting and cleaning of small drains covering a total length of 52,212m and also desilting and cleaning of wide collector drains with a total length of 2,868m. However, we observed that the roads are completed together with the drainage and covering the open drains and replacing the old once with new covers and as well sewages connected to houses through pipes.

During our site verification and the review of the contract document, we also noted that the following deliverables relating to drainage and sewage works were still not met.

- Install flap gates and filter screens at the outfall locations of the main drains to collect solid waste.
- Rehabilitation of existing catch basins along the roads and constructing new ones to quickly evacuate surface runoff water during the rainy season.
- Acquisition of equipment to secure maintenance in coming years, comprising trucks for high water pressure flushing, excavator and waste collection.
- Clearance of the bond polder of contaminated soils and solid waste, before excavating the ring canal for conveyance.
- Provide and install 1.10m diameter pvc pipes from collector drains to Pump House at Bund Road, length 5700m.

We also observed that the rehabilitation of the lifting station located at Brikama car park and the pumping station located at Box Bar Road in Banjul which carries a total amount of \$2,471,000 representing 6.9% as of the contract sum are still pending and in a critical condition.

The water pumping machine at the Box Bar station was supposed to be shifted to the sea to allow the water in the bond polder not to flood the tobacco road streets. This has

resulted into the sea outfall pipe that discharges the sewage into the sea to be detached from its anchorage.

There is also need for water space to store water during the raining season before the water is actually pumped into the sea in the Bond Road area which is taken over by structures being constructed along the water space (such as the newly constructed petrol station, Jah oil) which will affect the flowing of water in the long run.

**Implication**

The critical situations if not urgently addressed, might cause an adverse impact to the project considering the amount of government funds being utilized.

**Priority Ranking**

High

**Recommendation**

The Ministry of Works should be monitoring the contractor at all stages to ensure that works are completed and also engage with relevant stakeholders to ensure that these deficiencies highlighted are promptly addressed.

**Management Response**

Management response	The project is ongoing and issues raised are already in the contractor’s programme of work and will be executed during the course of the project implementation.
Action to be taken	
Officer responsible for the remedial action	
Date when the situation will be regularized	

**Auditor’s further comment**

The lifting station at Brikama car park and the pumping station at Box Bar Road are dilapidated and need urgent action, and therefore project management should engage local authorities to prevent the usage of the water space to avoid blockage during the rainy season.