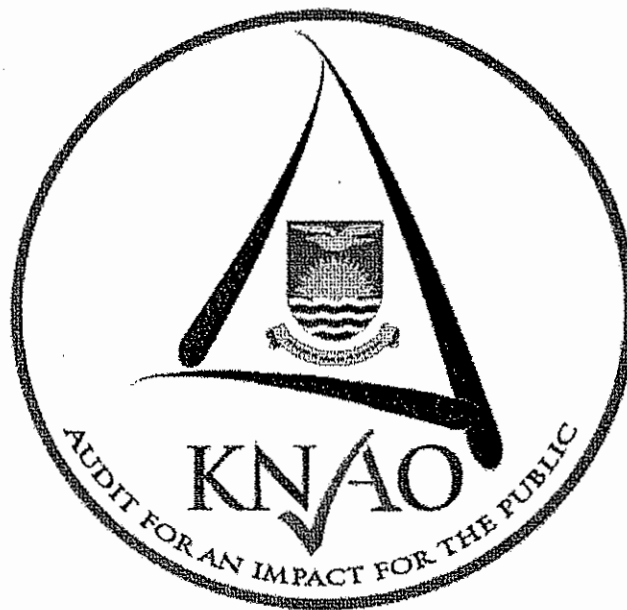
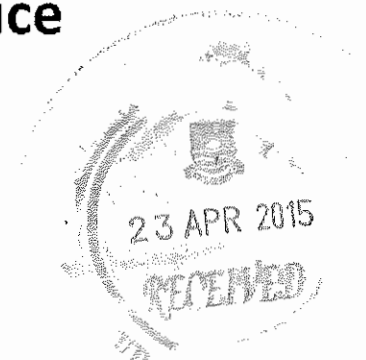


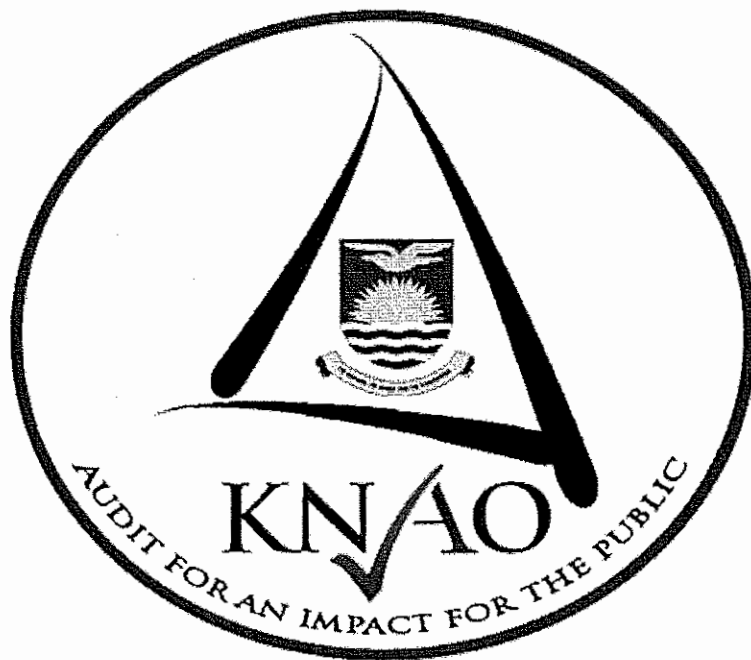
**COMPLIANCE AUDIT REPORT OF THE  
AUDITOR GENERAL  
ON THE**



**UNSUCCESSFUL ACQUISITION AND CONSTRUCTION  
OF MLPID LANDING CRAFT 2014**

**Kiribati National Audit Office  
April 2015**





COMPLIANCE AUDIT REPORT ON THE  
UNSUCCESSFUL CONSTRUCTION AND ACQUISITION OF  
THE LANDING CRAFT FOR THE MINISTRY OF LINES & PHOENIX GROUPS 2014

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## 1 INTRODUCTION

This compliance audit report on the unsuccessful construction and acquisition of the Landing Craft for the Ministry of Line and Phoenix Development (MLPID) was carried out as part of my statutory duties mandated under sections: 10(1) (b) and 40A of the Public Finance (Control and Audit) Ordinance, 1976.

In February 2014, MLPID, following the approval of Cabinet to purchase the Landing Craft and entering into a contract agreement with the selected shipbuilding company, sent, via telegraphic transfer, two payments amounted to over USD\$539k .

The total cost of the Landing Craft as agreed between MLPID and the selected shipbuilding company, namely Danscyso was over forty two million pesos which is equivalent to over a million Australian dollars.

The Dansyco Corporation is a family owned entity run by a father and son and is domiciled in the Philippines.

As reported, the landing craft was never built and the huge sums were sent without any trace. At this stage one could conclude that the recovery of this substantial amount of public fund is very slim.

The main cause of this huge loss of public fund was the absence of a recovery provision in the agreement or international procedural processes that would enable the Ministry to pursue should the construction corporation fails to comply with its obligatory role in constructing the Landing Craft.

The findings of this Report are presented in five subsections. Subsection 5.1 presents the procurement process on the construction or acquisition of the Landing craft. Subsection 5.2 discusses the contract agreement of the Landing Craft. Subsection 5.3 highlights the oversights on the part of MLPID. Subsection 5.4 presents the results of the KPPS and the Interpol investigation. The conclusions as to whether the plan adopted in the construction and acquisition of the Landing Craft fulfills the requirement of the Procurement Act 2002, the agreement encompasses safeguards, principles of good governance and transparency were ensured, Government financial regulations were adhered to and other considerations were presented in subsection 5.5.

## 2 BACKGROUND

2.1 The idea of acquiring the Landing Craft to boost or aid the social and economic development of the Line and Phoenix groups was approved by Cabinet in late 2013. The Republic of China (Taiwan) agreed to finance such project and had donated \$1,706,543.00 to the Minister of MLPID for the cost of the Landing Craft and other auxiliary items. This amount was warranted to MLPID as per DW No. 01/14 dated 13/01/2014.

2.2. The Minister, Secretary and the Attorney General departed Tarawa on the 16 January 2014 to review with the General Manager of Dansyco Corporation the contract agreement and other matters pertinent to the procurement of the Landing Craft. Consequently the contract agreement was signed by the Hon. Minister and the General Manager Dansyco Corporation on the 21 January 2014 (see annex 1).

2.3. The total contract price of the Landing Craft as per Contract agreement was \$42,118,000.00 Pesos, an equivalence of about \$1,040,314.60. The first down payment deemed to be 30 % of the contract price was made and wired to Dansyco Corporation on the 7th February 2014 followed by a second similar amount on the 13th February 2014. The total for these telegraphic transfers was \$539,299.60US dollars.

## 3. AUDIT OBJECTIVES:

The objective of this compliance audit report was to evaluate whether:

- 1) the procurement of the Landing Craft was in line with sections 22 and 51 of the Procurement Act 2002,
- 2) the Contract Agreement signed was duly completed and captured all legally binding obligations of the two parties and other relevant requirements for the construction and the purchase of the Landing Craft,
- 3) the payments made were in accordance with the agreement, international construction procedures as well as internal controls and financial regulations,
- 4) remittances made by the ANZ Bank were in order.

#### 4 AUDIT SCOPE AND METHODOLOGY

The audit of such undertaking was carried out in accordance with relevant and applicable International Standards for Supreme Audit Institution (ISSAI). In this case, ISSAI 4100, Compliance Auditing was performed by examining and evaluating the following:

1) Contract Agreement

To ensure the terms encapsulate all provisions that will enhance the smooth flow of the construction contract agreement including saving clauses parties could resort to, particularly in the event faults are encountered during the tenure of the agreement.

2) MLPID original payment vouchers and documents from the ANZ bank

The original payment vouchers raised by MLPID for the Landing Craft and corresponding relevant documents available from ANZ Bank such as telex advice, copy of telegraphic transfers, etc, were thoroughly reviewed and examined in order to be able to obtain sufficient and appropriate audit evidence.

3) Procurement Act 2002

The audit involved reviewing some of the relevant clauses of the Procurement Act, 2002, especially sections 22 and 51 to confirm compliance.

4) Cabinet paper

As part of the audit a review of the cabinet papers has to be made to confirm procedures and processes laid out therein have been reflected in the agreement and/or were being followed since the commencement of the undertaking. These processes should encapsulate from the start the selection of the contractor (or shipbuilder), negotiations, terms of payment, reviewing and finally signing the contract agreement.

5) Exit meeting with MLPID top management

An exit meeting, one of the audit procedures, was held with the Secretary and Hon Minister of MLPID on Wednesday, 22 April to discuss issues being encountered on the Landing Craft.

## 5 FINDINGS AND ANALYSIS

### 5.1 CONSTRUCTION OF THE LANDING CRAFT: PROCUREMENT PROCESS

#### 5.1.1 PROCUREMENT OF THE CONSTRUCTION OF THE LANDING CRAFT UNDER SECTIONS 22(1) AND 51 OF THE 2002 PROCUREMENT Act

The absence or unavailability of records in the hands of the Ministry of Line and Phoenix at the time of the audit had made it difficult for our auditors to confirm that the Ministry had actually followed the conditions and requirements stipulated under sections 22 and 51 of the Procurement Act 2002 for procuring the construction of the \$1,030,231.55 Landing Craft for the Line and Phoenix Groups. These provisions, which are conditional for use of single source procurement, require a submission with reasons for selecting a particular construction entity to the Central Procurement Review Board Committee that is chaired by a Chief Procurement Officer who was appointed by the Beretitenti.

As noted in the available second Cabinet paper dated 5/2/14, re Appendix 1, though the validity of such is questionable, one of the three interested construction companies was Dansyco Marine Works & Shipbuilding Corporation, a corporation owned by a father and son and domiciled in the Philippines.

#### Effects

Competitive price will never be achieved and other important aspects of securing the purchase will be overlooked.

The absence of the records pertaining to the initial submission with list of interested construction companies would cast doubt on the full compliance with the requirements stipulated under the aforementioned sections 22 and 51 of the Procurement Act 2002 by the Ministry and Government.

#### Recommendations

MLPID to provide a copy of their initial submission to the Central Procurement Review Board or other supporting documents that would support the action taken under sections 22 and 51 of the Procurement Act 2002.

MLPID should provide all details of bidders for the constructing of the Landing Craft including Dansyco Corporation no later than 31 March 2015.

#### Management response

*MLPID has been trying to get hold of the copy of the submission to the Central Procurement Review Board and details of the bidders, but these documents are not available in the Ministry files.*

*The submission was done by the former Secretary, Mr Dephew Kanono, through email communications. MLPID recommends that the former Secretary is asked to provide the required documentations*



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### 5.1.2 DISCLOSURE OF CONTRACTORS DETAILS

Section 27 of the Procurement Act 2002 asks for documentary evidence of the contractor's expertise, qualifications etc. At the time of writing this management letter all papers or documents in respect of the construction contractors, including Dansyco Corporation, indicating their suitability for the construction of the Landing Craft were not made available.

#### **Effect**

Assessment of the all contractors' expertise and qualification would have greatly assisted the Ministry in identifying the best and reliable contractor to undertake the construction work for Government.

#### **Recommendation**

MLPID should provide the aforementioned information on all bidders for the constructing of the Landing Craft no later than 31 March 2015 for further review on such undertaking.

#### **Management Response**

*MLPID is still working to collate documents required as stated in this recommendation. MLPID must also apologise for being unable to meet the deadlines as required as the PAC report had just been drawn to the attention of the Secretary of the MLPID in the third week of March 2015, which coincides with the busy work schedule related to the visit of the Taiwan Ambassador to Kiribati.*

*These documentations are not also available on the Ministry files. It is recommended that the former Secretary is also asked to provide such documentations as the communications and submissions were done through email communications.*

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### 5.1.3 VISITING TEAM TO MANILA SHOULD INCLUDE A QUALIFIED LOCAL SHIP SURVEYOR AND A QUALIFIED ACCOUNTANT

It was noted in same Cabinet paper the team did not include the above named two key personnel who could have provided support on the specifications that will be used and provide advice on the manner as to how the payments to the Builder will be certified in accordance with the applicable international construction phased payments law. There was an intention to deploy this person in the Philippines but will be done at a later stage, re Option 2 noted under "Options" in same aforementioned Cabinet paper. It was also noted the second payment sent was without a supporting work completion certificate signed by a qualified surveyor the document of which will show the percentage of work completed to date with the amount as stated in the agreement.

In regards to the support expected of a qualified accountant, the accountant should ensure full bank details were included in the agreement and the creditworthiness of the foreign corporation had been obtained for assurance such is a genuine entity. In addition instructions as to how remittances of funds including communication means

and other precautionary measures should be available. The above information is of crucial importance the Ministry should readily have for reference when transfers are activated.

In the absence of the above the Ministry had contacted the owner of the Corporation by telephone asking for details of their bank account. An email, re Appendix 3, was received with a request for use of US currency and UK as domicile for remitting funds.

### **Effects**

The integrity of the Ministry could be undermined by its counterpart.

The absence of the two key personnel in the negotiation team to provide proper advice would place the Ministry in a very high risk position.

The other party could deviate from the construction norm at the detriment of Government in terms of cost and from the required or expected quality and safety of the vessel for passengers.

The creditworthiness of the corporation will give assurance the corporation is a genuine entity with sound financial means and is accessible by the Bank.

The provision covering the issuance of a signed certificate for work completion by a qualified surveyor is the cornerstone for paying the construction party without which the other party would be relieved from adhering to the agreed scheduled payment.

### **Recommendations**

MLPID should include in their team an expert on shipbuilding, marine architect or anyone with maritime related knowledge and skills and the Accountant General or his expert representative.

MLPID should have followed the normal construction rule where payment is dependent on the issuance of a certificate signed by a qualified surveyor for completion of (percentage) work done to date.

MLPID should have sought second opinion or invite comments from other key personnel on the terms of the agreement before it is finalized.

MLPID should have avoided contacting their overseas counterparts by telephone and email especially when requesting for bank details.

MLPID should have not entertained requests for a currency other than those mentioned in the agreement.

MLPID should be cautious when receiving an email with a beneficiary address especially for remitting funds knowing, in this particular case, the corporation they are dealing with domiciled in the Philippines.

MLPID should have sought assistance from the Bank on the creditworthiness of Dansyco Corporation before activating the transfer of funds.

MLPID should have strictly adhered to the terms of the payment agreement, no more or less.

## Management Response

*MLPID worked closely with Marine expert to obtain technical expertise advise on the shipbuilding marine architecture during the initial stages in constructing the project document MLPID also plan to engage the shipbuilding engineer during the inspection stage, but this did not eventuated due to problems arising from the payment process.*

*In making the payment, MLPID has tried to strictly adhere to the terms of payment agreement as laid down in the agreement on the payment schedule where the 30% downpayment was made. The first and second payments were paid in line with the requirement for the first 30% downpayments.*

*MLPID agreed that shortcomings arising from this experience with the landing craft should never happen in future similar dealings.*

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### 5.1.4 REMITTANCE OF TELEGRAPHIC TRANSFERS (TT)

As sighted in the "Tender Summary and Recommendations" dated 4/2/14, re Appendix 4, the Ministry sought approval of the Chairman of the CPRB for the release of three payments with amounts \$279,242, repeated, and \$93,080.78 with recommendation to speed up the payment so the work on the Landing Craft could commence. The first two TTs based on the PVs raised had been sent, the dates being 7/02/14 for USD268,276.33 (equivalent to \$312,104.38) and 13/02/14 for USD271,023.27 (an equivalence of \$313,367.93).

The use of USD currency had obviously inflated the agreed cost of the Landing Craft thus would consequently weaken the residual value that had been earmarked for procuring auxiliary items as already highlighted in same Cabinet paper.

According to the agreement the continuation of the construction work on the Landing Craft is subject to the Builder providing the Principal with the progress billing and the latter has to pay the former no later than 7 days following receipt of the bill. As could be sighted on the date the TTs were sent MLPID had been too ambitious in their actions to realize they had breached the terms of the agreement to the advantage of the corporation, hence the turmoil now experienced.

Regarding the actual remittance or loss been incurred, this is limited only to the value of the first TT of \$313.104.38 as details of such were correct in all respect. Contrary to this the second TT was defective as it did not bear the full address of the beneficiary as again shown in the second payment voucher which should read "DANSYCO MARINE WORKS & SHIPBUILDING CORPORATION IGP EUROPE LTD". It missed out the word "WORKS" and this incorrect address also appeared in the BoK Telex Advice dated 13/03/14, re Appendix 6. This confirmed the BoK had erroneously addressed the second TT, a deviation from the normal banking rules. It is therefore on this oversight the BoK should be approached for reimbursement of the second TT of USD271,023.27 or \$313,367.93.

## **Effects**

The use of US currency that was not mentioned in the agreement would inflate the cost of the project and would also have an impact on other important auxiliary activities.

Once the cost is inflated this could disturb and attract undue penalties under the contract agreement.

Adhering to the terms of the contract is a legal obligation and any deviations would raise doubts on the credibility of the Ministry by the contracting partner.

Effective communication would inform the Corporation of the capability of the Ministry in handling commercial dealings of this kind and convey the pressing need of having the construction work completed as projected.

## **Recommendations**

MLPID should provide supporting documentations or internal approval that had prompted the use of USD.

MLPID should provide a revised cost of the Landing Craft based on the change in currency they have used.

MLPID should make good for the unauthorized increase in the value of the vessel.

MLPID should have instituted recovery from BoK on the second incorrect TT.

MLPID and also Secretary to Cabinet, being the Board Director of BoK, should pursue reimbursement or recovery from the ANZ Bank for the amount of the second TT plus any other bank charges, if any.

MLPID should have followed up Dansyco on their work progress after having remitted the first payment of \$313,104.38.

## **Management response.**

*MLPID regret to say at this stage that supporting documentations or internal approval for using US currency can not be provided. It is recommended that this is directly asked from the former Secretary for MLPID.*

*MLPID wish to report that effort to influence the Bank of Kiribati to recover funds from the second payment was made in April 2014. The ANZ Bank of Kiribati highlighted that they will try to do this. However, later in April 2014, ANZ Bank of Kiribati verbally advised that they could not succeed in their efforts to recover funds from the second payment.*

*MLPID point of contact at the ANZ Bank of Kiribati during the payment process made in February 2014 was a Fijian named Baro. We realized that this Fijian ANZ officer was removed just before we arrived in Tarawa in April 2014. It was then Merean Oconnor who communicated with us on the payment.*

*MLPID did make follow up actions to Dansyco through email communications on the progress of the first payment by MLPID.*

**See also response from ANZ Bank separately annexed to this report as appendix 7**

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#### 5.1.5 RETURNED THIRD TT OF 27/2/14, VALUED AT USD105,295

The third payment voucher mysteriously had different bank details from the earlier two PVs and included in the new details was an account name of "Jely Lang-es" instead of "Dansyco Marine Works & Shipbuilding Corporation IGP Europe Ltd".

Despite the fact this remittance had safely been returned and credited back to Government No. 5 account, the reason for the return of the fund in this case could substantiate the Government pursuit of reimbursement by the BoK for the second TT, re 1.1.4 above. As could be sighted in the bank advice notice for this third TT an error message "Error Description" appeared in the last column of the rows where the wrong descriptive words were shown, such examples as: "receivers ID, receivers name and address" and "tag ID, field name and field contents".

##### **Effects**

The bank notice received from the recipient Institution, as was the case with the third TT, confirmed the practice any Bank would do when bank details in respect of a client were not all correct.

Accepting changes in bank details particularly with names that were not mentioned in the agreement would increase the risk of loss of funds to Government.

##### **Recommendations**

MLPID to confirm that the BoK had actually credited the Government No. 5 account with an amount equivalent to USD105,295.

MLPID to advise the Government bank account number out of which remittances had been made.

MLPID to provide a copy of the authority that prompted the issuance of the third PV.

##### **Management response**

*The Government No 5 account has been credited. The amount does not match to the equivalent of USD105,295 as there are fees involved in the remittance of the funds.*

*The 3rd payment was done in line with the payment schedule in the contract agreement for the 30% downpayment*

## 5.2 LANDING CRAFT: CONTRACT AGREEMENT

There were numerous defects noted in the signed agreement which are highlighted hereunder for consideration and reference where seen necessary by management and those to be involved in future negotiations.

### 5.2.1 MISSING AND WRONG ROMAN NUMBERING SHOWN IN THE AGREEMENT, NO PAGE NUMBERS AND INCOMPLETE AMENDMENT OF AGREED VESSEL COST

In passing I noted there was missing an Article number VIII between that shown in the previous page of Article VII and Article IX in the page following. The pages were not even numbered and thus could cause undue oversight when quickly reading the agreement. It was also noted in the immediate following page the Article numbering shown for "Lien on the Vessel..." was erroneously written as Article IVX instead of XIV.

The amendment to the contract price of the Landing Craft shown under Article I A was only made to the figure initially typed as "PESOS (42,811,000.00)" to P42,118,000.00 but not to that written in words as it still remains "FORTY TWO MILLION EIGHT HUNDRED ELEVEN THOUSAND PESOS".

#### Effect

The authenticity of the agreement is questionable, particularly from the perspective of the other contracting partner.

#### Recommendation

MLPID should have proof read the agreement before signing the agreement to ensure such legal document is free of errors.

#### Management response

*MLPID agrees to the recommendation*

### 5.2.2. OMISSION OF SOME CLAUSES DEEMED IMPORTANT IN THE AGREEMENT: BANK ACCOUNT DETAILS, CURRENCY TO USE, MEANS OF COMMUNICATION, PENALTY ON DELAY IN CONSTRUCTION WORK

Where dealings involve the movement of funds the initiating party should be cautious with clauses relating to bank transfers, mode of communication and the currency for use when transmitting funds and to ensure these are well covered in the agreement. Apparently these were omitted.

Also omitted is a clause for the Ministry to resort to for damages in the event the Builder fails to comply with its obligation in continuing the construction works. Article IV only allows the Builder to claim for damages from the Ministry (Principal) should the latter fails to adhere to its payment obligation. As a known fact the Builder had received the first down-payment on 7/02/14 however, since then the construction works appear to have been left in abeyance until now.

## Effects

Agreements are binding documents a disadvantaged party could place reliance on to sue for damages.

The use of a currency other than that already approved would deem all payments made as unauthorized.

The absence of bank details, mode of communication and currency to use are loopholes the other party could use for its advantage.

The absence of a clause that would allow the Ministry to sue for recovery and or damages being experienced would relieve the other party from facing charges for any breach or damages they had caused.

## Recommendations

MLPID and others involved in the drafting of agreements should ensure all the above anomalies are considered in future similar dealings.

MLPID should ensure an inclusion in the agreement of a recovery clause that would empower the Ministry to impose charges on the contracting partner should that partner fails to adhere to its obligatory roles.

## Management response

*MLPID agrees to the recommendation and should take a more cautious approach in its future similar dealings*

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### 5.2.3 SAFEGUARD CLAUSES AND WAY FORWARD: DTA WITH THE GOVERNMENT OF THE PHILIPPINES, AGENT IN THE PHILIPPINES

Once an agreement is held between a Government of one contracting state with a commercial entity of another the issues surrounding border, sovereign rights, profitability among others, will surely emerge. All these issues, however, could easily be addressed, though delays will be experienced, where a double tax agreement (DTA) exists with the partner country as there are clauses that could be included during the negotiations that would allow a court to hear claims lodged by an agent of the other contracting partner. As of current there is no DTA with the Philippines and given the notable increase in volume of trade and mobility of skilled personnel this is an option for consideration in the future.

In the absence of a treaty agreement, one possible means of prompting marine works or instigating recovery actions in the other contracting state would be via an appointed agent. Such agent would act for the Ministry, of course at an agreed ransom, for the duration of the agreement, which in this case is 130 days, in pursuing marine works to continue and ensuring payments follow the banking international rules. A clause to this effect was unfortunately not present in the agreement.

## **Effects**

The existence of a DTA with the Philippines is one avenue the Government could recover its funds from its fraudulent partner.

The appointed agent in the other contracting state would assist Government in ensuring the provisions of the agreements are adhered to by the contracting partner and would save government from incurring losses.

## **Recommendations**

Consideration of a tax treaty could assist the Government in its future dealings with states it has close ties with.

MLPID should have considered the appointment of an agent in the Philippines who could also assist with all aspects of the law in their state.

## **Management response**

MLPID agrees to consider using the tax treaty in its future dealings as well as considering appointing a law firm agent in the Philippines for assistance

## **5.3 OVERSIGHTS**

The Contract agreement specifically stated the terms of payment, but being totally neglected when actual payments were made. Refer to Article 1 B and C of the Contract agreement. Had such term of payment been strictly complied with, the amount of cash loss could have not reached over US\$539k, an equivalence of about AUD625k.

Further, the second payment should be supported by a work completion certificate depicting the percentage of work being completed to date and such to be signed by a qualified surveyor. This practice was not followed.

The above were not possible as the Ministry had failed in pursuing the deployment of a Surveyor by the Builder as stipulated under Article II B 4 of the agreement. This was also alluded in same Cabinet paper under Option 2 as earlier mentioned.

Regarding the cash loss this would not have happened had the Ministry ensured all requisite information with respect to banking details and code of communication were included in the agreement. Also the amount of cash loss would have been retained at the initial sum of \$279,242 had the Ministry refrained from entertaining a request for a currency other than that stated in the agreement.

The errors and omissions noted in the agreement as earlier alluded in the preceding paragraphs extrapolated the Ministry had shortsightedly overlooked the importance of sharing and seeking views from a wider audience before concluding the terms of the agreement.



It is worth noting every sentence appearing in any agreement as each has a purpose for inclusion. At the top left hand corner of the agreement the following words appear "KNOW ALL MEN BY THESE PRESENTS: This undoubtedly is a message reminding each party to be vigilant in their dealings.

#### **Effects**

A poorly designed agreement coupled with actions of the Ministry outside the terms already agreed upon with the contracting partner would raise doubts on the integrity of the Ministry.

Any loophole noted in the agreement could pave the way to unexpected catastrophic results.

Any oversights or loopholes present in the agreement would inform the other observant party the competence level of their contracting partner.

#### **Recommendations**

MLPID should ensure the terms of the agreement are free of errors and omissions

MLPID should ensure to fulfill all that is required in the agreement and other prerequisite tasks already agreed by Government.

MLPID should strictly adhere to the terms of the agreement in particular the payment schedule as stated therein.

MLPID should be proactive in recovering the second wrong TT from the BoK and, if seen necessary, to consider refueling the unauthorized increase in the first installment of \$33,862.38.

#### **Management response**

*MLPID agrees to the recommendation and we are committed to ensure that this will not happen in the future.*

*MLPID has been and will continue to work to recover funds losts in the second payment*

**See also ANZ Bank response as per appendix 7 of the report.**

#### **5.4 RESULT OF THE INVESTIGATION ON MLPID'S LC BY THE KIRIBATI POLICE AND PRISON SERVICES (KPPS) AND AUSTRALIAN INTERPOL**

As mentioned in the debate on the Kiritimati Landing Craft during the August Parliament session in 2014, the cash loss involved with such project had been investigated by the KPPS and Australian Police Interpol.

According to the police officer in charge at the Crime Branch, the case was still with the Commissioner of Police. Also the officer in charge of the Financial Intelligence Unit at KPS had not yet received information on the case to be submitted by the Crime Branch.

##### **Effects**

The outcome of the investigation carried out by the joint Police forces could, in one way, assist the GoK in obtaining its loss of funds.

It could also indirectly damage the reputation of the contracting corporation.

##### **Recommendation**

The KPS to provide, if possible, by 31 March, 2015, the result of their investigation or a copy of their report for comparison on the findings and analysis.

##### **Management response**

KPS response was stated as follows:

".....police investigation into the missing fund for the Ministry of Line and Phoenix Groups landing craft has not been completed. Police investigation is now pending awaiting further actions from Attorney General's office and Foreign Affairs who are now working with their counterparts in UK. They will try to access the bank account that the missing fund was sent to. Once evidence from the Bank in UK is available, we (the police) will follow up by interviewing relevant witnesses in UK and Manila through the assistance of InterPoL (International Police Organisation). From those evidence (bank documents and relevant witnesses) should then be able to conclude whether a criminal offence has been committed or not and by whom, if possible".

## 5.5 CONCLUSIONS

### 5.5.1 PROCUREMENT ACT 2002

As required in the Procurement Act 2002, the bidders should submit their letter expressing their interest in the construction of the Landing Craft. None of the bidders' details can be made available when requested.

Also the Central Procurement Review Board Committee should be involved and endorse the contractor for the construction of the Landing Craft. As confirmed, the CPRBC was not involved in the procurement process of MLPD's Landing Craft.

Based on the outcome of the meeting with MLPID top management it was noted the above mentioned requirements of the Act may not be viable with MLIP given the remoteness of the Ministry. However, there is still a need to ensure hard copies of emailed documentations are kept in the appropriate file for future reference and of course to satisfy the requirements of the Financial Regulation.

### 5.5.2 CONTRACT AGREEMENT

Generally, the contract agreement is a legal binding document and should be well-drafted and reviewed before being finalized and signed by the parties concerned. As can be observed from subsections 5.2 and 5.3 above, the signed Contract Agreement for the construction of the Landing Craft was either defective in various ways or not capturing all relevant legal obligations for both parties.

Additionally, despite the fact that the Contract agreement should be a legal binding document, some of the clauses were not being complied with. For instance, the terms of payment agreed to (refer Article 1 B) in the contract agreement was not being complied with and therefore had resulted in huge losses of public fund. Further, as stated in the Contract Agreement the currency should be in Philippine currency, i.e. pesos and not US dollars. However, as noted, the amount remitted was in US dollars (see Article 1 A) and this had in effect inflated the cost of the Landing Craft as well as the cost to Government.

### 5.5.3 GOOD GOVERNANCE AND TRANSPARENCY

From the audit perspective, the notable shortcoming in terms of good governance and transparency (apart from CPRBC in 5.5.1 above) was the absence of involvement of the qualified Ship surveyor and the Accountant in the procurement process in the early stages of the project. Such qualified personnel should have been part of the procurement plan and be involved at the initial stages of the whole process for acquiring the Landing Craft.

Further, MLPID never looked into the idea of forming up a committee, which should comprise of a number of people with different, but relevant specialized areas for the purpose of acquiring the Landing craft from another nation that is suitable for the Lines and Phoenix groups.

As evidenced, only two from the MLPID and one from the Attorney General's office involved during the review and the signing of the Contract agreement for the Landing Craft in Manila.

However, as informed there were two representatives from MLPID that visited and sought advices from KSSL and MCTTD but never actually engaged anyone from these entities to be part of the team. MLPID actually negotiated with MCTTD to engage a qualified ship surveyor with the project, however, this was taken over when a report was received on the loss of the Landing craft fund.

---

#### 5.5.4 ADHERENCE TO FINANCIAL REGULATIONS

According to the financial regulation: FR 9.2(3), it stated that: "Accounting Officers responsible for capital expenditure shall not only review such expenditure periodically in relation to the sums voted but also in respect of the progress of the work". We noted, re subsection 5.3 above, there was no invoice or certificate of completion of work from Dansyco and despite that MLPID still sent the second payment.

Sending payments by MLPID without obtaining such confirmation of work completed to date is definitely a deviation from international construction procedures that are also reflected in our internal control procedures and government financial regulation.

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#### 5.5.5 INCONSISTENCY NOTED ON THE USE OF INTERNATIONAL TELEGRAPHIC TRANSFER APPLICATION FORM

Based on the discussions under subsection 5.1.4 above, we were of the view the first ITT application form was in all respect correct and therefore had been sent. However, based on the advice received from the ANZ Bank, re attached response under Appendix 7, even the first TT sent was in error and this therefore provides us the basis to conclude the two TTs had erroneously been remitted by the Bank as the advice sent to the Bank from MLPID in the form of a payment had all correct particulars of the Dansyco Bank account in the UK.

Despite the above there still remains a conundrum the solution of which could be deduced once a response is provided as to 1) what entails the remittance of a TT, is it only an advance notice with funds still remain with the originating Banker and 2) if remissions have been made but to the wrong recipient account name or number, were funds actually been transacted or not, and if the former to which accounts or under whose custody this "suspense" funds are being held until claimed?

Based on the statement received from MLPID we are of the view both amounts are recoverable with the assistance of the ANZ bank.

---

#### 5.5.6 OVERALL CONCLUSION

The procurement of the Landing Craft would have been a success had the Contract Agreement, being the legal binding document between MLPID and its overseas counterpart, Dansyco Corporation, been finely drafted with inclusive provisions that would solve issues been highlighted in this report.

## APPENDICES

### APPENDIX 1 CABINET PAPER

File Ref: Information No. /14

05/02/2014

Line & Phoenix Landing Craft.

(Presented by the Minister of Line & Phoenix Island Development)

#### PURPOSE

1. The purpose of this paper is to inform Cabinet of the Shipbuilding Contract resulted during the negotiation that my team undertook with the owners of Dansyco Marine Works & Shipbuilding Corporation in Manila, Philippines.

#### BACKGROUND

2 Following the approval of the Linnix Landing Craft subsequently with funding by Cabinet and allocation of AUD1,706,543.00 presented in a cheque to my Ministry by Taiwan Ambassador, my team composed of myself, the Secretary and the Attorney General undertook a trip on 16 – 23/01/14 to Manila Philippines to negotiate with the Owners of the Dansyco Corporation, Mr. Dary Sy and his father.

3 The approval by Cabinet that we relied upon has clearly allowed the single source procurement after selecting amongst the three quotations we submitted and Cabinet was in favor of the Dansyco Corporation's quotation. Despite that, there was another quotation just lately submitted to me before we departed for the negotiation but it was more than the amount the Dansyco Corporation provided and specifications that we require were not clearly stated so for that reason we preferred the Corporation's quotation instead.

4 My team departed on 16/02/14 and we reached Manila on the 19/01/14. The two days negotiation from 21-22/01/14, we checked through Annexes A and B to ensure all specifications we intended to be included when the LCT is constructed are reflected (refer Annex A & B). On the second day we reviewed over the agreement, clause by clause and there were two minor changes we made concerning the word "Owner" to "Principal" and the contract price amount was corrected from PHP42,811,000.00 to PHP42,118,000.00 (refer Annex 1). The remaining provisions or Articles were okay as advised and I signed the agreement accordingly.

5 The agreement, namely "the Shipbuilding Contract" as it stands is obligating my ministry in Article 1 (B) to pay the shipbuilder 30% first then 10% in 6 installments and 5% in the last two installments. This clause or provision does not stop my ministry to pay more than 30% if we want to for the purpose of encouraging the builder to speed up procurement of materials and work on the LCT construction.

6. My team, beside the installment payments in the agreement, prefers to pay 30% first then another 30% at the end of the second week and another 10% the following week. My ministry is now trying her best to remit the 30% (PHP 12,635,400) or (AUD269000) as first installment on Friday 07/02/14 and similar amount for the second

payment next Friday 14/02/14 and the last 10% installment on Friday 21/02/14. The other 30% payment will be dealt with according to installments already provided for in the agreement. This will help avoid penalty of PHP5,000 per day that my ministry be responsible for when fails to pay on time.

7 In order to facilitate smooth payment, I would ask the assistance from MFED to weekly top up funds by sending or transferring funds from the No. 1 account worth more than AUD300,000 to the number 5 account in Kiritimati in order to enable the Account unit here meets the 30% twice and 10% demands to remit to Dansyco Corporation for the first three weeks commencing this Friday 7/02/14. My ministry also encourages MFED to top up same account for the remaining 30% to be ready too. At present our account unit has managed to secure enough funds in the No.5 account here after receiving transferred funds from MFED No: 1 Account. Further, the DW No.01/14 of \$1,706,543,000 has been received also.

8. Upon receipt of the first payment by Dansyco Corporation, the construction of the LCT will then commence and during the stages of shipbuilding, correspondences between us and Dansyco will continue within the time frame of 130 calendar days where anticipated the LCT should be completed by then and inspection stages will be notified to us within that period in particular to critical parts of the vessel that my ministry's surveyor should execute and endorse prior to the next portion or stage of work is carried out. The work-plan or time frame for construction and inspection is guaranteed to be sent to us by the Corporation.

9. When the surveyor is satisfied with the works during stages of construction at times inspections namely on Erection of Frames & Building, Erection of Side Plates, Erection of Deck Plate, Erection of Superstructure and Engine Installation have been carried out (refer to Article 1 B of the agreement at page 1 & 2), all these stages will be paid in full as we anticipate but where there are defects found all these should be addressed to the Builder instantly to fully reshape them accordingly to the directive of our surveyor/inspector and again once the surveyor is satisfied, the installation payment will be paid in full according to the percentages as appear in the Agreement. Further, with regards to the "Launching" Stage (5%) and "Delivery" Stage (5%) the total of 10% for these stages will be on hold until these and all shipbuilding stages are satisfactorily facilitated.

10 Note that once we do not fail to remit the funds but comply fully with the installment payments, we can relax in good shape while giving the burden to the shipbuilder to try and accomplish the construction within the 130 calendar days. Failure on the part of the builder will render my ministry receive from the builder PHP5,000.00 or AUD122.30 per day.

11 Note also that the LCT total price is PHP42,118,000.00 equivalent to AUD1,030,231.55. The remaining funds from the grand total of AUD1,706,543.00 is AUD568,603.55 which is enough to cover other expenses in the Philippines like provision of crew: a Captain, Chief Mess and Engineer for sea trial of the LCT plus fuel, water, voyages and tugboats; mooring ropes, appliances, logbooks and surveyor (refer Article II B); and other expenses we require when the LCT is in operation in Kiribati waters.

#### ISSUES

12. Surveyor & failure on installment payments by the Principal, my ministry.

#### OPTIONS

13. Option 1: To pay in advance prior to due date to avoid penalty through MFED top up by transferring funds from No. 1 Account to No.5 account in Kiritimati.

12. Option 2: To find and deploy an International Recognized Surveyor in the Philippines (refer Article II B).

#### RISK

14. Insurance cover during trial, delivery and operation in Kiribati waters

#### LINKS WITH GOVERNMENT POLICY AND PRIORITIES

15. This request will surely achieve Good governance in terms of complying with government policies on infrastructure (supplementing appropriate transportation and freight problems).

#### PUBLIC IMPACTS

16. Negative comments and unsettled complaints to government over irregular shipping schedules for grain foods, construction materials, referrals & medical supplies, returning & new intake students and inappropriate transportation of heavy plants to the Line and Phoenix Islands will cease once this landing craft arrives.

#### INTER-GOVERNMENTAL RELATIONS

17. MLPID and Colleagues have agreed to find an heavy duty sea-transportation for delivery of heavy machineries and for regular shipping in the Line and Phoenix Islands, hence this paper is tabled.

#### FINANCIAL IMPLICATIONS

18. Refer to Annex 1 which includes the price of the landing craft, inspection and delivery services cost plus spare parts and other costs for management arrangement.

#### CONSULTATION

19. Consultation with Cabinet colleagues in compliance with Cabinet's former approval and DCC.

#### RECOMMENDATION

20. Based on the foregoing discussions, Cabinet is now invited to note:

- i). the accounts of my team's trip for the LCT Negotiation; and
- ii). the principle agreement with annexes A and B as presented.

Bairiki

T.T

Tarawa

05/02/2014



## APPENDIX 2 CONTRACT AGREEMENT

### SHIPBUILDING CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This SHIPBUILDING CONTRACT is made and entered into by and between:

REPUBLIC OF KIRIBATI with principal address at Betio, Tarawa, Republic of Kiribati represented in this act by its Minister for Line and Phoenix Islands Development, Honorable TAWITA TEMOKU, hereinafter referred to as the PRINCIPAL,

- And -

DANSYGO MARINE WORKS & SHIPBUILDING CORPORATION, a domestic corporation, organized and existing under the Laws of the Philippines with principal address at 1204 M. Naval St., Navotas City, Metro Manila, represented in this act by its General Manager, DANIEL SY, hereinafter referred to as the BUILDER.

- WITNESSETH: THAT -

WHEREAS, the ~~OWNER~~ has the desire to own One (1) Unit 200 DWT Landing Craft 44.8440 Meters Steel Hull & Superstructure, Twin Screw, Single Bottom, Shallow Draft, Technical description of which the General Arrangement Plan & Outline Specification, copy of which is hereto attached as Annex "A" and "B".

WHEREAS, the BUILDER has represented to the PRINCIPAL that it has the qualification capability and willingness to construct the vessel in accordance with the specifications mentioned above.

NOW, THEREFORE, for and in consideration of the foregoing premises and the stipulations hereunder appearing the herein parties have agreed as they hereby agree, as follows:

#### ARTICLE I. TERMS OF PAYMENT

##### A. Contract Price

The price to be paid by the PRINCIPAL to the BUILDER under this contract shall be FORTY TWO MILLION EIGHT HUNDRED ELEVEN THOUSAND PESOS (42,811,000.00), Philippine Currency, exclusive of VAT and other Taxes., which represents the labor and materials component parts to be provided by the BUILDER and shall be referred to in this contract as the "CONTRACT PRICE".

B. The payment of the contract price agreed by the parties shall be made by the PRINCIPAL under the following schedule:

- 30% Downpayment
- 10% Start Fabrication
- 10% Erection of Frames & Bhds
- 10% Erection of Side Plate

- 10% Erection of Deck Plate
- 10% Erection of Superstructure
- 10% Upon Engine Installation
- 5% Launching
- 5% Prior Delivery & Acceptance

C. Upon receipt of the progress billing, the **PRINCIPAL** or thru any of its representatives has the obligation to give payment immediately but not beyond seven working (7) days there from.

D. Any delay in the payment shall entitle the **BUILDER** to assess liquidated damages at the rate of **FIVE THOUSAND FIVE HUNDRED PESOS (P5,000.00)** per day of delay for each corresponding billing computed starting from the date each of the delayed payment becomes due, taking into account the 7-day allowance indicated in the immediately preceding paragraph. Such liquidated damages shall be separate from and in addition to the storage charges that may become due under Article IV, section B, hereof. In addition, the **BUILDER** has the option to cause the temporary stoppage of work in the construction until payment is made and resume the work only after actual and full payment of the amount stated in the billing.

E. In the event that the **BUILDER** opted to temporarily stop the work and wait till the **PRINCIPAL** cause valid payment, the period during which there was no actual work shall be added to the period granted to the **BUILDER** to complete the construction.

## ARTICLE II. SCOPE OF WORK

A. The **BUILDER** will provide the Following:

1. All Steel Materials for the Completion of Hull & Superstructure
2. Machinery such as Main Engine, Genset, Pumps, Winches & Accessories
3. Machining Job
4. Sandblasting of all Steel Plate, Angles & Pipes with One Coat of Primer
5. Materials for Insulation, Electrical, Ducting, Paint & Anode
6. Labor for the completion of steel works of Hull & Superstructure
7. Carpentry & Masonry Job
8. Electrical Job
9. Piping Job
10. Engine, Machineries & Deck Equipment Installation
11. Painting & Cup Brush for Retouch of Painting Job
12. Launching
13. Consumable such as Gasses and Welding Rod
14. Equipment such as cutting torch, welding machine
15. Plans for Marina
16. Power Source
17. Yard facility
18. Navigational, Communication, Fire Fighting, Life Saving Equipment

B. The **BUILDER** will provide the following at the cost to the **PRINCIPAL**

1. Registration & Documentation Fee to Marina, PCG & Custom
2. Mooring Ropes, Appliances, Vessel Logbooks
3. Crews, Fuel Oil & Fresh Water for Dock, Sea Trials & Voyage, Tugboats
4. Surveyor to inspect and certify the quality work of the Landing Craft

## ARTICLE III. COMPLETION DURATION OF WORK

A. The **BUILDER** shall commence construction works on the vessel only upon the completion in totality of the following acts and deed:

1. Signing of the Shipbuilding Contract by the two herein parties; and
2. Payment of the required down payment;

The construction of the vessel shall then be completed and finished based on the scope of work provide by the **BUILDER** in One Hundred Thirty (130) good weather calendar days from the commencement date of construction works as determined above.

Additional working days shall be added to such One Hundred Thirty (130) good weather calendar days to compensate for losses that may be brought about by delays in payment of the **PRINCIPAL** to the **BUILDER**.

#### ARTICLE IV. DELAY IN PAYMENT

A. Delay in payment of **PRINCIPAL** shall be counted as delay on the part of the **PRINCIPAL** unless caused by force majeure mentioned in Article V. such delay shall have the effect of extending the period for the **BUILDER** to complete the vessel, counting the number of days of delay.

B. If, for whatever cause occasioned by the **PRINCIPAL**, construction is stopped due to delays in payment of the **PRINCIPAL** to the **BUILDER** berthing or storage fee of P10,000.00 per day shall be payable by the **PRINCIPAL** to the **BUILDER**.

C. Computation of such berthing or storage fees shall start from the day following the actual stoppage of construction or three working days from receipt by the **PRINCIPAL** of the notice to take delivery of the completed vessel.

#### ARTICLE V. FORCE MAJEURE

A. If the prompt completion the construction of the vessel is prevented by "force majeure" then the period for the construction shall be extended accordingly.

B. The term "force majeure" shall mean acts beyond the control of either party, such as strikes, lockout or other industrial disturbances, war, blockades, insurrections, epidemics, landslides, lightning, earthquakes, arrest and restraint of rules and people manning the construction, explosions, fires, typhoons, floods, rains, electric power failures and other like causes, such as unfavorable "weather working condition" wherein the Industry consider as legitimate disruption of the smooth flow of the construction.

C. If **BUILDER** believes that the vessel is ready for launching, said **BUILDER** may so launch the vessel even without the prior approval of the **PRINCIPAL** but by mere notice thereof to the **PRINCIPAL**.

#### ARTICLE VI. ALTERATION OF CONSTRUCTION

A. Any changes in the specifications of the vessel under construction, such as request to increase the capacity of the vessel, or major changes in the specifications shall be subject to the prior written agreement and/or conformity of the herein parties.

B. The accomplished change order/s shall contain details with corresponding cost adjustment the additional price, new delivery period, etc.

#### ARTICLE VII. TECHNICAL GUARANTEE

A. The **BUILDER** guarantees and warrants that the subject vessel shall be constructed in accordance with Local Classification of the work provide by the **BUILDER** in the General Arrangement and Outline Specifications mentioned in Annex "A" and "B" above, unless otherwise altered or changed by the parties concerned.

B. The design to be introduced on the Landing Craft shall be the exclusive ownership of the BUILDER. The PRINCIPAL is prohibited to copy, duplicate and implement the design of the Landing Craft for any of its future or present projects.

C. As soon as the BUILDER turns over the vessel to the PRINCIPAL, any or all defects or problems suffered which are attributable to natural causes or the natural wear and tear of the vessel shall be for the account of the PRINCIPAL.

D. The BUILDER warrants the quality of the workmanship, capacity and good shipbuilding standards;

#### ARTICLE IX. LIQUIDATED DAMAGES

A. In case the BUILDER failed to deliver the Landing Craft to the PRINCIPAL within the agreed One Hundred Thirty (130) good weather calendar days of construction, the BUILDER shall indemnify the PRINCIPAL the sum of FIVE THOUSAND PESOS (P5,000.00), Philippine currency, per day for every succeeding days thereafter.

B. The Liability by the BUILDER for the delay excludes any delay in the completion of the subject vessel occasioned by the fault of the PRINCIPAL and those caused by force majeure, the weather working condition, delay in payment of the PRINCIPAL to the BUILDER.

#### ARTICLE X. SEA TRIAL

A. Initiating the sea trial shall be at the discretion of the BUILDER. Should the PRINCIPAL and BUILDER disagree, the final decision to go to sea trial shall rest with the BUILDER.

B. All aspects of the vessel undergoing sea trial shall be the sole responsibility of the PRINCIPAL, from towing of the vessel to the open sea up to returning the same at the shipyard. The PRINCIPAL shall provide the captain and crew who will man the vessel during sea trial.

C. Any damage to the vessel caused on occasion, or by reason of the sea trial, shall be borne by the PRINCIPAL. Any obligation or liability to third parties incurred on occasion of the said sea trial shall be solely for the account of the PRINCIPAL.

#### ARTICLE XI. DELIVERY:

A. Upon successful sea trial the PRINCIPAL shall take delivery of the vessel by signing the Certificate of Delivery and Acceptance. Physical possession of the vessel shall constitute as full acceptance and complete delivery of the vessel from the BUILDER to the PRINCIPAL.

B. After acceptance and delivery, the vessel and all appurtenance thereto, as well as accessories and accession shall be the sole responsibility of the PRINCIPAL.

C. Issuance by the BUILDER to the PRINCIPAL of the Original Builder's Certificate shall constitute as delivery and acceptance of the vessel.

D. No Original Builder's Certificate or certified copy thereof shall be released to the PRINCIPAL until full and final payment of all considerations has been paid.

#### ARTICLE XII. DEFERMENT:

A. All fees, obligation and consideration shall be fully paid before acceptance and delivery of the vessel shall be allowed.

B. Upon full payment by the PRINCIPAL to the BUILDER, the latter shall release the Original Builder's Certificate to the PRINCIPAL, otherwise, said Certificate shall remain with the BUILDER until full payment has been made.

#### ARTICLE XIII. WARRANTIES

A. The BUILDER warrants that the vessel to be constructed shall be in accordance with the General Arrangement Plan & Outline specifications mentioned in Annex "A" and "B"

B. The BUILDER also warrants that it is a duly licensed contractor, authorized to do business as such, and that it has sufficient capital and money to pay its obligation to its laborers and employees employed or hired by it for the purpose of performing its obligations under this Contract and shall be solely liable in favor of its employees, complying at its own expense, with proper compliance of the provisions of law, rules and regulations of any national, provincial, municipal or other government authority. Any labor disputes/cases on the part of the BUILDER shall be for the BUILDER's account.

C. The BUILDER shall be excused from all the above warranties should the PRINCIPAL allows other parties to interfere in any way with the BUILDER'S work performance, without prejudice to the right of the PRINCIPAL to demand rectification of works observed to be not in accordance with this contract.

#### ARTICLE IVX. LIEN ON THE VESSEL AND BINDING EFFECT

A. The BUILDER shall have the lien on the vessel subject of this contract in the event of non-payment of the contract price of the balance thereof.

B. This Contract shall be binding upon the respective successors, executors, administrators and assigns of the parties hereto; however, both parties may not assign the rights in this Contract without the previous written consent of the other party.

C. Release of the Vessel. It is agreed and understood that the Landing Craft shall not be released to the PRINCIPAL until such time that all the outstanding balances due to the BUILDER shall have been fully paid by the PRINCIPAL.

The following ANNEXES attached herein shall be followed and binding and shall form parts of this Contract:

- ANNEX "A" - General Arrangement Plan
- ANNEX "B" - Outline Specifications

IN WITNESS WHEREOF, We have hereunto set our hand this 24<sup>th</sup> day of JANUARY 2014 at MAKATI CITY

REPUBLIC OF KIRIBATI

(PRINCIPAL)

Represented by:

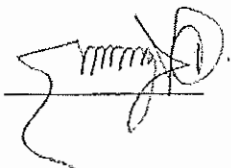
HON. TAWITA TEMOKU  
Minister for Line & Phoenix Islands  
Development

DANSYCO MARINE WORKS AND  
SHIPBUILDING CORPORATION

(BUILDER)

Represented by:

DANIEL SY  
Gen. Manager



WITNESSES:



**ACKNOWLEDGMENT**

BEFORE ME, a Notary Public for and in the City of \_\_\_\_\_ personally appeared the following:

Name	Drivers License/Passport No.	Date/Place Issued
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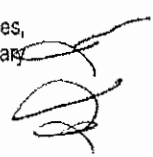
**REPUBLIC OF KIRIBATI**

<b>HON. TAWITA TEMOKU</b>	Passport No.	/Kiribati
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**DANSYCO MARINE WORKS  
AND SHIPBUILDING CORP.**

<b>DANIEL SY</b>	Passport No. XX3745006	May 19, 2009 /Manila
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Acknowledging to me that they executed and signed the foregoing instrument consisting of six (6) pages, including this page on which this acknowledgment is written, and that the same are their free and voluntary act and deed as well as the voluntary act and deed of the entities they represent.



Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2014

**APPENDIX 3 EMAIL MESSAGE ON BANK DETAIL**

JAN. 26,2014

**DANSYCO MARINE WORKS & SHIPBUILDING CORPORATION  
BANK ACCOUNT**

**BANK NAME: HSBC BANK PLC. (SWIFT CODE: MIDLGB22)**

**ACCOUNT NAME: DANSYCO MARINE WORKS & SHIPBUILDING CORPORATION IGP EUROPE LTD.**

**IBAN CODE/ACCOUNT NO: GB20MIDL40051573308633.**

**ADDRESS: BOROUGH HIGH ST, LONDON SE 1.**

**NOTE: PLEASE INSTRUCT YOUR BANK TO REMIT IN USD\$**

# APPENDIX 4 COPIES OF SUPPORTING DOCUMENTS

## TENDER SUMMARY AND RECOMMENDATIONS

To: Chairperson, CPRB	Submission No: 01/14
From: Ministry of Line and Phoenix	Date: 4/02/2014
Requirement: To seek approval from the Committee to approve 1 <sup>st</sup> payment amount \$279,242.34 this week, 2 <sup>nd</sup> payment next week same amount and 3 <sup>rd</sup> payment, week after amount \$93,080.78 for Landing Craft.	File Ref: Complexity: High Medium Low
Deadline: Friday, 7 <sup>th</sup> February, 2014	
Procurement Action Taken: Single Source	
Comments: No quotes required since it has been approved by Cabinet	
Risk Assessment: None has been identified so far	
Price Variation Conditions (if applicable)	
Recommendations: A great need to speed this payment so that the work on the Craft will carry on without delay and to complete within timeframe	
Total Amount Involved: \$651,565.46	
1 <sup>st</sup> Payment \$279,242.34 <i>changed due to rate used.</i>	
2 <sup>nd</sup> Payment \$279,242.34	
3 <sup>rd</sup> Payment \$ 93,080.78	
I certify that:	
1. Funds are available ( please refer to current budget )	
Signature of Procuring Officer:	Date:

Warrant No. 01/14 \$1,706,43-00  
 Budget No. 42901 00 0071



Min. No.	13112
FV. No.	P. 18114

ACCNO: CB20MIDL40051573306633

DATE	DETAILS	AMOUNT
------	---------	--------

AMOUNT

3:2, 104-38

266, 268, 276.33 USD

OTHER:

TOTAL	AS 31 2,104-38
-------	----------------

SIGNATURE OF RECEIVER

BY James H. [Signature]

~~CONFIDENTIAL~~

PROJECT TITLE

PROJECT NUMBER

CREDIT

AMOUNT

4

4

4

4

100

4

TOTAL - A

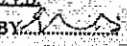
312.104-38

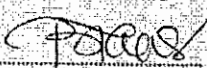
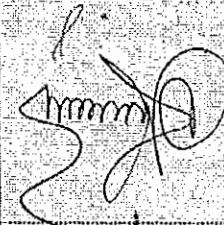

**THE GILBERT ISLANDS  
DEVELOPMENT FUND PAYMENT VOUCHER**

Min. No. 165/2  
PV. No. 18-22/14

PAY TO: HSBC BANK PLC (SWIFT CODE: MIDLGB22)  
ADDRESS: DANSYU MARINE WORK & SHIPBUILDING CORPORATION IGP EUROPE LTD  
ACCT NO: GB20MIDL40051573308633  
BOROUGH HIGI ST LONDON SE1

DATE	DETAILS	AMOUNT
2014 13 Feb	<p>Second</p> <p>First Payment to the above for Landing Craft as</p> <p>Pesos 42,118,000.00 x 0.0248 = \$1,044,526.40</p> <p>= \$1,044,526.40 x 30% = \$313,357.92 x 0.8649</p> <p>271,013.27</p> <p>Amf in USD 270,825.25 = 0.8649 =</p> <p>= AUD 313,357.92</p> <p>TT COST 10.00</p> <p>\$ 313,367.92</p>	313,367.92

EYE BY:   
DATE: 13/2/14  
AUTHORITIES: \_\_\_\_\_ WARRANT: \_\_\_\_\_  
OTHER: \_\_\_\_\_  
CHEQUE NO: 194558  
TOTAL AS 313,367.92

APPROVED	AUTHORISED	CHEQUE AND PASSED FOR PAYMENT	SIGNATURE OF RECEIVER
		SA 313,367.92 BY: 13/2/14	 AND BANK (GILBERT ISLANDS) LTD 13 FEB 2014

ALLOCATION		PROJECT TITLE	PROJECT NUMBER	CREDIT	AMOUNT
4			H2901-44-D0974		313,367.92
4					
4					
4					
4					
4					

Bal. \$1,081,070.70  
TOTAL AS 313,367.92

T-111-000

## APPENDIX 5 BANK ADVICE FOR RETURNED PAYMENT 3



**PSBank**  
PHILIPPINE SAVINGS BANK  
Metrobank Group

March 25, 2014

MS. MERIANN CANDIA YORAC  
BLK -D10 Lot 14 Bgy. San Andres II  
Dasmarinas City  
Cavite Province

Dear Ma'am,

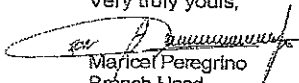
We would like to inform you that we have closed your Passbook with ATM account under No. 214361003420 maintained at Cavite General Trias branch effective today, March 25, 2014.

This is in pursuance to the provisions of the Application and Agreement for Deposit Account you have executed on the said account, which authorized the Bank to close the same when, upon its determination, the continuation thereof is not in its best interest.

Should you have any queries, please call me at (046) 4241357, (046) 4241357.

Thank you very much.

Very truly yours,

  
Maricel Peregrino  
Branch Head  
Branch Banking Group

PSBank Center, 777 Paseo de Roxas corner Sedeno St., Makati City 1226  
Telephone: 885-8208 • 944-1772 • Fax: 845-0007 • [www.psbank.com.ph](http://www.psbank.com.ph)

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 002 REQUIRED  
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THE GILBERT ISLANDS  
DEVELOPMENT FUND PAYMENT VOUCHER


Min. No. HG 3212

PV.No.	AT: 42/14
--------	-----------

PAY TO: Bank Name: Metro Bank Philippines

ADDRESS: Account Names: Sely Lunn - es Account No. 033033958613

SWIFT Code: MBTC PHPMM BRANCH ADDRESS: UNITED NATION AVENUE  
Cor Mabini St.

DATE	DETAILS	AMOUNT
2014 27 Feb	3rd Payment of landing Craft to the above address. 42,180.00 Pesos $42,180,000 \times 0.0250 =$ AUD 1,054,500-00 1052,950-00 $\$105,067-38 \times 10\%$ = 105,245-00 = 4,105,106-74 USD $\$105,106-74 \div 0.8587 =$ 122,621-40 AUD 122,462-40 TT Cost 10.00 $\$122,412-46$ 122,631-40	Ermita Philippines 1052,950-00 105,245-00 4,105,106-74 122,621-40 122,462-40 122,412-46
EVE BY 	AUTHORITIES:	WARRANT:
		OTHER:

EYB

BY                     

**AUTHORITIES:**

WARRANT

OTHER:

DATE 27/2/14

CHEQUE NO. 94167

**TOTAL** 145

11

110

17

22

5

2

11



•

APPROVED

ALPHABETICALLY

CHEQUE AND PASSED  
FOR PAYMENT

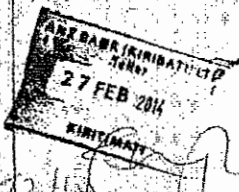
SIGNATURE OF RECEIVER

Went

Paul

SA 122-637540

by [illegible]



ALLOCATION			
PROJECT TITLE	PROJECT NUMBER	CREDIT	AMOUNT
	4 H 2901-44-5097a		122,121.76
	4		122,121.76
	4		
	4		
	4		
	4		
Bal - \$ 958,439.30		TOTAL AS	122,121.76

Bal - \$ 955, ~~434-30~~  
~~602-94~~

TOTAL AS

123-45678

**APPENDIX 6 BANK TELEX ADVICE SLIPS/COPIES OF TT**

Telex Advice

Date : 07/02/2014

This is a computer generated advice and requires no signature.

KIRIBATI GOVERNMENT

THE CHIEF ACCOUNTANT, MINISTRY OF FINANCE

BAIRIKI, KIRIBATI

Ref : TTKI020701000032

We have today debited your account number 736981 AUD

Details are :

Beneficiary :

DANSYCO MARINE WORKS AND SHIPPING

CORPORATION

Details : FIRST PAYMENT OF THE LANDING

CRAFT

Amount : USD 268,276.33

Exchange Rate : 0.85960000

Converted Amount : AUD 312,094.38

Charges : 736981

COMMISSION AUD 10.00

Total Debited : AUD 312,104.38

(Second Copy)

# International Telegraphic Transfer Application Form

ANZ

Account number C74  
 Name 1800 1000  
 Please complete this form for international telegraphic transfer on behalf of  
 Applicant Complete Section A  
 Please complete Sections A & B

## SECTION A APPLICANT'S DETAILS

Name MLP10  
 Address London  
K. Chinnath  
 Telephone no. 1 81218  
 Telephone no. 2 81214

## INTERNATIONAL TELEGRAPHIC TRANSFER DETAILS

Pay to order of USD Amount 268,276.32  
 Telegraphic transfer fee 0.8576  
 Currency USD Amount 312,894.38  
 Pay to order of USD Amount 10.45  
 Pay to order of USD Amount 312,104.38

## PURPOSE OF PAYMENT (MANDATORY)

☒ Independence or family of friend ☐ Expense payment to home country ☐ Payment of services ☐ Payment of goods

Send to payee's registered street address (Maximum 15 characters per line)

DUNLOP MARINE WORKS & SHIPPING CORPORATION  
60 QUEEN HIGH STREETS  
LONDON SE1

Beneficiary's account number GB20MIDL40051573308633

Pay to order of Bank including address, and where available, the BSB or SWIFT code (Maximum 40 characters per line)

HSBC BANK PLC  
SWIFT CODE: MIDLGB22

## BANK USE ONLY

Date received 03/02/14  
 Date processed 03/02/14  
 Telegraphic transfer no. 7030/04

## SECTION B DETAILS OF PERSON LOGGING THIS APPLICATION

Name [Signature]  
 Street address [Signature]  
 Customer number 3  
 Phone no. 1 [Signature]  
 Phone no. 2 [Signature]

## PAYMENT METHOD

☐ Cash ☐ Account ☒ Cheque  
 Payment from account 736981  
 Fees charged from account 736981

Approved pls  
 7000

Approved  
 02/02/14

International Telegraphic Transfer Application Form



Specify Applicant message to Beneficiary (Maximum 24 characters per line)

First Payment of the Landing Craft

PRIVACY ACKNOWLEDGEMENT

Where Australia and New Zealand Banking Group Limited (the Bank) collects any personal information in connection with your application, it does so in order to carry out your instructions and to comply with applicable laws. The Bank may disclose that information to the beneficiary's bank, a correspondent or any relevant government authorities. You may request access to your personal information at your nearest branch.

AGREEMENT AND AUTHORISATION

By signing this International Telegraphic Transfer Application you acknowledge and agree that you

- (a) Have read and understood the Bank International Telegraphic Transfer Terms and Conditions and agree to be bound by them;
- (b) Declare that all information you have provided to the Bank on this Application form is true and correct;
- (c) Authorise the Bank to debit your account nominated in the 'Payment from account' or 'Fee Charges from account' sections in this document, with the total payment, commission (if any), other fees, costs and duties which are imposed by the Bank in connection with this International Telegraphic Transfer Application;
- (d) Confirm that the amount to be transmitted is as stated below.

Currency USD Amount \$268,276.33

- (e) Authorise the Bank to disclose your information to its related companies (including subsidiaries) and third parties engaged by the Bank or its related companies, in order to carry out your instructions.

In the event of any inconsistency between the English and other language content of this form, the English will apply.

Please write all names with family name first.

This application must be signed in accordance with the mandate instructions on this account.

APPLICATION BY INDIVIDUAL

Signature of Applicant

[Signature]

Date 17 03 2014

Full Name of Applicant Andrew Evan Tucki

Signature of Applicant

[Signature]

Date 17 03 2014

Full Name of Applicant

APPLICATION ON BEHALF OF COMPANY, PARTNERSHIP OR OTHER LEGAL ENTITY

Signed for and on behalf of (full name of Legal Entity):

Signature [Signature]

Date 17 03 2014

Full name (family name first)

Signature

[Signature]

Date 17 03 2014



Telex Advice

Date : 13/02/2014

This is a computer generated advice and requires no signature.

KIRIBATI GOVERNMENT

THE CHIEF ACCOUNTANT, MINISTRY OF FINANCE

BAIRIKI, KIRIBATI

Ref : TTKI021301000023

We have today debited your account number 736981 AUD

Details are :

Beneficiary :

DANSYCO MARINE AND SHIPBUILDING

CORPORATION IGP EUROPE LTD

Details : ORDER OVERSEAS AND SECOND PAYMENT

FOR LANDING CRAFT

Amount : USD 271,023.27

Exchange Rate : 0.86490000

Converted Amount : AUD 313,357.93

Charges : 736981

COMMISSION AUD 10.00

Total Debited : AUD 313,367.93

2nd



## International Telegraphic Transfer Application Form

Branch number 66

4. Name of Vessel: YMAS ANZ Date of departure: 22/05/2018

...making the international telephone transfer on behalf of:

**17** **Insert - Complete Section A**

☐ **Some concrete** Complete Sections A & B

## SECTION A

### APPLICANT'S DETAILS

RIGHT, GOVERNMENT No. 5

Target Address ... YNAS LINK ...

1. Explain the importance of the following factors in the development of a country:

7-10-68

[illegible]

## BANK USE ONLY

Date Received 03/02/2014

Date Processed: 13/02/2014

Telegraphic Transfer No. 17316113

SECTION B  
DETAILS OF PERSON LODGING THIS APPLICATION

*[Handwritten signature]*

Sweet Address . . . . .

Container Number . . . . .

[illegible]

Phonetic 2

## INTERNATIONAL TELEGRAPHIC TRANSFER DETAILS

USD Amount \$12,71,023.27 ✓

exchange rate, sell 2:1 . . . . . 0.5649 . . . .

Level of Contamination: High - Asbestos \$ 31.3, 357-92

Charges Contingent div / Account 10-00

Total payment currency . . . amount \$ 313,367.92

#### PAYMENT METHOD

☐ Cash    ☐ Account    ☒ Cheque

Payment from account ..... 356.08

Fees/Charges from account: .00

## PURPOSE OF PAYMENT (MANDATORY)

☐ Gift payment to family of friend    ☐ Expatriate payment to home country    ☐ Payment of services    ☐ Payment of goods    ☐ Marital settlement

1.7 Other (Please Specify)

Beneficiary home and street address (Maximum 24 characters per line)

DANISCO MARINE & SHIPBUILDING CORPORATION

ISP EUROPE LTD.

BOROUGH HIGH ST LONDON SE 1

Beneficiary's account number 982.0 MID, L4-0051573308633.

Beneficiary's Bank (including address, and where available the BSB or SWIFT BIC) (Maximum 34 characters per line)

HSBC BANK PLC

SWIFT CODE: MIDLGB22

Filed off  
city of  
13/10/14

## APPENDIX 7 ANZ BANK RESPONSE LETTER



ANZ Bank ( Kiribati ) Ltd Po Box 66  
Bairiki  
Tarawa  
Rep of Kiribati  
Telephone: 686 21095  
Facsimile: 686 21200  
Email: anzkiribati@anz.com  
Internet banking: www.anz.com/kiribati

2 April 2015

Attention: Ms Matereta Raiman  
Auditor General  
Kiribati National Audit Office  
Bairiki, Tarawa, Republic of Kiribati

cc Secretary to Cabinet  
cc Secretary to MCTTD  
cc Secretary to MFED  
cc Commissioner of Police  
cc Secretary to MLPID

**Delivered by hand**

To Ms Raiman

**Re: Draft Management Letter on the unsuccessful procurement and acquisition of the land craft for the Ministry of Line and Phoenix Islands Groups (MLPID).**

We refer to your email dated Tuesday 24 March to Ms Teea Tira enclosing the above management letter. Ms Tira has referred this matter to me to respond on behalf of ANZ Bank (Kiribati) Ltd (ANZ).

This letter and attached table contains our feedback, which details amendments and clarifications we request be made to the Management Letter in the interests of accuracy. We have also provided responses on issues raised in the management letter that relate to the role and responsibilities of ANZ to assist with your factual review.

Further, in relation to the factual review insofar as it relates to ANZ's role, I confirm that ANZ Kiritimati branch received International Telegraphic Transfer Application Forms (TT Forms) on behalf of MLPID on:

- o 7 February 2014 (First Payment);
- o 13 February, 2014 (Second Payment); and
- o 27 February 2014 (Third Payment).

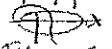
I confirm that ANZ processed each of these payments on the date that these TT forms were received in the branch, and in accordance with MLPID's instructions as stated on the TT Forms. ANZ acted on the instruction of MLPID only in all instances as it is required to do so, and also in accordance with ANZ's standard policies and procedures.

Yours sincerely

  
**Rufus Pinto**  
Chief Executive Officer  
ANZ Bank (Kiribati) Ltd

RECEIVED

02/04/2015

  
EA KNAO



## Management Letter – ANZ Feedback and corrections

Item	Pg	Section	Excerpt from Letter	ANZ Comments and correction
Section 1.1. VISITING TEAM TO MANILA SHOULD INCLUDE A QUALIFIED LOCAL SHIP SURVEYOR AND A QUALIFIED ACCOUNTANT				
1.	8	1.1.3 (Recommendations)	<i>MLPID should have sought assistance from the Bank on the creditworthiness of Dansyco Corporation before activating the transfer of funds.</i>	<p>This is not a service that is provided as part of ANZ's International Telegraphic Transfer (TT) services. The ITT service requires ANZ to process payments in accordance with instructions set out by ANZ's customer (MLPID) on a TT Form. The accuracy of the information on the TT Forms (including any creditworthiness or status of the party receiving the payment) is strictly the responsibility of the customer (MLPID).</p> <p><b>Suggested Recommendation:</b></p> <p>MLPID should have conducted due diligence with respect to the creditworthiness of the Dansyco Corporation (the Supplier) before entering into a contract.</p>
Section 1.1.4. REMITTANCE OF TELEGRAPHIC TRANSFERS (TT)				
2.	9		<p><i>... the second TT was defective as it did not bear the full address of the beneficiary as again shown in the second payment voucher which should read "DANSYCO MARINE WORKS &amp; SHIPBUILDING CORPORATION IGP EUROPE LTD". It missed out the word "WORKS" and this incorrect address also appeared in the BoK Telex Advice dated 13/03/14, re Appendix 6. This confirmed the BoK had erroneously addressed the second TT, a deviation from the normal banking rules. It is therefore on this oversight the BoK should be approached for reimbursement of the second TT of USD271,023.27 or \$313,367.93.</i></p>	<p>ANZ received the second TT Form from MLPID on 13 February 2014 with instructions to pay USD\$271, 023.27 to "Dansyco Marine &amp; Shipbuilding Corporation".</p> <p>MLPID incorrectly transcribed the Supplier's name on these forms. MLPID omitted "Works" and also "IGP Europe Ltd" from this second TT Form which was processed by ANZ in accordance with the details as recorded by MLPID.</p> <p>There was no deviation from normal banking rules by ANZ, and ANZ processed the TT Form in accordance with the details transcribed on the form by MLPID, which ANZ is required to do so, in line with ANZ policy and procedure.</p> <p>We note that in any event, MLPID first TT Form for the first payment also had the incorrect details transcribed by MLPID as it omitted "IGP Europe Ltd".</p> <p>Therefore, there is no oversight by ANZ and no reimbursement by ANZ is payable.</p> <p>It is and was the responsibility of MLPID to ensure the payment details on the TT Forms submitted to ANZ are correct.</p>



3.	9	1.1.4 (Recommendations)	<i>MLPID should have instituted recovery from BoK on the second incorrect TT.</i>	There has been no error on the part of ANZ for the reasons set out in Item 2 in this table above.  <b>Suggested Recommendation:</b> MLPID ought to have ensured that the payment details submitted on TT Forms are correct at all times.
4.	10	1.1.4 (Recommendations)	<i>MLPID and also Secretary to Cabinet, being the Board Director of BoK, should pursue reimbursement or recovery from the ANZ Bank for the amount of the second TT plus any other bank charges, if any.</i>	There has been no error on the part of ANZ as ANZ has processed the second TT payment in accordance with MLPID's instructions at all times.  <b>Suggested Recommendation:</b> As above (item 2 and 3 of this table).
Section 1.1.5. RETURNED THIRD TT OF 27/2/14, VALUED AT USD105,295				
5.	10	1.1.5	<i>Despite the fact this remittance had safely been returned and credited back to Government No. 5 account, the reason for the return of the fund in this case could substantiate the Government pursuit of reimbursement by the BoK for the second TT, re 1.1.4 above.</i>	When processing TT Forms at the request of a customer, ANZ must ensure it processes the payment in accordance with the instructions on the TT Form.  ANZ is not required or obliged to request or receive receipts from the receiving financial institution to confirm payment has been received.  On 20 March 2014, ANZ receives instructions from MLPID to cancel and reissue all payments to the Supplier.  In doing so, ANZ receives notification that the proceeds of the third TT payment of USD\$105,098.49 has been returned to ANZ because Metrobank was unable to apply funds to the beneficiary as stated on the TT Form.  ANZ has processed all TT payments (including this third TT payment) strictly in accordance with MLPID's instructions. Therefore, there is no such substantiation of MLPID pursuing any reimbursement by ANZ.  <b>We suggest this sentence be deleted.</b>
Section 1.3. OVERSIGHTS				
6.		Recommendations	<i>MLPID should be proactive in recovering the second wrong TT from the BoK and, if seen necessary, to consider refueling the unauthorized increase in the first installment of \$33,862.38</i>	For the reasons stated in items 2 and 3 above, this recommendation is incorrect. There is no entitlement by MLPID to recover any lost funds from ANZ directly, as ANZ has merely processed TT Forms in accordance with MLPID's instructions as stated on the TT Form.  <b>We suggest this recommendation be deleted.</b>