



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF MALAWI PUBLIC PROCUREMENT SYSTEM

2019





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Procurement Systems

MALAWI

Assessment of the Public Procurement system

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Acronyms

ACB	Anti-Corruption Bureau
ADMARC	Agricultural Development and Marketing Corporation
AfDB	African Development Bank
CEM	Country Economic Memorandum
CGS	Central Government Store
CMST	Central Medical Stores Trust
COMESA	Common Market for Eastern and Southern Africa
CPAR	Country Procurement Assessment Report
CPF	Country Partnership Framework
CSO	Civil Society Organization
DFID	Department for International Development
DPO	Development Policy Operation
e-GP	Electronic Government Procurement
ESHS	Environmental, Social, Health, and Safety
EU	European Union
GCU	Government Contracting Unit
GDP	Gross Domestic Product
GNI	Gross National Income
ICB	International Competitive Bidding
IFMIS	Integrated Financial Management System
IHS	Integrated Household Survey
IMF	International Monetary Fund
IPC	Internal Procurement Committee
KPA	Key Priority Area
MAPS	Methodology for Assessing Procurement Systems
MASC	MAPS Assessment Steering Committee
MCCCI	Malawi Confederation of Chambers of Commerce and Industries
MDAs	Ministries, Departments, and Agencies
MDB	Multilateral Development Bank
MDGs	Millennium Development Goals
MEJN	Malawi Economic Justice Network
MGDS	Malawi Growth and Development Strategy
MIPS	Malawi Institute of Procurement and Supply
MoJ	Ministry of Justice
MoFEPD	Ministry of Finance, Economic Planning, and Development
MSMEs	Micro, Small, and Medium Enterprises
NAO	National Audit Office
NCB	National Competitive Bidding
NCIC	National Construction Industry Council
NGO	Nongovernmental organization
ODA	Official Development Assistance
ODPP	Office of the Director of Public Procurement

OECD	Organization for Economic Co-operation and Development
OPC	Office of the President and Cabinet
PDE	Procuring and Disposing Entity
PE	Procuring Entity
PEFA	Public Expenditure and Financial Accountability
PFM	Public Financial Management
PFM RP	Public Financial Management Rolling Plan
PFEM RP	Public Finance and Economic Management Reform Rolling Plan
PIMA	Public Investment Management Assessment
PPA	Public Procurement Act of 2003
PPD Act	Public Procurement and Disposal of Assets Act (No. 27 of 2017)
PPDA	Public Procurement and Disposal of Assets Authority
PPP	Public-Private Partnership
PPTAG	Public Procurement Technical Advisory Group
PRM RP	Public Finance Management Rolling Plan
PPR	Public Procurement Regulations (PPR 2004/ PPR Draft of 2018)
SADC	Southern African Development Community
SCD	Systematic Country Diagnostic
SDGs	Sustainable Development Goals
SIP	Solution and Innovations in Procurement
SMEs	Small and Medium Enterprises
SOE	State-Owned Enterprise
SPU	Specialized Procurement Unit
ATAG	Assessment Technical Advisory Group
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
WDR	World Development Report

CURRENCY EQUIVALENTS

(Exchange Rate Effective October 31, 2017)

Currency Unit = Malawian Kwacha (MWK)

MWK 725 = US\$1

Fiscal Year: July 1–June 30

Executive Summary

Background

1. **The World Bank, in collaboration with the Malawi government**, through the Public Procurement and Disposal of Assets Authority (PPDA),¹ carried out the Country Procurement Assessment of Malawi, based on the latest Methodology for Assessing Procurement Systems (MAPS). Malawi was the first country to use the revised MAPS analytical tool in the Africa region. This assessment also benefited from the extensive support of the European Union (EU) and African Development Bank (AfDB) besides other development partners.
2. **MAPS** is a universal tool, based on qualitative and quantitative indicators reflecting leading international procurement frameworks. It is also linked to the United Nations Sustainable Development Goals (SDGs) for sustainable procurement and thus serves as a guide toward sustainable and inclusive public procurement reforms.
3. **The objective of this assessment** is to deliver an up-to-date diagnostic of the Malawi public procurement systems and make recommendations that will support the government in prioritizing its reform efforts to improve value for money, transparency, fairness, and good governance in public procurement. The assessment also serves as a basis for the development partners' engagement in Malawi.
4. **Validation.** The assessment underwent a review process involving government bodies, private sector, World Bank, AfDB, and EU. Finally, the assessment is also subject to quality review and endorsement of the MAPS Assessment Technical Advisory Group (ATAG).

Assessment Coverage and Timing

5. **This assessment is built along four pillars:** (a) Pillar I: Legal, Regulatory and Policy Framework; (b) Pillar II: Institutional Framework and Management Capacity; (c) Pillar III: Procurement Operations and Market Practices; and (d) Pillar IV: Accountability, Integrity, and Transparency of the Public Procurement System. It was informed by a private sector survey and extensive dialogue with the government and stakeholders.
6. **The assessment is timely.** First, no comprehensive procurement assessment has been carried out since the 2004 Country Procurement Assessment Report (CPAR). Second, there is political will supporting this action, as reflected in the government's public financial management (PFM) strategic plans. Third, this assessment provides input to other strategic studies: ongoing Development Policy Operations (DPOs); Systematic Country Diagnostics (SCDs); Country Partnership Framework (CPF) (2019–2023); the Public Investment Management Assessment (PIMA) of the International Monetary Fund (IMF); and the Public Expenditure and Financial Accountability (PEFA) Assessment, which was completed in FY19.
7. **To facilitate the preparation of this assessment, a MAPS Assessment Steering Committee (MASC)** was set up. MASC is a multi-stakeholder team, led by the PPDA with

¹ The former Office of the Director of Public Procurement (ODPP).

representation from key ministries, parastatal organizations, civil society, the private sector, and development partners.

Country Context

8. **Malawi is a landlocked, low-income country, with an agriculture-based economy, a developing private sector, and relatively weak governance environment.** Malawi's gross national income (GNI) per capita was estimated at US\$320 in 2016. Aid accounts for 22 percent of the gross domestic product (GDP). Malawi's economy is dominated by a small number of large firms. The World Bank's 'Doing Business Report of 2018' ranks Malawi at 110 out of 190 countries for the ease of establishing and running a business. According to the 2017 Corruption Perceptions Index reported by Transparency International, Malawi is the 122nd least corrupt nation out of 175 countries.

9. **The country has a stable government and a democratic multiparty system since the end of the one-party rule in 1993.** Malawi is engaged in regional integration, being a founding member of the Common Market for Eastern and Southern Africa (COMESA), the largest regional body in Africa. Malawi is also a member of the Southern African Development Community (SADC), a regional economic community comprising 15 Member States.

10. **Public procurement is an integral part of the government agenda.** Public procurement is estimated to account for more than 14 percent of GDP. Increase in efficiency in this area would have a substantive monetary and developmental impact, hence procurement ranks high on the government agenda. The Public Financial Management Rolling Plan (PFM RP) (2017–2020) (draft) identifies “strengthening the efficiency and transparency of procurement systems” among the key strategic areas. The Malawi Growth and Development Strategy (MGDS III) (2017–2022) emphasizes the need to continue with the PFM reforms, including public procurement. It is also noteworthy that introduction of an electronic government procurement (e-GP) system is a government priority area, and work is under way through the World Bank-funded Malawi Digital Migration Project.

Key Findings

11. **The assessment has identified good progress in the areas pertaining to public procurement in the legal, regulatory, and institutional framework.** However, challenges remain, which, if addressed, could significantly improve efficiency in the use of public funds and delivery of public services to the Malawi citizens.

12. **Progress was made in developing a legal and regulatory framework for public procurement starting in 2003 when Malawi adopted an UNCITRAL-based procurement law.** The latest procurement law, the Public Procurement and Disposal of Assets Act (No. 27 of 2017) (PPD Act), brought some improvements: (a) conferring an autonomous body status to the PPDA to strengthen its leading position in public procurement and (b) introducing a mandatory requirement to publish intention to award contracts above a specified financial threshold to achieve greater transparency and accountability. The legal framework is generally consistent with internationally accepted practice promoting open competition as the default procurement method,

promoting transparency by advertising procurement opportunities, allowing free access to public procurement markets, and enabling aggrieved bidders to appeal through a complaint mechanism.

13. **Furthermore, the government has adopted a supportive suite of laws on accountability, integrity, and transparency**, which is extremely relevant to public procurement, that is, the 2003 Public Audit Act, 2008 National Anti-Corruption Strategy, 2004 Corrupt Practices Act, 2013 Public Officer's (Declaration of Assets, Liabilities, and Business Interests) Act, and 2017 Access to Information Act.

14. **Finally, the institutional architecture for public procurement has been created**, consisting of the apex institution, PPDA, having the normative and regulatory function for public procurement; about 200 procurement entities (PEs) decentralized up to the local level; the Public-Private Partnership (PPP) Commission, regulated under a separate act; the National Audit Office (NAO), responsible for audits including procurement audits; and the Anti-Corruption Bureau (ACB) whose mandate is to ensure public servants' disclosure of interests and enforce provisions of the Corrupt Practices Act including on procurement-related corruption.

15. **Despite the progress achieved, the MAPS Assessment has identified significant gaps in the public procurement legal and regulatory framework** that may affect the efficiency, quality, and fairness of procurement outcomes. For instance, some key gaps relate to opportunities for conflict of interest in the responsibilities of the PPDA and the ACB, which cumulate two functions that are normally segregated: oversight and transaction clearance. This also undermines the complaints resolution function of the PPDA, making it less credible. Other substantive gaps relate to a multilayered, lengthy clearance process, omission in the law about two important existing central procurement bodies (Central Medical Stores Trust [CMST] and Central Government Stores [CGS]), the lack of proportionality and due process in bidders' debarment, and the absence of exclusion from the law for donors' funding.

16. **Enforcement of the law is weak and the procurement process cumbersome, while funding is a serious constraint.** Application of the law is weak with less competitive methods being predominant even though open competition is the default procurement method: 80 percent of prior reviewed contracts during 2016–2017 were awarded through restricted tender. Furthermore, the procurement process is inefficient, being overly complex with multilayered 'clearance' systems involving the PPDA, Government Contracting Unit (GCU), Ministry of Justice (MoJ), Treasury, and ACB (some of them are not even mandated by the law). There is lack of implementation in publication of contract award notices, noncompliance in preparation of procurement plans, delay in contract execution and payment of invoices, and poor record keeping. Finally, while the law requires availability of funding to start procurement, in practice often such funding is not available for contract execution due to resource constraints.

17. **Staff capacity to conduct procurement is still weak**, and they do not have appropriate guidance, effective capacity-building systems, and incentives to properly carry out their functions. Procurement is not recognized as a profession in practice and there is no career path. Furthermore, there are no updated implementing regulations, manuals, and Standard Bidding Documents for the new law, while the old ones are still effective, resulting in conflicting messages to practitioners. This is further compounded by the lack of clarity in the law regarding preference to disadvantaged

groups (indigenous black Malawians) and lack of regulation on micro, small, and medium enterprises (MSMEs) to operationalize them.

18. **Competition is low in the national market, while the private sector is facing, in practice, a series of constraints in accessing the public procurement market.** Currently, the market is dominated by a few large national firms. Overall, the private sector's access to public procurement opportunities is hindered by (a) access to credit because of high interest rates and onerous payment conditions, (b) difficulties in obtaining bidding documents due to the absence of an online public procurement portal with required functionality, and (c) the lack of dialogue between the private and public sectors—albeit the dialogue gained some momentum in the course of this assessment.

19. **Procurement oversight is not adequately enforced, and integrity of procurement seems to be a binding constraint.** The NAO lacks the capacity to carry out procurement audits. On the integrity side, the MAPS Survey underscores a perception that contract awards are 'predetermined', there is no effective appeals mechanism, and the noncompetitive methods are abused. Civil society does not play a role in monitoring public procurement and boosting the demand for good procurement. The 2018 SCD confirms that despite efforts to advance the anti-corruption agenda, implementation gaps are wide, and corruption and patronage remain endemic. The 2013 'cash gate' and the 2016 'maize-gate' drew the attention of politicians and public to public procurement and led to the passing of the PPD Act. However, the remedies provided in the new law, that is, mainly more controls and oversight, by themselves may not be enough to address the underlying causes of such events.

Key Recommendations

20. **To address the above implementation gaps and challenges,** a set of recommendations have been made. In identifying them, consideration was given to potential risks that the implementers may face: (a) the election calendar that may affect some of the recommendations and (b) the availability of human and financial resources. Therefore, interim measures, where possible, have been also identified and recommended.

21. **To address the systemic substantive gaps derived from the PPD Act,** including the conflict-of-interest issues related to the functions of the PPDA and ACB, and the other gaps identified above, an amendment of the law seems opportune. For the amendment, the PPDA needs to sensitize the law makers/relevant Commission of the Parliament on its value for the efficient and transparent use of public expenditures. In the short term, the PPDA could partially mitigate this conflict of responsibilities by ensuring appropriate segregation of powers between the departments that are responsible for review and clearance of procurement transaction and those responsible for complaints. An amendment will also address other gaps identified in the law.

22. **To improve the operational efficiency of the system** by streamlining the procurement processes through delayering the 'clearance' system; addressing the funding gap; monitoring performance; implementing e-GP; and strengthening the procurement function, including the formulation and implementation of a capacity-building strategy. In the short term, practitioners need clarity on application of the law: while regulations are being prepared, this could be achieved

through training and desk instructions on the law’s application and updated Standard Bidding Documents.

23. **To boost private sector participation in procurement**, the PPDA could organize regular outreach seminars for the private sector to build mutual trust through honest and open dialogue. Periodical surveys could help in assessing challenges and progress. The operationalization of MSMEs’ participation is also a priority.

24. **To streamline and strengthen oversight and improve integrity of the procurement systems**, better collaboration is required between the NAO and PPDA to regularly conduct procurement audits. Oversight can be also strengthened through the contribution of non-state actors by engaging civil society organizations (CSOs) and building their capacity to monitor procurement transactions through initiatives such as the ‘procurement watch’.

25. **To effectively advance the reform agenda, the PPDA needs to build support for procurement reforms** and their implementation from the authorizing environment and various stakeholders (private sector, CSOs, and other government agencies) by reaching out and seeking their support and feedback. To keep up the momentum, MASC could become a ‘Public Procurement Technical Advisory Group (PPTAG)’ to be hosted by the PPDA as a secretariat.

26. **Finally, for the procurement reforms to be successful**, technical reform efforts need to be coupled with strong leadership and commitment to change, including an effective coalition for good governance in public procurement advocating for a fair, transparent, and value for money procurement. This MAPS Assessment identified actions that limit discretion and address issues such as conflict of interest, increased transparency, and enhanced civil society involvement that, if effectively implemented, have the potential to improve governance and procurement outcomes.

Next Steps in the Implementation of Recommendations

27. **As the next practical step, to effectively implement the ‘Recommended Actions’, the government prepares a detailed Action Plan** including mechanisms to measure progress over time and appropriate funding in consultation with development partners.

Overview of Compliance

28. An overview of the findings of the assessment on the level of sub-indicators is summarized below. Each sub-indicator is color-coded to match the findings according to the following scheme:

- Green = Full compliance
- Yellow = Gaps identified
- Red = Substantial gap identified

- **Explanation of Red Flags.** In case ‘Red Flags’ are identified; the respective sub-indicator is marked with an asterisk (*). The ‘Red Flags’ highlight any element that could significantly impede the main goals of public procurement, could lie outside its sphere, and cannot be mitigated directly or indirectly. It could occur for sub-indicators with ‘gaps identified’ or ‘substantial gap identified’.

PILLAR I	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) Scope of application and coverage of the legal and regulatory framework
	1(b) Procurement methods *
	1(c) Advertising rules and time limits
	1(d) Rules on participation
	1(e) Procurement documentation and specifications
	1(f) Evaluation and award criteria
	1(g) Submission, receipt, and opening of tenders
	1(h) Right to challenge and appeal
	1(i) Contract management
	1(j) Electronic Procurement (e-procurement/e-GP)
	1(k) Norms for safekeeping of records, documents, and electronic data
1(l) Public procurement principles in specialized legislation	
2. Implementing regulations and tools support the legal framework.	2(a) Implementing regulations to define processes and procedures
	2(b) Model procurement documents for goods, works, and services
	2(c) Standard contract conditions
	2(d) User's guide or manual for procuring entities
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) Sustainable Public Procurement (SPP)
	3(b) Obligations deriving from international agreements

PILLAR II	
4. The public procurement system is mainstreamed and well integrated into the public financial management system.	4(a) Procurement planning and the budget cycle*
	4(b) Financial procedures and the procurement cycle*
5. The country has an institution in charge of the normative/regulatory function.	5(a) - Status and legal basis of the normative/regulatory institution function*
	5(b) Responsibilities of the normative/regulatory function
	5(c) Organization, funding, staffing, and level of independence and authority
	5(d) - Avoiding conflict of interest *
6. Procuring entities and their mandates are clearly defined.	6(a) Definition, responsibilities, and formal powers of procuring entities
	6(b) Centralized procurement body
7. Public procurement is embedded in an effective information system.	7(a) Publication of public procurement information supported by information technology
	7(b) Use of e-Procurement (e-GP)
	7(c) Strategies to manage procurement data
8. The public procurement system has a strong capacity to develop and improve.	8(a) Training, advice, and assistance
	8(b) Recognition of procurement as a profession
	8(c) Monitoring performance to improve the system

PILLAR III	
9. Public procurement practices achieve stated objectives.	9(a) Planning
	9(b) Selection and contracting*
	9(c) Contract management
10. The public procurement market is fully functional.	10(a) Dialogue and partnerships between public and private sector*
	10(b) Private sector's organization and access to the public procurement market*
	10(c) Key sectors and sector strategies

PILLAR IV	
11. Transparency and civil society engagement foster integrity in public procurement.	11(a) Enabling environment for public consultation and monitoring
	11(b) Adequate and timely access to information by the public
	11(c) Direct engagement of civil society
12. The country has effective control and audit systems.	12(a) Legal framework, organization, and procedures of the control system
	12(b) Coordination of controls and audits of public procurement
	12(c) Enforcement and follow-up on findings and recommendations
	12(d) Qualification and training to conduct procurement audits
13. Procurement appeals mechanisms are effective and efficient.	13(a) Process for challenges and appeals
	13(b) Independence and capacity of the appeals body
	13(c) Decisions of the appeals body
14. The country has ethics and anticorruption measures in place.	14(a) Legal definition of prohibited practices; conflict of interest; and associated responsibilities, accountabilities, and penalties*
	14(b) Provisions on prohibited practices in procurement documents
	14(c) Effective sanctions and enforcement systems
	14(d) Anti-corruption framework and integrity training
	14(e) Stakeholder support to strengthen integrity in procurement
	14(f) Secure mechanism for reporting prohibited practices or unethical behavior
	14(g) Codes of conduct/codes of ethics and financial disclosure rules*

For a detailed color chart refer to Annexure XII of Volume II, which describes the criterion met, criterion partially met, and criterion not met for all 210 assessment criteria covering 55 sub-indicators as above.

Chapter 1: Introduction

Strategic Context and Rationale of the Assessment

1. Public procurement is a crucial component of public services delivery, good governance, and sustainable economies with inclusive growth. With US\$9.5 trillion of spending by the government around the world, public procurement constitutes around 12–20 percent of a country’s gross domestic product (GDP) with such percentage being higher in some developing countries (source MAPS² version of September 2017). Given that significant public spending takes place through the public procurement system, interventions that focus on improved transparency and openness, monitoring of procurement results, access to independent appeals, and redress arrangements are central to a well-functioning public procurement system.

2. The World Bank is developing the Systematic Country Diagnostic (SCD) for Malawi. The concept paper review was conducted on September 15, 2017. The Country Partnership Framework (CPF) (2019–2023) will soon follow the SCD. The initial findings of the SCD identify a ‘weak governance environment (policy uncertainty, weak implementation, and ineffective institutions)’ as one of the key issues to be addressed. During the management discussion for a Development Policy Operation (DPO) in Malawi and during presentation of the same to the Board of Executive Directors of the World Bank, concerns about oversight of public procurement were raised. It was also noted that the procurement analytical base (CPAR³ 2004) was outdated and needed to be updated.

3. The recent procurement reviews conducted by the Office of the Director of Public Procurement (ODPP) indicate that record keeping is poor, use of Request for Quotations is common and late payments are leading huge public sector arrears, among others. Financial audits for fiscal year ended June 2012, June 2013, June 2014, June 2015, June 2016, and June 2017 also reveal similar substantive gaps such as poor procurement record keeping including the nonavailability of bid and other documents for audit purposes, irregularities in the bid evaluation processes and selection of firms, and so on.

4. **Fraud and corruption are rife and award of contracts to the right firm faces challenges, which have a great impact on governance.** In 2013/2014, about US\$50 million was siphoned from government coffers by civil servants in collusion with businessmen in what has been dubbed ‘cash gate’. This led to many bilateral donors withdrawing from the use of public systems in the implementation of donor-financed projects and budget support.

5. In 2011, the government adopted the Public Finance and Economic Management Reform Program (PFEM RP) 2011–2014 as its umbrella framework for providing greater coherence and guidance to reforms of its public financial management (PFM) systems. Under the program, steps were taken to improve transparency in the procurement system. The subsequent Public Financial Management Rolling Plan (PFM RP) 2017–2020 (draft) has the goal of restoring confidence in PFM systems that suffered from massive internal fraud mentioned above. ‘Component 8: Procurement’ under the ‘Theme 2: Budget Execution’ of the PFM RP envisages a MAPS

² MAPS = Methodology for Assessing Procurement Systems.

³ CPAR = Country Procurement Assessment Report.

Assessment for the country. The Malawi Growth and Development Strategy (MGDS III) (2017–2022) emphasizes that during its implementation, there will be a need to continue with the PFM reforms, including procurement, to overcome challenges in public service delivery.

6. After the CPAR of 2004, no comprehensive procurement assessment was carried out for Malawi by the World Bank. The ODPP carried out a limited Procurement Capacity Assessment in November 2007 in collaboration with United Nations Development Program (UNDP) following OECD-DAC Methodology for Assessment of National Procurement Systems with a view to prepare a plan for procurement capacity development and system strengthening. Another notable assessment was undertaken by the AfDB in 2011, which focused on readiness of the country’s procurement system for its use in the AfDB-financed procurements using the national competitive bidding (NCB) procurement method. An agreement to that effect was signed between the Malawi government and AfDB in 2014.

7. Thus, a new holistic procurement assessment was considered critical to identify gaps in the procurement system and prioritize reforms toward sustainable public procurement (SPP), linking with PFM, governance, technology, market, and citizenry to achieve economic ideals and socioeconomic objectives. The Malawi government, through the previous ODPP, now transitioned into the Public Procurement and Disposal of Assets Authority (PPDA), initiated the Country Procurement Assessment of Malawi in December 2017 using MAPS with support from the World Bank. The new version of MAPS is timely in the wake of the Sustainable Development Goals (SDGs). Its foreword states “Like the SDGs, MAPS will be relevant for all countries, irrespective of income level or development status. MAPS is related to Goal 12, which calls for the promotion of sustainable procurement practices in line with national priorities and policies, and Goal 16, which calls for effective and accountable institutions.”

8. Besides the World Bank, other development partners have been engaged in the field of procurement reform in the country in the past: the AfDB for procurement capacity building, Department for International Development (DFID) for development of Standard Bidding Documents, and UNDP for procurement capacity development strategy. At present, other development partners, specifically the EU and AfDB, are showing keen interest in public procurement reform as also the Public Investment Management Assessment (PIMA) intervention of the International Monetary Fund (IMF). The forthcoming World Bank DPO(s) is a good opportunity to pursue reform priorities that the study recommends. The outcomes of this assessment will provide a coordinated approach for donor’s support to the government’s reform efforts in public procurement.

9. This assessment is coming at a time when electronic procurement (e-GP) is being introduced in Malawi. Its interface with the e-GP project, which is expected to include business process reengineering, will create an opportunity to drive reforms beyond the digitization of public procurement.

Development Objectives of the Assessment

10. The assessment has the following development objectives: (a) assess the strengths and substantive gaps of the public procurement system in Malawi and benchmark it with international best practices and standards and (b) help the government prioritize efforts in public procurement

reform to enable (i) clear accountability mechanisms between the government, citizens, and private sectors; (ii) improved risk identification and management in the procurement cycle; (iii) application and monitoring of SPP; and (iv) integration of the public procurement system with the overall PFM, budgeting, and service delivery processes. Further, the assessment shall also focus on promoting professionalization of procurement functions and strengthening contracts management.

Methodology of the Assessment

11. The procurement assessment was guided by the MAPS new analytical framework with four pillars: (a) Pillar I: Legal, Regulatory and Policy Framework; (b) Pillar II: Institutional Framework and Management Capacity; (c) Pillar III: Procurement Operations and Market Practices; and (d) Pillar IV: Accountability, Integrity, and Transparency of the Public Procurement System. The framework is anchored in the 2015 OECD Recommendation of the Council on Public Procurement and reflects leading international procurement frameworks such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement (2011); the EU Directives on Public Procurement (2014); and the procurement frameworks used by multilateral development banks, countries, and implementing institutions.

12. The assessment was carried out for 14 indicators, 55 sub-indicators, and 210 criteria under the four pillars following the three-step approach of review: (a) review of the system, applying assessment criteria expressed in qualitative terms; (b) review of the system, applying a defined set of quantitative indicators; and (c) identification of substantive or material gaps (gap analysis).

13. The MAPS Assessment Team consisted of the World Bank Governance Global Practice, led by Solution and Innovations in Procurement (SIP) staff, and supported by an experienced international consultant along with two local consultants. On the e-GP aspect, the MAPS Assessment Team liaised with the e-GP adviser and acquired necessary inputs as needed for the study. The e-GP adviser has been hired by the government under the World Bank-funded Malawi Digital Migration Project to support the government in the implementation of e-GP in Malawi.

14. One of the critical elements of the assessment was to seek the government's commitment by establishing strong leadership arrangements for the assessment and thus, a MAPS Assessment Steering Committee (MASC), consisting of 15 members, was set up, led by the ODPP/PPDA. MASC is a multidisciplinary team, which includes representation from key ministries with roles in public procurement, parastatal organizations, civil society, the private sector, and donors. Four meetings were held by MASC, the first one on December 15, 2017, followed by three more meetings on January 23, 2018, March 6, 2018, and May 7, 2018. A letter from the government on the nomination of MASC is provided in Annexure VII to Volume II of this report.

15. To understand the political economy affecting public procurement in Malawi, mapping of stakeholders was done at an early stage of the assessment. These stakeholders were identified to cover a group of key counterparts such as the ODPP/PPDA; ministries such as the Ministry of Finance, Economic Planning, and Development (MoFEPD); key spending ministries, departments, and agencies (MDAs) such as the Ministry of Education, Science, and Technology; local city councils; utilities and central authorities such as the Water Board, electricity companies, Agricultural Development and Marketing Corporation (ADMARC), and Roads Authority; control

bodies such as the ACB and NAO; private sector bodies such as the Malawi Confederation of Chambers of Commerce and Industries (MCCCI) and National Construction Industry Council (NCIC); civil society organizations (CSOs) such as the Malawi Economic Justice Network (MEJN); development partners such as the AfDB, DFID, EU, and UNDP; and professional institutions such as the Malawi Institute of Procurement and Supply (MIPS). The assessment involved interviews with most of these entities.

16. A total of 91 procurement cases from 13 procuring entities (PEs) were sampled for analysis with respect to Indicator 9. The PEs covered the central government (four entities), local government (five entities), and parastatal organizations (four entities) mostly located in Lilongwe and Blantyre and a few in other cities. Obtaining sample cases required extensive coordination and cooperation with these entities where the advance request was sent by the ODPP/PPDA to provide the required documentation to the MAPS Assessment Team. The PEs were assured by the Assessment Team that there will be no attribution while aggregating the data and information in the Assessment Report. This report has named the 13 entities as Entity 1 to Entity 13. In addition, the analysis of cases was supplemented by procurement review reports of the ODPP and interviews with government personnel involved in procurement. Details of the assessment are covered in Annexure II of the report in Volume II.

17. Surveys were to seek feedback from the private sector, through SurveyMonkey. In total, 150 respondents were asked to provide electronic responses. A total of 88 responses were received (58 percent), of which about half the respondents completed most of the questions (total 79), which is considered a robust response. The survey included the following areas: (a) reasons that may lead to low participation in the bidding process, (b) if there is a mismatch between contract size and capacity of local contracting industry leading to ‘fake’ joint ventures with foreign firms, (c) integrity-related concerns regarding the bidding process, (d) applicable mechanisms for handling complaints, and finally (e) ease of bidding in case of procurement financed by donors versus through government’s own funds.

18. The initial results of the survey were validated in a consultation workshop with the private sector on ‘Public Procurement in Malawi - Improving Competitive Effectiveness of Private Sector’—hosted jointly by the ODPP and World Bank on March 8, 2018, in Lilongwe. Subsequently, after receipt of 88 responses, the outcome was shared with the private sector through a ‘Business Outreach Workshop’ on May 10, 2018, in Blantyre and feedback was obtained. The Assessment Team analyzed the findings of survey, and these are suitably reflected in the detailed assessment of Indicator 10, Indicator 13, and other indicators under Pillars III and IV. A summary of the results of these interactions in the consultation workshop and responses from the survey is provided in Annexure VI to this report in Volume II.

19. There were significant challenges in data collection due to the absence of any functioning web portal, e-GP platform, and Open Data Sources. Serious challenges were also encountered in obtaining all the records of the sample cases (procurement files). Another challenge was in carrying out analysis of the legal framework, due to the recent enactment of the new law, the Public Procurement and Disposal of Assets Act (PPD Act), which replaced the Public Procurement Act (PPA) of 2003. As Pillar I relates to “law in the books” and for the other three pillars the analysis relates predominantly to practical implementation and operation of the framework, the assessment

has looked at both the PPD Act and PPA 2003. These have been discussed and applied as relevant to the specific pillars and indicators and the given criteria.

20. The process followed for the validation of the results is provided in Chapter 5: Information regarding Validation.

21. A list of entities for sample cases and persons met by the Assessment Team is provided in Annexure IX to this report in Volume II.

Chapter 2: Analysis of Country Context

Political, Economic, and Geostategic Situation of Malawi

22. Malawi is one of Southern Africa's most densely populated countries, with a population of about 17 million people spread over an area of 118,484 square kilometers. With 200 people per square kilometer, Malawi's land is under extreme pressure. The country's population growth rate averages 2.8 percent per year, and the country's young and growing population is expected to reach 20 million by 2025.

23. Malawi is a landlocked, low-income country with an agro-based economy. Approximately, 85 percent of Malawi's population lives in rural areas and agriculture remains the primary economic activity. The majority of the population engages in smallholder, rain-fed agriculture production, and only about 4 percent of the cultivatable land is under irrigation.

24. Malawi's gross national income (GNI) per capita was estimated at US\$320 in 2016. The Human Development Index was estimated at 0.445 in 2014, positioning the country at 173 out of the 188 countries. According to the third Integrated Household Survey (IHS 3), absolute poverty at the national level declined marginally from 52.4 to 50.7 percent between 2005 and 2011. Although poverty in urban areas reduced from 25.4 to 17.3 percent, this was counterbalanced by worsening rural poverty from 55.9 to 56.6 percent and an increase in the rural-urban divide.

25. Extensive reliance on basic farming methods and reliance on rain-fed agriculture, together with a growing population, has made food security a recurring challenge and adds to pressure on land use, soil fertility, and forest resources. In recent years, Malawi has suffered from weather shocks at an increasing frequency, including simultaneous floods and droughts in early 2015, followed by another major drought in 2016.

26. Malawi's economy is dominated by a small number of large national firms. For example, in 2012, the five largest business enterprises accounted for 62 percent of total exports, while the 20 largest enterprises accounted for 81 percent. In aggregate, the vast majority of exporters are small, with more than 65 percent of firms exporting goods at a value less than US\$50,000 per year. There are constraints for growth for small companies, with a large share of the government's demand for goods and services favoring established operators.

27. The World Bank's 'Doing Business Report of 2018' ranks Malawi 110 out of 190 countries for the ease of establishing and running a business. Also, due to a challenging business environment, manufacturing firms in Malawi realize only 68 percent of output they could be capable of producing, given their equipment and manpower, a share equal to that for Zambia but far less than for firms in Tanzania (82 percent). Another constraint to growth of Malawi's private sector is the high cost of domestic and international trade.

28. There are high costs for trade due to the long distance to seaports for overseas trade, an overreliance on road transport, lack of competition on some trade routes (especially those through Mozambique), and delays in clearing cargo at border crossing points and at ports in neighboring Mozambique and Tanzania. High trade costs make it difficult for Malawian firms to gain access to low-cost imported inputs and take advantage of export opportunities, including within the

region. Given the low-income levels and relatively modest population size, Malawi's domestic market provides limited opportunities, particularly in sectors where economies of scale are only possible if international markets are accessible.⁴

29. Formal independence was granted to Malawi on July 6, 1964. Malawi has had stable governments and a democratic multiparty system since the end of one-party rule in 1993. It has since held presidential and parliamentary elections rather peacefully.

30. Malawi is a unitary state, that is, all powers of state are vested in the central government, which operates through various ministries and departments. The Constitution provides for powers of state to be split between the executive, the judiciary, and the legislature, supposedly on an equal basis. In reality, however, the Constitution over-concentrates authority in the executive, particularly the Presidency.

31. Malawi has experimented with decentralization for a long time. In Malawi, decentralization and local governance have a long but uneasy history, especially as a result of the extensive centralization of the state that took place during the 30 years of one-party rule. The Constitution recognizes and regulates local governments, and this is supplemented by the Local government Act, which outlines how local governments should be administered in Malawi.

32. In Malawi, political and economic marginalization is pegged to gender and geographical location (urban/rural, region), class, and race. Historically, women, rural communities, peasant farmers, and workers have been susceptible to exploitation and have been shunted to the periphery of political and economic power by laws and policies that promoted the interests of men, urban elites, and colonial and postcolonial landowners and employers. Other marginalized groups are people living with albinism and other physical disabilities.

33. Malawi ranks 44 on the Fragile States Index out of 175 countries, according to the 2017 ranking. Generally, Malawi is not a fragile state as order and stability are maintained, key actors or institutions have legitimacy although societal expectations and capacity to meet them are not in balance, and the effects of external and internal shocks make survival or improvements in well-being difficult. Conflicts are infrequent in Malawi because there are no real or perceived differences between two or more groups of people in their interests, wants, needs, fears, and concerns that cannot easily be reconciled.

34. According to the 2017 Corruption Perceptions Index reported by Transparency International, Malawi is the 122nd least corrupt nation out of 175 countries. Corruption rank in Malawi averaged 89.35 from 1998 until 2017, reaching an all-time high of 122 in 2017 and a record low of 43 in 2000. Corruption by public officials presents a major administrative and financial burden on firms. Corruption creates an unfavorable business environment by undermining the operational efficiency of firms and raising the costs and risks associated with doing business. Inefficient regulations constrain firm efficiency as they present opportunities for soliciting bribes where firms are required to make 'unofficial' payments to public officials to get things done.

⁴ World Bank. 2018. *From Falling Behind to Catching Up*. Washington, DC: World Bank.

35. The Malawi Economic Monitor of November 2017 observes that in Malawi, weak governance and rampant corruption have been major constraints to economic development, with the numerous attempts to strengthen governance systems having had only limited results. The recent Malawi Country Economic Memorandum (CEM), launched in 2017, also identifies the inability of the government to reduce corruption and the fraudulent use of public resources as one of the major challenges. The CEM also points out that public procurement in major programs, such as in fertilizers and goods and services contracts and infrastructure, has been a major challenge and the source of several grand corruption cases in recent years. Corruption is increasingly seen as a challenge to business activity. It also indicates that corruption stands out as a more significant issue in Malawi than in neighboring Tanzania and Zambia, where corruption was not identified as one of the top obstacles. In Malawi, the percentage of companies that reported having been asked for bribes by public officials rose from 13.7 percent in 2008 to 24.0 percent in 2014.

36. Malawi is a founding member of the Common Market for Eastern and Southern Africa (COMESA), the largest regional body in Africa, which was established in 1994 and currently has 19 member countries covering a population of 390 million. To enhance competition and transparency in both private and public procurement arrangements, it is essential that regulations and procurement procedures be harmonized across the Free Trade Area, and this is the aim of the regional approach to public procurement under COMESA. There are a number of agreements by COMESA that interface with the public procurement law of Malawi, for example, thresholds for international competitive bidding (ICB), Procurement Management Information Systems, and so on. Malawi is also a member of the Southern African Development Community (SADC), a regional economic community comprising 15 Member States. Established in 1992, SADC is committed to regional integration and poverty eradication within Southern Africa through economic development and ensuring peace and security. In addition, SADC is guided by the Protocol on Trade that demands members to implement measures within the Community, which promotes competition and prohibits unfair business practices.

37. The World Development Report (WDR) 2017: Governance and Law provides lessons for Malawi on how best policies may fail to achieve their intended goals and how short-term interests of maintaining power and stability may limit the ability of governments to commit credibly to longer-term policies and induce coordination and cooperation among those policies needed to implement change. Such lessons need to be taken into account while pushing for reforms in Malawi.

38. Procurement oversight is not adequately enforced, and integrity of procurement seems to be a binding constraint. The NAO lacks the capacity to carry out procurement audits. On the integrity side, the MAPS Survey underscores a perception that contract awards are ‘predetermined’, there is no effective appeals mechanism, and the noncompetitive methods are abused. Civil society does not play a role in monitoring public procurement and boosting the demand for good procurement. The 2018 SCD confirms that despite efforts to advance the anti-corruption agenda, implementation gaps are wide, and corruption and patronage remain endemic. The 2013 ‘cash gate’ and the 2016 ‘maize-gate’ drew the attention of politicians and public to public procurement and led to the passing of the PPD Act. However, the remedies provided in the new law, that is, mainly more controls and oversight, by themselves may not be enough to address the underlying causes of such events.

The Public Procurement System and its Links with Public Financial Management and Public Governance System

39. The key institution responsible for the normative and regulatory function for procurement is the PPDA. The PPDA is responsible for the regulation, monitoring, and oversight of public procurement and disposal of assets in Malawi. The PPDA also carries out procurement reviews and is responsible for handling complaints. The PPDA is required to establish and maintain institutional links with MIPS and other professional bodies in regulating the ethical behavior and standards of supply chain management professionals.

40. According to the PPD Act, the public procurement system has a decentralized institutional structure with Controlling Officers under MDAs responsible for supervising the work of Procuring and Disposing Entities (PDEs). There are about 200 PEs including at the local government level.

41. There are some other procurement bodies with the function of centralized procurement. Central Government Stores (CGS) was established by a fund order in the 1960s to procure and store materials in bulk for distribution in all government ministries and departments. The other central body that was established along with CGS was the Central Medical Stores, now a trust (CMST⁵). However, these bodies are not mentioned in PPA 2003 or the PPD Act and thus lack legal standing in terms of their role and responsibility in procurement.

42. The NAO, by means of its mandate of ‘audit’, is also responsible for procurement audit. However, it has not been exercising this function mostly because of lack of capacity and resources.

43. There is a well-functioning ACB with the mandate to ensure that there is disclosure of interest by public officers and to enforce provisions of the Corrupt Practices Act, including on procurement-related corruption.

44. The decision of contract award goes through a series of clearances by various control bodies: the ODPP/PPDA, Government Contracting Unit (GCU), Treasury, and Ministry of Justice (MoJ). It also requires clearance from the ACB for single source procurement or ‘any high-value procurement’. Such clearances are required in some of the cases without any mandate in PPA 2003 or in the PPD Act such as for the GCU, Treasury, and MoJ.

45. The Public-Private Partnership (PPP) Commission, based in Blantyre, is mandated to deal with PPP activities, which are regulated through a separate PPP Act (No. 27 of 2011). In accordance with Part VI, Procedures for Awarding Contracts (Section 26–31) of this act, it follows steps of feasibility study, pre-qualification, request for proposal with evaluation criteria, and due treatment of unsolicited bids through a competitive process.

46. The procurement process and contracts implementation are affected by weak PFM, which has tended to transmit recurring shocks to fiscal indiscipline, in turn exacerbating macroeconomic instability and delayed payment to contractors. There have been recurring instances of fiscal slippages, where realized deficits significantly exceeded those planned at the beginning of the year.

⁵ CMST = Central Medical Stores Trust.

These slippages often result from both a shortfall in resources and unplanned expenditures undertaken during the year.

47. There are several other important stakeholders in the field of public procurement as follows:

- (a) **Competitions and Fair-Trade Commission.** A body mandated to ensure fair competition in trade.
- (b) **Private sector bodies.** (i) MCCCCI, (ii) NCIC, (iii) Malawi Building and Civil Engineering Contractors and Allied Trades Association, and (iv) Indigenous Business Association of Malawi. These bodies are quite active but have not been engaged much by the ODPP/PPDA to promote them as key other party in public procurement.
- (c) **Nongovernmental organizations (NGOs).** The NGOs in Malawi are represented by a nodal body Council for Nongovernmental Organizations in Malawi.
- (d) **CSOs.** The main CSO body in Malawi is the MEJN.
- (e) **Development partners.** Besides the World Bank, the other development partners engaged in the field of public procurement are the AfDB, EU, DFID, United States Agency for International Development (USAID), and UNDP.
- (f) **Professional institutions.** Besides MIPS, the other institutions providing procurement courses are The Polytechnic, Malawi Institute of Management, Malawi College of Accountancy, and Pentecostal Life University.

48. Most of the abovementioned bodies have a keen interest in the field of procurement in one or the other role; however, somehow, the avenues of engagement have been lacking.

National Policy Objectives and Sustainable Development Goals

49. MGSD III of September 2017 supports the sustainable development strategy-identified Key Priority Areas (KPAs) to maintain a balance between economic, social, and environmental considerations. It is expected that progress in the KPAs will have a multiplier effect benefitting Malawi's economy, society, and environment in an integrated fashion. The general policy objectives are yet to be translated into a comprehensive SPP policy.

50. With regard to the social dimension of sustainability, the PPD Act provides for preference of indigenous black Malawians in NCBs, though such provisions lack clarity on their application in a practical manner.

51. With regard to the economic dimension of sustainability, particularly to help develop micro, small, and medium enterprises (MSMEs) offering goods, works, consultancy, or other services grown and performed by a local enterprise, the PPD Act has provisions for preferences and some reservations. These provisions, however, have not been made operational through appropriate regulations.

52. Public procurement reforms in Malawi started around 1996 after the government and development partners prepared a diagnostic study on public procurement, which noted that public

procurement was not effectively managed. However, until 2003 not much attention was paid by the government to public procurement reform, relying on stop-gap measures such as dissolution of the Central Tender Board (May 2000) and transfer of its function to the GCU, which reported to the Office of the President and Cabinet (OPC), and issuance of Circulars by the OPC in June 2000 on Interim Procurement Guidelines for goods, consultancy services, works, and donor-funded projects. The Interim Procurement Guidelines were not in line with sound international public procurement practices, as they did not have a legal mandate and were poorly enforced and monitored. During this period, due to the above limitations, coupled with an acute shortage of procurement skills, the public procurement system was not conducive to economy, efficiency, and transparency, which also included excessive use of quotations and precontract negotiations.

53. The first PPA for Malawi was enacted in 2003 (hereinafter the PPA 2003). It was based on the UNCITRAL Model Law on Procurement of Goods, Construction, and Services (1994). It became effective on August 1, 2003, and this act purported to decentralize the procurement function to the PEs and also established the ODPP as an oversight body. Procurement Regulations and Desk Instructions were issued in 2004. With formation of the ODPP on August 1, 2003, the GCU was no longer mandated to operate in the area of procurement.

54. The World Bank, in close cooperation with Malawi government and with support from development partners, carried out a Country Procurement Assessment in 2003, and the CPAR was issued on May 24, 2004. The CPAR presented several recommendations on the legislative framework, procurement system and processes, capacity to conduct procurement, and effects of corruption in procurement process. The CPAR observed that the ODPP needs to maintain its independence as a non-biased review and regulatory body without direct executive influence in tender award.

55. According to the CPAR of 2004, the overall risk that reforms might fail was considered as ‘average’ and that proactive and sustained involvement of the government, private sector, civil society, and the donor community was needed to mitigate the risks and overcome possible setbacks. However, it is apparent that the intended goals are far from being achieved.

56. Based on a paper published by the World Bank on Assessing and Responding to Malawi’s History of Institution Reform (December 2017), it is seen that generally such reforms have been led by donors and not with good results. To quote from this paper “donors have dominated the reform processes, and under their influence, the state has withdrawn from its development mission.” There is a pattern of “form” dominating “function” confirmed in the Public Expenditure and Financial Accountability (PEFA) Assessment of 2011—a gap between law and implementation in Malawi where donor support is typically associated with improving de jure concentrated reform (in contrast to de facto and deconcentrated reforms).

57. From the foregoing, the key lesson learned was that full engagement of the government was a must for the success of the assessment and implementation of recommendations. Considering this, the assessment process was made to be led by the PPDA right from the beginning with the World Bank taking the position of facilitator and resource provider. The 15-member MASC included important key stakeholders from critical sectors of the economy and was chaired by the PPDA. The Concept Note was prepared jointly with the PPDA, and the whole process of assessment was carried out with its full involvement.

58. According to the PFM RP 2017–2020 (currently in draft stage), the second-generation programmatic approach to PFM reforms in the country, the strategic areas that will be targeted for improvements under procurement are strengthening the efficiency and transparency of procurement systems and institutional structures and the professional standards of procurement staff cadre, including the review of existing institutions, and strengthening contract management.

59. As mentioned in Chapter 1, MGDS III (2017–2022) emphasizes that during its implementation there will be a need to continue with the PFM reforms, including procurement, to overcome the challenges being faced. Further, poor contract management is considered an important area to improve, as MDAs have, generally, low capacity to monitor contracts, especially large-scale procurement and building contracts.

60. Further to the above key drivers for procurement reforms, introduction of the e-GP system is also a priority area of the government now. In this respect, the work has also just started through the World Bank-funded Malawi Digital Migration Project. Under this project, six key representative PEs will be piloted with the intention of subsequently rolling out to all the PEs in due course. The implementation of the e-GP system for the six pilot agencies is expected to be done over three years from July 2018.

61. The government understands that the procurement system of Malawi has not matured and that it is not at par with their neighboring countries such as Zambia. This MAPS Assessment, which is the first of few such assessments in the region, has propelled Malawi into the limelight as being a country interested in procurement reform in Southern Africa, and with this visibility it is expected that the government would continue to drive this reform agenda. Further, this comprehensive assessment is being undertaken after a gap of 14 years and MAPS being a universal tool, the government is aware that development partners and other international institutions would like to assess the government's commitment for procurement reform based on the recommendations of MAPS. In view of these incentives, the prospect of taking the procurement reform forward appears bright.

62. One important challenge is with respect to amendment of the PPD Act, which was adopted in December 2017. There could be reluctance on the part of the government to table an amendment before the Parliament within a year of its adoption.

Chapter 3: Assessment

63. This section of the report discusses the findings of the assessment in relation to each of the pillars and indicators based on the qualitative review of the system and the application of quantitative indicators as defined in MAPS. It describes the main strengths and substantive gaps and identifies the areas that show material or substantial gaps and require action to improve the quality and performance of the system. Substantial gaps are classified into categories by the risk they may pose to the system, and actions are recommended to address these substantive gaps. In case factors that have been identified are likely to prevent appropriate action to improve the public procurement system, ‘red flags’ are assigned. The detailed assessment results covering each sub-indicator and each criterion are provided in Volume II of the Assessment Report with back-up material and documentation in support of this analysis. The Assessment Team has used the guidance and assessment criteria as given in the MAPS version of September 2017 (draft), which was finalized without any substantive changes in 2018.

Pillar I. Legal, Regulatory and Policy Framework

64. Pillar I assesses the existing legal, regulatory, and policy framework for public procurement. It identifies the formal rules and procedures governing public procurement and evaluates how they compare to international standards. The practical implementation and operation of this framework is the subject of Pillars II and III. The indicators within Pillar I embrace recent developments and innovations that have been increasingly employed to make public procurement more efficient. Pillar I also considers international obligations and national policy objectives to ensure that public procurement lives up to its important strategic role and contributes to sustainability.

Summary of Pillar I

65. This section of the assessment focuses on the “law in the books” and analyzes the main features of the PPD Act (No. 27 of 2017), which became effective on December 21, 2017. It also offers a gap analysis focusing primarily on the PPD Act while referring comparatively to PPA 2003. At the time of the assessment, the regulations and desk instructions (that is, secondary legislation) corresponding to the PPD Act were in draft form and therefore the gap analysis identifies the areas that can be further addressed in these regulations and instructions as well as through amendments to the PPD Act. The PPDA has informed all Controlling Officers that while subsidiary legislation under the new act is in the final stages of development, the regulations and other instruments issued under PPA 2003 shall remain in force to the extent that they are consistent with the new law till such time they are replaced.

66. In view of the above, this analysis has also relied on Public Procurement Regulations of 2004 (PPR 2004) and draft of PPR 2018 (which is based on PPR 2004) and related Desk Instructions of 2003 and draft of Desk Instruction of 2018 (which are also similar) with the expectation that the finalized PPR of 2018 and Desk Instructions of 2018 would continue to retain the useful features of PPR 2004 and Desk Instructions of 2003 and make these consistent with the PPD Act with suitable improvements.

67. To date, the Standard Bidding Documents and Request for Proposal posted on the ODPP's website (known as 'PPDA' under the PPD Act) are based on PPA 2003 and PPR 2004, and they have not been updated to reflect the legislation that was made effective from December 21, 2017. Essentially, these standard procurement documents follow the standard procurement documents of international financial institutions, especially those of the World Bank. It is expected that these documents will be suitably adapted consistent with the PPD Act to reflect features of international good practices, lessons learned from implementation of PPA 2003, and recommendations following this assessment.

68. A detailed list of applicable procurement laws and regulations for Malawi is provided in Annexure X in Volume II of the Assessment Report.

69. The PPD Act was enacted with the intention to improve PPA 2003. There are certain notable improvements such as, elevating the status of a normative and regulatory office, headed by a director, to the PPDA with a Director General competitively selected and serving as Chief Executive Officer of the PPDA. The PPDA shall be an autonomous body with members drawn from professional institutions and senior government officials as ex officio members. The PPD Act has also introduced a provision akin to a 'stand-still period', which requires PDEs to publish the intention to award contracts above a threshold in two widely circulated newspapers and on the PPDA's website for 14 days before signing the contract. This is expected to bring greater transparency and accountability, if administered efficiently. However, certain anomalies have crept in the legislation, possibly due to lack of consultations with key stakeholders while finally adopting the act in Parliament. Major issues/gaps are as follows:

- Discrepancy between 'Functions' and 'Powers' of the PPDA (Sections 5 and 6 of the PPD Act), particularly with respect to the role of issuing 'no objection' to contract awards for procurement activities above a financial threshold. This issue is covered in detail under Pillar II, as it specifically relates to the institutional framework.
- The vetting role of the ACB of single-source or any high-value procurement (Section 37 (11) of the PPD Act) is inconsistent with assigned audit, control, and oversight functions of the ACB.
- There is no specific exemption from application of the law for donor-funded procurement in the PPD Act as in PPA 2003 (Section 3 (3)).
- Preference of 60 percent under NCB to indigenous black Malawians and 40 percent to others according to Section 44 (10) of the PPD Act lacks clarity for application.
- The provision for small and medium enterprises (SMEs) to improve their share in public procurement (Section 36 of the PPD Act) is general and would need detailed regulations to effectively implement the same.
- Procurement Regulations, Desk Instructions, and Standard Procurement Documents as available at the time of assessment are based on PPA 2003 and are not updated for consistency with the PPD Act, though the PPDA has issued instructions that "while subsidiary legislations (Regulations, Desk Instructions, Standard Bidding Documents) under the new Act is in the final stages of development, the Regulations and other instruments issued under the Public Procurement Act (2003) shall remain in

force to the extent that they are consistent with the new law till such time they are replaced.” This incompatibility between the primary and secondary legislation will likely undermine the successful implementation of the new procurement law.

- e-reverse auction is not included as one of the procurement methods in Section 37 of the PPD Act, though ‘reverse auction’ appears under Section 2 of the PPD Act ‘Interpretation/definitions’.
- The complaints review body is not independent as it is under the subordination and control of the PPDA. To ensure the independence of such complaints review body, there is a need for clear segregation of those functions that could create potential for conflict of interest. For example, the ‘no objection’ role of the PPDA together with vetting of a single-source procurement are in direct conflict of interest with the PPDA’s role as reviewer of complaints.
- The concept of sustainable public procurement is not reflected well in public procurement strategies, rules, regulations, and procurement documents.
- Debarment due to bidder’s failure to sign a contract, submit a performance security, or fulfill the contractual obligations is disproportional. Additionally, requirements for debarment after a due process are not included in the act.
- Provisions on confidentiality of procurement process and confidentiality of information obtained during the procurement process are not complete, thus creating a gap in terms of obligations by PDEs.

70. Indicator-wise findings are summarized in the following paragraphs.

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

71. The indicator covers the different legal and regulatory instruments established at varying levels, from the highest level (national law, act, regulation, decree, and so on) to detailed regulations, procedures, and bidding documents formally in use.

Findings

72. **Strengths.** The formation of the PPDA is a right step in elevating the normative and regulatory function from an office, headed by a director, to the PPDA with a Director General selected competitively and serving as Chief Executive Officer of the PPDA. The PPDA shall be an autonomous body with members drawn from professional institutions and senior government officials as ex officio members. According to the legal system in Malawi, laws, decrees, regulations, and procedures are adequately recorded and organized hierarchically. The procurement act (PPD Act) is the primary legislation; PPR and desk instructions constitute the secondary legislation. In case of discrepancy, the procurement act takes precedence over the secondary legislation. Regulations and Desk Instructions, though outdated, are well structured and detailed. The PPD Act covers goods, works, and services including consultancy services. There is a PPP Act (No. 27 of 2011), which provides transparent procedures for awarding PPP contracts. Procurement methods are established unambiguously—the default method of procurement is open tender. Procurement opportunities are publicly advertised, and sufficient time is provided for

potential bidders to obtain the bidding documents and respond to the advertisement. Participation of interested parties is generally fair and there is no legal barrier to participation. Submission, receipt, and opening of tender procedures are defined and well regulated. Participants to the procurement proceedings have the right to challenge decisions through complaints and appeals. Functions for contract management are well defined. The act provides for a retention policy of five years for procurement records as detailed in the act. The PPD Act has a provision akin to a ‘stand-still period’, which requires PDEs to publish the intention to award a contract in newspapers and the PPDA’s website for 14 days for a contract above specified financial thresholds before signing the contract. This is expected to bring greater transparency, if administered efficiently.

73. **Substantive gaps.** The act stipulates a vetting role of the ACB for single-source or ‘any high-value procurement’, which is inconsistent with the audit/control function of the ACB according to the Corrupt Practices Act. The PPD Act allows participation of state-owned enterprises (SOEs) even when SOEs are under the supervision of the agency responsible for the tendering process. This does not ensure a level playing field for all bidders. The PPD Act Section 44 (10), on Preference in National Competitive Bidding of 60 percent to indigenous black Malawians and 40 percent to others, lacks clarity. There is no separate act for the utilities sector, which may affect efficiency and effectiveness given the commercial nature and mandate of public service delivery. The PPD Act does not include specific exemptions from application of the act for donor-funded procurement, as was the case in PPA 2003. The use of electronic reverse auction as one of the procurement methods is not specified, though the act defines reverse auction in the section of interpretation/definition.

74. A tabulation on substantive gaps, risk classifications (L = Low, M = Medium, H = High), and recommendations is provided in the following table.

Overview of substantive gaps with risk and recommendations

S. No ⁶	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	✓ The ACB’s vetting role of single-source, or any high-value procurement is inconsistent with the ACB’s audit/control function and could lead to delays and inefficiencies.	H	Act to be amended to remove ACB’s vetting role
2.	Participation of SOEs when an SOE is under the supervision of the agency responsible for tendering process affects fair competition.	M	Act to be amended to exclude participation by agency that is dependent of the PE/Ministry
3.	Preference in NCB for black Malawians requires further clarity.	M	Act to be amended
4.	There is no separate regime for utilities sector despite the commercial or industrial nature of the entities involved.	M	Consider developing a separate act for utilities sector, modelled after the public procurement law, with such adjustments as are needed to safeguard the option of more flexible practices appropriate to entities engaged in commercial or industrial activity.

⁶ S. No = Serial number.

S. No ⁶	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
5.	No specific exemptions from application of the act for donor-funded procurement	M	Act to be amended
6.	e-reverse auction not included as a method of procurement.	L	Act to be amended
7.	Provision for SMEs to improve their participation requires further clarity.	M	Act or regulations to be amended
8.	The act does not describe the minimum due process requirements for exclusion and debarment.	M	Act to be amended
9.	Provisions on confidentiality are not complete.	M	Act to be amended
10.	A comprehensive review is required to clarify the link between open tender and national/international competitive bidding, use of life cycle costing, and information to be made available in the public domain and so on as given in the detailed assessment.	M	Act and/or regulation to be amended

Indicator 2. Implementing regulations and tools support the legal framework

75. This indicator verifies the existence, availability, and quality of implementing regulations, operational procedures, handbooks, model procurement documentation, and standard conditions of contract. Ideally, the higher-level legislation provides the framework of principles and policies that govern public procurement. Lower-level regulations and more detailed instruments supplement the law, make it operational, and indicate how to apply the law to specific circumstances.

Findings

76. **Strengths.** PPR 2004 is comprehensive and is divided into 10 parts covering introduction, institutional and organizational arrangements, procurement planning, bidder qualifications, procurement methods, contract formation, contract administration, information and communication technology for public procurement, participation by small enterprises, and finally accountability and transparency in public procurement with 196 regulations. The Desk Instructions of 2003 (akin to a handbook/manual) provide working procedures. Standard Bidding Documents and Standard Contract Conditions are comprehensive and mostly modelled after Standard Bidding Documents of the World Bank. These documents provide a framework of detailed instruments to supplement the law and how to apply it in specific circumstances.

77. **Substantive gaps.** Despite provisions in PPA 2003 (and now in the PPD Act) that the ODPP (now the PPDA) has the responsibility of reviewing and updating the Procurement Regulations, Desk Instructions, and Bidding Documents, these documents have not been updated to ensure consistency with the law while also considering implementing experiences in Malawi. With the assistance of the AfDB, an update was carried out for PPR 2004 and Desk Instructions of 2003 to make them consistent with the PPD Act. However, these documents are still in draft form. The PPDA has issued instructions (Ref No ODPP/01/22) dated February 1, 2018, stating that “while subsidiary legislation (Regulations, Desk Instructions and Standard Bidding

Documents) under the new Act is in the final stages of development, the Regulations and other instruments issued under the Public Procurement Act (2003) shall remain in force to the extent that they are consistent with the new law till such time they are replaced.”

78. The above instruction further states that the PPDA is available for any clarifications. In retrospect, the PPDA should have issued all Regulations, Desk Instructions, and updated Bidding Document before making the newly adopted PPD Act effective. It is not efficient for the PEs to routinely rely on the PPDA’s guidance on how to implement certain parts of the procurement process. This will not only lead to delays and inefficiencies but would place the burden on the PPDA to provide timely and sound advice.

79. There are numerous references in the PPD Act on elaboration of the act “through subsidiary legislation,” “issue a no-objection for procurement above a set prior review threshold as set by regulation,” “as prescribed in the regulations,” “in accordance with the regulations,” “as prescribed by PPDA,” “as set by the Director General,” “as approved by the Director General,” “or such formation at Section 58,” “The Director General may promulgate codes of conduct to guide the behavior of public officials and bidders and suppliers involved in public procurement or disposal process,” “seek approval from Director General for choice of procurement method,” and so on. However, though the PPD Act was made effective from December 21, 2017, the secondary legislation that includes the Regulations and Desk Instructions are still in draft form, which will create difficulties in implementation of these provisions.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	Regulations, Desk Instructions, and Bidding Documents are not finalized and made consistent with the PPD Act. This gap will lead to difficulties and inefficiencies in conducting procurement and may result in inconsistencies in the interpretation of the law.	H	The PPDA to (a) review and update to ensure that there are no inconsistencies between the law and Regulations, Desk Instructions, and model procurement documents and complete it as early as possible and (b) conduct another update once the law has been amended.

Indicator 3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

80. This indicator assesses whether horizontal policy objectives, such as goals aiming at increased sustainability, support for certain groups in society, and so on, and obligations deriving from international agreements, are consistently and coherently reflected in the legal framework, that is, whether the legal framework is coherent with the higher policy objectives of the country.

Findings

81. **Strengths.** The government appears cognizant of the need for sustainable public procurement, as reflected by the inclusion of the definition of “socio-economic policies” in the PPD Act, which means the environmental, social, economic, and other policies a PDE is required to consider in procurement and disposal proceedings. Some provisions related to the development and inclusion of SMEs and indigenous black Malawians are also included in the act.

82. **Substantive gaps.** The application of sustainable public procurement is yet to be reflected in public procurement strategies, rules, regulations, and procurement documents. For example, the abovementioned provision for indigenous black Malawians requires further clarity for application, and the provision on SMEs has not been made operational yet. In addition, appropriate institutional arrangements and tools are lacking.

83. Regarding obligations deriving from international agreements, PPA 2003 had a clear provision under Section 3 (3) that to the extent the act conflicts with procurement rules of a donor or funding agency, the application of which is mandatory pursuant to an obligation entered into by the government, the requirements of those rules shall prevail. It appears that there is a major gap in the PPD Act as it should not be applicable for donor-funded procurement as was the case in PPA 2003.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	The application of sustainable procurement is yet to be reflected in public procurement strategies, rules, regulations, and procurement documents and institutional arrangements and tools are lacking.	M	As mentioned in Indicator 1, the provision on the inclusion of indigenous black Malawians needs clarity for application, and the provision on SMEs needs to be operationalized by suitable regulations. Further, the bidding documents also need to be updated to include such provisions. Also, the environmental, social, health, and safety (ESHS) requirements, the use of life cycle costing in evaluation, and requirements regarding the purchase of energy efficient equipment will require amending the bidding documents and issuing guidance notes/instructions. Application of the supplementary MAPS module ‘Sustainable Public Procurement’ to comprehensively assess the integration of sustainability in Malawi’s public procurement system as an input to the country’s sustainable development strategy and reforms.

Pillar II. Institutional Framework and Management Capacity

84. Pillar II assesses how the procurement system defined by the legal and regulatory framework in a country is operating in practice, through the institutions and management systems that make up overall governance in its public sector. Pillar II evaluates the effectiveness of the procurement system in discharging the obligations prescribed in the law, without gaps or overlaps. It assesses whether (a) it is adequately linked with the country’s PFM system, (b) institutions in charge of necessary functions are in place, and (c) the managerial and technical capacities are adequate to undertake efficient and transparent public procurement processes.

Summary of Pillar II

85. As practical implementation and operation of the legal framework under Pillar I is the subject of Pillar II according to the Methodology, this part of the assessment refers to PPA 2003, to the extent it relates to practices so far, and the PPD Act for practices to be followed in future. Based on the detailed assessment of each sub-criterion under Indicators 4, 5, 6, 7, and 8, major issues under Pillar II are as follows:

- There is no link between procurement planning, allocation of budget, and availability of funds to ensure timely payment. This uncertainty of payment leads to lack of competition, increased prices, and delays in delivery of facilities and services.
- The ‘Functions’ and ‘Powers’ of the PPDA, as given under the PPD Act, are fraught with conflict-of-interest concerns. The regulatory, monitoring, and oversight role conflicts with the power to issue ‘no objection’ to the award of high-value contracts, use of less competitive methods, and amendments of contracts. The ‘no objection’ role itself conflicts with the complaints review mandate of the PPDA and other powers such as debarment of suppliers and declaration of misprocurement.
- ‘Powers’ also includes conducting investigations and issuing sanctions with appropriate disciplinary and punitive measures against PDEs. This combined set of responsibilities creates an internal conflict of interest among the various powers. It will surely affect the ability of the PPDA to discharge its primary functions as a normative and regulatory entity, which, as the assessment shows, are already suffering under the ODDP/PPDA. The PPD Act (Section 6) refers to the power of the PPDA to declare misprocurement. Given that this is a term normally adopted by multilateral development banks (MDBs) (as a financing decision), clarifying this concept in the act, or implementing regulations is paramount for its usefulness and practical application.
- The decision of contract award goes through a series of clearances by various control bodies: ODPP/PPDA, GCU, Treasury, and MoJ. It also requires clearance from the ACB for single-source procurement and procurement above certain threshold values. Some of those clearances are required in practice without any mandate in PPA 2003 or in the PPD Act as for the GCU, Treasury, and MoJ.
- Though in practice these entities have a role in procurement, it appears that the PPD Act has missed regulating the role of organizations such as the Central Medical Stores Trust (CMST) and CGS, which carry specialized/consolidated procurement, raising the question whether they will continue to have this role in the future.
- The PPDA’s website, developed a decade ago, is inadequate as it lacks the technical capability to capture and monitor data to be posted directly by PDEs and is also not fully functional, leading to a lack of transparency.
- There is a lack of reliable data/statistics and monitoring of performance to improve the system.

- There is no training strategy or strategy for professionalization with coordination between the PPDA and MIPS and other professional institutions on procurement, including contract management, to meet the demands of the public and private sectors.
- The government is implementing e-GP through the World Bank-funded Malawi Digital Migration Project.

86. Indicator-wise findings are summarized in the following paragraphs.

Indicator 4. The public procurement system is mainstreamed and well integrated with the public financial management system

87. This indicator focuses on how well integrated the procurement system is with the PFM system, given the direct interaction between procurement and financial management, from budget preparation to planning treasury operations for payments.

Findings

88. **Strengths.** Section 39 of the PPD Act requires PDEs to plan procurement activities with a view to achieving maximum value from public expenditure. The requirement of no solicitation of tenders without availability of funds is covered under PPR 2004 and the draft regulations of 2018.

89. **Substantive gaps.** There is lack of implementation on procurement planning and its link to budget preparation. This leads to lack of funds, uncertainty of payment, and nonpayment (including instances of contract price reduction due to such lack of funds), which is one of the major gaps in the procurement system of Malawi that could lead to bidders not participating in bids (also supported by survey results) or quoting higher prices to factor in such uncertainties. There are also delays in processing of invoices.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	✓ Lack of funds, uncertainty of payment, and nonpayment (including instances of contract price reduction due to such lack of funds)	H	Procurement plans to be prepared, updated regularly, and used as an input to budget preparation. Budget funds to be committed and appropriated on time, covering all contractual obligations. Availability of funds to be ensured before undertaking any procurement and payments made to the contractor/supplier once due.
2.	A transparent system of processing of invoices and authorization of payments is not available publicly and not clear to potential bidders.	M	National procedures for processing of invoices and authorization of payments to be reinforced, published, and consistently applied. e-GP system under development to address this issue.

Indicator 5. The country has an institution in charge of the normative/regulatory function

90. This indicator refers to the normative/regulatory function in the public sector and its proper discharge and coordination. The assessment of the indicator focuses on the existence, independence, and effectiveness of these functions and the degree of coordination between responsible organizations. Depending on the institutional setup chosen by a country, one institution may be in charge of all normative and regulatory function. In other contexts, key functions may have been assigned to several agencies, for example, one institution might be responsible for policy, while another might be in charge of training or statistics. As a general rule, the normative/regulatory function should be clearly assigned, without gaps and overlaps. Too much fragmentation should be avoided, and the function should be performed as a well-coordinated joint effort.

Findings

91. **Strengths.** The PPDA was established on April 3, 2018, as a public office responsible for the normative/regulatory function as defined in the PPD Act.

92. **Substantive gaps.** Under good international procurement practice, regulatory and oversight bodies should be independent and should not be involved in procurement operations or activities. The involvement of the PPDA in specific procurement procedures makes it part of the procurement decision-making process, which creates conflicts with its oversight function and its role in the review of complaints. It is also a good practice that the bodies responsible for debarring/sanctioning companies act independently from entities involved in the procurement decision-making process.

93. In this respect, the PPD Act establishes the ‘PPDA’ as the primary agency responsible for the ‘function’ of regulation, monitoring, and oversight of public procurement. The PPDA, however, is vested with multiple other roles as ‘powers’ in procurement operations (such as issuing no objection to use of less competitive methods such as restricted tender, single-source procurement, and vetting of contract recommendation for procurement above certain thresholds) and the review of complaints, declaration of misprocurement, and investigation and debarment of bidders. This concentration of functions (with additional powers) within the PPDA presents fundamental concerns regarding independence and potential conflicts of interest.

94. On the drafting side, there are overlaps and inconsistencies between ‘Functions’ and ‘Powers’ of the PPDA. Two articles to describe the role of the PPDA are not needed. This duplication and inconsistency in the definition of functions further exacerbate the issues of conflict of interest.

95. Further, the funds given to the PPDA are not sufficient to discharge its mandated responsibilities under the PPD Act.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	✓ The concentration of functions within the PPDA (including those covered under powers) presents fundamental concerns regarding independence and potential conflicts of interest that need to be addressed.	H	Amend the PPD Act for segregation of powers of the PPDA to avoid conflict of interest, in particular to remove <ul style="list-style-type: none"> • ‘No objection’ role and • complaints review role. The government should immediately consider establishing a task force to assess the various options for allocation of powers, especially for the ‘no objection’ role and complaints review. Until the PPD Act is amended based on recommendations of the task force, the following actions should be taken: <ol style="list-style-type: none"> (a) Departments dealing with the ‘no objection’ and complaints review should be run independently from the other departments of the PPDA. (b) Process for issuing ‘no objections’ should be streamlined by putting in place operating procedures with strict timelines and reasonable documentation. (c) Thresholds for ‘no objection’ should be set high enough so that only a small portion of contracts is being prior reviewed by the PPDA.
2.	Funds given to the PPDA are not sufficient to discharge its mandated responsibilities under the PPD Act.	M	Malawi government to conduct an assessment on the sufficiency of funds allocated to the PPDA to discharge its functions effectively. Annual strategic plans should be developed to plan the activities of the PPDA and monitor implementation.

Indicator 6. Procuring entities and their mandates are clearly defined

96. This indicator assesses whether (a) the legal and regulatory framework clearly defines the institutions that have procurement responsibilities and authorities, (b) there are provisions for delegating authorities, procurement staff, and other government officials to exercise responsibilities in the procurement process, and (c) a centralized PE exists.

Findings

97. **Strengths.** The PPD Act defines relevant terms for PDEs, Controlling Officers, Internal Procurement and Disposal Committee, Procurement and Disposal Units, and Ad hoc Evaluation Team and their responsibilities.

98. **Substantive gaps.** The multilayer clearance process causes inefficiencies and erodes accountability of PEs. There are multiple layers of vetting and approval of contract award decisions (the PPDA, GCU, MoJ, Treasury, and ACB), leading to inefficiencies and lack of accountability by PDEs.

99. Only 50 percent of 197 PEs are with a designated, specialized procurement function.

100. It appears that the PPD Act has missed to regulate the role of existing organizations, such as CMST and CGS, which carry out specialized/consolidated procurement. This is a significant gap with regard to lack of enabling provision in the act to define the role of such organizations to handle the procurement of medicines/medical supplies and items of common use for several PEs/user departments, which could be combined to bring better economy and efficiency including through use of Framework Agreements.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	There are multiple layers of vetting and approval in contract award.	H	Adequate delegation to be provided to PEs (commensurate with their capacity).
2.	About 50 percent of PEs lack designated, specialized procurement function.	M	All PEs to have designated, specialized procurement function staffed with qualified professionals.
3.	The PPD Act does not define the role of central procurement bodies such as CGS and CMST.	M	Benefits of centralized procurement bodies to be analyzed, and based on the outcome of the analysis, the act to be amended to specify the mandate of central procurement bodies.

Indicator 7. Public procurement is embedded in an effective information system

101. The objective of this indicator is to assess the extent to which the country or entity has systems to publish procurement information, efficiently support the different stages of the public procurement process through application of digital technologies and manage data that allow for analysis of trends and performance of the entire public procurement system.

Findings

102. **Strengths.** The PPD Act (and PPA 2003) promotes application of digital technology including e-Procurement (e-GP). The government is implementing e-GP through the World Bank-funded Malawi Digital Migration Project. In March 2018, a study was carried out to evaluate readiness of e-GP, advise the government regarding the key decision areas, and prepare a workplan for implementation of e-GP. Initially, key features of the e-GP system will be piloted in about five purchasing agencies, which is expected to include purchasing agencies at the local government level also. Then, the adoption of e-GP system will be gradually expanded across all PEs.

103. **Substantive gaps.** The ODPP/PPDA’s website was created more than a decade ago. It is not fully functional. In the absence of compliance on reporting by PEs, data/information published is incomplete. An online data portal is yet to be created. This lack of transparency has been exacerbated by the absence of an e-GP system in the country with the private sector complaining of difficulties and cost and expenses to obtain tender documents due to multiple trips over long distances. Further, there is a risk of delay in the implementation of e-GP compared to the original roadmap, as the effectiveness of the Malawi Digital Migration Project was extremely delayed.

Overview of substantive gaps with risk and recommendations

S. No	Substantial Gaps/ ✓ Red Flags	Risk	Recommendations
1.	The ODPP/PPDA’s website is outdated and not fully functional.	H	The ODPP/PPDA’s website needs to be revamped by populating it with recent data to provide public access to procurement information and allow for any meaningful analysis of procurement data.
2.	Absence of an e-GP system	M	Introduction of an e-GP system to be fast-tracked– to start with the functionality of registration of suppliers, publication of tender notices, and online availability of tender document and publication of contract award data (including intention to award). Procurement data to be collected and analyzed (trends, levels of participation, efficiency and economy of procurement, and compliance with requirements) to evaluate policies and operations.

Indicator 8. The public procurement system has a strong capacity to develop and improve

104. This indicator focuses on the strategies and ability of the public procurement systems to develop and improve. Three aspects should be considered: (a) whether strategies and programs are in place to develop the capacity of procurement staff and other key actors involved in public procurement, (b) whether procurement is recognized as a profession in the country’s public service, and (c) whether systems have been established and are used to evaluate the outcomes of procurement operations and develop strategic plans to continuously improve the public procurement system.

Findings

105. **Strengths.** There are a number of institutions in the country engaged in the professionalization of the procurement function, particularly the newly created MIPS under MIPS Act No.3 of 2016, which has a wide mandate to set professional standards of procurement and supply chain management professionals in collaboration with other learning institutions, develop ethical standards, set and conduct professional examination, and conduct training and research.

106. **Substantive gaps.** Before 2016, the function of training and professionalization of the procurement function rested with the ODPP. MIPS was created in 2016 by MIPS Act of 2016; however, this institution is still not fully functional to discharge its wide mandate. Procurement is not recognized as a profession with defined job description at each professional level with appointments and promotion made on competitive basis. As mentioned earlier, only 99 out of 197 PEs have a designated and specialized procurement function. There is a huge gap in the coverage of training as evident from the budget document (No. 5 for 2017/18) as the projected number of institutions to be coached and mentored is 10 and staff to be trained is 15, which translates to about 2–3 percent of the requirement for about 200 PDEs. A performance measurement system on qualitative and quantitative aspect that is required to support strategic plans and results framework to improve the system is missing.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	MIPS, established in 2016, is yet not fully functional to discharge its duties and responsibilities.	M	Effective coordination is required between MIPS and the PPDA and other learning institutions to develop training strategy on procurement including contracts management (supported by deficiencies identified under Indicator 9 (c)) to meet the demands of the public and private sectors.
2.	Procurement is not recognized as a profession with positions defined at different professional levels, appointments based on qualifications, and staff evaluation and development.	M	Procurement function to be recognized by the country's public service as a profession akin to the accountancy function. All PEs to be staffed with trained procurement professionals. The PPDA and MIPS to collaborate for regular evaluation and periodic adjustment of training programs.
3.	Training is grossly inadequate in terms of content, coverage, and frequency. Regular evaluation of training program and periodic adjustment is lacking.	H	'Skill gap inventory' to be prepared for the procurement function to match needs of the system. Frequency and coverage of training to be increased.
4.	Performance measurement system required to support strategic plans, and results frameworks to improve the system is missing.	M	Performance measurement system on qualitative and quantitative aspects—an initiative which was undertaken in 2007 with UNDP support—to be reassessed, adjusted, and implemented. Strategic plans should be developed to improve the public procurement system.

Pillar III. Public Procurement Operations and Market Practices

107. This pillar looks at the operational efficiency, transparency, and effectiveness of the procurement system at the level of the implementing entity responsible for managing individual procurements (PE). In addition, it looks at the market as a means of judging the quality and effectiveness of the system in putting procurement procedures into practice. This pillar focuses on how the procurement system in a country operates and performs in practice.

Summary of Pillar III

108. This part of the assessment has looked at procurement operations and market practices through (a) analysis of 91 sample cases covering 13 entities and (b) a survey on 'Perception of Private Sector on Public Procurement in Malawi'. Both these activities were carried out jointly with the ODPP/PPDA. The initial results of the survey were validated through consultation workshops with the private sector to get direct feedback. Details of the approach and methodology for both the analysis of sample cases and the survey are provided in Annexure VI to Volume II of this assessment report. The following are the key findings under this pillar:

- Based on review of sample cases, significant issues were found such as the absence of procurement planning, problems in evaluation of proposals, delays in contract award, delayed implementation, and most importantly delay and uncertainty of

payment and lack of funds to make payment once supplies are made, work executed, or services rendered. The payment issue is one of the most critical gaps in the entire procurement and contract execution process in Malawi.

- Procurements are done on an ad hoc basis; there is no guarantee for adequate funding. Out of 91 cases assessed, 27 cases had no procurement plan, representing 29.7 percent of noncompliance. Even where available the procurement plan is not updated and not used as a tool for contract monitoring.
- Based on the survey, there is a perception that procurement methods are unfairly applied, which is supported by data on restricted tender (80 percent by value in 2016/20–17 for prior review/‘no objection’ cases by the ODPP/PPDA) even though open tender is the default method of procurement.
- As mentioned earlier, there are no detailed regulations to implement the provisions of Section 36 of the PPD Act to improve the share of contracts by MSMEs. It is the perception of the private sector that most of the contracts are awarded to few large firms with ‘connections’.
- Lack of availability of the bidding document through electronic means is a constraint for doing business—based on feedback from the private sector, potential bidders need to make extensive efforts and incur huge expenses to obtain a tender document.
- The perception of the private sector is that there is no level playing field for local bidders compared to foreign bidders due to the lack of access to credit, high interest rates, and payment conditions.
- Based on the results of the surveys, there is a perception that contract awards are ‘predetermined’, which leads to a lack of participation.
- No sector market analysis was available nor was any study done on how to remove constraints that inhibit the private sector’s capacity to access the public procurement market.
- There is an evident lack of dialogue between the private and public sector; however, it has gained some momentum in the course of this assessment.

109. Indicator-wise findings are summarized in the following paragraphs.

Indicator 9. Public procurement practices achieve stated objectives

110. The objective of this indicator is to collect empirical evidence on how procurement principles, rules, and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government, and achievement of horizontal policy objectives.

111. The assessment of Indicator 9 required the selection and review of a sample of actual procurement transactions. A total of 91 samples were selected, covering 13 PEs.

Findings

112. **Strengths.** Nil.

113. **Substantive gaps.** There is no needs analysis. Procurements are done on an ad hoc basis and there is no guarantee of adequate funding for contracts awarded and this leads to PEs owing suppliers money or failing to pay on time.

114. There is lack of enforcement of the ODPP/PPDA regarding the publication of contract awards. Contract award data for 2017/2018 are not available on the PPDA’s website—now a mandatory requirement for intention to award a contract. For earlier years, contract award data published on the ODPP’s website for contracts above MKW 50 million (about US\$70,000) are prior review/no objection cases, but adequate details on contract award are not available. The contract award data should include complete details as follows: (a) the name of each bidder who submitted the bid; (b) bid prices as read out at the time of bid opening; (c) evaluated price for each bid; (d) the names of the bidder whose bids were rejected as nonresponsive or not meeting qualification criteria or not evaluated, with reasons thereof; and (e) the name of the winning bidder, the final total contract price, and duration and summary of scope of contract.

115. The data for ‘no objection’/prior review for 2016/2017 show that 80 percent of the total value of contract was awarded as restricted tenders even though open tender is the default method of procurement.

116. For 16 cases for which information of delayed implementation was available, there was an average delay of 72 percent as time overrun over specified scheduled completion/delivery time. Copies of invoices and payment vouchers are not retained by procurement units. This makes it difficult to trace whether payments are done on time.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	Procurements are conducted without proper planning and guarantee for adequate funding.	H	Need to enforce the preparation, use, and update of procurement plans and availability of funds for all procurement.
2.	There is lack of enforcement to publicize contract awards.	H	PE to promptly publish notice of contract awards on the PPDA’s website (including intention to award contract according to Section 48 of the PPD Act) for contracts above thresholds including full details The new Regulation to include such provisions for full transparency.
3.	✓ There is predominance of use of less competitive methods (restricted tender) even though open tender is the default method of procurement.	H	For all cases of less competitive methods such as restricted tender/single-source, sufficient justification to be recorded in procurement file and contract award to be published.

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
4.	Serious delays in contract implementation. Payment records not maintained by procurement units.	H	There is an urgent need to train procurement and contract management staff on all aspects of contracts management including record keeping.

Indicator 10. The public procurement market is fully functional

117. The objective of this indicator is primarily to assess the market response to public procurement solicitations. This response may be influenced by many factors such as the general economic climate; policies to support the private sector and a good business environment; strong financial institutions; the attractiveness of the public system as a good, reliable client; the kind of goods or services being demanded; and so on.

Findings

118. **Strengths.** Nil.

119. **Substantive gaps.** There is a lack of dialogue and engagement with stakeholders, including the private sector, when adopting new laws/regulations. Absence of user-friendly and easily accessible e-GP systems creates constraints for participation including difficulties and expenses incurred in obtaining tender documents by potential bidders. There is a grave perception that contract awards are ‘predetermined’ and awarded to those with ‘connections’. Neither any sector market analysis nor any study is available to determine how to remove constraints that inhibit the private sector’s capacity to access the procurement market. The bidders have grievance that there is no level playing field for local bidders compared to foreign bidders due to lack of access to credit, high interest rates, and payment conditions. There is a perception that MSMEs’ share of contract awards is limited and that awards are made to a few large firms.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	Lack of dialogue and engagement with stakeholders when adopting new laws/regulations	M	Stakeholder consultation, particularly with the private sector, to be done before finally adopting procurement legislations in future.
2.	Absence of e-GP systems to facilitate the obtaining of tender documents by potential bidders	M	Fast-track introduction of e-GP, including functionality ensuring online access to tender documents.
3.	✓ Grave perception that contract awards are ‘predetermined’ and awarded to those with ‘connections’	H	Steps needed to ensure that (a) full justification is recorded for use of less competitive method, (b) complaints are handled promptly and fairly, (c) publication of opportunities and contract award is done, and (d) regular dialogue is done with the business community through business outreach seminars.

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
4	Neither sector market analysis available nor any study done on how to remove constraints that inhibit private sector's capacity to access procurement market	H	Sector market analysis to be done on how to remove constraints that inhibit private sector's capacity to access procurement market in a particular sector.
5.	Not a level playing field compared to foreign bidders due to lack of access to credit, high interest rates, and payment conditions	M	government to consider ways to remove constraints such as delays in payment to local contractor/suppliers (refer to Indicator 4 above).
6.	A perception that MSMEs' share of contracts is limited, and awards are made to few large firms	M	Suitable regulations for the operationalization of SME provision in the PPD Act are required (see above).
7.	✓ There is lack of availability of funds and uncertainty and delays in payments.	H	The availability of funds in the course of execution of contract is ensured and steps taken to avoid delay in payments (refer to Indicator 4 also).

Pillar IV. Accountability, Integrity, and Transparency of the Public Procurement System

120. Pillar IV has four indicators that are considered necessary for a system to operate with integrity, which has appropriate controls that support implementation of the system in accordance with the legal and regulatory framework and appropriate measures in place to address the potential for corruption in the system. It also covers important aspects of the procurement system, which comprise stakeholders, including civil society, as part of the control system. This pillar takes aspects of the procurement system and governance environment to ensure that they are defined and structured to contribute to integrity and transparency

Summary of Pillar IV

121. In terms of existence of laws and regulations, there is ample evidence on provisions in the areas of accountability, integrity, and transparency through the Public Audit Act No.6 of 2003, National Anti-Corruption Strategy of 2008, Corrupt Practices Act No. 17 of 2004, Public Officers (Declaration of Assets, Liabilities, and Business Interests) Act No. 22 of 2013, and Access to Information Act No. 13 of 2017. However, implementation of these rules and regulations is weak, and there is not much evidence of enforcement. Major findings under this pillar are as follows:

- There is lack of consultation with all stakeholders when adopting changes in the public procurement system/legislation. For example, while enacting the PPD Act, features such as vetting by the ACB or 'no objection' role of the PPDA were introduced without due consultation.
- CSOs do not appear to have any role in procurement monitoring, according to the legislative framework. In any event, there are a limited number of CSOs active in Malawi in procurement and contracts management.

- The NAO, by means of its mandate of audit, is responsible for procurement audits. However, the NAO has not been exercising this function mostly because of a lack of capacity and resources. On the other hand, the ODPP has been conducting procurement reviews to ascertain efficiency and compliance with applicable legislation and has a reasonable level of capacity in this regard. However, due to budget constraints, it has been doing this in a limited manner covering only a few agencies every year.
- The review of complaints and appeals is not effectively handled, leading to a lack of trust in the system by the private sector.
- ‘Conflict of interest’ and definition of ‘close relatives’ in procurement transactions are difficult to implement due to different definitions in various acts, which leads to inconsistent application and misuse of these provisions.

122. Indicator-wise findings are summarized in the following paragraphs.

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

123. Civil society, in acting as a safeguard against inefficient and ineffective use of public resources, can help to make public procurement more competitive and fairer, improving contract performance and securing results. Governments are increasingly empowering the public to understand and monitor public contracting. This indicator assesses two mechanisms through which civil society can participate in the public procurement process: (a) disclosure of information and (b) direct engagement of civil society through participation, monitoring, and oversight.

Findings

124. **Strengths.** Nil.

125. **Substantive gaps.** There is no legal mandate for CSOs in procurement monitoring. There is no enabling environment for CSOs to contribute to the strengthening of integrity in public procurement and no evidence for direct participation of citizens in procurement through consultations, observation, or monitoring. As a result, there are a limited number of CSOs active in Malawi in procurement and contract management. It was learned that there was no consultation with CSOs while finally adopting the PPD Act as was the case for the private sector.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	There is lack of suitable enabling legal/regulatory and policy provisions for citizen participation in the procurement process. There are a limited number of CSOs active in Malawi in the area of	M	CSOs to be encouraged to participate in procurement process and contract management through initiative similar to ‘procurement watch’ and establish programs to build the capacity to understand, monitor, and contribute to improving the public procurement system; to take inputs from civil society into account.

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
	procurement and contracts management.		To allow for the implementation of the Open Contracting Principles and Open Data Standards, the legal framework would need to be amended and this would need to be considered when developing e-GP.
2.	Absence of any e-GP and Open Contract Data	M	To permit more effective participation by CSOs through introduction of e-GP (see above).

Indicator 12. The country has effective control and audit systems

126. The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. Equally, the effectiveness of controls needs to be reviewed. For this indicator, ‘effectiveness’ means the expediency and thoroughness of the implementation of auditors’ recommendations. The assessors should rely, in addition to their own findings, on the most recent PEFA assessments and other analyses that may be available. This indicator has four sub-indicators (A–D) to be assessed.

Findings

127. **Strengths.** There is a Public Audit Act 2003, which is based on international practices and establishes a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies.

128. **Substantive gaps.** No procurement audits were carried out by the NAO although required by PPA 2003. There was no coordination between the PPDA and NAO on procurement audits/reviews.

129. At the time of assessment, only the PEFA assessment carried out in 2011 was available and based on PEFA 2011 it is difficult to establish the gaps related to PFM performance, particularly in quantitative terms.

130. The NAO does not have adequately trained personnel and resources are insufficient for carrying out procurement audits.

Overview of substantive gaps with risk and recommendations

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
1.	No procurement audits are being carried out by the NAO.	H	Procurement audits by the NAO to be carried out in close cooperation with the PPDA. Written standards to be established.
2.	No recent PEFA assessment was done at the time of assessment. Based on PEFA 2011 it is difficult to establish the gaps in PFM performance, particularly in quantitative terms.	M	PEFA assessment to be completed at the earliest possible date (since done now in FY19)

S. No	Substantive Gaps/ ✓ Red Flags	Risk	Recommendations
3.	The NAO does not have adequately trained personnel to conduct procurement audits, and resources are insufficient for carrying out procurement audits.	M	Training programs for internal and external auditors to be established. There must be collaboration between the PPDA and Auditor General so that procurement audits can be reinforced. The PPDA needs to provide its technical expertise and input to the NAO so that such procurement reviews by the PPDA could be incorporated in the audit report by the NAO on a regular basis.

Indicator 13. Procurement appeals mechanisms are effective and efficient

131. Pillar I cover aspects of the appeals mechanism as it pertains to the legal framework, including creation and coverage. This indicator further assesses the appeals mechanisms for a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

Findings

132. **Strengths.** There is a well-structured legislation with a three-tier process through PDE, then the PPDA, and finally High Court.

133. **Substantive gaps.** The independence of the appeal body under the ODPP/PPDA is questionable as the ODPP/PPDA is also engaged in prior review of procurement.

134. There are no data available on appeals resolved within the time frames specified in the law, and there is a lack of transparency as the outcome of the appeal proceeding is not being published.

135. The private sector has the perception that the complaints are not being effectively handled, leading to a lack of trust in the system.

Overview of substantive gaps with risk and recommendations

S. No	Substantial Gaps/ ✓ Red Flags	Risk	Recommendations
1.	The independence of appeal body under the PPDA is questionable as the PPDA is also engaged in prior review of procurement.	H	Recommendations made under Indicator 5
2.	There are no data available on appeals resolved within the time frames specified in the law.	H	Urgent attention to be given by the PPDA to ensure that the records of the appeal information are properly captured, statistics compiled, and analyzed periodically.
3.	There is a lack of transparency as the outcome of the appeals proceedings is not being published.	H	This needs to be urgently addressed. Appeals decisions can be published with immediate effect on the PPDA's existing website. Procedures governing decision-

S. No	Substantial Gaps/ ✓ Red Flags	Risk	Recommendations
			making to be published on the PPDA's website.
4.	The private sector has perception that the complaints are not being effectively handled, leading to lack of trust in the system.	H	The business outreach seminars (suggested earlier) must include discussion on the complaint handling mechanism and its effectiveness.

Indicator 14. The country has ethics and anti-corruption measures in place

136. This indicator assesses (a) the nature and scope of anti-corruption provisions in the procurement system and (b) how they are implemented and managed in practice. This indicator also assesses whether the system strengthens openness and balances the interests of stakeholders and whether the private sector and civil society support the creation of a public procurement market known for its integrity.

Findings

137. **Strengths.** Presence of laws and regulations including the National Anti-Corruption Strategy and ACB.

138. **Substantive gaps.** There are inconsistent definitions of 'conflict of interest' and 'close relatives' in procurement-related matters in the PPD Act; Corrupt Practices Act; and Public Officers Declaration of Assets, Liabilities, and Business Interest, leading to its misuse or potential for misuse.

139. There is a lack of coordinated training programs for public officials, control and oversight bodies, and the private sector on awareness of integrity and transparency.

140. There is a lack of digital information, which leads to noncompliance on reporting and monitoring cases of fraud and corruption, debarment, declaration of assets.

141. There is a lack of participation by CSOs in the full contracting cycle consistent with the Open Contracting Global Principles, which is also linked to absence of e-Procurement that could enable existence of reliable data and analytics once implemented.

Overview of substantive gaps with risk and recommendations

S. No	Substantial Gaps/ ✓ Red Flags	Risk	Recommendation
1.	✓ Inconsistent definitions of 'conflict of interest' and 'close relatives' in different legislations	H	Regulation on procurement should clarify 'conflict of interest' and definition of 'close relatives' in procurement transactions.
2.	Lack of coordinated training programs for public and private officials on integrity and transparency	M	Periodic training programs for the public officials and coordinated outreach to the private sector to enhance their awareness on anti-corruption measures and gain

S. No	Substantial Gaps/ ✓ Red Flags	Risk	Recommendation
			their active support to improve integrity and trust in the system.
3.	Lack of digital information on reporting and monitoring of cases of fraud and corruption, debarment, and declaration of assets	M	The PPDA and ACB websites to list names of debarred firms. Compile and make transparent statistics on number of firms and individuals suspended or debarred and found guilty of fraud and corruption in public procurement. Enforcement of existing rules on code of conduct and declaration of assets.
4.	Lack of participation by CSOs in monitoring of procurement to contribute to improving integrity	M	Refer to recommendations in Indicator 11.
5.	As part of the anti-corruption framework, no special mechanism is in place for systematically identifying corruption risks and mitigating these risks in the public procurement cycle.	M	The anti-corruption framework to be amended to include mechanisms for systematically identifying corruption risks and mitigating these risks in the public procurement cycle.

Chapter 4: Consolidated Key Findings and Recommendations

Key Findings of the Assessment Results against the Four Pillars

142. The key findings from the qualitative and quantitative assessment of the Malawi public procurement system, are detailed in the following paragraphs:

Pillar I. Legal, Regulatory and Policy Framework

- There has been progress in developing a legal and regulatory framework for public procurement. The PPD Act was enacted with the intention to improve PPA 2003 and some good practices have been incorporated in the act such as conferring an autonomous body status to the PPDA to secure more objective decision-making and introduce a mandatory requirement to publish award intention for high-value contracts to allow for greater transparency and accountability.
- The analysis identified the following substantive gaps: the vetting role of the ACB on single-source and high-value procurement is inconsistent with its oversight functions, articles on preference under NCB for certain social categories lack clarity for proper application, mechanisms to increase the SMEs' participation in public procurement need to be further developed, there is a lack of proportionality in applying the debarment remedy in some cases, and sustainable procurement is not addressed adequately. Gaps have been also identified in the level of independence of the complaint mechanism at the PPDA level and how confidentiality of information is addressed at the PDE level. The interim guidance raises questions of compatibility between the new law and secondary regulations that may undermine implementation of the law, and procurement under international financing agreements is not addressed in the act.

Pillar II. Institutional Framework and Management Capacity

- The institutional architecture of public procurement has been set in place and the procurement plan was mandated for PDEs.
- Substantive gaps have been identified as follows: weak link between procurement plan, allocation of budget, and availability of funds that negatively affects timely payment, level of competition, price levels, and delivery time; the 'Functions' and 'Powers' of the PPDA, as given under the PPD Act, create conflict of interest situations; multiple layers of vetting and approval of contract awards by the PPDA, GCU, MoJ, Treasury, and ACB lead to inefficiency and lack of accountability by PDEs; the PPD Act does not regulate the role of existing organizations such as CMST and CGS, which carry specialized/consolidated procurement impending potential gains in economy and efficiency for the bulk of government recurrent procurement; the PPDA website is not fully functional, limiting transparency; there is a lack of reliable statistics and monitoring of performance to improve the system; and there is no capacity-building strategy that would support the professionalization of public procurement.

Pillar III. Procurement Operations and Market Practice

- While there is progress in the application of the law, significant issues were found in the procurement processes of reviewed activities, including lack of consistency in procurement planning, problems in evaluation of proposals, delays in contract award, and poor record keeping. While open competition is the default method of procurement, data of the PPDA for the ‘no objection’ cases handled during 2016–17 show that 80 percent of the total value of contracts were awarded following ‘restricted tender’, which is a matter of concern. In the sample cases, such procurement methods were adopted without appropriate market research to help identify an optimal procurement strategy. In 35 percent of cases, procurement was done without a procurement plan, as required under the law.
- With regard to the private sector participation, surveys and workshops revealed the following gaps. Currently, the market is dominated by a few large national firms. Overall, the private sector’s access to public procurement opportunities is hindered by (a) access to credit because of high interest rate and onerous payment conditions; (b) difficulties in obtaining bidding documents due to the absence of an online public procurement portal with required functionality; and (c) the lack of dialogue between the private and public sectors—albeit the dialogue gained some momentum in the course of this assessment.

Pillar IV. Accountability, Integrity, and Transparency of the Public Procurement System

- Positive findings relate to the passage of the relevant laws addressing accountability, integrity, and transparency (Public Audit Act, Corrupt Practices Act, Access to Information Laws, and so on). Enforcement of these laws is however weak.
- The substantive gaps identified relate to the following: low level of consultation when new normative acts are adopted; absence of audit activities by the NAO due to lack of capacity and resources; absence of role of CSOs in boosting the demand side of governance and good procurement; existence of various definitions of the ‘conflict of interest’ concept in different acts, particularly related to ‘close relatives’, creating implementation challenges; and review of complaints and appeals is not being effectively handled, leading to a lack of trust by the private sector.

Key Recommendations

143. The MAPS Assessment identified four priority areas for the PPDA to advance the procurement agenda:

- **Build the support for procurement reforms through a network of alliance of government agencies, Parliament, private sector, and CSOs by reaching out and seeking their support and feedback.** Engaging Parliamentarians is particularly useful for the PPD Act amendment as this act was passed by the Parliament recently and there may be reluctance on their part to effect changes within just a year of the PPD Act coming into force.

- **Provide needed assistance to the practitioners** during this transition period of enforcement of the PPD Act, by updating critical regulations, Desk Instructions, and most used Standard Bidding Documents and continue to improve their capacity to be able to enforce the PPD Act including through business outreach and training for private sector.
- **Increase the confidence in the procurement systems** by removing conflicts of interest in the appeal mechanisms and improving transparency through e-procurement; starting with publicizing bidding opportunities and contract awards.
- **Strengthen procurement oversight** by engaging not only the NAO to conduct procurement audits but also non-state actors, civil society, and NGOs, under initiatives similar to ‘procurement watch’, to boost the demand for good procurement.

144. Detailed recommendations are listed in the table below. Consideration was given to potential risks identified: (a) the election calendar which may affect some of the recommendations such as the PPD Act amendment and (b) availability of human and financial resources which could also be a constraining factor. Therefore, specific interim/incremental measures, where possible, have been also identified by the MAPS Assessment. These are actions that the PPDA can pursue immediately to increase efficiency and minimize governance risks until the broader recommendations are implemented.

S. No	Recommended Actions	Responsible Entity	Timeline
1.	Constitute the PPTAG. To keep up the momentum generated during this assessment for public procurement reform, transform MASC into a ‘Public Procurement Technical Advisory Group (PPTAG)’ to be hosted by the PPDA as a secretariat.	PPDA MoFEPD	IMDT
2.	Amend the PPD Act with specific attention to gaps identified: <ul style="list-style-type: none"> (a) To remove inconsistencies between ‘Function’ and ‘Power’ of the PPDA (for example, ‘no objection’ role under ‘power’ conflicts with ‘functions’ of regulation, monitoring, and oversight and complaints handling) (b) To remove vetting role of the ACB on single-source and high-value procurement (c) To redraft the provision of preference to the indigenous black Malawians (Section 44 (10)) for greater clarity. (d) To recognize the existence of central procurement bodies (CGS and CMST) and include the role of such agencies in the act. (e) To include e-reverse auction as one of the procurement methods. (f) To provide exemptions from application of the act for donor-funded procurement 	PPDA MoFEPD	MT
	In the interim <ul style="list-style-type: none"> (a) Ensure appropriate segregation of powers between the departments that are responsible for review and clearance of procurement transactions and those responsible for complaints and appeal handling and 	PPDA	ST

S. No	Recommended Actions	Responsible Entity	Timeline
	(b) Initiate dialogue with parliamentarians/lawmakers to sensitize them on the law amendment.		
3.	Prepare regulations for the PPD Act with specific attention to the following: (a) To improve the share of contracts by SMEs and operationalize provision of Section 36 of the PPD Act. (b) To clarify definition of ‘close relatives’ in procurement transactions due to different provisions in various acts.	PPDA MoFEPD	ST
	In the interim Update and publish critical guidance and Desk Instructions and most used Standard Bidding Documents to be consistent with the PPD Act.	PPDA	IMDT
4.	Remove multiple layers of vetting and approval in contract award by the PPDA, GCU, MoJ, Treasury, and ACB, which is causing serious inefficiency, and some of these layers are not even mandated.	PPDA MoFEPD	ST
5.	Fast-track implementation of e-GP , to increase transparency and fair access to information. It will include functionality on bidder registration, publication of tender notices, online availability of tender documents, publication of contract award, and data analysis to evaluate procurement policies and operations.	PPDA MoFEPD	MT/LT
	In the interim Advance some critical functionalities that can provide a quick boost to transparency: publication of tender notices and publication of contract awards. Upgrade the PPDA’s website and make it fully functional.	PPDA MoFEPD	ST
6.	Create a task force to address links between procurement planning, allocation of budget, and availability of funds to ensure timely payment.	PPDA MoFEPD	IMDT
7.	Analyze high incidence of restricted tender and ensure it is done only in appropriate cases with due justification.	MoFEPD	ST
8.	Analyze high incidence of restricted tender and ensure it is done only in appropriate cases with due justification.	PPDA	ST
8.	Capacity building: Develop a strategy for training and professionalization in procurement and contract management with coordination between the PPDA and MIPS and other professional institutions.	MIPS PPDA	MT
	In the interim Conduct capacity-building activities for PE staff on procurement process and contract management including documentation and record keeping. Conduct capacity-building activities (a) for the NAO auditors to improve procurement oversight function and (b) for the private sector to increase their chances of participation in public procurement	MIP PPDA	REG
9.	Private sector outreach: Organize regular outreach seminars for the private sector to gain its support, improve system integrity, and build mutual trust through honest and open	PPDA MCCI	REG

S. No	Recommended Actions	Responsible Entity	Timeline
	dialogue. Conduct periodical surveys to assess challenges and progress.		
10.	Streamline the oversight function by improving collaboration between the institutions in charge (NAO and PPDA) for more efficient and impactful procurement audit and supervision.	NAO/PPDA	ST
11.	Engage CSOs and build their capacity to monitor procurement transactions through initiatives such as ‘procurement watch’.	PPDA MoFEPD	ST

Note: IMDT = Immediate; ST = Short term (within one year); MT = Medium term (within one to two years); LT = Long term (beyond two years); REG = Regularly.

Next Steps on the Implementation of Recommendations

145. As the next practical step, the government will prepare a detailed Action Plan to implement the recommendations of the MAPS Assessment. This should include the definition of targets and mechanisms to measure progress over time, both on key qualitative and quantitative aspects identified as substantive gaps, including identification of resources in consultation with development partners.

146. For implementation of the Action Plan, it is further recommended to focus in the short term on the interim actions (‘quick wins’) to help address some of the risks identified and pave the way toward implementation of the medium- and long-term actions as laid out in the Action Plan above.

Chapter 5: Information Regarding Validation Process

147. The process of validation is summarized in the following table.

S. No	Description	Outcome	Action Taken
1.	Presentation to the private sector initial finding of survey results on March 8, 2018	Feedback obtained	Feedback incorporated in the report
2.	Sharing of the first draft report dated April 16, 2018, with the PPDA and AfDB	Comments received	Comments incorporated in the report
3.	Presentation of the key findings to MASC on May 7, 2018	Feedback obtained	Comments incorporated
4.	Presentation of key findings to a broad group of stakeholders including government bodies, donors, private sector bodies, etc. on May 8, 2018.	Comments received	Comments incorporated
5.	Presentation of findings of assessment and survey results to the private sector on May 10, 2018.	Feedback obtained	Feedback incorporated in the revised report
6.	Sharing of the revised draft report with the PPDA on June 4, 2018	Feedback obtained	Feedback incorporated in the revised report
7.	Sharing of the revised draft report with peer reviewers of the World Bank (June 15–22, 2018)	Feedback obtained	Comments incorporated in the final draft report
8.	Sharing of the revised draft report with the AfDB and EU (June 15–22, 2018)	Feedback obtained	Comments incorporated in the final draft report
9.	Decision Review Meeting of the World Bank's Management (June 26, 2018)	Guidance received for improvement of the report	Report revised and the World Bank's Management approval obtained on February 8, 2019
10.	Review by the MAPS ATAG (during March–April 2019)	Comments received	Comments incorporated in the revised report
11.	Review of the revised report by the MAPS ATAG (during June 2019)	Comments by ATAG on December 8, 2021	Comments addressed in June 2022
12.	Final review and certification by the MAPS secretariat	Certification of the report	Certification provided on September 21, 2022