MAPS | Methodology for Assessing Procurement Systems

ASSESSMENT OF MALAWI PUBLIC PROCUREMENT SYSTEM

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MAPS | Methodology for Assessing 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 MAPS[2] 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 (CPAR[3] 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 Geostrategic 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 (CMST[5]). 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) MCCCI, (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 • '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: (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 2011was 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: (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 (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 PPDA	 ST IMDT
6.	**Create a task force** to address links between procurement planning, allocation of budget, and availability of funds to ensure timely payment.	MoFEPD	ST
7.	**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

MAPS | Methodology for Assessing Procurement Systems

MALAWI

Assessment of the Public Procurement system

Volume II - Annexures

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Note: ***Following terms have been used interchangeably depending on the context: (i) Procuring Entities (PEs)/Procuring and Disposing Entities (PDEs); and (ii) Office of the Director of Public Procurement (ODPP)/Public Procurement and Disposal of Assets Authority (PPDA). On the other hand, Electronic Procurement (e-Procurement/E-Procurement) and Electronic Government Procurement (e-GP/E-GP) have been interchangeably used, which have one or the same meaning.***

Annexure I- Indicator Matrix - Detailed Assessment

This detailed assessment covers qualitative and quantitative analysis for all Indicators, Sub-indicators as per template of the Indicator Matrix and presents the same information and data in A4 template. For each of the assessment criteria, a determination is made if the Criterion is met, partially met, or not met. Substantive or material gap are listed under gap analysis. Where factors have been identified which are likely to prevent appropriate action to improve the public procurement system, "red flags" have been assigned. These are used to highlight any element that could significantly impede the main goals of public procurement, could lie outside its sphere, and that cannot be mitigated directly or indirectly. These "red flags" are marked as a "tick" mark in red color.

Methodology for Assessing Procurement System (MAPS)

Pillar I. Legal, Regulatory and Policy Framework

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

Sub-indicator 1(a) – Scope of application and coverage of the legal and regulatory framework

Assessment Criteria: The legal and regulatory body of norms complies with the following conditions:

(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.

(b) It covers goods, works, and services, including consulting services for all procurement using public funds.

(c) PPPs, including concessions, are regulated.

(d) Current laws, regulations and policies are published and easily accessible to the public at no cost.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Laws, decrees, regulations, procedures are adequately recorded and organized hierarchically. In accordance with Chapter II, Section 10 of Constitution of Republic of Malawi "In the interpretation of all laws and in the resolution of political disputes, the provisions of this Constitution shall be regarded as the supreme arbiter and ultimate source of authority". The public procurement regulatory framework does not explicitly describe the hierarchy of legal instruments, but according to the legal system in Malawi the procurement act is the primary legislation, public procurement regulations and desk instructions constitute the secondary

legislation. In case of discrepancy, the procurement act takes precedence over the secondary legislation.

(b) Criterion met: As explained below, it covers all procurement as per the given criteria. In accordance with Section 3 of PPD Act, goods, works and services, including consulting services for all procurement, the Act applies to all procurement involving public funds and disposal of public assets with the exception of (i) employment contracts, (ii) lease or rental of real property, (iii) financial services and (iv) procurement and disposal of assets under Public-Private Partnership Act (the latter is regulated through a separate PPP Act # 27 of 2011). PPD Act lacks clarity with respect to other categories of procurement that are normally excluded from the scope of procurement law such as: procurement related to national security and defense, arbitration and conciliation services, procurement funded by international organizations, multilateral development banks, etc. In terms of types of procurement covered by the Act, Section 37 refers in various places to goods, works and services and Section 37(10) mentions that in case of procurement of consultancy services, a method other than request for proposal would require approval of Director General. But an explicit statement on the type of procurement being covered by the Act, would be desirable.

(c) Criterion met: PPP including concessions are regulated. As explained above the Public-Private Partnership Act is 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.

(d) Criterion -partially met: Current laws, regulations and policies are published and easily accessible to the public at no cost. However, the material on website is limited. The Act, regulations, desk instructions (User's Guide), all standard bidding documents are accessible at no cost to the public at website, http://odpp.mw. However, ODPP/PPDA website is not fully functional and updated. For example, the strategic plan is dated 2006/2008 and annual reports are dated 2011-2012. Procurement notices are not published with regularity as required by the Act. Moreover, the regulations that are supposed to detail the provisions of the newly enacted PPD Act are only available in draft form and not published. However, as per Circular Ref No. ODPP/01/22 dated 1st Feb 2018, while subsidiary legislation (Regulations, Desk Instructions and Standard Bidding Document) under the new Act is in the final stages of development, the Regulations, and other instruments under PPA 2003 shall remain in force to the extent that they are consistent with the new law and until such time they are replaced.

Step 2: Quantitative Analysis (*where applicable*)

Not applicable

Additional explanatory material in support of the analysis:(It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

The existing regulatory framework governing public procurement in Malawi consists of the PPD Act, which is in force from December 21, 2017. Even though Section 64(1) of PPD Act allows the Minster to issue regulations to implement the PPD Act, except for the outdated PPR

2004, no new regulations are adopted as of the time of the review. However, the government has developed draft procurement regulations, which are expected to become effective soon. PPD Act replaced the Public Procurement Act No.8 of 2003 (earlier referred to as PPA 2003) which was in force from August 1, 2003, until PPD Act was made effective.

PPA 2003 was principally modeled on UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994). It appears that initially PPD Act was also drafted following on UNCITRAL Model Law on Public Procurement (2011) as can be seen from Section 2 on Interpretation of terms with definition of e-GP, framework agreement, reverse auction, small and medium enterprises. However, some of these terms, including e-GP or reverse auction have no application in the detailed Sections as per the Act which was finally adopted and made effective on December 21, 2017. This raises the question whether they were left in the Act unintentionally or they are intended to be regulated through secondary legislation.

PPA 2003 (Section 3) for example was very specific about: (a) its application over non-sensitive part of procurement for national defense and national security related procurement; and (b) exclusion from its scope of procurement following rules of donor or funding agency which was mandatory pursuant to an international obligation entered into by the Government of Malawi. The only mention to procurement related to national defense and security is under Section 37 of PPDA. As provided under this Section, the Director General waives the requirement for open tender in case of national defense and national security related procurement to the extent that such procurement is determined to be a sensitive nature in accordance with regulations. In light of the above, it is implied that procurement related to national defense and national security is covered by PPD Act.

In addition, PPD Act defines under Section 2 the "public funds" to include funds appropriated through donor organization, however, as noted earlier, the Act does not exclude from its scope of application, the procurement funded by international organizations. This is a gap in PPD Act as it does not reflect the international good practice, which normally excludes such procurement from the scope of national procurement legislation.

Step 3: Gaps analysis/ conclusion (describing any substantive gaps)

i. With respect to criterion (b): PPD Act does not include specific exemptions on donor funded procurement, as was the case in PPA 2003 (***a suggestion for improvement***).
ii. With respect to criterion (d): ODPP's website does not provide updated and comprehensive information on current laws, regulations, and policies.

Initial input for recommendations

(a) With respect to criterion (d): To mitigate the gap, PPDA should take necessary steps to make their website fully functional and provide in a regular and sustained manner the updated information on the Law, regulations, and related documents.

Sub-indicator 1(b) – Procurement methods

Assessment Criteria: The legal framework meets the following conditions:

(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.
(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality, and integrity.
(c) Fractioning of contracts to limit competition is prohibited.
(d) Appropriate standards for competitive procedures are specified.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Procurement methods are established unambiguously. In accordance with Section 37 of PPD Act, the legal framework provides procurement methods to be used in a procurement process. The procurement methods are clearly set in a hierarchy of their importance and there are conditions from which each procurements method may be used, the default method of procurement is open tender, which is the most competitive and transparent way of procurement. Open tender provides a wider opportunity of accessing the market and also provides a wider and levelled playing field of business participation to the private sector. However, when determined sensitive, the restriction to use open tender for the procurement of national defence and security may be waived by PPDA.

(b) Criterion partially met. Other than the default procurement method *(open tender),* PPDA sets thresholds on each of other procurement methods that may be used according to individual circumstances, other than that, the Director General's approval is sought prior to their use, and the following are the other main procurement methods used and their conditions:

- Restricted tendering - when goods, works or services are only available form limited suppliers or when time and cost is disproportionate to the value of procurement.
- Request for Quotation / Request for Proposal – when the procurement is above nominal value defined by threshold.
- Single sourcing - when the procurements are below nominal value set by threshold, where there is only one supplier, during emergency where human life is under threat or when issues of standards are well defined.

(c) Criterion met: In accordance with Section 39 (2) of PPD Act the fractioning or artificial splitting of contracts aimed at circumventing the use of competitive method of procurement is not allowed. This was also the case with old law under Section 3 (4) of PPA 2003 where it did not permit such act with the intention of avoiding monetary threshold. Regulation 27 of PPR2004, ODDP sets monetary threshold guiding the selection of appropriate procurement methods, procuring entities are expected to assess the expected value of a procurement contract taking into account various costs build up and history of a similar contract or estimated value of any procurement proceeding.

(d) Criterion met: Regulation 28 of PPR 2004 sets the standards for competitive procedure where the requisitioning unit initiates procurement addressed to the head of procurement unit and it is the responsibility of requisitioning unit to solicit budget approvals that will justify availability of funds. The procurement unit examines the request for compliance with

the legal framework and non-compliant requests are sent back to requisitioning unit for modifications.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 37(1) of PPD Act specifies that public procurement shall be realized by means of open tender proceedings subject to exceptions in the Act and as further prescribed in regulations. With the approval of Director General, the use of open tender related to procurement for national defence or security may be waived provided such procurement is deemed of a sensitive nature. Section 37 further lists additional procurement methods and their conditions for use. These methods are: (**A) Goods/Works/Services**: (i) Restricted tender (sec. 37(3)), (ii) Two-Stage tender (sec. 37(4)), (iii) international tender (or International Competitive Bidding) (sec. 37(5)), (iii) Request for quotation (below a value set by the regulations) (sec. 37(8)) and (iv) Single-source (sec. 37(9)); **(B) Consultancy Services** can be procured through Request for Proposal (sec. 37(7)).

PPD Act also allows for the use of framework agreements (Section 61(1)) to be prescribed under the regulations. Currently, no such regulations are adopted.

Definitions under Section 2 of PPD Act include "e-GP" and "reverse auction", implying there was an intention to use electronic reverse auction as a method of procurement, but for unclear reasons, they are not mentioned either under procurement methods or anywhere else in the Act.

"Open tender proceedings" are also not properly defined in the Act. In some parts, the Act refers to "national competitive bidding" and "international competitive bidding" (Section 42(5)). Commonalities and/or distinction thereto, if any, between these methods and open tender may be implied, but are not clearly specified in the Act.

Section 37(10) states that to use a method other than open tender or in case of consultancy services, a method other than request for proposal, procuring and disposing entities ("PDEs") will provide written reasons with sufficient clarity to the Director General of PPDA for the choice of the procurement method. Considering that the preamble to PPD Act has an avowed objective "to provide for, and regulate, a decentralized institutional structure," with this provision, it means that PPDA would be engaging in day-to-day execution of procurement operations which would have consequences on procuring entity shifting their responsibility and accountability on to PPDA. Additionally, that would lead to a situation of conflict of interest arising from PPDA's role in complaints resolution. In practical terms, it implies that the span of attention/resources of PPDA will be moving to routine tasks of prior reviewing requests for use of other methods, at the cost of other more essential functions related to the regulation, monitoring and oversight of overall procurement system.

Section 37(11) of PPD Act states that for "single source method of procurement or any high value procurement shall be subject to vetting by Anti- Corruption Bureau, pursuant to powers conferred on the Bureau under Section 10 of the Corrupt Practices Act". *First*, this provision is not consistent with functions of the control bodies like Anti-Corruption Bureau ("ACB"). *Second*, while the reasons may be to mitigate any risk associated with this type of procurement,

if implemented this could be a source of delay in the timely completion of these procurement activities. *Third*, this shared responsibility with ACB, would dilute the responsibility and accountability from PDEs. The latter should use their judgement and discretion in choosing appropriate procurement methods by adequately documenting a decision to use of less competitive method. *Last but not least*, this vetting role will put ACB into a situation of conflict with its primary role as oversight and audit/control entity.

Section 39(2) of PPD Act specifies that PDEs shall not artificially split procurement and disposal requirements with a view to circumventing the use of competitive methods.

More broadly, the process of vetting or prior approval by Director General of PPDA or other control bodies is not efficient and dilutes the responsibility and accountability of PDEs in procurement decision-making. Instead, PPDA could focus on ex-post controls and audits to ensure the procedures of the Act are fully complied with.

Step 2: Quantitative Analysis - *Not applicable*

Step 3: Gap Analysis and Conclusions (substantive gaps/red flags)

(i) With respect to criterion (b) use of electronic reverse auction not covered under procurement method.

✓ (ii) Related to criterion (b), ACB's vetting role of single source or high value procurement not consistent with the function of ACB.

(iii) Related to criterion (b): Conditions for use of less competitive methods such as single source subject to clearance by PPDA.

(iv) Related to criterion (b): Regarding consulting services, PDEs can use methods other than request for proposals, provided those methods are defined and set forth under the Act and/or regulations- instead of PDEs using discretion, they need clearance by PPDA which shifts the accountability.

(v) Also, for criterion (b), the link between open tender and national/international competitive bidding not clearly established in the Act.

Initial input for recommendations

With respect to above gaps under criteria (b):

- Regulation to cover details on e-reverse auction
- Act should be amended to remove ACB's vetting role of single source or high value procurement.
- Related to gaps (iii) and (iv) On conditions for use of less competitive methods, and use of certain methods as related to consultancy services, instead of ex-ante controls, PDEs should use documented discretion and be subject to audit and other post-facto controls by PPDA and other audit/control entities

- Link between open tender and national/international competitive bidding through amendment of PPDA or at least regulation to be established.

Sub-indicator 1(c) – Advertising rules and time limits

Assessment criteria: The legal framework should meet the following conditions:

(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).

(b) Publication of opportunities provides sufficient time, consistent with the method, nature, and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.

(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g., technological barriers).

(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Procurement opportunities are publicly advertised. In accordance with Section 40 of PPD Act open tenders are advertised in the two widely circulated newspapers. Procurement opportunities are also gazetted and placed on visibly notice boards placed at the open reception areas or outside the buildings; in case of ICB, internationally recognised newspapers and other media of wide international circulation and the website of the PPDA.

(b) Criterion met: Publication of opportunities provides sufficient time for potential bidders to obtain documents and respond to the advertisement. As provided for in Section 42 (5) of PPD Act minimum submission deadlines of bids are published prior and during the bid invitation process and are included in the tender document. When fixing the submission deadlines PE take particular account for the complexity of the contract and time required to draw up bids. The following are the periods which are consistent with Regulation 47 of PPR 2004:

i. International competitive bidding- forty-five days;
ii. National competitive bidding-thirty days;
iii. Restricted tender-twenty-one day;
iv. Request proposals-twenty-one day;
v. Request for quotation method-five days;
vi. Single sourcing-five days; and
vii. Single sourcing in an emergency-twenty-four hours

(c) Criterion met: The publication of invitation to bid is required to be done in two national widely circulated newspapers in accordance with the Section 40 of PPD Act, and the case of international tendering in international media and website of PPDA. PPDA has clarified in a circular on 20th April 2018 that to strengthen transparency, publication of all Invitation to Tender (ITT) on the website of PPDA is mandatory. The grounds on which the Director General will decide on shorter timelines are unclear and may lead to abusive discretion.

(d) Criterion met: The content published for open tender includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 42(5) of PPDA stipulates minimum bidding period for each method of procurement. Specifically: international competitive bidding- 45 days; national competitive bidding- 30 days; restricted tender21 days; request proposals-21 days; request for quotation method-5 days; single sourcing-5 days; and single sourcing in an emergency–24 hours. The timelines generally appear reasonable, provided however that complexity and nature of procurement are properly considered (as required under Section 42(4)). The minimum of 24 hours for single source in an emergency is questionable and may not be needed at all since the government will itself approach the bidder. More importantly, the reasonableness of these timelines is undermined by the provision giving the Director General of PPDA the right to shorten them (Section 42(5). The grounds on which the Director General will decide on shorter timelines are unclear and may lead to abusive discretion

Desk Instructions (User's Guides) have been developed to be used with the Standard Bidding Documents. They provide templates for invitation for bid that offers the potential bidders the possibility to inspect the bidding document prior to purchase, contains deadline for bid submission and bid opening, full name, and physical address of PDE with e-mail address where clarifications may be sought.

Step 2: Quantitative Analysis - *Not applicable*

Step 3: Gap Analysis/Conclusions (substantive gaps)

None

Initial input for recommendations

None

Sub-indicator 1(d) – Rules on participation

Assessment criteria: The legal framework should meet the following conditions:

(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions;

(b) It ensures that there are no barriers to participation in the public procurement market;

(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations;

(d) It establishes rules for the participation of state-owned enterprises that promote fair competition; and

(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met. The participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions. Section 52 of PPD Act requires the bidder to be (a) registered with Registrar of Companies and or with National Construction and Industry Council of Malawi (NCIC) depending on nature of business; (b) to be tax-compliant; and (c) not to be debarred from participating. Section 56 of PPD Act stipulates conditions for exclusion like misconduct as prescribed in the Act to be set out in the Regulation. Section 44 (10) of PPD Act on Bid Evaluation allows PDEs to give "preference to 60 per cent Indigenous Black Malawians and 40 per cent others for national competitive bidding", a provision that is difficult to understand and lends itself to interpretation. Failure to sign a contract and failure to submit a performance security are grounds for exclusion of bidders.

(b) Criterion met: In accordance with Section 52 of PPD Act, the sole absence of an application for entry in the registry or classification system is not ground for exclusion from participation in procurement proceedings.

(c) Criterion partially met. In accordance with the Section 55(2) of PPD Act, the legal framework cautions the conduct of bidders and suppliers not to abet corruption practices, fraudulent practice and collusion among bidders as may be reason for exclusion in participating in public procurement. The reasons for exclusion are further extended under Section56 (2) of PPD Act. It does not set out the minimum due process requirements for debarment. Director General of PPDA may exclude a supplier, contractor, consultant, or any bidder for any misconduct prescribed in this Act in accordance with procedures set out in the Regulations. The grounds for debarment are very broad and vaguely defined (any misconduct prescribed under this Act).

(d) Criterion not met: PPD Act does not isolate the state-owned enterprises (SOEs) as having an added advantage compared to the bidders in the private sector. Just like any other company, for the state-owned enterprise to be eligible for award of procurement contract, it must be registered with Registrar of Companies, tax compliant and not debarred from participating in public procurement as stipulated Section 52 of the PPD Act.

(e) Criterion met: It details the procedures used to determine a bidder's eligibility as in (a)

above (Section 52 of PPDA) and ability (Section 53 of PPDA). In accordance with Section 53 of PPD Act, there are qualification criteria to be met in order to enter into a procurement contract based on bidder's ability to perform a specific contract.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 53 of PPD Act provides qualification criteria that bidders should meet to be considered for a procurement contract. Such criteria include (a) legal capacity; (b) professionals and technical qualifications; (c) financial resources and conditions; (d) equipment and other physical facilities; (e) personnel and managerial capabilities; and (f) past performance that includes history of legal disputes including conditions like criminal offence, professional conduct, false statements, misrepresentation.

PPD Act sets forth the requirements for a bidder to be eligible to "be awarded a procurement contract" (Section 52) and to be eligible to "enter into a procurement contract" (Section 53). Section 52 lists the legal capacity and conditions to participate whereas Section 53 lists the qualification criteria to be met by the bidders as a condition to be awarded a contract.
Section 54(2) describes the mandate of Director General of PPDA to organize and maintain a centralized system and lists of suppliers. PPDA encourages PDEs to have their own supplier's lists which will be approved by Director General prior to its use. It is not clear why there is a need for such lists in first place, the criteria for being included in the lists, and why the Director General should be in charge of approving those lists. Section 54(4) defers to regulations for the conditions of establishing the list, but the underlying intention of the arrangement itself is questionable.

Section 55 of PPD Act requires bidders and suppliers not to engage in or abet corruption, fraudulent and collusion practices among bidders. Failure to observe the above requirement may presumably lead to exclusion of a supplier, contractor or consultant from participation in public procurement based on Section 56, but it would have been useful to be more explicit about it in the Act. Section 56(1) of PPD Act provides that a supplier, contractor, consultant, or any bidder may be excluded from participation in public procurement for any misconduct prescribed in the Act and regulations. Section 56(2) goes on to specify the grounds which would lead to such exclusion: (a) refusal by a successful bidder to sign a contract or furnish a performance security in accordance with the terms of the bidding document; (b) supplying false information in the bid; (c) collusion between the bidder a the public official pertaining to the bidding process; (d) collusion amongst the bidders; (e) conviction of a criminal offence in obtaining or attempt to obtain a contract or a sub-contract; (f) conviction of an offence under the Corrupt Practices Act or the Financial Crime Act; or (g) breach of contractual obligations.

Director General of PPDA may exclude a supplier, contractor, consultant, or any bidder for any misconduct prescribed in this Act in accordance with procedures set out in the Regulations. The grounds for debarment are very broad and vaguely defined (any misconduct prescribed under this Act). A cross reference to relevant articles setting out those misconducts in the Act would be useful. But then under Section 56(2) there is a list of grounds for exclusion of a bidder from

participation in public procurement proceedings. It is not clear how to read Sections 56(1) and 56(2) together. This part of the Act needs review.

It also might be considered whether refusal to sign a contract (Section 56(2) (a)) should automatically warrant exclusion given that there may be valid reasons behind such refusal. It is disproportional and there may be justified reasons why bidders do not sign. Failure to sign a contract or furnish performance security can be addressed through other means, for example, by forfeiting bid security (unless there is a bid securing declaration that leads to automatic exclusion as per conditions specified in such declaration by the bidder).

Section 56(3) implies the existence of a debarment process with "hearing". But that is the only procedural step that the Act refers to in this regard. It does not set out the minimum due process requirements for debarment.

It is important to mention that there is an inconsistency in the PPD Act with respect to debarment, between Section 6(1) (g) and Section 56(3). Section 6(1) (g) states that PPDA can "suspend or debar any bidder that breaches any provision of this Act", while Section 56(3) provides for debarment only (by the Director General) and specifies the grounds for debarment. While the statement under Section 6(1) (g) and Section 56(1) are too broad and may lead to unjustified exclusions, it would be useful to define and distinguish debarment from suspension if the intention is two separate actions. It is worth clarifying that debarment is precluding participation of specific supplier in public procurement process for a stated period of time, whereas suspension is excluding a supplier pending the completion if investigation or legal proceedings.

With respect to the criminal convictions mentioned in Section 56(2) (e), there is a need to ensure consistency with criminal law and introduce appropriate cross-references to the relevant provisions, if any.

For state-owned Enterprise (SoEs) to be eligible for award of procurement contract, they must be registered with Registrar of Companies, tax compliant and not debarred from participating in public procurement. However, PPD Act is silent on the aspect of a level playing field between SOEs and private sector participants that should require SoEs to be legally and financially autonomous, to operate under a commercial law; and not to be under the supervision by the agency contracting them.

Section 44 (10) of PPD Act on Bid Evaluation allows PDEs to give "preference to 60 per cent Indigenous Black Malawians and 40 per cent others for national competitive bidding", a provision that is difficult to understand and lends itself to interpretation. Though the intention appears to help certain target group of contractors, suppliers or bidders, the way the clause is framed is difficult to be used in practice.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps):

(a) For criterion (a): Reference to 60 per cent indigenous black Malawians and 40 per cent others for national competitive bidding to be reconsidered as it lacks clarity and application and may deter competition and reduce efficiency.

(b) For criterion (a): Failure to sign a contract and failure to submit a performance security as grounds for exclusion of bidders is not fair.

(c) For criterion(c): There are inconsistencies and PPD Act does not describe minimum due process requirements for exclusion and debarment.

(d) For criterion (d): There are no fair competition rules on participation by SoEs as bidder, in particular when the SOE is under the supervision of the agency responsible for tendering process.

Initial input for recommendations (for all the above gaps)

Gaps should be addressed by amendments to PPD Act.

Sub-indicator 1(e) – Procurement documentation and specifications

Assessment criteria: The legal framework requires the following conditions to be met:

(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.

(b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.

(c) It requires recognition of standards that are equivalent when neutral specifications are not available.

(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing).

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: The procurement documents contain relevant and sufficient information for suppliers to respond (minimum content of bidding document should be in the Act as well as provided below in the explanatory material). In accordance with Section 5(2) (c) of PPA 2003 the Director developed Standard Bidding Documents for use in public procurement. The bidding documents were developed between 2004 and 2005 benchmarking the World Bank bidding documents. Prior to use, ODPP conducted a number of training workshops targeting procurement entities, contractors, and suppliers on how to use the documents. However, with the coming in of the new law, PPD Act, the current bidding documents are under review to comply with the changes made in the new law. Section 41 of PPDA mandates PEs to ensure that the bidding documents are provided to the

bidders responding to invitation with relevant information required to respond to submit the bids.

(b) Criterion partially met. In respect to the above, Section 15 of PPA 2003, the legal framework requires that any specifications, plans, drawings, and design of goods to be drawn in an objective, performance, and function manner to maximise competition. Desk Instructions emphasize of generic specification that allow the use of output-based specification to allow innovation and competition. However, this clause is not included in the PPD Act.

(c) Criterion met: The use of standards is recognized in the Desk Instructions, a subsidiary of PPA 2003 and PPR 2004. It is a requirement in the *Desk Instructions – Guidance note 2 - Specification* that the standards specified should not be restrictive, where possible international recognized standards should be used.

(d) Criterion met: Potential bidders are allowed to request a clarification of the procurement document. As provided for in Section 31 (6) of PPA 2003 and Section 41 (4) of PPD Act, PEs are required to respond promptly to any requests by a bidder on clarifications received earlier than fourteen (14) days, in case of ICB, prior to the deadline for submission of bids. A prospective bidder requiring any clarification on the bidding documents should notify the PE in writing.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 41 of PPD Act on issuance of bidding document requires that: (a) bidding documents shall be provided to all bidders responding to the invitation to tender or in case of pre-qualification to all prequalified bidders; (b) provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the PDE; (c) include terms and conditions of the resultant contract; (d) all bidders shall be provided with the same information; (e) PDE shall promptly respond to clarifications sought by bidders before deadline of bid submission and such response shall be circulated to all participating bidders. PPD Act, however, does not stipulate the minimum content of the bidding document, an important feature of transparency and legal certainty of the legal framework. Mandating the minimum content of bidding documents in the Act is important for consistent and uniform application of the Act by the PDEs.

It is noteworthy to mention that under Section 15 of PPA 2003 it was stipulated that "… description of services, and any contract terms, shall be drawn up in an objective, and performance and function-based manner so as to maximize competition and avoid creating obstacles to participation by bidders in the procurement proceedings, while ensuring that applicable national and international standards and requisite quality levels are met". Unfortunately, a similar stipulation is missing from PPD Act.

PPR 2004 (Regulation 63) provides the minimum content of bidding document, Section 64 describes formulation of technical evaluation criteria, Regulation 65- 68 describes details on framing technical specification for goods, works, Bill of Quantity/Activity Schedule, and for

services other than consultancy services. However, PPR 2004 is not updated to reflect the PPD Act, but the Government should ensure that a similar provision is included in the new PPR when adopted.

As per existing desk instruction (Guidance Note 2) technical standards specified should not be restrictive, where possible recognized international standards should be used and there should be acceptance of standards that are of equal quality. In this respect, Article 10 of UNCITRAL Model Law (2011) provides a good guidance on use of objective, functional and generic specification and need to set out the relevant technical, quality and performance characteristics of that subject matter. Similar guidance is available in standard bidding documents of multi-lateral development banks and in procurement rules of European Union (EU Directives 2014).

Based on desk instruction for PPD Act, which is still in drafting stage, it is intended to include that "PPDA shall from time-to-time issue standard bidding documents and forms, to provide working documents for the implementation of public procurement, supplies management and disposal activities. The use of the standard documents is mandatory for all PDEs. The standard documents are intended to provide standard drafts for documents and records, which: (i) are compliant with the rules and procedures contained in the Act, Regulations and Desk Instructions; and (ii) include the basic contractual provisions and safeguards required by the Government of Malawi in the execution of public procurement, supplies management and disposal of public assets."

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) With regard to criterion (a): PPD Act does not stipulate the minimum content of the bidding document, an important feature of transparency and legal certainty of the legal framework. Mandating the minimum content of bidding documents in the Act is important for consistent and uniform application of the Act by the PDEs.

(ii) With regard to criterion (a): New regulations and desk instructions not updated to be in line with PPD Act including gaps identified in this assessment.

Initial input for recommendations for gap under criterion 1 (e)(a)

PPD Act to be amended on the minimum content of the bidding document, to cover the gaps as above in Standard Bidding Documents and new regulations and desk instructions need to be updated to be in line with PPD Act.

Sub-indicator 1(f) – Evaluation and award criteria

Assessment criteria: The legal framework mandates that:

(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.

(b) The use of price and non-price attributes and/or the consideration of life cycle cost is

permitted as appropriate to ensure objective and value-for-money decisions.

(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.

(d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents.

(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.

Step 1-Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Tthe evaluation criteria are objective. Section 44 of PPD Act stipulates that the choice of evaluation methodology must be determined by type, value, and complexity for procurement. It is a requirement for the evaluation criteria to be included in the bidding document, template with minimum required already provided in the standard bidding document, prior to publication and release.

(b) Criterion partially met: The use of price and non-price attributes is permitted. In accordance with Section 44 (7) of PPD Act allows for non-price criteria, as long as it is practical, objective and quantifiable as specified in the bidding document. However, it is not clear how consideration of life-cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.

(c) Criterion met: Quality is a major consideration in evaluating proposals for consulting services as indicated in Regulations 88-112 of PPR 2004 and draft PPR 2018. PEs can use one of the following methods for selecting one of the proposals for consultancy services, Quality and Cost-Based Selection (QCBS), Quality-Based Selection (QBS) or Least Cost Selection (LCS). The PEs under Regulation 93 (2) and (3) of PPR 2004 are advised to use QCBS method as appropriate for assignments that are complex or highly specialised assignments, a high downstream impact whose objective is to have best experts and or assignments composed of management advice, and sector and policy studies. LCS is appropriate for standard or routine in nature such as audit, engineering designs of non-complex works.

(d) Criterion met: Evaluation criteria are combined, and their relative weight determined are clearly defined in the procurement documents.

(e) Criterion met: Information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others during evaluation. All officials handling procurement proceedings prior to award have the obligation for discipline. In accordance with Section 28 (1) of PPD Act, it is the members of IPDC that appoint members of the ad-hoc evaluation team who are public officials and according to Section 34 of PPD Act mandated to keep confidentiality to information related to procurement they are handling. Under Section 62 of PPD Act, every member and employee that includes a member of IPDC, ad hoc evaluation team to take an oath of secrecy.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 44 of PPD Act on Bid Evaluation states that the choice of evaluation methodology shall be determined by the type, value and complexity of the procurement or disposal requirement and shall be done in accordance with the Act and as may be prescribed in regulations. Based on the detailed provision in Section 44 of PPDA: bids are to be evaluated and compared in accordance with the criteria, and their relative weight, as set forth in the bidding document; non-material deviation to be evaluated with deviations being quantified in monetary terms, no negotiations to be held with bidders as to the price and substance of the bid; clarification may be sought without changing the price and substance of the bid; margin of preference to be applied as disclosed in the bidding document; non-price criteria to the extent practicable shall be objective and quantifiable with relative weight in evaluation or expressed in monetary terms wherever practicable and contract to be awarded to the lowest evaluated bidder as per price; non-price criteria and applicable margin of preference all as per conditions in the bidding document; and prior to entry into force of the contract a successful bidder is required to provide security for performance of the contract. PPR 2004 and draft PPR 2018 on the other hand, describe in detail the formulation of technical evaluation criteria which provides that bid evaluation criteria need to be quantified in monetary terms (an issue that requires consistency of terms between at Section 44 of PPD Act and PPR 2004 or draft of PPR 2018) acceptable range of standards of performance, delivery and payment terms needs to be specified with criteria for environment impact and safety given including requirement of performance test and final acceptance tests. PPR 2004 describes in detail the bid evaluation process. In particular, there is mention of preliminary screening/examination of bids, identifying minor/major deviations, conditional bidding terms, identifying and correcting the arithmetical errors, seeking clarifications from bidders, etc.

Section 44(6) of PPD Act refers to margin of preference to be applied in favour of domestic or regional bidders. It is not clear under which method and/or approach (international vs. national market) such margin is to be applied.

Regarding confidentiality of the bidding process, Section 34(1) of PPD Act requires all public officials to keep confidential all information that comes into their possession related to procurement proceedings; provided, however, that upon request from an unsuccessful bidder communicate to the bidder the grounds for the rejection of its application to prequalify all of its bid. Failure to comply with this requirement will result into a person being fined with an amount of K 500,000 and imprisonment to two years and disciplinary action. *First*, it is not clear whether the obligation to keep confidential all the information obtained in the course of a procurement proceeding, is temporary or permanent. If temporary, what is the time- frame? *Second*, this clause seems to allow public officials to share information only on results of prequalification. What about results/outcome of bidding process? Are they intended to be excluded from here or unintentionally omitted? And *third*, it is not clear how Section 34 is linked to, if at all, with Section 62(1) of PPD Act, which requires that every member and employee shall, on assumption of duty, take an oath of secrecy as may be prescribed by regulation. Failure to comply with Section 62(1) will lead to a fine of K 100,000 or six months of imprisonment. There appears to be contradiction between these two Sections.

On the other hand, Regulation 54 of PPR 2004 and draft PPR 2018 states that information relating to the examination, clarification, evaluation, and comparison of bids shall not be disclosed to bidders or to any other person not involved officially in the examination, evaluation, or comparison of bids or in the decision on which bids should be accepted except as provided in the Act and these Regulations. In absence of relevant cross references to other provisions of the Act, this obligation appears to be of a permanent nature.

For consultancy services Section 34(7) of PPA 2003 had specified these methods with a stipulation that any award by the procuring entity shall be made to the bidder who proposal best meets the needs of the procuring entity as determined in accordance with the criteria for evaluating the proposals and the final selection procedures set forth in the request for proposal. PPD Act has not elaborated on the above, except for stating under Section 37(10) that for consultancy services use of a method other than Request for Proposal shall require approval of Director General. The criteria for evaluation for consultancy proposals are however covered under the PPR 2004 and in draft Regulation 2018.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

- **(i)** For criterion (b): Regulations, Desk Instructions and Standard Bidding Documents corresponding to PPD Act are not updated.
- **(ii)** For criterion (b): Use of life cycle costing and value for money considerations as evaluation criteria is not elaborated for its applicability and conditions for use.
- **(iii)** For criterion (b): Conditions for the use of merit points system are not available in regulations.

Initial input for recommendations for gaps under criteria (b)

a. Regulations, Desk Instructions and Standard Bidding Documents to be issued consistent with PPD Act.
b. Criteria for evaluation such as Life Cycle Costing and use of merit point to be clarified through Regulation.

Sub-indicator 1(g) – Submission, receipt and opening of tenders

Assessment Criteria: The legal framework provides for the following provisions:

(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.
(b) Records of proceedings for bid openings are retained and available for review.
(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid

unnecessary rejection of tenders.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Opening of tender is done immediately following the closing date of submission. In accordance with Section 31 of PPA 2003 and Section 43 of PPD Act, bid documents shall be opened at the time and date place indicated in the bidding document and bidders or their representatives may attend the opening of bids.

(b) Criterion met: Records of proceedings for bid openings are retained. In accordance with Section 27 of PPA 2003 and Section 29 (2) (d) of PPD Act, records of procurement proceedings are to be retained in the PDEs by the procurement and disposal unit.

(c) Criterion met: Security and confidentiality of bids is to be maintained prior to bid opening. In accordance with Regulation 48 of PPR 2004 PEs ensure that all the bids received are kept in a securely locked tender box into which bidders deposit their bids.

(d) Criterion partially met: Disclosure of specific sensitive information is prohibited. In accordance with Section 27 (6) of PPA 2003, records should be prepared in a manner that avoids disclosure of proprietary commercial information. Section 34 of PPD Act on "Confidentiality" states that all public officials shall keep confidential the information that comes into their possession relating to the procurement and disposal proceedings and to bids, including any bidder's proprietary information. There is however no clarity as to what constitutes "confidential" information.

(e) Criterion met: There are modalities of submitting and receiving of tenders. Section 42 of PPD Act stipulates requirements for submission of bids including that a bidding document may provide for submission of bids electronically.

Additional explanatory material in support of the analysis ::(It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 42(1) of PPD Act requires that bids shall be submitted in written form as instructed in the bidding document. Section 42(2) stipulates that a bidding document may provide for submission of bid electronically provided that measures are put in place to protect the confidentiality of bidders' bids and to ensure their authenticity and integrity. Section 42(4) of PPD Act requires that deadline for submission shall take into account the nature of the procurement or disposal process and the time required for preparation of the bid. Section 42 (3) of PPD Act stipulates that a procuring and disposing entity shall, upon request, provide to the bidder a receipt showing date and time when tender was received.

Section 43(1) of PPD Act stipulates that bids shall be opened at the time and place indicated in the bidding document, and the time of opening of bids shall coincide with the deadline for submission of bids. Section 43(2) of PPDA further stipulates that Bidders or their respective representatives may attend the opening of bids, and their prices, shall be read out and recorded.

Under Regulation 48 of PPR 2004, PDEs need to ensure that all the bids received are secured and should not permit bids to be opened or viewed to ensure that all the bids' documentation they receive are secure, each PDE has securely locked tender box with a minimum of two locks kept by procurement unit and one member of IPC placed at the reception of the PDE where bidders drop their bids. Bids that may be physically large for depositing into the tender box are received and kept securely with the secretary of the Controlling Officer or in the IPC Chairman's office.

As per Desk Instruction of 10th October 2003 Guidance Note 1, there is a requirement to provide receipt of bids to the bidder.

As per Desk Instruction of 10th October 2003 Guidance Note 2 –information to be read out should be as stated in the bidding document. This must include at least: the name and address of each bidder, the total price of each tender stating the currency and amount. It may also include the presence or absence of a tender security, and the form and amount for the tender security, where one was requested in the bidding document and any other details stated in the bidding document. No additional information concerning any tender should be read out, other than that required by the bidding document.

It is seen from the draft PPR 2018 and Desk Instructions for 2018 that similar provisions as in PPR 2004 and Desk Instructions of 2003 exist but with more detail and clarity.

Sections 29(2) (d) and 32 of PPD Act require PDEs to keep records of all procurement and disposal activities for a period of five years. It is not clear when the 5-year period is going to expire given that the events listed under the Section 32 are of a different nature. It further stipulates that in an event that the period referred to in sub-Section 32(1) has expired but the documentation has not been subjected to an audit, the records of procurement and disposal proceedings shall still be maintained by the procurement and disposal entity. Regulations 168 to 172 of PPR 2004 provide details on records of procurement proceedings to be kept and the draft PPR of 2018 have similar provisions.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) For criterion (d): PPR and desk instruction (including the standard bidding documents) are not clear that proprietary commercial information of bidders would not be disclosed at any time as already stated in Section 34 of PPD Act.

Initial input for recommendations

a. For criterion (d): Regulation and desk instructions (including standard bidding documents) to make it clear that proprietary commercial information of bidders would not be disclosed at any time, to clarify what constitutes proprietary information, and to address other substantive gaps as identified above including on period for keeping procurement records (on safekeeping of records covered in further detail at sub-indicator 1 (k)).

b. For criterion (b): There is no substantive gap as such but for further improvement, Section 32 of PPD Act should at a minimum include the expression "whichever is later" before listing the expiry events for records of procurement. Also, if the audit by competent authorities is the

determining event in the length of maintaining the procurement records, it should be included under the list of events.

c. For criterion (e): Though there is no gap for further improvement, PPR and desk instruction should encourage presence of capable Civil Society Organizations at the time of bid opening to improve transparency and integrity of procurement process.

Sub-indicator 1(h) – Right to challenge and appeal

Assessment criteria: The legal framework provides for the following:

(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.

(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has authority to suspend the award decision and grant remedies, and also establish the right for judicial review.

(c) Rules establish the matters that are subject to review.

(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.

(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.

(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Participants in procurement proceedings have the right to challenge decisions. In accordance with Section 59 of PPD Act, the legal framework provides the right for the bidders to seek review of procurement processes.

(b) Criterion partially met: There are provisions to respond to a challenge with administrative review by another body, independent of the procuring entity. As per Section 60 (3) of PPD Act, application for review may be made to PPDA where the Director General shall convene a three-member *ad hoc* committee independent of procurement. However, the appeals body is not a separate entity and there are potential conflicts of interest with other PPDA functions.

(c) Criterion met: There are rules that establish the matters that are subject to review. In accordance with Section 59 (2) of PPD Act, choice of selection procedure, decision by PDEs to reject all bids, refusal by PDEs to respond to an Expression of Interest do not constitute grounds for review.

(d) Criterion met: There are rules establishing time frames for the submission of challenges and appeals. Section 60 (1) of PPD Act provides 14 days for the bidder for submission on being aware of the circumstances giving rise to complaint and 14 days for rendering decision.

(e) Criterion not met: Applications for appeal and decisions are not published in easily accessible places. Publication of appeals and decisions is not mandatory. Decisions made from public procurement appeal cases held in courts may be published through media as news.

(f) Criterion met: Decisions by the independent appeals body can be subject to higher-level review. Under Section 60 (10) of PPD Act decisions of the review committee are subject to review by the High Court.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 41(2) of the Constitution of the Republic of Malawi gives right to every person to have access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues.

Section 59(1) of the PPD Act provides that "any bidder that claims to have suffered or that may suffer loss or injury due to breach of a duty imposed by the procuring and disposing entity, or Director General may seek a review in accordance with this part." This provision is broad enough to allow bidders and potential bidders to file complaints. Section 59(2) describes the matters that are not subject to complaints. Those are: (a) choice of a selection procedure in request for proposals for services, (b) a decision by the procuring entity to reject all bids, proposals, offers or quotations, and (c) a refusal by a procuring entity to respond to an expression of interest in participating in requests for proposals under Section 37(7).

It is considered a good practice for the transparency and accountability purposes to make any procurement action or decision subject to the procurement complaints. In this respect, the grounds set forth under Section 59(2) are not desirable, especially those restricting the bidder's right to challenge the choice of selection method for consulting services, which are already missing from the Act. Regarding (c), it is not clear from the Act what "refusal to respond to an expression of interest" means, but in any event, as a matter of fairness and transparency, PDE should respond and acknowledge timely all submissions by the interested bidders. Furthermore, the right to review should be limited to the decisions and actions of the PDEs, and not the Director General's and/or PPDA. This is also the reason it was suggested earlier to not have the Director General approve evaluation reports and awards for contracts above certain thresholds. It is advisable to not restrict the grounds for review and to permit protests regarding all procurement-related actions.

Section 48 of PPD Act requires PDEs to publish the intention to award contract in two widely circulated newspapers and PPDA's website for a period of 14 days for any procurement contract above a threshold to be set by Director General before signing the contract, a provision which is akin to "standstill period". Complaints can be submitted within the standstill period (14 days) or within 14 days of the complaining bidder becoming aware of the circumstances giving rise to the application. It is not clear from PPD Act what information is being transmitted to the bidders through the intention to award a contract notice for them to file a meaningful complaint.

PPD Act on the other hand defines under Section 5, the functions of "PPDA" that is responsible for the regulation, monitoring and oversight of public procurement which *inter alia* includes administrative review of bid protests in accordance with Sections 59 and 60 of Part IX of PPD Act. Section 60 sets out the steps for review of complaints.

PPD Act describes the institutional arrangements for the review of protests. Section 60(2) specifies that an application shall be made, in the first instance and in writing, to the Controlling Officer or head of PDE or PPDA. It is not clear whether these are consecutive or alternate avenues for review. Although there may be independence and conflict of interest concerns that may be associated with complaining to the PDE, the submission of the applications for review to the procuring entity is considered as good practice and is a review mechanism that is used in international practice as it allows the procuring entity to remedy any mistake or misunderstanding with the bidders. Where proper safeguards are in place, such mechanism may be an efficient method of resolution of protests. As noted above, it is unclear whether the bid protest review mechanisms set forth in the PPD Act represents consecutive or alternate venues for review (i.e., it is unclear whether each lower level of review must be exhausted before a bid protest can be brought to a higher-level review entity). It appears that PPD Act removes the authority of the line minister in receiving and handling challenges at the PDE level (as was the case in PPA 2003). In some ways, having the complaints reviewed by the highest authority in the PDE offers some sort of independence from those who made the award decision.

Section 60 (11) states that any application submitted to the Director General in the first instance or by way of appeal shall attract a fee prescribed by the Director General. It may be pointed out that such fee should be nominal to ward-off frivolous complaint but not so excessive to discourage complaint.

It also is unclear whether certain types of protests may be brought before only one such entity or, alternatively, only in court (e.g., post-contract protests). It also should be clear that potential as well as actual bidders should be permitted to submit protests. The apparent standstill provision provided for in Section 60(6) (a) also should be further clarified and linked to other relevant provisions in the PPDA.

Ideally, in addition to procuring entity-level and judicial review, a separate independent body should be established as a common forum to review appeals. If PPDA were not involved in specific procurement transactions, it could have acted as an independent appeals body. However, PPDA's involvement in the review and approval of procurement transaction, puts them in a situation of conflict of interest in cases when PPDA may be required to review complaints or appeals arising in connection with contracts, whose award PPDA may have cleared.

Although Section 60(2) provides that an ad-hoc review committee will be convened by the Director General, it is not clear from the PPD Act what level of independence the ad-hoc committee has vis-à-vis the Director General and PPDA. In addition, on a practical matter, the

time required to establish the ad-hoc committee might impede thorough review of appeals, which is required to be completed within 14 working days (Section 60(9)).

To provide bidders with interim relief, the procurement process is normally suspended until a complaint is being reviewed and resolved. Under PPD Act, upon receipt of an application for review, the procurement proceedings shall be suspended for 10 days (Section 60(7)). It is not clear whether the suspension applies in both cases i.e., when the complaint is submitted to the PDE or PPDA. In addition, it is not clear how the period of suspension is linked with the 14 days required under Section 60(9). The process is usually suspended for the same amount of time that a complaint is being reviewed.

Regarding jurisdiction of the court, Section 60(10) stipulates that an appeal against a decision of a Controlling Officer or head of a PDE shall be made to the Director General and the decision of the Review Committee shall be subject to review by the High Court.

Publication of appeals and decisions is not regulated by PPD Act. Decisions made from public procurement appeal cases held in courts are published through media as news.

PPD Act does not provide the procedures for challenges and appeals before the Review Committee and the Controlling Officer. At least some main aspects of such procedures should be set forth in the PPDA and should not be left for the secondary legislation. Important procedural issues that presently are not addressed or that could benefit from clarification are: confidentiality; standstill period between announcement of contractor selection and contract signing; right to receive debriefing; due process considerations; right of potential as well as actual bidders to protest; subject matter that can be protested, which should not be limited; basis upon which protest decisions are made; basis for rejection of a challenge or appeal; ability to submit protests after contract signing; clarification as to whether higher-level and court review are limited to appeals decisions or also are available for review of challenges in the first instance; binding nature of appeals decisions; enforceability of appeals decisions; etc.

Apart from the above, safeguards and clarity to handle challenges and appeals may be covered in the regulation or desk instructions under preparation along the lines of PPR 2004 (the detailed rules are procedures are set in Schedule D of Public Procurement Regulations PPR 2004).

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) For criterion (b), the appeal function under PPDA is not fully independent.

(ii) For criterion (e)Application for appeal and decisions not published in easily accessible places (like website of PPDA) and within specified time frame.

Initial input for recommendations

a. For criterion (b), to the extent that a challenge and appeals function is retained within PPDA, proper and clear segregation of functions and safeguards should be put in place to

ensure independence and to minimize the potential for conflicts of interest with other PPDA functions.

b. For Criterion (e), application for appeal and decisions to be published in easily accessible places (like website of PPDA) and within specified time frame (Amendment to PPD Act).

Sub-indicator 1(i) – Contract management

Assessment criteria: The legal framework provides for the following:

(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned.

(b) Conditions for contract amendments are defined, ensure economy, and do not arbitrarily limit competition.

(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.

(d) The final outcome of a dispute resolution process is enforceable.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Functions for undertaking contract management are defined. Section 51 (1) of PPD Act assigns procurement entities the responsibility for the administration of procurement contracts. According to Section 51 (2) of PPD Act, PDE may appoint a contract manager, depending on the nature and complexity of the contract.

(b) Criterion met: The conditions for contract amendments are defined. In accordance with Section 50 of PPD Act, all amendments to a signed contract require the prior approval of the responsible authorities in form of IPDC or Director General of PPDA, as prescribed in the regulations.

(c) Criterion partially met: There are generally efficient and fair processes to resolve disputes. Under regulation 156 of PPR 2004, parties to a procurement contract to submit disputes arising under procurement contract to settlement by arbitrator. However, rules are not clear with respect to the large value contracts.

(d) Criterion not met: Data or information is not available to confirm that the final outcome of a dispute resolution process is enforceable. However, Malawi is not included in the List of Contracting States of the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and therefore it is not clear how the arbitral awards under a dispute resolution process would be enforceable.

Additional explanatory material in support of the analysis: : (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

As per Section 29 of PPD Act, PDEs shall establish Procurement and Disposal Units whose function include preparing contract documentation and managing the resultant contract in conjunction with user departments.

Section 49 of PPDA requires all contracts to be prepared in the manner prescribed in the appropriate standard bidding document issued by Director General and contract needs to be signed subject to no objection as required by the Act or subsidiary legislation.

On contract management, Section 51 of PPD Act states that PDEs shall be responsible for the administration of procurement contracts into which they enter, and to that end, they shall establish procedures for contract administration and provide necessary material and human resources for their implementation. Further, PDEs may appoint a contract manager, depending on the nature and complexity of the contract, whose main responsibility shall be to ensure that the supplier, contractor, or consultant performs the contract in accordance with the terms and conditions specified therein.

Section 50 of PPDA states that all amendments to the signed contract will require prior approval of the responsible authorities and will enter into effect as prescribed in the regulations, with "responsible authority" defined as Internal Procurement Disposal Committee or the Director General of PPDA and shall be effected as prescribed in the regulations.

As PDEs are responsible for the contract administration and PPD Act is based on a "decentralized institutional structure" as defined in the preamble Section of the Act, the role of Director General (or PPDA depending on threshold(s) to be defined- Section 6 of the Act) in providing a "no-objection" on contracts and further in contract amendments, may lead to inefficiency and ineffective execution of the contract by PDEs. This arrangement has the potential to dilute the ownership and responsibility/accountability of PDE for the procurement activities in question.

PPR 2004 and draft of PPR 2018 Regulation 127 to 159 has dealt with all aspects of contract administration from the stage of initiation, advance and progress payment, monitoring of progress, inspection, tests, liquidated damages, contract completion, agreement to submit disputes to Arbitration, condition for termination very comprehensively.

In practice, one of the reasons for delays in contract implementation is availability of funds and delays in contractually due payments. PPD Act does not stipulate supplier's rights in case of late payments. However, PPR 2004 and also draft of PPR for 2018 stipulate that "Payments that become due to the supplier shall be made in accordance with the deadlines set forth in the procurement contract, failing which, the supplier shall be compensated by payment of interest in accordance with the provisions of the procurement contract".

Based on the provisions on Standard Bidding Document for Works (ICB) as on the website of ODPP (prepared in 2005), it is seen that the format of contract is somewhat similar to Small

Works Civil Works Document of the World Bank and in respect of delayed payments clause 43 of GCC states as under ": (1) Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within forty-five (45) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made; (2) If an amount certified is increased in a later certificate as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispu**te."**

Part VI of Desk Instruction (both of 2003 and draft of 2017) deals with administration, amending, completion and terminating in a detailed way.

Regulation 155 of PPR 2004 states of increase in quantities, which exceeds the maximum variations, say 15% of the procurement contract, to require a formal modification of contract without altering the basic nature or scope of contract. The amendment in excess of 15% variation will require new procurement proceedings or justification.

As stated in Regulation 156 of PPR 2004 parties to a procurement contract agree to submit disputes arising under a procurement contract by a separate agreement to settlement by arbitrator. General Conditions of Contract of standard bidding documents state of the parties failing to resolve such a dispute or difference within twenty-eight days, the dispute be referred for resolution in accordance with the Arbitration Law of the Republic of Malawi or such other formal mechanism specified in the SCC. The choice of settlement of disputes is made in the Special Conditions of Contract (SCC) of the standard bidding document.

Based on SBD for Works- ICB as on ODPP website, GCC 24, 25 and 26 defines procedure for resolution of dispute through Adjudicator. These clauses further state that the Arbitration shall be conducted in accordance with the procedure published by the institute named and at the place named in Special Conditions of Contract. SCC provisions appear blank in SBD.

The ICB for Civil Works as stated above is applicable for Contracts not exceeding one billion Kwacha, beyond which use of FIDIC document is recommended.

Malawi is not included in the List of Contracting States of the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and therefore it is not clear how the arbitral awards under a dispute resolution process would be enforceable.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps):

(i) For criterion (c): PPR 2004, Desk Instruction 2003 and SBDs of 2005 not updated to reflect the latest developments in contracts management and to deal with issues and lessons from implementation of these documents over a decade as also to make it consistent with PPD Act.

(ii) For criterion (c): Use of arbitration proceedings for large value contracts in particular in case of International Competitive Bidding is not clearly specified and enforcement of decisions is unclear.
(iii) For criterion (c): The role of Director General of PPDA (or PPDA depending on threshold(s) to be defined- Section 6 of the Act) in providing a "no-objection" on contracts and further in contract amendments, may lead to inefficiency and ineffective execution of the contract by PDEs
(iv) For criterion (d), Malawi is not included in the List of Contracting States of the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

Initial input for recommendations

a. Related to gaps under criterion (c): Procuring and Disposing Entities (PDEs) should be authorized to issue amendment to contract with appropriate delegation of powers to Controlling Officer of PDEs without involvement of Director General of PPDA, based on clear conditions specified in the Act- this will require an amendment to the Act.
b. Related to gaps under criterion (c): Use of arbitration proceedings for large value contracts in particular in case of International Competitive Bidding should be clarified through Regulations and Desk Instructions.
c. Related to gaps under criterion(d): The country needs to institute a procedure to enable enforcement of international arbitration award.

Sub-indicator 1(j) – Electronic procurement (e-GP)

Assessment criteria: The legal framework meets the following conditions:

(a) The legal framework allows or mandates e-GP solutions covering the public procurement cycle, whether entirely or partially.

(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.

(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: Though not well articulated which provides elaborately for application of e-GP system, the PPD Act provides definitions of e-GP and reverse auction, which to some extent can serve purpose of use of e-GP system.
(b) Criterion met: the legal framework ensures the use of tools and standards that provide unrestricted and full access to the system. In accordance with Regulation 160 of PPR 2004, the use of electronic media is provided for in the procurement process including acceptance of electronic signatures and enabling preventive security. Regulation 161 of PPR2004

supports the introduction of ICT in public procurement as also in PPD Act and draft Regulations

(c) Criterion met: Since the establishment of e-GP in the country is expected to be gradual, as may be advised by the e-government procurement advisor, indeed the interested parties will be advised which parts of the processes will start to be managed electronically through regulations.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

PPD Act contains enabling provisions for the use of e-GP and procurement methods by electronic means. For example, Section 2 of PPD Act defines e-GP as "the process of procurement using the internet or other information and communication technologies". Also, it includes a definition of "reverse auction" as "an online real-time sourcing technique utilized by a procuring and disposing entity to select the successful bid, which involves presentation by suppliers or contractors of successively lowered bids during a scheduled period of time and automated evaluation of bids". Further "information" is defined as "written, visual, oral and electronic information;" "record" is defined as "any recorded information, in any format, including an electronic format." Additionally, Section 42(2) provides that "a bidding document may provide for submission of bids electronically", even though the Act does not include elaborate provisions on such electronic submissions. However, after defining e-GP and reverse auction, there is no further mention or details on the use of these tools under Part V of PPD Act or any other part of the Act.

More importantly, the Act is silent on the entity developing, administering, and monitoring the e-GP system.

PPR 2004 and draft PPR of 2018 at Regulation 160 and 161 stipulate that the use of electronic media, including acceptance of electronic signatures, may be authorized consistent with the applicable statutory regulatory or other rules for use of such media, so long as such rules provide for: (a) appropriate security to prevent unauthorized access to the bidding, approval and award processes; and (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying; and 161 (1) The use of information and communication technology shall be introduced in a gradual but steady manner, as the readiness of PDEs progresses.

These regulations further elaborate use of e-GP on availability of procurement documents, communication, bid submission, contracts awards, billing, and payments. With regard to implementation of e-GP under PPD Act, it usually takes time for the Government to implement contract management and publication of Procurement plans. It is better if legislation is not specific about the post tendering and pre-tendering related e-GP requirements.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) For criterion (a), PPD Act does not specify the minimum requirements for the use of e-GP system and the entity in charge for the development, management, and monitoring of e-GP system.

(ii) For criterion (a), though it is there in the definition section, e- reverse auction not included in the Act as one of the methods of procurement and disposal; and

(iii) For criterion (a), Regulation not updated and aligned with PPD Act.

More details on e- Procurement are covered in **Annexure V** of this Report

Initial input for recommendations (all related to criterion (a))

- PPD Act requires an amendment to specify the minimum requirements for the use of e-GP system, e-reverse auction as a method of procurement and the entity in charge for the development, management, and monitoring of e-GP system.
- The legal framework shall require establishment of a unified e-GP platform for Malawi and ideally it should decentralize implementation/ management of this platform by a steering committee.
- The Government needs to deliberate and take a conscious and well-informed decision on: (a) Electronic signature vs. Digital Signature (i.e., for authentication user transactions); (b) Symmetric key vs. Asymmetric key encryption (i.e., for securing sensitive information submitted by bidders);
- Due care should be taken to ensure that the adoption of certain technology does not restrict participation from bidders both from within Malawi and internationally.
- Certain key information to be mandatorily published in Tender notice and Award of Contract can be specified in the legislation or at least in the Regulation.

Sub-indicator 1(k) – Norms for safekeeping of records, documents, and electronic data

Assessment Criteria: The legal framework provides for the following:

(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.

(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.

(c) There are established security protocols to protect records (physical and/or electronic).

Step 1: Quantitative Analysis (comparison of actual situation vs. assessment criteria)

(a) **Criterion met:** There is a comprehensive list established of the procurement records and documents related to transactions including contract management. Regulation 168 of PPR 2004 (as also in draft Regulation) provides details on the requirements of records of public procurement proceedings.

(b) **Criterion met:** There is a document retention policy. In accordance with Section 32 of PPD Act the period of retention of procurement documents is at least five years. The commencement period of the five years is from the date of contract completion or termination, the decision to cancel the procurement proceedings, settlement of disputes or resolution of any complaint, challenge, or appeal. This limitation of five years shall not apply if the documentation has not been subjected to audit.

(c) **Criterion not met:** There is not enough information in the legal framework established for security protocols to protect records (physical and/or electronic). The procurement law is silent on matters of security for both physical and electronic procurement documents files in the procurement units. However, the government has some existing security protocols covering all electronic transactions, the current law is Electronic Transactions and Cyber Security Act No.33 of 2016 which may be applied to protect e-GP which is being studied until detailed protocols in e-GP are established.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 32(1) of PPD Act requires PDEs to maintain records of all procurement and disposal proceedings for a period of five years as from the date of: (a) contract completion or termination; (b) the decision to cancel the procurement proceedings or disposal process; (c) settlement of any disputes under a procurement contract; or (d) resolution of any complaint, challenge or appeal made under the Act. It further stipulates that in an event that the period referred to in sub-Section 32(1) has expired but the documentation has not been subjected to an audit, the records of procurement and disposal proceedings shall still be maintained by the procurement and disposal entity. A record is defined as: "any recorded information, in any format, including an electronic format" (Section 2 of PPDA).

Regulation 168 of PPR 2004 provides further details on the requirements of records of public procurement proceedings. Regulation 170 of PPR 2004 complements the need for the procurement documents to be available for inspection upon demand by oversight organs of government and Regulation 171 on record keeping and reporting requirements. Regulation 172 provides a comprehensive definition of "contract files" and need for its retention to cover contract file index number, invitation to bid, all documents related to evaluation and decision of award contract, modification to contract, inspection, invoice/ payment, work take-over certificates, all contract management records. These are also reflected in draft PPR of 2018, except that at some of places the references to the Section of Act relate to PPA 2003 and not PPD Act.

PPD Act is silent on matters of security for both physical and electronic procurement documents files in the procurement units. However, the government has some existing security protocols covering all electronic transactions, the current law is Electronic Transactions and Cyber Security Act No.33 of 2016 to protect e-GP until detailed protocols in e-GP have specific legal framework. The Act makes provision for electronic transactions; for the establishment and functions of the Malawi Computer Emergency Response Team (MCERT); to make provision for criminalizing offences related to computer systems and information communication

technologies; and provide for investigation, collection, and use of electronic evidence; and for matters connected therewith and incidental thereto. This part needs to be coordinated with Access to Information No. 13 of 2017 on Disclosure of Information on procurement and contracts management.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(a) Related to criterion (c)Regulations and desk instructions not updated to correspond to PPD Act.

(b) Related to criterion (c)A protocol is not established and clarified as part of record on procurement and contracts management as to information to be available in public domain.

Initial input for recommendations(all related to gaps under criterion (c))

- Regulations and desk instructions to be updated to correspond to PPD Act.
- A protocol needs to be established and clarified as part of the record on procurement and contracts management which needs to be consistent with Electronic Transactions and Cyber Security Act No.33 of 2016, Access to Information No. 13 of 2017 and PPD Act so that protocol could be put in public domain**.** This is required to be covered in the Regulation on Open Contracting Data once e-GP is functional (also covered under Indicator 11 on Transparency and civil society engagement strengthen integrity in procurement)**.**

Sub-indicator 1(l) – Public procurement principles in specialised legislation

Assessment Criteria: The legal and regulatory body of norms complies with the following conditions:

(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.

(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.

(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.

Step 1-Qualitative Analysis (comparison of actual situation vs. assessment criteria):

(a) Criterion partially met: According to PPD Act, the law applies to all procurement carried out using public funds. The law does not exclude or give a special attention to any special sector like the major utilities are in the supply of water, electricity and postal services which are all statutory bodies of government. These sectors are to be run on commercial lines often in competition with private sector for which rules of PPD Act may be a constraint.

(b) Criterion met: Public Private Partnership Commission (PPPC) has its own legal framework that started with a PPP policy that was approved by Cabinet on 18 May 2011. Later in the same year an Act of Parliament was enacted as PPP Act No. 27 of 2011. Even for PPPC, PPP Act 2011 applies only for PPP transactions. (PPPC as a Procuring Entity for other transactions must follow PPD Act). PPP Act 2011 follows public procurement principles of transparency and equal opportunity.

(c) Criterion met: The responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned. In accordance with Section 70 of PPP Act 2011 the responsibility is given to the Minister (Minister of Finance) on recommendation of the PPPC to issue guidelines, policy, directives or objectives or forms of public-private partnership and further guidelines to be followed for the proper and effective implementation of the provisions of PPP legal framework.

Additional explanatory material in support of the analysis: : (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 3 (1) of PPD Act stipulates that the Act applies to all procurement involving public funds and disposal of public assets with exclusions stated at Section 3 (2) which at (d) refers to "Procurement and disposal of assets under the Public Private Partnership Act. The Public Private Partnership Commission (PPPC) has its own legal framework that started with a PPP policy that was approved by Cabinet on 18 May 2011. Later in the same year an Act of Parliament was enacted as PPP Act No. 27 of 2011.

The PPP Policy covers the issues of procurement calling for transparency whilst the new procurement process was developed objective of enhancing infrastructure projects and services in the public sector. The PPP policy further advises on activities that are within the scope of public procurement to be undertaken under the Public Procurement Act. *(Ref: Clause 1.0, 7.2.10, 10.2.3. of PPP policy)*

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

i. For criterion (a): There is no separate regime for utilities sector which may impact efficiency and effectiveness of service delivery as these sectors are to be run on commercial lines often in competition with private sector for which provisions of PPD Act may be a constraint.

Initial input for recommendations

a. For criterion (a): Malawi government may 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.

Indicator 2. Implementing Regulations and tools support the legal framework.

Sub-indicator 2(a) – Implementing regulations to define processes and procedures

Assessment Criteria:
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.
(b) The regulations are clear, comprehensive, and consolidated as a set of regulations readily available in a single accessible place.
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: There are regulations that consistently supplement and detail the provisions of the procurement law. In accordance with Section 43 of PPA 2003, the Minister was empowered to make Regulations on the recommendations of the Director in 2004 cited as Public Procurement Regulations, 2004 (PPR 2004). Under the new law, Section 64 of PPD Act, the Minister has still the same powers. A circular was issued on 1st February 2018 by PPDA that existing Regulations shall remain in force to the extent they are consistent with the PPD Act. Even 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.

(b) Criterion partially met: Existing regulations are clear, comprehensive, and consolidated. The Public Procurement Regulations of 2004 were compiled in single booklet cascaded into ten parts covering 196 Regulations and 4 Schedules. The regulations for the new law are yet to be promulgated as explained in (a) above.

(c) Criterion partially met: the responsibility for maintenance of the regulations is clearly established. In accordance with Section 5 (2) (b) and (c) of PPA 2003 and also Section 5 (2) (b) of PPD Act, it is the function of the Director of PPDA to develop unified and binding regulations for all Government institutions and make them available and accessible to the general public. However, the regulations were never amended.

Additional explanatory material in support of the analysis: : (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 5 (1) of PPD Act on Functions of PPDA states that PPDA shall be responsible for the regulation, monitoring and oversight of the public procurement and disposal of assets in Malawi. As per Section 5(2) (b), PPDA shall develop standardized procurement and disposal of assets regulations which shall be binding on all procuring and disposing entities, in consultation with concerned professional and official entities, by the relevant authorities for use throughout Malawi.

There are numerous references in 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 behaviour of public officials and bidders and suppliers involved in public procurement or disposal process", "seek approval from Director General for choice of procurement method", etc. This means that there is an expectation to have implementing rules and regulations. Unfortunately, even 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.

In addition, Section 64 of PPD Act states that the Minister (understood to be Minister of Finance, but not defined in the Act) may make regulation for the better carrying into effect the provisions of the Act. PPA 2003 had a provision in Section 43 that, the Minister, on the recommendation of the Director makes regulations for carrying into effect the provisions of the Act.

Some topics like codes of conduct are covered in other legal texts like Corrupt Practices Act or Act on Public Officers (Declaration of Assets, Liabilities and Business Interest)" which needs to be unified or made consistent on common aspects. Relevant cross references to such other legal texts can be provided under the PPD Act as necessary.

The above provisions bring some degree of uncertainty on subjects to be covered by the Regulation and some degree of dilution in the responsibility of Director General and PPDA in making regulations.

The present website of ODPP has a comprehensive set of Regulation and Desk Instructions which are being updated to correspond to PPD Act. A full list of topics covered in the Regulation based on PPR 2004 including the draft Regulation 2018 is given at **AnnexureIII**

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) Related to criteria (a), (b) and (c): Regulations and Desk Instructions (akin to procurement Manual- also discussed next) not updated for consistency with PPD Act (a draft has been prepared), there are numerous references in the Act for PPDA and Director General making Regulations (example, above a threshold as set by regulations, Code of Conduct to be promulgated by Director General), issues that need to be consolidated and made part of the Regulation as per PPD Act.

Initial input for recommendations:(Relates to gaps under Criteria (a), b) and (c))

a. Regulations and Desk Instructions (akin to Procurement Manual) need to be updated immediately to make it complementary to and consistent with PPD Act.

Sub-indicator 2(b) – Model procurement documents for goods, works and services

Assessment Criteria:

(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.

(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.

(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: There are model procurement documents. In accordance with Section 5 (2) (c) of PPA2003, between 2004 and 2005 the Director in consultation with procurement professionals, developed standard-bidding documents (SBD) for use in all procuring entities. These documents follow the pattern of SBDs of international financing institutions like the World Bank.

(b) Criterion met: At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. SBDs are made of nine Sections containing various clauses and templates.

(c) Criterion partially met: As the responsibility for preparing and updating the document is assigned, however, the documents are not kept up to date. These were developed in 2003, 2004 and 2005 as indicated at (a). Responsibility for preparation and updating of the documents is clearly assigned. In addition to the function of developing of standard bidding documents and other legal documents as provided for in Section 5 (2) (c) of PPA 2003 read together with Regulation 12 (3) of PPR 2004 and Section 5 (2) (b) of PPD Act, the Director of Public Procurement has the role to review and propose to the government improvements to legislative and regulatory text that include the bidding documents, applicable to public procurement.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 5 of PPD Act requires that apart from regulations and instructions, "PPDA" shall be responsible for developing "bidding documents which shall be binding on all procuring entities", in consultation with concerned professional and official entities, for issuance by the relevant authorities for use throughout Malawi. Section 29 of PPD Act requires Procurement and Disposal Unit (PDUs) of PDEs to prepare bidding documents. Section 41 of PPD Act on issuance of bidding document requires that bidders should be provided with all the information they require in order to submit bid(s) that are responsive to the needs of the PDEs, and it must include the terms and conditions of resultant contract. Also, PDEs need to respond promptly to bidder for clarification on the bidding document and such responses to clarification need to be circulated to all participating bidders.

Section 48 of PPD Act on Intention to award a contract requires PDEs to publish intention to award contract in two widely circulated newspapers and on PPDA's website for a period of fourteen days for any contract above a threshold to be set by the Director General before signing the contract. This is akin to the requirement of a standstill period which is a step in the right direction. However, this provision needs to be incorporated in the bidding document.

Standard Bidding Documents are available on the website of ODPP for Consultancy, Goods, Works, and Non-Consultancy Services. There is total twelve documents which are based on types of contracts (for example, Lump-Sum or Time-Based) and method of procurement (for example, ICB or NCB).

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

i. Related to criterion (c): Standard Procurement Documents were prepared in 2004 and 2005 mostly following World Bank templates and these have not kept pace with developments and lessons over the past 12 years.

Initial input for recommendations:(For the gap under criterion (c))

a. Model procurement documents (Standard Procurement Documents) need to be updated to take into account latest developments and to ensure consistency with PPD Act and the upcoming new Regulations.

Sub-indicator 2(c) – Standard contract conditions

Assessment Criteria:

(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.

(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.

(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.

Step 1-Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: There are standard contract conditions for the most common types of contracts like goods, works and consultancy services. Sections 7 (General Conditions of Contract) and 8 (Special Conditions of Contract) of the SBDs contain some of the contract conditions that are common and are mandatory in their use.

(b) Criterion met: The content of the standard contract conditions is generally consistent with internationally accepted practice. The General Contract Conditions were benchmarked with internationally recognised bidding documents, World Bank procurement documents and good international practice.

(c) Criterion met: Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.

Additional explanatory material in support of the analysis (Applies to criteria (a) above)

For Procurement of Works over a value of one billion Kwacha, use of FIDIC Document is recommended. A brief content of Sections of a typical SBD is given at **Annexure III.**

Step 2: Quantitative analysis: *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps):

For Criterion (a), this is not a gap as such but for further improvement. The standard contract conditions were prepared in 2004 and 2005. They are in need of a comprehensive review and update to ensure consistency with the new legal framework, to take into account lessons of their application in Malawi and to incorporate international best practices as relevant for Malawi.

Initial input for recommendations: (suggestions for improvement under criterion (a))

a. Model procurement documents including contract conditions need to be updated to ensure consistency with the law, take into account lessons of application in Malawi and to incorporate international best practices as relevant for Malawi.

Sub-indicator 2(d) – User's guide or manual for procuring entities

Assessment Criteria: There is:

(a) Comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.

(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: There is a comprehensive manual in the form of Desk Instructions which were prepared based on PPA 2003 and PPR 2004. However, there is currently no procurement manual(s)/desk instructions detailing all procedures for the correct and consistent implementation of PPD Act including regulations. These documents need update.

(b) Criterion partially met: The responsibility for maintenance of the manual is clearly established. In accordance with Section 5 (2) (c) of PPA 2003 and Section 5 (2) (b) of PPD Act, the Director is responsible for development of all procurement manuals that include Desk Instructions. However, there have not been any updates.

Additional explanatory material in support of the analysis (Applies to criteria (a) and (b) above)

The website of PPDA contains a detailed set of Desk Instruction in the form of Manual which contains the following procedures intended to: (i) provide working procedures; (ii) promote efficiency, economy and the attainment of value for money; (iii) promote transparency and accountability ; (iv) provide uniform procedures for application by all procuring and disposing entities; and (v) provide standard procedures, against which procurement, supplies management and disposal activities can be monitored and audited. In PPD Act, this function is covered under Section 5 (2) (b) and currently the Desk Instructions are in draft form.

Step 2: Quantitative Analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) Related to criterion (a): No guidance notes on topics like use of life cycle costing as

evaluation criteria, detection of abnormally low bid prices and Challenges and Appeals Process including use of standstill period.

(ii) Related to criterion (b): Desk Instruction are not updated and not fully consistent with PPD Act.

Initial input for recommendation:

a. Related to criterion (a): There is a need to incorporate experiences gained in Malawi after use of regulation, desk instructions and SBDs for over a decade as also other good practices and developments in other UNCITRAL, EC, MDBs models/directive/regulations etc.
b. Related to criterion (a): Further, there is a need to develop guidance notes on topics like use of life cycle costing as evaluation criteria, detection of abnormally low bid prices and Challenges and Appeals mechanism including use of standstill period.
c. Related to criterion (b): There is an urgent need for Desk Instructions (and User's Guide) to be updated and made consistent with PPD Act.

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

Sub-indicator 3(a) – Sustainable Public Procurement (SPP)

Assessment Criteria:
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.
(c) The legal and regulatory frameworks allow for sustainability (i.e., economic, environmental, and social criteria) to be incorporated at all stages of the procurement cycle.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met, the country is a signatory to the Agenda 2030 and has some provisions in place to implement SPP in support of broader national policy objectives. In accordance with Section 5 (2) (k) of PPA2003 and now Section 5 (2) (i) of PPD Act, the Director may advise the Government on the importance of strengthening national policies by joining and implementing public procurement practices that are sustainable. As mentioned in sub-indicator 1 (d) Rules of Participation, as per Section 44 (10) of PPD Act procuring entity is required to ensure prioritization of all bids submitted to give preference to 60% Indigenous Black Malawians and 40% others for National Competitive Bidding which lacks clarity for application.
(b) Criterion not met: There is no SPP implementation plan based on an in-depth assessment and no appropriate systems and tools are in place.

(c) Criterion met: The legal and regulatory frameworks allow for sustainability to be considered. Section 5 (2) (k) of PPA2003 and Section 5 2 (i) of PPD Act allow for example carrying out of economic studies on public procurement by looking at comparisons and future projections (life cycle costs).

(d) Criterion not met: There are no legal provisions that require a well-balanced application of sustainability criteria to ensure value for money.

Additional explanatory material in support of the analysis: : (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Based on document Third Malawi Growth and Development Strategy (MGSD III) of September 2017, regarding sustainable development goals: "Sustainable Development Goals**:** The SDGs constitute a plan for achieving Agenda 2030 which aims to end poverty in all its forms, inclusively and irreversibly everywhere. The SDGs, comprising 17 goals, are to be achieved by 2030. Malawi is a signatory to the Agenda 2030 and participated in its formation. The SDGs are a comprehensive and ambitious set of goals intended not only to spur growth, but also ensure that such growth is equitably shared so as to leave no one behind. They are aimed at creating a just society where resources are sustainably utilized. Unlike the MDGs where environment was represented by a single goal, the SDGs have taken environment as a core element with at least one target in each of the 17 goals and close to half of the 169 targets relating to the environment. It is therefore unlikely that the SDGs can be achieved without environmental sustainability. The SDGs bind all nations in a pact that ensures upward movement of all countries at the bottom of the ladder through partnerships among themselves and with other first world countries in the development process".

However, the concept of sustainable procurement is yet to get reflected in public procurement strategy, rules, regulations and procurement documents except to the extent that under Section 2 of PPD Act there is a definition of "socio-economic policies" which means environmental, social, economic and other policies which a procuring and disposing entity is required to take into account in the procurement and disposal proceedings. There is an overall lack of clarity on how those environmental, social, economic, and other policies are to be applied in the specific procurement activities. As noted earlier under evaluation criteria, some of the environmental aspects can be incorporated through the use of life-cycle cost.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

i. Related to criterion (a) and (d): Sustainability considerations have not been incorporated into existing procurement strategies, rules, regulations, bidding documents, guidance notes on procurement needs to convert goals into appropriate mechanisms for action, i.e., to implement and monitor SPP. Appropriate institutional arrangements and tools are lacking.

ii. Related to criterion (b): Preference of 60% under National Competitive Bidding to indigenous black Malawians and 40% to others as per Section 44 (10) of PPD Act lacks clarity for application. On a broader note, Malawi public procurement has not adopted Resolution 70/1

– Transforming our world: 2030 Agenda for Sustainable Development whose primary goal target 12 applies to 'Ensure sustainable consumption and production patterns'. This requires use of sustainability criteria throughout the procurement cycle, for example use of environmentally friendly products including use of efficient equipment, life cycle costing principles in evaluation, consideration of Environment, Social, Health and Safety aspects in the bidding document.

Initial input for recommendations

a. Related to criterion (a) and (d): Malawi should adopt Resolution 70/1 – Transforming our world: 2030 Agenda for Sustainable Development whose primary goal target 12 applies to 'Ensure sustainable consumption and production patterns' in its procurement systems. This requires use of environmentally friendly products including use of efficient equipment, life cycle costing principles in evaluation, consideration of Environment, Social, Health and Safety aspects in the bidding document and the development of a SPP implementation plan that should be based on an in-depth assessment.

b. Related to criterion (b); Need for clarity on preference for indigenous black Malawians in National Competitive Bidding.

Sub-indicator 3(b) – Obligations deriving from international agreements

Assessment Criteria: Public procurement-related obligations deriving from binding international agreements are:

(a) clearly established

(b) consistently adopted in laws and regulations and reflected in procurement policies.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria

(a) Criterion met: Public procurement-related obligations deriving from binding international agreements are clearly established.

(b) Criterion met: Public procurement-related obligations are consistently adopted in laws and regulations and reflected in procurement policies.

Additional explanatory material in support of the analysis: : (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Based on document Third Malawi Growth and Development Strategy (MGSD III) of September 2017, **"**The MGDS III is aligned to Malawi's international, continental and regional obligations, such as the 2030 Agenda on Sustainable Development Goals (SDGs), the African Union Agenda 2063, the Istanbul Program of Action (IPoA), the Vienna Program of Action (VPoA), the Southern African Development Community Regional Indicative Strategic Development Plan (SADC RISDP) and the Common Market for Eastern and Southern Africa (COMESA) Treaty. The Key Priority Areas (KPAs) have direct links to these commitments, providing a strong basis

for the MGDS III as an implementation tool for the SDGs and the other international agendas in the medium term".

Malawi has been a member of WTO since 31 May 1995 and a member of GATT since 28 August 1964.

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 nineteen member countries covering a population of 390 million. In order to enhance competition and transparency in both private and public procurement arrangements, it is essential that regulations and procurement procedures be harmonized across the COMESA 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 which impact public procurement law of Malawi e.g., thresholds for ICB, Procurement Management Information Systems (PROMIS), etc. 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 Protocol on Trade that demands Members to implement measures within the Community that prohibit unfair business practices and promote competition.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

None

Initial input for recommendations

None

Pillar II – Institutional Framework and Management Capacity

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

Sub-indicator 4(a) – Procurement planning and the budget cycle

Assessment Criteria: The legal and regulatory framework, financial procedures and systems provide for the following:

(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.

(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).

(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the completion of major contracts.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria

(a) Criterion met: Annual or multi-annual procurement plans are prepared. In accordance with Section 21 of PPA 2003 and Section 39 (1) of PPD Act, PEs are required to plan their procurement and disposal activities with the view of achieving maximum value for money. This is also linked to sub-indicator 9 (a) on planning.

(b) Criterion not met: The budget funds are not generally committed or appropriated in a timely manner, or they do not cover the full amount of the contract. Most of the suppliers and contractors are not paid in time because of lack of funds. This is linked to Sub-Indicator 9 (c) on Contracts management in practice.

(c) Criterion not met: The public procurement law or any of the other two, Public Finance Management Act and Audit Act do not provide a feedback mechanism on completion of contracts. Feedback is only provided in the financial reporting that does not provide specific details or categorization of procurement contracts.

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps/red flag)

✓ (i) Related to criterion (b): Lack of funds, uncertainty of payment and non-payment (including instances of contract price reduction due to such lack of funds) are major gaps in the public procurement system of Malawi. This could lead to bidders not participating in bids (also supported by Survey Results) or quoting high prices to factor such uncertainties. In detail, procurement plan is not linked to budget and in fact not available for most of the procuring entities - refer to sub-indicator 9 (a)- also a red flag.

(ii) Related to criterion (a) Apart from the requirement of indicative budget estimates for two years beyond the current year as per PFMA 2003, there is no requirement for multi-year procurement planning and budgeting, for large contracts being executed for periods exceeding one year (***Not a gap but suggestions for improvement***).

(iii) Related to criterion (c) There is no evidence of a feedback mechanism for reporting on budget execution in particular regarding the major contracts.

Initial input for recommendations

a. Pertaining to criterion (b). Procedures to be reinforced and consistently applied to ensure the availability of funds before undertaking any procurement and payments made to the contractor/supplier according to contractual obligations. Procurement plans to be prepared and updated regularly and used as an input to budget preparation. Budget funds to be committed and appropriated in a timely manner covering all contractual obligations.
b. Pertaining to criterion (c). There is need to develop feedback mechanism for reporting on budget execution in particular regarding the major contracts.

Sub-indicator 4(b) – Financial procedures and the procurement cycle

Assessment Criteria: The legal and regulatory framework, financial procedures and systems should ensure that:

(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.

(b) The national regulations/procedures for processing of invoices and authorisation of payments are followed, publicly available and clear to potential bidders. *****

*** Quantitative Indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion (b):**

- invoices for procurement of goods, works and services paid on time (in % of total number of invoices)

Source: PFM systems.

In case comprehensive data is not available, this indicator may be applied when reviewing a sample of procurement cases (Sub-Indicator 9).

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria

a) **Criterion partially met**: In accordance with regulation 24 of PPR 2004, procurement proceeding may be initiated only after determination and approval of budgetary allocations and only after obtaining a certificate from Ministry of Finance that budget allocations are sufficient to the procurement. Section 39 of PPD Act requires PDEs to plan procurement and disposal activities with a view to achieving maximum value from both public expenditures and disposal proceedings. Section 39 (4) of PPDA require that the annual procurement and disposal plans shall be submitted to PPDA by the last date of the first month of the financial year failing which PPDA shall impose necessary sanctions to PDEs and report for disciplinary sanctions against Controlling Officer. However, these are just punitive measures. However as evidenced under Indicator 9 these rules not followed in many instances.

b) **Criterion not met:** The national regulations/procedures for processing of invoices and authorisation of payments are not followed, though there are procedures of handing invoices, receipt of goods or service is certified or the technical unit signs completion certificate before invoices are authorised for payment by PDU. Finance department, in presence of all authorised documentation, effects payment.

Additional explanatory material in support of the analysis: : (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Part III of PPR 2004 defines prerequisite for initiating procurement proceedings. Regulation 23 of PPR 2004 on Annual Planning for Budget Preparation Purposes states that "Prior to the

determination of annual budgetary allocations, Procuring and Disposal Entities shall provide to the Ministry of Finance, or in the case of local authorities, to the Local Government Finance Committee, a general plan describing the extent, timing and purposes of projected procurement requirements for the budgetary period".

Regulation 24 on PPR 2004 elaborates planning for individual procurement proceedings" 24 – (1) A procuring and disposing entity may initiate actual procurement proceedings only after the determination and approval of budgetary allocations, and only after obtaining a certification from the Ministry of Finance that budgetary allocations sufficient to fund the procurement are available for that purpose; and a specific reference to that certification shall be included in the bidding documents. (2) Procuring and Disposal Entities shall devise procurement plans, taking into account the following factors and steps as appropriate under the circumstances; (a) identification and assessment of the need for the procurement; (b) designation of procurement planning team; (conducting market research in order to identify various technical solutions, in particular in the commercial market, to identify the range of available suppliers, and to determine the most favorable contractual and guarantee terms available in the commercial market that would be suitable for procurement; (d) studying acquisition history for similar goods, works or services; (e) conducting feasibility and other pre-contract studies; (f) defining and describing the requirement; (g) estimation of the cost of a proposed procurement; (h) identification of the sources and amount of financing".

The above provisions of PPR 2004 are reflected at Regulations 23 and 24 of draft PPR 2018 as well.

Public Finance Management Act No.7 of 2003 (PFMA 2003), has been promulgated with a view to "to foster and enhance effective and responsible economic and financial management by Government, including adherence to policy objectives; to provide accompanying accountability arrangements together with compliance with those arrangements; to require the Government to produce statements of proposed budget policy, confirmation of adherence to fiscal discipline, economic and fiscal statements including economic and fiscal forecasts and updates, and performance information, including comprehensive financial statements; and for matters connected therewith and incidental thereto".

Section 10 of PFMA 2003 requires that each Controlling Officer is responsible for ensuring that in relation to his ministry all expenditure is incurred with due regard to economy, efficiency and effectiveness and avoidance of waste, any proposal to charge for supply of goods and services confirms that the charge is consistent with the economic and fiscal policy of the Government, after six months of each financial year reports are submitted on out of the ministry.

Section 15 of PFMA 2003 requires that the Minister "lay before the National Assembly, with the Estimates, a written budget policy statement including forecast providing a projection of expenditures for each category of outputs for ensuing financial year and the two years following that year that *inter alia* includes the details of estimated expenditure of the Government".

Section 68 of PFMA requires that "the head of each statutory body, however called, shall within three months before the end of its financial year submit to the Minister and to the Secretary to the Treasury a performance and management plan, including projected financial statements for the following financial year".

Section 77 of PFMA 2003 requires that "a statutory body may enter into contracts for the works, acquisition, disposal or management of goods, services and construction works in accordance

with the Public Procurement Act 2003. Section 78 of PFMA 2003 requires that a statutory body or a subsidiary shall keep a proper accounts and records of its transactions and financial position and shall do all things necessary to ensure that all payments are correctly made and properly authorized and shall maintain adequate internal control over its assets, or assets in its custody, and over the incurring of liability by it".

In the Section on Initiating and Planning for Procurement Desk Instruction of 10th October 2003 issued by ODPP, it is stated that while raising a requisition, there is need for confirming the availability of funds based on estimated value of the procurement requirement and the Section on Completing the Contract including the contract completion check-list require a confirmation that all necessary payments have been made after completion of the contract and that there are no outstanding items, claims or payments which are overlooked and that records that properly archived and available for audit. These desk instructions appear in the draft Desk Instruction of 2018 as well.

However, much remains to be desired on how the procurement system is linked with the public financial management system. There is no legal backing on commitment or appropriation of funds. The feedback mechanism on completion of contracts is not backed by Acts.

Based on the above it is seen that PPD Act and related regulations, and desk instructions feature only annual procurement plan but without any linkage to multi-year procurement plan. There is no evidence that a feedback mechanism on budget execution in regarding to completion of major contracts is in place. In accordance with the PPD Act as also PFMA 2003, it is a requirement that availability of funds is checked before initiation of procurement, however in practice (as covered under Indicator 9 based on Sample Cases), there is an absence of procurement plan for several procuring entities and allocation of funds is inadequate to cover due payments under the contract and contractors are asked to continue to work without timely payments.

Step 2: Quantitative Analysis

For criterion 4 (b): Regarding the invoices paid in time as detailed at Indicator 9(c), information was available for fifty invoices in 86 cases of 13 entities and 31 were processed in time representing 62%. However, most of these invoices were for local shopping and it does not capture late payment issues for larger construction contracts or other payments for goods and services.

Step 3: Gap analysis (substantive gaps/red flag)

- ✓ (i) Related to criterion (a): There are situations of lack of funds to complete a contract and uncertainties and delays in payment (also covered under Indicator 9 on Sample of procurement cases).

  (ii) Related to criterion (b): There is no evidence of a national regulations/procedure for processing of invoices and authorization of payments which are publicly available and clear to potential bidders.

Initial input for recommendations:(For gaps under criteria 4 (b) (a) and 4 (b) (b))

a. Related to criterion (a): Draft PPR 2018 to be finalized in respect of procurement planning and budgeting and actual availability of funds to be ensured.

b. Related to Criterion (b): National procedures for processing of invoices and authorization of payments to be developed and reinforced, published, and consistently applied to ensure timely payments. e-GP system is under development to address this issue.

Indicator 5 – The Country has an institution in charge of normative and regulatory function

Sub-indicator 5(a) – Status and legal basis of the normative/regulatory function

Assessment Criteria:

(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) **Criterion not met:** In accordance with Section 4 of PPA 2003 and now Section 4 of PPD Act, the law establishes the Office of the Director of Public Procurement (ODPP) and now Public Procurement and Disposal of Assets Authority (PPDA) (established on April 3, 2018) as a public office responsible for the implementation of the Public Procurement Act No.8 of 2003 and now Public Procurement and Disposal of Assets Act No. 27 of 2017, which became effective in August 2003 and 21 December 2017 respectively.

Under Section 5(1) of PPA 2003 Director of Public Procurement falls under the direct supervision of the President of the country and now Section 5 of PPD Act establishes PPDA responsible for monitoring and oversight of public procurement and disposal of assets in Malawi as an autonomous body. In accordance with Section 6 of PPD Act, PPDA has been given "Powers" which are inconsistent with its functions as a normative/regulatory body and will impact PPDA's ability to discharge its primary functions effectively (refer to gap analysis below).

Step 2: Quantitative Analysis - *Not applicable*

Additional explanatory material in support of the analysis:

Status and legal basis of the normative/regulatory function and responsibilities

In accordance with Section 4 of PPD Act, the Public Procurement and Disposal of Assets Authority (PPDA) shall be: (a) a public body responsible for the administration of PPD Act; (b) a body corporate with perpetual succession and common seal; and (c) capable of doing or performing all such acts and things as bodies corporate may, by law, do or perform. Section 5 of PPD Act states that PPDA shall be responsible for the regulation, monitoring and oversight of public procurement and disposal of assets in Malawi.

With regard to assessment criteria 5(b), as described in Section 2 of PPD Act, the function of PPDA encompass (a) to develop and enhance the efficiency and effectiveness of public procurement and disposal of assets operation; (b) develop standardized and unified procurement

and disposal of assets regulations, instructions, and bidding documents which shall be binding on all PDEs; (c) to establish and maintain institutional linkages with Malawi Institute of Procurement and Supply (MIPS) and other professional bodies including regulating the ethical behaviour and standards of supply chain management professionals- there is a separate act called The Malawi Institute of Procurement and Supply Act (No. 3 of 2016)- MIPS 2016; (d) to collect and establish a data and information base on public procurement and monitor performance of PDEs; (e) to maintain and circulate lists of debarred bidders, suppliers, contractors, consultants and other service providers; (f) to provide an annual report on procurement and disposal activities carried out by PDEs including reporting this through the Minister who shall lay it before the National Assembly; (g) to refer violation of the Act and the regulations on procurement to the relevant budgetary and law enforcement authorities for appropriate action; (h) to facilitate administrative review of bid protests in accordance with Section IX of PPD Act; and (i) to carry out economic studies, comparisons, and future projections, so as to provide advice to the Government in respect of the mid-term and long term policy all with respect to public procurement and disposal of assets.

As per Section 5 (3) of PPD Act, in discharge of the above function under the Act, PPDA shall act in a manner that is impartial and independent. The functions as described in Section 5 do not envisage direct involvement of PPDA in the decision making for award of contracts.

Section 6 of the Act of 2017 on Powers of PPDA states that PPDA through subsidiary legislation would set a mandatory threshold for issue of a "No Objection" by Director General of PPDA and above any stated limit such "No-objection" shall be issued by PPDA (consisting of all members as defined in Section 7 of the Act). Further, PPDA, inter alia, shall have powers to summon and examine witnesses in procurement process, suspend and debar bidders, declare mis-procurement, and investigate and sanction procuring entity and individuals involved in mis-procurement or misconduct. The earlier Act of 2003 did not envisage any "No-objection", but in practice through regulation ODPP got involved in providing "No-objection" above a defined threshold as a control function.

With the above powers, PPDA would be involved deeply into review of procurement cases and control functions which are required to be carried out by agencies like Anti- Corruption Bureau. This mismatch between "Functions" and "Powers" would impact ability of PPDA to discharge their stated function as also put them into conflicting situation with their monitoring and oversight functions.

The functions and the powers of PPDA are a combination of transactional, regulatory and review roles with the following tasks: (i) the regulation and monitoring of procurement activities (sec 5(1)); (ii) the involvement in specific procurement transactions through review of procurement procedures through prior review or no objection (sec. 6(2)), or the approval of "the use of methods other than open tendering…or than request for proposals" (sec.34(15)); (iii) the review of bid protests (sec.5(2)(k), sec.60); (iv) the summoning and examination of witnesses (sec.6(1)(c)) (here, too, the context in which this could be done is unclear); (iv) the conduct of audits where PPDA may have other involvement in the procurement process (sec.6(1)(e)) ; (v) the suspension and debarment of bidders (sec.6(1)(g)); (vi) investigation and sanction of procuring entities, as well as declarations of mis-procurement (sec.6(1)(i), (j)); (vii) institute procurement review at any time before, during or after contract award (sec.6(1)(h))

The proposed allocation of multiple functions to PPDA raises concerns with respect to potential or actual conflict of interest situations. The intent of sec. 5, "Functions of PPDA," and sec. 6, "Powers of PPDA," and any distinction among these provisions, also are unclear.

Under good international procurement practice, regulatory and oversight bodies should be independent and should not be involved in procurement operations/transactions or activities. In this respect, the involvement of PPDA in specific procurement procedures makes it part of the procurement decision-making process, which creates conflicts with its oversight function, as well as its role in the review of bid protests. It is also good practice that the bodies responsible for debarring/sanctioning companies should act independently from entities involved in the procurement decision-making process. Under certain circumstances, it may occur that consolidation of functions happens, but in this case, safeguards should be put in place to ensure as broad a separation of functions as possible, such as the institution of firewalls within PPDA that are vested with potentially conflicting functions.

Sections where clarity is required in the function and powers of PPDA

Section 6(1) (f): It would be advisable to clarify under which circumstances and for which purposes PPDA may "summon and examine witnesses" **Section 6(1)(g):** The grounds for debarment indicated are too broad and might be subject to abuse. Moreover, this provision is not consistent with Section 56 which describes the grounds for debarment (a cross-reference to this Section would also be beneficial); **Section 6(1)(i):** Mis-procurement has been defined in the PPA, but the consequences are not clear. Given that this is a term normally adopted by MDBs (as a financing decision), understanding this concept in practice is paramount to understand its usefulness; **Section 20(1):** The post engagement restrictions on confidentiality extend only to members of PPDA (Board) or committee of PPDA. General Director, deputy director or other staffs are not covered. Since PPDA is involved in procurement transactions, we would advise to include a broader confidentiality obligation, which would cover the employees of PPDA involved in procurement operations, as well as other Government participants in the procurement/disposal process.

Other matters related to PPDA:

PPDA, on the other hand, is a collegial body. It consists of five full time and three ex-officio members. PPDA shall also appoint, in consultation with the Minister, appoint Director General. A member of PPDA can be removed by the Minister, *on the advice of PPDA,* for the following reasons (sec.7(6)): (a) Has been declared bankrupt; (b) Has been convicted within the last five years by a competent court of a crime which is punishable with a imprisonment without an option of a fine; (c) Is otherwise incapacitated (*not clear what is this is*); (d) Is in default or breach of trust in discharge of the members duties under this Act; (e) If representing a specific institution, has ceased to be a member of such professional body that nominated him.

Section 12(1) of PPD Act sets forth the conditions when the Director General is removed. Those conditions are: (a) Incompetence; (b) Inability to perform functions by reason of mental or physical infirmity; (c) conviction of an offence which is punishable with imprisonment without an option of fine; (d) Involvement in corrupt transaction; (e) Misconduct that brings PPDA into disrepute; (f) Non-disclosure of interest; and (g) Undischarged bankruptcy.

Given that PPDA includes more than members, i.e., Director General, Deputy Director General, and other staff, it would have been easier to consider the 8 members (5 full time and 3 ex-officio) to be called one name, e.g., "Board" "Commission", etc. It is not clear who represents the "PPDA" when one member is considered for termination. Is it the other members (Board)?

Is it the Director General included in this decision? For reasons mentioned above, it is important to distinguish the technical members (Board) from the executive functions (Director General and Deputy Director General). Similarly, the PPDA (Section 7(6) (c)) refers to incapacitation of member, but it is not clear what that means. Also, the Act does not provide for natural causes of removal of the member, e.g., expiry of the mandate/term, death, mental incapacity, etc.

The conditions for terminating the Director General and for terminating a member are different, and it's not clear why. For example, misconduct or conflict of interest or involvement in fraud and corruption are grounds that could apply in both cases.

Section 22(1)-(3) of PPD Act requires a person involved in public procurement, on the side of PPDA, Internal Procurement and Disposal Committee, or a committee of PPDA, to disclose a conflict of interest, and consequences (imprisonment for 5 years and fine of 1 million K) if he/she fails to do so. There is no clarity on what is meant by situations of conflict of interest and therefore a cross reference to the relevant Section in the Act would be useful.

Step 3: Gap analysis/conclusions (substantive gaps)

- ✓(i)There is an inconsistency and overlap between "Functions" and "Powers" of PPDA as given in Section 5 and Section 6 of PPD Act. "Functions" of PPDA include regulation, monitoring and oversight (including complaint handling) but the "Powers" include issuing no-objection,conducting investigations, issuing sanctions, declaring misprocurement with appropriate disciplinary and punitive measures against Procuring and Disposal Entities. This combined set of responsibilities creates an internal conflict of interest among the various powers. It will surely impact the ability of PPDA to discharge its primary stated function as a normative and regulatory entity, which as the assessment shows, are already suffering under ODDP/ PPDA. PPD Act (section 6) refers to the power of PPDA to declare misprocurement. The term has been defined in PPDA, but the consequences are not clear. Given that this is a term normally adopted by MDBs (as a financing decision), clarifying this concept in PPDA, or implementing rules is paramount for its usefulness and practical application.

Initial input for recommendations:

(a) Anomaly between "Function" and "Power" of PPDA needs to be resolved to avoid conflicts of interest (through amendment of Act). PPDA should not be directly involved in execution part of the procurement.
(b) Until such time the Act is amended Government should consider establishing a task force to assess various options for allocation of powers like departments dealing with no-objections and complaints review should run independently from other departments of PPDA, no-objection levels to be set high enough and given in a timely manner.
(c) Decisions on procurement method should be the responsibility of procuring entities (not of any outside agency). Matter should be subject to complaints/appeals.
(d) Responsibilities/ powers of PPDA should be in line with 5(1), which is regulation, monitoring and oversight.

Sub-indicator 5(b) – Responsibilities of the normative/regulatory function

Assessment criteria: The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

(a) providing advice to procuring entities

(b) drafting procurement policies

(c) proposing changes/drafting amendments to the legal and regulatory framework

(d) monitoring public procurement

(e) providing procurement information

(f) managing statistical databases

(g) preparing reports on procurement to other parts of government

(h) developing and supporting implementation of initiatives for improvements of the public procurement system

(i) providing tools and documents, including integrity training programmes, to support training and capacity development of the staff responsible for implementing procurement

(j) supporting the professionalization of the procurement function (e.g., development of role descriptions, competency profiles and accreditation and certification schemes for the profession)

(k) designing and managing centralised online platforms and other e-GP systems, as appropriate.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

As Pillar II refers to how the law operates in practice, reference is given to both PPA 2003 and PPD Act. As per Section 5 of PPD Act, PPDA is responsible for regulation, monitoring and oversight of public procurement including the administrative review of bid protests. Further under Section 6 of PPD Act, through subsidiary legislation, PPDA has powers (and responsibility) of issuing "No Objection" for contracts above financial thresholds and other powers of sanctions, suspension, debarment as explained in detail under additional explanatory material. In particular, PPDA has the following set of responsibilities against each sub-criterion:

(a) Criterion met: The normative/ regulatory function provides advice to procuring entities. In accordance with Section 5 of PPA 2003 and Section 5 of PPD Act read together with Regulation 13 of PPR 2004, ODPP/PPDA assist in the development and enhancement of efficiency in public procurement operations, issuing opinions and providing advice and proposing solutions to facilitate the work of procuring entities in fulfilling the objectives of the law.

(b) Criterion met: The normative/regulatory function drafts procurement policies. In accordance with Section 5 (2) (d) of PPA 2003 and Section 6 (1) (e) of PPD Act, it is the responsibility of ODPP/PPDA to develop government-wide policies on public procurement and governance issues.

(c) Criterion met: The normative/ regulatory function proposes changes/drafting amendments to the legal and regulatory framework. In accordance with Section 5 of PPA 2003 and Section 5 PPD Act read together with Regulation 12 (3), ODPP/PPDA reviews and proposes improvements to the public procurement legal framework.

(d) Criterion met: The normative/regulatory function monitors public procurement. In accordance with Section 5 (1) of PPA 2003 and Section 5 (1) of PPD Act, it is the function of ODPP/PPDA to monitor and regulate procurement including oversight function under the new law.

(e) Criterion met: The normative/regulatory function provides public procurement information. In accordance with Section 5 (2) (l) of PPA 2003 and Section 5 (2) (d) of PPD Act, ODPP/PPDA is mandated to establish information base for public procurement. Meanwhile ODPP developed a website to support this role where information can be accessed.

(f) Criterion met: The normative/regulatory function manages statistical databases. In accordance with Section 5 (2) (e) of PPA 2003 and Section 5 (2) (d) of PPD Act, ODPP/PPDA is mandated to collect and establish a data and information base for managing public procurement.

(g) Criterion partially met: The normative/regulatory function prepares reports on procurement to other parts of government. In accordance with Section 5 (2) (g) of PPA 2003 and Section 5 (2) (f) of PPD Act, ODPP/PPDA in mandated to provide annually a quantitative and qualitative report to the Minister who presents it before National Assembly. However, in practice such quantitative and qualitative data is not available. The last Annual Report of ODPP as available on their website is for FY 2010-11.

(h) Criterion met: The normative/regulatory function develops and supports implementation of initiatives for improvements of the public procurement system. In accordance with Section 5 (2) (a) of PPA 2003 and Section 5 (2) (a) of PPD Act, it is the function of the ODPP/PPDA to develop and enhance efficiency and effectiveness of public procurement.

(i) Criterion met: The normative/ regulatory function provides tools and documents, including integrity-training programmes, to support training and capacity development of the staff responsible for implementing procurement. In accordance with Section 5 (2) (c) of PPA 2003 read together with Regulation 13 (1) (a) of PPR2004, it is the role of ODPP/PPDA to provide regulations instructions and bidding documents for use in all procuring entities and also to organize and conduct educational programs and professional training. However as per Section 5 (c) of PPD Act, the role of PPDA is to establish and maintain institutional linkages with Malawi Institute of Procurement and Supply (MIPS) and other professional bodies having interest in regulating the ethical behaviour and standards of supply chain management professionals. Section 4 of MIPS Act No. 3 of 2016 provides details of the function of MIPS that covers registration of supply chain management professional, establishing educational standards and qualification, collaboration with other institutions, develop ethical standards, set, and conduct professional examination, conduct training and research in procurement and supply chain management. However, MIPS is in a formative stage.

(j) Criterion met: The normative/ regulatory function supports the professionalization of the procurement function. In accordance with Section 5 (2) (d) of PPA 2003 and Section 5 (2) (c) of PPD Act, it is the function of ODPP/PPDA to promote the development of professional workforce and a body responsible for professional competence and accreditation and to establish and maintain linkages with professional bodies relevant to the profession. However, MIPS has a wider role as explained above.

(k) Criterion met: The normative/regulatory function designs and manages centralised online platforms and other e-GP systems, as appropriate. In accordance with Section 5 (2) (l) of PPA 2003, ODPP is responsible for setting up policy for, and promote the application of information and communications technology (ICT) to public procurement including e-GP. As per Section 5 (d) of PPD Act, PPDA is required to collect and establish a data and information base. PPDA has also taken initiative to establish e- Procurement system in the country as explained in detail in the Annexure on "e-GP- Key findings and Implementation Road Map."

Step 2: Quantitative Analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

(i) For criterion (j): This is not a gap but identified for further improvement. There is a need for effective coordination between PPDA and MIPS in supporting the professionalization of the procurement function (e.g., development of role descriptions, competency profiles and accreditation and certification schemes for the profession).

(ii) For criterion (g): The website of ODPP/PPDA is not maintained and does not provide procurement information and statistics on procurement for the country.

Initial input for recommendations

(a) For Criterion (j) as further improvement: Effective co-ordination needed between PPDA and MIPS on professionalization of procurement function
(b) For Criterion (g): ODPP/PPDA website to be made fully functional.

Sub-indicator 5(c) – Organisation, funding, staffing, and level of independence and authority

Assessment Criteria:

(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.

(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.

(c) The institution's internal organisation, authority and staffing are sufficient and consistent with its responsibilities.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: The normative/regulatory function and the head of the institution have a high-level and authoritative standing in government. In accordance with Section 4 of PPA 2003 and Section 4 of PPD Act, ODPP and now PPDA (established on April 3, 2018), formed by Act of Parliament (Law) reports directly to the minister responsible who is answerable to Public Appointments Committee of Parliament.

(b) Criterion partially met: The legal/regulatory framework secures the financing of the normative/regulatory function. In accordance with PPA 2003, the legal framework is not clear on the independence of ODPP on financing. However, Section 16 of PPD Act has come up with a Section: "Funds for PPDA" on how PPDA will be funded in its operational and financial costs. However as per explanatory material provided at the end of analysis for Indicator 5, the funds are not sufficient for PPDA to discharge its mandated functions.

(c) Criterion partially met: The institution's internal organisation, authority and staffing are not sufficient. as explained under additional explanatory material. In accordance with Section 6 and 7 of PPA 2003 and now Sections 10 to 15 of PPD Act provides for staffing of ODPP and PPDA, respectively. However, sufficiency of staff in the institution depends on the availability of funds and commitment from the government.

Additional explanatory material in support of analysis (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Organization, funding, staffing and level of independence and authority of normative/regulatory body

Currently PPDA is headed by an Acting Director. There are four departments headed by Deputy Director or Assistant Director or a head of the department: (i) Monitoring and Enforcement; (ii) Regulatory, Review and Advisory; (iii) Professional Development; and (iv) Finance and Administration.

It is seen that Director of ODPP reports to the Minister of Finance and as understood to be the situation under PPD Act for the Director General. Based on Budget Document No 5 for Financial Year 2017/18 it is seen that under the Directorate of Public Procurement whose Controlling Officer is Director of Public Procurement against an authorized establishment of 71 personnel, total filled post was 45 as of July 1st, 2016, and 52 as of July 1st, 2017 (estimated), from grade D (PP1) to O (PP 13) with an annual approved budget of MK 857.16 million for 2017-2018.

As per the Budget Document No.5 Financial Year 2017/18, the major achievement in 2016/17 of ODPP is indicated as: (i) 27 Procurement Post Reviews (PPRs) conducted in District Councils; (ii) 9 independent Procurement Reviews/ Audits; (iii) Public Procurement and Disposal of Public Assets (PPDA) Bill tabled in Parliament; (iv) Bid Protest mechanism training for suppliers conducted in all regions; and (v) 7 vacant positions were filled.

Other statistical data on performance are: (i) Number of procurement audits/reviews conducted- 9 in 2015/16, 20 in 2016/17 with target of 30 in 2017/18; (ii) number of bidders or suppliers debarred in 2016/17 -2, and 2017/18- Zero so far. In a country where number of procurement professionals are in the range of thousands, the number of procurement staff trained in public

sector was 40 (2015/2016) and the number is down to 15 to 20 in recent years as per Budget Document No.5 for FY 2017/18.

Regarding the adequacy of resources, the approved budget of ODPP/PPDA for 2017-18 is MK 857 million. Based on ODPP/PPDA sources, the actual allocation of funds until February 2018 (8 months into FY) is about MK 320 million which is about 37%, unless there is a spurt in year-end allocation. If this rate of funding continues until the end of FY (June 30, 2018), the total expected funding shall be MK 480 million which will be about 56% of approved budget. In year 2016-2017 the figures for budget allocation/actual funding were MK 406/343 Million, and MK 368/303 Million. Based on discussions held with PPDA and these figures in Program based Budget document (reference Budget Document no.5), the available resources are insufficient to discharge mandated functions and additional responsibilities of PPDA.

Step 2: Quantitative Analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps/red flag)

i. For criterion (b): Funds given to PPDA are not sufficient to discharge its mandated function under Section 5 of PPD Act (and additional functions described under the Section 6 "Power of PPDA"). Insufficient resources to discharge functions as required by the Act which could impact the effectiveness of PPDA.

ii. For criterion (c): The institution's internal organisation, authority and staffing are not sufficient.

Initial input for recommendations (to address gaps under criteria (b) and (c))

a. For criterion (b): Malawi Government to make an assessment on sufficiency of funds allocated to PPDA to discharge its functions effectively with additional function mandated now under power of PPDA in PPD Act. It appears the "management bandwidth" or span of attention or resources of ODPP/ PPDA gets diverted into so called "urgent" task at the cost of "important" strategic tasks.

b. For criterion (c): There is need to take steps to remove the institution's internal organisation, authority, and staffing. This is basically linked to the recommendation a. above, as the lack of sufficient financing is the main reason for this deficiency.

Sub-indicator 5(d) –Avoiding conflict of interest

Assessment Criteria:

(a) The normative/regulatory institution has a system in place to avoid conflicts of interest. *****

***** Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a):

Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). *Source:* Survey

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) **Criteria not met**: There is a conflict-of-interest situation at the level of the institution as explained in detail in explanatory material However at the level of officials involved in

procurement, there is a system in place on disclosure of interest. In accordance with Section 22 of PPD Act, where any member, a committee or any employee of PPDA, or any public official or member of an Internal Procurement and Disposal Committee has any direct or indirect pecuniary interest in relation to any matter before PPDA, any of its committees, or the procuring and disposing entity, he/she shall disclose the nature of interest and not take part in any deliberation or any decision-making process in relation to that matter.

Step 2: Quantitative Analysis

As per perception of private sector based on survey results 40% of respondents consider that normative/regulatory body is not free from conflict of interest, the text of response stating that they work under political influence and same contractors get the job repeatedly – Survey Results given at **Annexure**.

Additional explanatory material in support of analysis (for 5 (d) (a))

It appears the regulation, monitoring and oversight by ODPP was not very effective due to non-compliance by Procuring Entity in providing data or information. Based on discussions in ODPP it is understood that as PPD Act provides more powers to PPDA as at Section 6 through subsidiary legislation, the compliance would improve, which may not be true as explained below:

First, there is no reliable data on public procurement. For example, number of procuring entities that have been non-compliant with the public procurement legal framework was Zero in 2016/17 and 1 in 2017/18. Number of procurement misconducted cases investigated and completed was 2 in 2015/16, 1 in 2016/17 and zero so far in 2017/18 the last annual report of ODPP was prepared in 2012. Based on this data it is possible to conclude that public procurement system is functioning effectively in Malawi. Similarly, based on Audit Reports of ODPP and Sample cases (discussed at Indicator- 9) Restricted Tender is a widely used method, which may be justified also in few instances (but not at the level of 80% by value).

Second, the focus of ODPP activities has shifted to spending time and resources on providing "no-objection", clearance for single-source, procurement post reviews at the cost of long-term strategic objectives of improving the legislation, bringing more transparency through well-functioning website, publication of procurement notices, creation of data and information base including introduction of e-GP, professionalization.

Third, it appears the "management bandwidth" or span of attention or resources of ODPP/ PPDA gets diverted into so called "urgent" task at the cost of "important" tasks as stated earlier which could have long term impact. Based on the given reports, complaints are rare, cases of debarment are in the range of 0 to 2 in the previous years. It appears ODPP/PPDA is under-resourced and needs to reset its priorities to improve its effectiveness more so with the enactment of PPD Act which has entrusted it with "powers" which does not match with its "function".

Avoiding Conflict of Interest

As explained in previous paragraphs, there are several sources of Conflict of Interest in the functioning of ODPP/PPDA which stems from the following situations: (i) "Powers" at Section 6 conflict with "Functions" at Section 5; (ii) Several tasks in "Power" like suspend/debar, summon/examine witness, declare misprocurement and impose appropriate disciplinary

measures belong to the Function of other control bodies like Anti- Corruption Bureau; (iii) these "Powers" would cause a stressed relationship between PPDA and Procuring and Disposing Entities which will impact a positive and constructive environment required for stated functions of PPDA like development of regulations/bidding document, training, collection of data/ information system etc.; (iv) PPDA is too involved in execution of the contract like "No-Objection" of contract above a threshold, clearance for Single Source, clearance for contract amendments; and (v) there is no culture of complaint for fear of getting black-listed - as per interaction with the private sector, complaints as per data is rare and with a fee for complaint as required by Section 60 (11) of PPD Act, situation is likely to worsen; and (vii) the quantum of funding for PPDA is insufficient to handle multiple and conflicting tasks of PPDA so PPDA is likely to divert its resources to those associated with no-objection, audit, sanction of firms and similar mandatory task rather than those required to enhance efficiency and effectiveness of institution on a long term basis.

Step 3: Gap Analysis/Conclusion (substantive gaps/red flags):

- ✓ (i) Involvement of PPDA in execution of contracts (e.g. no-objection above a threshold), inconsistencies between "Function" as per Section 5 and "Power"; lack of clarity as per Section 6 of PPD Act; and lack of clarity on several control functions like suspension/debarment, summoning/examining the witnesses, declaration of misprocurement are incompatible with the normative/regulatory functions of PPDA, in particular as they relate to the functions of an appeals body.

Initial input for recommendations:

a. Need for Amendment to the Act to remove anomaly between "Function" and "Power" to deal with conflict-of-interest situation.
b. Focus of PPDA needs to shift from spending time and resources on providing "no-objection", clearance for single-source, procurement post reviews at the cost of long-term strategic objectives of improving the legislation, bringing more transparency through well-functioning website, publication of procurement notices, creation of data and information base including introduction of e-GP, professionalization. This is important as the situation is likely to worsen after enactment of PPD Act where powers of summons, suspend, mis-procurement and debarment has been given to PPDA.

Indicator 6. Procuring Entities and their mandates are clearly defined

Sub-indicator 6 (a) – Definition, responsibilities, and formal powers of procuring entities

Assessment Criteria: The legal framework provides for the following:

(a) Procuring entities are clearly defined.

(b) Responsibilities and competencies of procuring entities are clearly defined.

(c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity, and capability. *****

(d) Decision-making authority is delegated to the lowest competent levels consistent with the

risks associated and the monetary sums involved.

(e) Accountability for decision is precisely defined

*** Quantitative indicator to substantiate assessment of sub-indicator 6(a) Assessment criterion (c):**
- procuring entities with a designated, specialised procurement function (in % of total number of procuring entities) *Source:* Normative/regulatory function

Step 1: Qualitative analysis (comparison of actual situation vs assessment criteria)

(a) Criterion met: The definition, responsibilities, and formal powers of procuring entities are clearly defined. In accordance with Section 3 of PPA 2003 and PPD Act, the legal framework applies to all procurements carried out by 200 listed procuring entities using public funds. Each Government Ministry, department, agency, or organ, of the Government or statutory body or other unit, or any subdivision thereof, engaging in procurement is a procuring entity.

(b) Criterion met: Responsibilities and competencies of procuring entities are clearly defined. In accordance with Section 25 of PPD Act, a controlling officer of PDE has the responsibility and competence to ensure that PDE complies with the Act. Sections 8 and 9 of PPA 2003 and Sections 26 and 27 of PPD Act require each PDE to establish IPDC appointed by the Controlling Officer (CO) whose composition comprise of senior officers.

(c) Criterion met: Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity, and capability. In accordance with Sections 10, 11 and 12 of PPA 2003 and Section 29 of PPD Act, PDE shall establish Procurement and Disposal Units (PDUs) and staff them with qualified procurement and disposal professionals.

(d) Criterion not met: Decision-making authority is not delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved. In accordance with Section 9 of PPA 2003 and Section 27 of PPD Act, the authority to procure rests in the hands of the Controlling Officers or their appointees within the PDEs' threshold. However, this authority is eroded by PPDA assuming the powers of "no-objection" and vetting for Single Source (including by Anti- Corruption Bureau) and other control functions like summon, examine witnesses, institute procurement reviews at any time. Further there are multiple layers of approvals through committees (explained below under explanatory material) and need for clearance of contract by multiple authorities like Government Contracting Unit (GCU), Treasury, Ministry of Justice.

(e): Criterion not met: For reasons explained at (d) above.

Step 2: Quantitative Analysis

Criterion (c): Approximately 50% of procuring entities have a designated, specialized procurement function (out of 197 Procuring Entities from ODPP website 99 are with a designated, specialised procurement function).

Step 3: Gap Analysis /Conclusions (substantive gaps)

(i) For criterion (d): While putting in place sanctions on the PDEs for failure by CO to discharge his duties could presumably mitigate risks of abuse or negligence in carrying out the functions**,** there must be other authority, in line with the civil service governance, to take disciplinary measure for any misconduct by CO of the level of Secretary/ DG/ Chief Secretary.

(ii) For criterion (d): For decision making on procurement cases there are several layers within the procuring entity which, combined with the need for "no-objection" from the Director General or "PPDA" depending on the threshold limits specified, have the potential to diffuse the responsibility and accountability. More importantly, the layered decision-making process will only lead to inefficiencies and delays in completing procurement activities.

(iii) For criterion (d) and (e): It is not clear from the PPD Act whether entities such as Central Government Stores (CGS), Central Medical Stores (CMS) and Plant and Vehicle Hiring Organization (PVHO) will continue to exist and therefore it is to be clarified through regulation that these institutions are included under the definition of PDE. Possibly, the PPD Act should be amended to more explicitly provide for this type of centralized and specialized procurement entities.

(iv) For criterion (c): Only 50 % of total 197 Procuring Entities have a designated, specialised procurement function (***not a gap but a suggestion for improvement in practice***).

Initial input for recommendations(to address gaps under criteria (d) and (e))

a. All procuring entities should have a designated specialized procurement function staffed with qualified professionals and decision-making authority should be delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved so that accountability for decisions is precisely defined - a review is needed. The status of centralized procurement bodies should be clarified in the legislative framework.

Additional explanatory material in support of analysis: It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Section 2 of PPD Act defines relevant terms for procuring entities and other responsible officials or bodies. These are: "Procuring and Disposing Entity" (PDE) which means a Government ministry, department, agency, any other public body or sub division thereof engaging in procurement and disposal of public assets; "Controlling Officer" which means the head or principal person who is in charge of procuring and disposing entity; "Internal Procurement and Disposal Committee" (IPDC) meaning a committee constituted under Section 26 of PPD Act. It is not clear if the definition of PDE includes local and regional government.

Part III Sections 25-29 of PPD Act define the responsibility of Controlling Officers, Internal Procurement and Disposal Committees, Procurement and Disposal Units and *Ad-Hoc* Evaluation Teams.

Section 25 of PPD Act requires that a Controlling Officer (CO) shall ensure that PDEs comply with the Act. CO shall appoint members of IPDC, submit annual procurement plans, quarterly reports and other statutory reports, provide corrective measures to prevent misconduct in procurement process, manage bidder's protest and grievances, report misconduct by bidders, suppliers or public officials to PPDA and other relevant bodies, implement disciplinary measures against public officials and suppliers, ensure availability of procurement documentation to PPDA and other oversight institutions and provide overall leadership and oversight role of the PDEs.

Based on the responsibilities given to the CO in the budget documents issued by Ministry of Finance, Economic Planning and Development, it is seen that the typical level of CO is like Secretary for Education, Science and Technology for this Ministry or a Director General for Financial Intelligence Authority or Chief Secretary to the Government for Greenbelt Authority. It is understood that these are highest levels of civil servants appointed by the President.

Section 25(3) stipulates that if CO fails to comply with his responsibilities as defined above, PPDA shall recommend imposition of sanctions by withholding PDEs annual budget for procurement from Treasury, reprimanding the appointing authority and bearing of any loss suffered by PDEs or part thereof by CO. These provisions require clarification as to why the PDE should be penalized for lack of action by CO. There must be another authority, including within civil service structure, to take disciplinary measures for any misconduct by CO.

Section 25(2) (f) refers to CO's power to issue disciplinary measures against public officials and suppliers. It is unclear what type of disciplinary sanction is being referred to in this provision. For example, it is not clear whether these sanctions are those pronounced by PPDA (under Section 6(i) and (j)). Moreover, it is not clear how disciplinary measures, as opposed to administrative, civil, or criminal penalties, could be imposed on suppliers that are private entities.

Section 26 PPD Act describes the functions of IPDC, which includes *inter alia*, ascertaining the availability of funds to pay for each procurement, approving the methods of procurement, approving procurement plan of PDEs, appointing chairperson of bid opening, appointing ad-hoc evaluation team for the examination, evaluation, and comparison of bids, reviewing and approving bid evaluation reports, reviewing and approving any contract amendments etc.

Section 27 of PPD Act describes the composition of IPDC which shall comprise senior personnel appointed by CO who shall be well informed of public procurement matters and shall meet the minimum qualifications set by regulation comprising of a senior person appointed by CO as chairperson of IPDC, head of Procurement and Disposal Unit (PDU) or his representative, an accountant or other budget professional and other senior office, with maximum of seven members in general. IPDC shall have a term of 2 years and members may be reappointed. Those PDEs having no PDU shall seek guidance from PPDA as to how to execute procurement and disposal activities.

Section 28 of PPD Act, requires that IPDC shall appoint an ad-hoc evaluation team for specific procurement with maximum of 5 members consisting of head of procurement, member from user, a non-IPDC member who has technical knowledge on how bids are to be evaluated and

external members may be used in exceptional circumstances with prior approval of Director General (DG).

Section 29 of PPD Act requires that PDEs should establish Procurement and Disposal Units (PDUs) staffed with qualified procurement and disposal professionals and PDU is assigned the authority to conduct procurement and disposal activities in accordance with the Act. PDU shall be responsible for preparing procurement plan, bidding documents, facilitate meetings of IPDC, keep all procurement records, act as secretariat to meetings of IPDC and ad-hoc evaluation team, evaluate simple low value procurements as prescribed in the Act and prepare contract documentation and manage resultant contract in conjunction with the user department. However, Section 26 of PPDA fails to assign the responsibility for contract award and signing and does not address the timing of contract signing.

In accordance with the assessment criteria, decision-making authority should be delegated to the lowest competent levels consistent with the risks and monetary sum involved.

Based on Document Ref No. ODPP/01/22 dated 20th July 2016 on Procurement Thresholds for 2016-17, it is seen that due to "prevailing economic environment" thresholds for Procuring Entities have fixed based on performance of respective PEs in discharging their procurement functions and the capacity of procurement units (PUs) have guided the exercise on need to provide "No-objection" from ODPP above a defined threshold. It appears those PEs with better staff capability have higher financial thresholds for prior review.

Table 1 of this document provides threshold for Methods of Procurement. For example, Works above K2 billion shall follow ICB subject to prior review by ODPP. Table 2 of this document lists PEs of Central and Local Government and Government Projects PEs which are divided groups with thresholds for no-objection under **Group A** (No prior review up to NCB – projects using donor funds and donor procurement guidelines); **Group B** (Goods: K 60 M; Works: K 70 M: Routine Services K 30 M; and Consultancy Services: K 30 M); **Group C** (Goods: K 30 M; Works: K 30 M: Routine Services K 20 M; and Consultancy Services; K 20 M; and Group D (Goods: K 20 M; Works: K 20 M: Routine Services K 10 M; and Consultancy Services; K 20 M). Table 3 lists limits for Parastatals and other public organization. Based on this document for 2016-17 some PEs were upgraded, others downgraded or yet others remaining the same.

Based on the provisions of PPA 2003 (Section 9) it was envisaged that Internal Procurement Committee shall be comprised of trained procurement professionals and in case of procurement exceeding a threshold IPC may consist of three external members consisting of procurement professional, technical expert and a neutral member from agencies like NAO, AG or MoF. PPA 2003 had no provision of any "No-Objection" from ODPP.

Therefore, instead of delegating the procurement to PEs and equipping them with qualified personnel, the execution of procurement function has been centralized with "No-Objection" to be provided by ODPP and now as per Section 6 of PPD Act by the Director General and/or PPDA above defined thresholds. PPD Act under Section 2 defines "no-objection" as "permission to proceed with the intention for contract award".

Sub-indicator 6 (b) – Centralised procurement body

Assessment criteria:

(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.

(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following: (i) Legal status, funding, responsibilities, and decision-making powers are clearly defined; (ii) Accountability for decisions is precisely defined; and (iii) The body and the head of the body have a high-level and authoritative standing in government.

(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.

Step: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: The country considered the benefits of establishing a centralised procurement function though not included in the PPA 2003 or PPD Act. Central Government Stores (CGS) was established by a fund order in the 60's with the purpose of procuring and storing in bulk for distribution of materials in all Government Ministries and Departments. The other central bodies that were established along with CGS were Central Medical Stores now a trust (CMST) as established by the Government of Malawi, Government Printer (GP), and Private Vehicle Hire Organization now named Private Vehicle Hiring and Equipment Services (PVHES) of Malawi Government. The advantages considered then of bulk materials storing and centralized services were:

i. The consolidation approach was to get benefits from bulk buying and trade discounts.

ii. Storing enough materials was considered as a remedy in readiness of ensuring availability of materials for ongoing projects and operations of the Government.

iii. Government being a large buyer, the lowering of demand on the local market by CGS being involved in direct importation or obtaining from manufacturers, stabilized the local market price and made Government agencies acquire materials at economical prices from Central Government Stores.

(b) Criterion not met: It is not met in view of the following:

i. Legal status, funding, responsibilities, and decision-making powers are not defined in PPD Act or any other current legislation. The Central Government Store was established by the fund order as a Treasury fund under then Finance and Audit Act Cap 37 of the Laws of Malawi. This Act was later split into Public Finance Management Act 2003, Public Audit Act 2003, and Public Procurement Act No. 8 of 2003 in 2003.

ii. Financing of Central Government Stores was a one-off funding that was made to grow by applying a little mark-up not necessarily for profit. Then CGS just like any other Government agency was exempted from tax until liberalization came into effect. CGS somehow lost the competitive edge and energy because of increased

competition, decentralised procurement in government agencies.

iii. The CGS administratively reports to Office of President and Cabinet (OPC) and technically to Ministry of Finance and is audited by Auditor General. The Controller of Stores heads Central Government Stores at the level of Principal Secretary grade C and the rest of higher positions that are also deployed in some PDEs are as follows:

- Deputy Controller graded at Deputy PS or Director.
- Assistant Deputy Directors.
- Head of procurement units at Assistant Director's level.
- Chief Procurement Officers in some Units at Grade 5 ranking in Government

(c) This criterion could not be assessed: Since mandate and responsibilities of existing centralised procurement bodies are unclear, it was not possible to assess whether internal organisation and staffing are sufficient and consistent with responsibilities. CGS plays another role as Procurement Staff Common Service for the ministries and departments. The Government recruits through the Public Service Commission procurement personnel whenever there is need and funds to do so, and hand them over to CGS for deployment. CGS is responsible for staffing in Government PEs, and they are also involved in training and maintaining database for procurement cadre. There is a lack of coordination among CGS, PPDA and MIPS in deployment of suitably qualified personnel based on the needs of the Procuring Entities.

Additional explanatory material in support of analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

There was no provision of a Centralised Procurement Body under PPA 2003, nor does it appear in PPD Act. Section 10 and 11 of PPA 2003, however envisaged that in case of procurement entities with low-capacity shared specialized procurement units may be given authority to conduct procurement. PPD Act in its preamble has stated that the Act shall provide for a decentralised institutional structure for the public procurement and disposal of public assets.

In practice CGS and PVHO continued to exist, and CMS got transformed over the year into a Central Medical Stores Trust (CMST). MAPS Assessment Team met CGS head of the organizations of CGS and CMST to seek their feedback on functioning of these central purchasing agencies.

A write-up on functioning of CMST as prepared by them is given in **Annexure** as an illustration on functioning **of a Specialized Central Procurement Body.** The Assessment Team has not carried out any assessment of CMST to establish the advantage or otherwise on benefits of a Centralized Procurement Body.

Based on practices embedded in other procurement regimes/instruments, the use of bulk purchasing, framework contracts, e-catalogues for commonly used items may improve process efficiencies. Also, it is widely considered in international procurement community that centralized purchasing can also promote better quality tender and other documents, higher uniformity and standardization across government, and better supplier or contractor understanding of procuring entities' needs can improve the quality of

submissions' and may be economically advantageous.

PPD Act refers to use of Framework Agreement (Section 61) but does not link it with the activity of a Centralized Procurement Body, which would be very relevant in situations of commonly purchased items.

It is noteworthy to mention that the use of a Central Procurement Body is quite different than centralizing the decision making in the public procurement system of the country. Centralized purchasing does not intend to take away the ability of PDEs to make decisions on the goods, works or services they buy. It is simply intended to achieve economies of scale and buy in a more economical way.

Step 2: Quantitative Analysis: *Not applicable*

Step 3: Gap Analysis /Conclusions (substantive gaps)

i. For Criterion (b): The Act does not include the use of a Central Procurement Body in situations of bulk purchase and to enable operation of framework agreement, e-reverse auction, or wherever a specialized procurement is economically advantageous. Mandate and responsibilities of existing centralized procurement bodies are unclear.

Initial input for recommendations

a. Criterion (a): There is need to further analyze the benefits/effectiveness of centralized procurement bodies.- Criterion met- suggestions for improvements

b. Criterion (b): Based on the outcomes of this analysis, the Act should be amended to include use of Central Procurement Body in combining the requirement of several Procuring Entities for common use items including through use of framework agreements.

c. Criterion (b): Such a body (bodies) could also be used in case individual PDEs don't have the required structure/capacity to procure themselves (e.g., above certain thresholds/complex procurement).

d. Criterion (b): Clarify the mandate and responsibilities of Central Procurement Body

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

Sub-indicator 7(a) – Publication of public procurement information supported by information technology

Assessment Criteria: The country has a system that meets the following requirements:

(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results, and performance.

(b) There is an integrated information system (centralised online portal) that provides up-to-

date information and is easily accessible to all interested parties at no cost.

(c) The information system provides for the publication of: ***** (i) procurement plans; (ii) information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments, and appeals decisions; and (iii) linkages to rules and regulations and other information relevant for promoting competition and transparency.

(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).

(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format). *

(f) Responsibility for the management and operation of the system is clearly defined.

*** Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion (c):**

- procurement plans published (in % of total number of required procurement plans)
- key procurement information published along the procurement cycle (in % of total number of contracts)
- invitation to bid (in % of total number of contracts)
- contract awards (purpose, supplier, value, variations/amendments)
- details related to contract implementation (milestones, completion, and payment)
- annual procurement statistics
- appeals decisions posted within the time frames specified in the law (in %).

Source: Centralised online portal.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a) Assessment criterion (e):
- Share of procurement information and data published in open data formats (in %).
Source: Centralised online portal.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: Information on procurement is not easily accessible. Information is not timely and complete. ODPP has a website www.odpp.mw which now is being changed to www.ppda.mw for new PPDA. However, the website is not maintained continuously and updated regularly due to insufficient resources. Other publications that provide information on procurement are Government Gazette and two widely circulated local newspaper publications, Times, and Nation.

A spot check on the website showed that most of the information is out-dated, the most strategic publications accessed are:

- The last uploaded Strategic Plan is for 2006-2008
- The last uploaded Annual report is for 2010/11 financial year

- Public Procurement Act 2003, Public Procurement Regulations, Desk Instructions and SBDs

(b) Criterion not met: Online portal to provide integrated information system has not been created yet, however the Government has embarked on introducing e-GP system in public procurement, which is expected to increase access to information and information sharing in future.

(c) Criterion not met: Publication and updates are generally not done, as it is not mandatory earlier and not enforced and there are not sufficient resources.

(d) Criterion not met: Information is not available in support of the concept of open contracting where more comprehensive information is supposed to be published on the online portal in each phase of the procurement process. The Open Contract concept is yet to be familiarised, currently there is no comprehensive information being published on ODPP /PPDA's website.

(e) Criterion not met: The information is not published at all, as explained above.

(f) Criterion met: Responsibility for the management and operation of the system is clearly defined. As per Section 5 (2) of PPA 2003, an important function of Director of ODPP *inter alia* included collection of data on public procurement and monitor performance of PEs to ascertain efficiency and compliance with applicable legislation, regulations and instructions, collection of data on the performance of procurement contracts in Malawi by suppliers and to maintain and circulate lists of debarred bidders and suppliers, and in particular "to establish a data and information base concerning procurement terminology and legislation, and to set policy for, and promote application of, modern information and communications technology to public procurement".

Step 2: Quantitative Analysis

Criterion (c): In practice, based on available information on the website of ODPP/PPDA, not much data is available except for contract awards for the last three fiscal years for contracts above a value of MKW 50 million where no-objection was required from ODPP/PPDA.

The last annual report on the website of ODPP is for FY 2010-11. It is seen from this report that a lot of statistical information should be available based on compliance checks and reporting of PEs which are useful indicators. However, no reliable data has been made available for recent years. The quantitative indicators listed above are partially covered under Indicator 9 based on sample data for thirteen entities and 91 sample cases.

Step 3: Gap Analysis/ conclusions (substantive gaps)

i. For criteria (a), (b), (c), (d) and (e): ODPP/PPDA website was created more than a decade ago. It is not fully functional. Also, in the absence of compliance on reporting by Procuring Entities, data/information is not complete. Any online data portal is yet to be created. There is no e-GP system at present.

Initial input for recommendations (to address gaps under Criteria (a), (b), (c), (d) and (e))

a. ODPP/PPDA 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.

Sub-indicator 7(b) – Use of e-GP

Assessment Criteria:

(a) E-procurement is widely used or progressively implemented in the country at all levels of government. *****

(b**)** Government officials have the capacity to plan, develop and manage e-GP systems.

(c) Procurement staff is adequately skilled to reliably and efficiently use e-GP systems.

(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology. *****

(e) If e-GP has not yet been introduced, the government has adopted an e-GP roadmap based on an e-GP readiness assessment.

Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a): uptake of e-GP
- number of e-GP procedures in % of total number of procedures
- value of e-GP procedures in % of total value of procedures

Source: e-GP system.

* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (d):
- bids submitted online (in %)
- bids submitted online by micro, small and medium-sized enterprises (in %)

Source: e-GP system.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: e-GP system is not yet applicable in Malawi public procurement. However, the government is in process of implementing ee-GP through World Bank funded Malawi Digital Migration Project. A planning study was carried out in March 2018 to evaluate readiness of the eco-system, advise government regarding the key decision areas, and prepare a work-plan for implementation of e-GP. Initially, key features of the e-GP system will be piloted in about 5 procuring entities which are expected to include the local government level. Then, the adoption of e-GP system will be gradually expanded across all procuring entities. However, there is risk of delay in the implementation as compared to the roadmap as the effectiveness of the Malawi Digital Migration Program Phase I Project got enormously delayed.

(b) Criterion not met: Information is not available as to Government officials having enough capacity to plan, develop and manage e-GP systems.

(c) Criterion not met: The criterion not met as yet to assess whether procurement staff is adequately skilled to reliably and efficiently use e-GP systems.

(d) Criterion not met: :It is not applicable yet.

(e) Criterion met: Though e-GP is not yet introduced, the government has adopted an e-GP roadmap based on an e-GP readiness assessment by engaging an e-GP advisor.

Additional explanatory material in support of analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

To date, e-GP has not been used by any Procuring Entity. Based on assessment carried out by the e-GP Advisor in March 2018 hired by the government under World Bank-funded Malawi Digital Migration Project, the current situation and plan for implementation of e- GP is summarized below:

The Government needs to establish a Steering Committee with representation from all key stakeholders such as key Local and Central Purchasing agencies, Procurement Policy Department, Legal Department, Finance Department, Contractor Association, Non-Government Organizations as applicable. This Steering Committee shall actively monitor and provide guidance in implementation of e-GP system. Phased implementation of e-GP is recommended, wherein Phasing can be done along the following dimensions: (i) Geography (i.e.) Purchasing agencies on-boarded gradually; (ii) Functionality (i.e.) Functional scope added gradually. E-Publication and e-Bidding are usually implemented in the first phase; and (iii) Value (i.e.) the use of e-GP for procurement in a certain value range is mandated and this threshold is continuously modified until all procurement is processed online using the e-GP system.

The initial e-GP systems were implemented about 15 years ago. There is adequate experience in implementation of e-GP systems. Hence, the Government of Malawi should learn from these experiences and aim for expedited implementation of e-GP. A couple of site visits should be organized wherein key decision makers from the Government of Malawi should conduct field visits to learn first-hand about well-established e-GP systems. e-GP is not just about development of software. The establishment of a robust eco-system is essential for sustained implementation of e-GP viz. Telephonic help desk, training, and hand-holding support. A full-fledged Project Management Unit (PMU) should be established specifically to manage implementation of e-GP. The PMU shall have IT experts and procurement experts, working together as a team. Key e-GP specific knowledge areas to be acquired by the team include electronic signature, Encryption, Security audit, External IT systems integration, Maintenance of Service Levels, Management of IT contracts, Exit / Transition Management, Data Back-up and recovery, Disaster Recovery and Data Center – Disaster Recovery Drills.

Full-fledged training set-up needs to be established to provide continuous hands-on training to both government officials and the supplier community. Such training establishment should be established across different parts of the Country, so the end-users need not travel long distances to get trained.

Workshops should be conducted to educate supplier community about e-GP system. Further, SMEs should be encouraged to participate in hands-on training provided FREE of charge.

A detailed roadmap has been developed for implementation of e-GP. Key findings and Implementation Road Map dated April 1, 2018, prepared by e- GP Advisor is given at **Annexure V.** (e-GP advisor has since given a final report on July 16, 2018):

Further to the above, deliverables of the Feasibility Study has been submitted by e- GP Advisor, which is yet to be revised and adopted by the government due to delay in approval of the Project Bill.

Step 2: Quantitative Analysis:

Applies to entire sub-indicator 7 (b): No quantitative indicators assessed due to the absence of e-GP system in the country.

Step 3 Gap Analysis/conclusions (substantive gaps):

i. Applies to entire sub-indicator 7 (b): Absence of e- Procurement System in the country

Initial input for recommendations (Applies to entire sub-indicator 7 (b))

a. Introduction of e-GP system to be fast-tracked – to start with, the functionality of registration of suppliers, publication of tender notices, on-line availability of tender document and publication of contract award data (including intention to award).

Sub-indicator 7(c) – Strategies to manage procurement data

Assessment Criteria:

(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-GP or other information technology.

(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.

(c)The reliability of the information is high (verified by audits).

(d)Analysis of information is routinely carried out, published and fed back into the system. *****

*** Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):**

- total number and value of contracts
- public procurement as a share of government expenditure and as share of GDP
- total value of contracts awarded through competitive methods in the most recent fiscal year.

Source: Normative/regulatory function/E-Procurement system.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: Information is available for contracts above MKW 50 million (no-objection cases) for recent years. There is no system in operation for collecting comprehensive data on the procurement of goods, works and services, including consulting

services, supported by e-GP or other information technology.

(b) Criterion not met: There is no system that manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.

(c) Criterion not met: Data or information is not available to assess the reliability of the information (verified by audits).

(d) Criterion not met: It is not applicable now for analysis of information to be routinely carried out, published and fed back into the system.

Step 2: Quantitative Analysis (Applies to criterion (a))

Based on the information available on ODPP website for the most recent 2 years the situation is as presented in the table below for contracts above MKW 50 million (approx. US$ 70,000) which were prior review/no-objection cases for ODPP:

Year	2015-16		2016-17	
	Number of contracts	Value in MKW Billion	Number of contracts	Value in MKW Billion
Total	**441**	**334**	**351**	**550**
Including				
Open Tender- ICB	1	1.4	20	9
Open Tender- NCB	323	232	208	73
Restricted Tender	61	66.5	79	445
Request for Quotation	11	1.4	5	4.5
Single Source	22	28	19	14.5
Request for Proposal	23	4.7	20	4

Year	2015-16		2016 -17	
	Number of contracts	Value in MKW Billion	Number of contracts	Value in MKW Billion
Total	**441**	**334**	**351**	**550**
Including				
Goods	221	231	216	99
Works	161	93	87	420
Non- consulting Services	32	5	28	27
Consulting Services	27	5	20	4

(ICB- International Competitive Bidding; NCB- National Competitive Bidding)

Based on GDP of 5.433 billion in current US$ in 2016 (*source: World Bank data*) and exchange rate of 1 US$ = MKW 710 on December 31, 2016, the prior review contract value of MKW 550 billion (U$ 0.775 billion) for 2016-17 constitutes about 14.26 % of GDP (which shall be higher if all contracts are considered, for which no data is available in procurement data system).

Step 3: Gap Analysis/conclusions (substantive gaps)

For the sub-indicator 7 (c) to cover all criteria: Absence of procurement data supported by e-GP. Due to the lack of data, no analysis possible (trends, levels of participation, efficiency and economy of procurement, compliance with requirements, etc.).

Initial input for recommendations* (*For the sub-indicator 7 (c) to cover all criteria)

a. To date, there is no strategy to collect and analyse procurement data. Statistical information should be generated to evaluate policies and the operation of the public procurement system. This needs to be integrated with e-GP Road Map with need for adoption of Open Contracting Data.

Indicator 8. The Public Procurement system has a strong capacity to develop and improve

Sub-indicator 8(a) – Training, advice, and assistance

Assessment Criteria: There are systems in place that provide for:

(a) substantive permanent training programmes of suitable quality and content for the needs of the system

(b) routine evaluation and periodic adjustment of training programmes based on feedback and need

(c) advisory service or help desk function to resolve questions by procuring entities, suppliers, and the public

(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: There are institutions in place that provide for substantive permanent training programs of suitable quality and content for the needs of the system, but the programs are not adequate to cover all procuring entities and procurement professionals both in public and private sector. The following public learning institutions are helping in building capacity for procurement profession in Malawi:

- Malawi Institute of Procurement and Supply (MIPS) established by an Act of Parliament no. 3 of 2016 whose role is to register procurement and supply chain management professionals, to regulate procurement and supply chain management profession with its functions listed under Section 4 of the Act.
- Malawi Institute of Management (MIM) established by an Act of Parliament (ACT no. 7 of 1989) to provide leadership and management training, consultancies and research services to the public sector, statutory bodies, and private sector.
- The Staff Development Institute (SDI) a local training, consulting and research government institution based at Mpemba, in Blantyre, Malawi. Established in 1962 as a civil service training institution, SDI forms the training arm of the Malawi Civil Service.
- Established in 1967, the Polytechnic is one of the constituent colleges of the University of Malawi offering permanent related training program of bachelor's degree in Procurement and Logistics, this program was initiated by ODPP with the support of UNDP as a long-term solution for building capacity in the field of procurement.

- Malawi College of Accountancy provides training programs to support towards attaining qualification for the Chartered Institute of Procurement and Supply (CIPS).
- In addition, Pentecostal Life University also provides training in the area of procurement.

(b) Criterion partially met: Though training programs are evaluated and adjusted at present in an ad-hoc manner based on experience of a particular program, there is no systematic and routine evaluation and periodic adjustment of training programmes based on feedback and need. With the establishment of MIPS, there is a need for more collaboration between PPDA and MIPS and training institutions cascading to its members / professionals.

(c) Criterion partially met: There is advisory service or help desk function to resolve questions by procuring entities, suppliers, and the public at PPDA. However, this is not adequate compared to needs.

(d) Criterion partially met: Strategies are not well integrated with other measures for developing the capacity of key actors involved in public procurement.

Step 2: Quantitative Analysis - *Not applicable*

Additional explanatory material in support of analysis (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

An act was passed by the government in 2016, called the Malawi Institute of Procurement and Supply Act – No.3 of 2016 (MIPSA 2016) that provides for establishment of the Malawi Institute of Procurement and Supply (MIPS) for registration of procurement and supply chain professionals, the regulation of the procurement and supply chain management profession and related matter. In accordance with Section 3 of MIPSA 2016, the function of MIPS (the Institute), *inter alia* includes registration of procurement and supply chain professionals, establish educational standards and qualifications, set professional standards in collaboration with government departments, commercial institutional and similar international institution in the practice of procurement and supply chain management, promote uphold and improve training and professional standards, develop ethical standards, exercise disciplinary control, set and conduct professional examination, conduct research, promote and protect welfare of its member, arrange conferences, publish literature, organize post qualification training, all the above for supply chain management profession both in the public and private sector.

With the above it is seen that MIPS has a wide mandate that covers the entire spectrum of procurement and supply chain professionalization in Malawi, but the Institute is yet to be fully functional.

Section 5 of PPD Act has altered the role of PPDA compared to PPA 2003, to the extent that PPDA shall be required to establish and maintain institutional linkages with MIPS and other professional bodies having interest in regulating the ethical behavior and standards of supply chain management professionals.

Section 27 of PPD Act requires that Internal Procurement and Disposal Committee members shall be well informed in the area of procurement and disposal of assets and shall meet the

minimum qualifications set by regulations. Section 29 of PPD Act require that PDEs shall be staffed by qualified procurement and disposal professionals.

PPDA has been instrumental in the introduction and set up of the Bachelor of Procurement Management at Malawi Polytechnic, as well as the MSc in Supply Chain Management administered by MIM. These are permanent training programs that have been fully absorbed into the prospectus of the mentioned training institutions. In addition to this several privately-owned colleges have introduced procurement related courses and are offering qualifications from certificate to master's degree level.

PPDA will very soon conduct an assessment of the programs together with selected training institutions in order to identify gaps and offer remedial solutions to those gaps.

PPDA has set in place a 'Desk officer' structure where technical officers within PPDA are assigned specific entities. This has been done so as to allow entities to have focal points should they need direct assistance.

Step 3: Gap Analysis/ conclusions (substantive gaps)

(i) For criterion (a): The training efforts are not sufficient in terms of content and frequency.

(ii) For criterion (b): Training programs are evaluated and adjusted in an ad-hoc manner and there is no systematic and routine evaluation and periodic adjustment.

(iii) For criterion (c): The advisory service or help desk function to resolve questions by procuring entities is not adequate.

(iv) For criterion (d): Strategies are not well integrated with other measures for developing the capacity of key actors involved in public procurement. A strategic plan on professionalization of the procurement function is missing. MIPS is yet not fully functional to discharge its wide mandate including developing such strategies.

Initial input for recommendations

a. For Criterion (a), (b) and (d): The ODPP/PPDA need to conduct routine assessment of the training programs in collaboration with MIPS together with selected training institutions in order to identify gaps based on a "skill gap inventory" to match the needs of the system. There is need for effective coordination among MIPS and PPDA and other learning institutions. A strategy well-integrated with other measures for developing the capacity of key actor need to be developed.

b. For Criterion (c): There is need to enhance the advisory service or help desk function to resolve questions by procuring entities.

Sub-indicator 8(b) – Recognition of procurement as a profession

Assessment Criteria: The country's public service recognises procurement as a profession:

(a) Procurement is recognised as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.

(b) Appointments and promotion are competitive and based on qualifications and professional certification.

(c) Staff performance is evaluated on a regular and consistent basis, and staff development and

adequate training is provided.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: Procurement, in comparison to accountancy, is not recognised as a profession in the country. In accordance with Section 10 (2) (a) (vii) of PPD Act procurement is listed as one of the requisite qualifications for the position of Director General at PPDA. Similarly, Section 29 (1) of PPD Act, Procuring and Disposing entities are required to establish Procurement and Disposal Units (PDUs) staffed by qualified procurement professionals. However, only ninety-nine out of 197 Procuring entities have a designated and specialised procurement function.

(b) Criterion partially met. As cited above in (a) the legal framework emphasizes the need for qualifications and competition. However, in practice this is not expected to be implemented fully based on the previous experience.

(c) Criterion partially met: Though, staff performance is evaluated on a regular basis, staff development and training provided is not adequate. (Refer to explanatory material). Also, there is no formal basis for evaluation specific to procurement practitioners. As per budget document No.5 for 2017/18, 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 % of the training needs (assuming 400 procurement professionals to be trained every year) as planned by ODPP/PPDA. This excludes data on extent of training and development by other learning institutions which is not available, but it underlines the gross inadequacy of training compared to needs.

Step 2: Quantitative Analysis - *Not applicable*

Additional explanatory material in support of analysis (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

PPDA has also been instrumental in the establishment of the Malawi Institute of Procurement and Supply (MIPS) which is the body responsible for regulating Procurement professionals working in both the public and private sectors. The MIPS Act was passed in 2015 and the Regulations are in the final stages of development. The MIPS Act provides that only those individuals that are duly registered with MIPS should practice procurement. This applies to both public and private practitioners.

Currently there is no formal basis for evaluation specific to procurement practitioners. If performance evaluation is undertaken, it is done using the general staff performance assessment framework.

The Assessment Team met with MIPS representative to find out their plan for improving professionalization of procurement and their feedback is as under:

(a) MIPS is in the final stages of establishing MIPS regulations to enforce the MIPS Act. A task force formed for this purpose drafted the regulations which underwent consultations with various stakeholders to validate it. Thereafter it was reviewed and

approved by the Ministry of Justice, which was then finally vetted by the task force. The final version of regulation will be printed by Ministry of Justice and disseminated. Further, various stakeholders, which will include Human Resource managers, officers, operations managers, and who are responsible for recruitments in their offices, shall be sensitized on the new MIPS regulations. MIPS is aware that the regulations will be very effective as people will know how serious they are and there will be no choice for procurement professionals but to follow the regulations.

(b) MIPS also ensures that their members and the non-members undergo continuous trainings, workshops, and annual conferences which they shall organize every year and shall invite over 200 members and speakers from outside the Country as a way of motivating professionals to attend.

(c) On knowledge improvement, MIPS is also in the final stages of setting up a resource Centre or a library for procurement professionals to have access and do research on the internet easily as they will have access to e-books, and they will be able to acquire new knowledge in the procurement sector.

(d) And lastly, as per their strategic plan, MIPS shall offer local examinations for the award of professional certification on procurement and supply as this will minimize costs incurred by Malawian students who write international examinations.

Related to the activities of PPDA on improved professionalization of public procurement as reflected in Budget Document No.5 on Program Based Budget for Financial Year 2017/18, there are three output indicators with achievements shown against each: (i) Number of procurement unit staff trained in public sector- This number was 40 in 2015/16 which has decreased in subsequent years in the range of 20 to 25 until 2017/18; (ii) Number of institutions coached and mentored: This number was 10 in 2015/16 and has nearly remained at the same in subsequent years until 2017/18; (iii) Number of institutions sensitized: This number was 10 in 2015/16 and has remained the same until 2017/18.

Based on the number of Procuring Entities as published document Ref No. ODPP/01/22 dated 20th July 2016 on Procurement Threshold for 2016-17, it is seen that there are about two hundred listed Procuring Entities / Procuring and Disposing Entities (PDE). With a requirement of qualified procurement professionals in each Internal Procurement and Disposal Committees of each PDEs (Section 26 of PPD Act) and requirement of staffing for qualified procurement and disposal professionals in each Procurement and Disposal Units of PDE (Section 29 of PPD Act), at a minimum this will require more than 400 procurement professionals (assuming an average of 2 professionals to be trained for these listed 197 entities). As per budget document No.5 for 2017/18, the projected number of institutions to be coached and mentored is ten and staff to be trained is 15, which translates to about 2-3 % of the training needs as planned by ODPP/ PPDA. This excludes data on the extent of training and development by other learning institutions which is not available, but it underlines the gross inadequacy of training compared to needs.

Step 3: Gap Analysis/ conclusions (substantive gaps)

(i) For criteria (a) and (b): Procurement is not recognized as a profession with defined job description at each professional level with appointments and promotion made on

competitive basis (Only 99 out of 197 procuring entities have a designated and specialized procurement function.)

(ii) For criterion (c): Though, staff performance is evaluated on a regular basis, staff development and training provided is not adequate.

Initial input for recommendations (to cover all criteria at 8 (b))

All 197 procuring entities to be staffed by qualified and trained procurement professionals through competitive selection. Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided. Steps need to be taken towards recognizing procurement as a profession in the country's public service through MIPS regulations to enforce the MIPS Act.

Sub-indicator 8(c) – Monitoring performance to improve the system

Assessment Criteria:

(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.

(b) The information is used to support strategic policy making on procurement.

(c) Strategic plans, including results frameworks, are in place and used to improve the system.

(d) Responsibilities are clearly defined.

Step 1- Qualitative Analysis (comparison of actual situation vs. assessment criteria):

(a) **Criterion not met:** Recent data or information is not available to assess whether the country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.

(b) **Criterion not met:** Since no system is in place, potential information is not used to support strategic policy making on procurement (not updated since 2008).

(c) **Criterion not met** Strategic plans, including results frameworks, were prepared until 2008 to improve the system. The legal framework in public procurement is silent on the need for periodical strategic plans, since 2008, ODPP/PPDA has not published strategic plans on its website.

(d) **Criterion met:** Responsibilities are clearly defined. In accordance with Section 5 of PPA 2003 and Section 5 of PPD Act, it is the function of the Director General or PPDA to regulate and monitor public procurement in Malawi and to develop and support the implementation of initiatives for improvements of the public procurement system (refer to sub-indicator 5(b)).

Step 2: Quantitative Analysis - *Not applicable*

Additional explanatory material in support of analysis (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Based on material available on website of PPDA it is seen that in November 2007, ODPP carried out in collaboration with UNDP, a Procurement Capacity Assessment based on OECD-DAC Methodology for Assessment of Procurement System (version 4, July 17 2006), and, based on the analysis and recommendations of the report, prepared a procurement capacity development and system strengthening plan including defining capacity development strategy, defining progress indicators with a plan until 2012 with Short Term and Medium Term Plans. The implementation of these recommendations, it appears, were partially achieved.

Based on the progress report of 2011-12 of ODPP, it is seen that in those years, professional development programs were conducted with assistance of UNDP and Millennium Challenge Account (MCA) on management awareness, procurement review workshops including with participation of National Audit Office (NAO) and Central Internal Audit Unit (CIAU), sensitization of private sector, Internal Procurement Committee training workshop and technical capacity development of ODPP staff.

However, in recent years no follow-up has been done on the above capacity development strategy and performance measurement.

Step 3: Gap Analysis /Conclusions (substantive gaps)

i. For criteria (a), (b) and (c): Performance measurement system and strategic plans to improve the system are missing.

Initial input for recommendations: (to address all the gaps under 8(c))

a. Performance measurement system on qualitative and quantitative aspects - an initiative which was undertaken in 2007 with UNDP needs to be reassessed, adjusted, and implemented. Strategic plans should be developed to improve the public procurement system also to take into the analysis and recommendations of the procurement capacity development and system strengthening plan report by UNDP as explained in the analysis.

Pillar III. Public Procurement Operations and Market Practices

Indicator 9. Public procurement practices achieve stated objectives.

The assessment of Indicator 9 required the selection and review of a sample of actual procurement transactions. 91 samples were selected covering 13 procuring entities. Cases were sampled from government ministries, departments, and parastatals with a mix of goods, works, consultancy services and routine services. It was also a mix of procurement from different financiers like the government and donors. There were 18 cases that were funded by credits or grants out of 91 cases in which only for International Competitive Bidding (5 cases) donor procedures were applied. Details on approach and methodology for sampling and entity-wise summary covering sub-indicator 9(a), 9(b) and 9(c) for each of the criteria are given as an attachment to this Assessment Report and a consolidated summary is given below.

Sub-indicator 9(a) – Planning

Assessment Criteria:

(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.

(b) The requirements and desired outcomes of contracts are clearly defined.

(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: Needs analysis and market research guiding a proactive identification of optimal procurement strategies is not carried out. Such plans are prepared when the project is funded by donors which makes it enforceable to have a procurement plan in place. Even in most of these instances, the procurement plans are not updated to reflect the planned and actual processes.

(b) Criterion met: All procuring entities are able to produce clear specifications for goods and quantities required, bills of quantities and specifications for works and the terms of reference for services. Most of the specifications assessed were of standard in nature and not restrictive. They assist them to have clearly defined outcomes.

(c) Criterion not met: There was no documentation showing any use of sustainability criteria.

Additional explanatory material in support of the analysis: (in support of (a) and (c))

Wherever procurement plans are not available, it is difficult to establish if needs analyses are conducted which call for market research. Budgets are largely derived from annual work plans of the entities.

Section 21 of the Public Procurement Act, 2003 states that procuring entities shall plan procurement with a view to achieving maximum value for public expenditures and the other objectives set forth in this Act, and in accordance with the applicable budgetary procedures.

Step 2: Quantitative analysis: (a useful information/data, though not required as per methodology)

Of all the ninety-one cases assessed from various entities, 59 cases had procurement plans representing 65% of the cases.

Step 3: Gap analysis/conclusions (substantive gaps):

i. For criterion (a): Procurement plan not used as tool for developing optimal procurement strategies and contract monitoring and there is no evidence of need analysis.
ii. For criterion (a): There was no visible linkage and collaboration with the requisitioning department/unit when initiating the procurement processes.
iii. For criterion (a): Internal procurement requisitions were not available.

iv. For criterion (a): Procurements are done on ad hoc basis; there is no guarantee for adequate funding, and this leads to procuring entities owing suppliers money or failing to pay on time

v. For criterion (c): No evidence was found about the use of any sustainability criteria.

Initial input for recommendations

(a) For gaps under criterion (a) Need to enforce to conduct needs analysis and market research guiding identification of optimal procurement strategies leading to the preparation, use and update of procurement plans and availability of funds for all procurement not only those funded by donors or lending agencies.

(b) For gaps under criterion (c): Sustainability criteria, if any are used, should be done in a balanced manner and in accordance with national priorities, to ensure value for money.

Sub-indicator 9(b) – Selection and contracting

Assessment Criteria:

(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.

(b) Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors.

(c) Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework.

(d) Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.

(e) Throughout the bid evaluation and award process, confidentiality is ensured.

(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.

(g) Contract awards are announced as prescribed.

(h) Contract clauses include sustainability considerations, where appropriate.

(i)Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.

(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *

*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b) Assessment criterion (j):

- average time to procure goods, works and services
  number of days between advertisement/solicitation and contract signature (for each procurement method used)
- average number (and %) of bids that are responsive (for each procurement method used)
- share of processes that have been conducted in full compliance with publication requirements (in %)
- number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined time frames)

Source for all: Sample of procurement cases.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: According to Section 33 of the Public Procurement Act, 2003, multi-stage procedures (two-stage tendering with first stage proposal without a tender price) are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process at price proposal stage. But in the cases assessed, there were no cases that used multi-stage procedures.

(b) Criterion met: Clear and integrated procurement documents, standardised where possible and proportionate to the need, are used to encourage broad participation from potential competitors. Standard Bidding Document including for consulting services were developed by ODPP/PPDA and are available online on ODPP/PPDA website. PPDA has modelled their Standard Bidding Document on the lines of SBDs of financing institution like the World Bank and AfDB with suitable modification for consistent with PPA 2003 and applicable Regulations. The use of these standard procurement documents is mandatory. There were isolated cases, though, where entities would use wrong documents not appropriate to the need. A case in point is using goods documents for routine service procurement.

(c) Criterion partially met: As per the sample cases, the procurement methods are chosen, documented, and justified in compliance with the legal framework. However, the data of ODPP for the 'no-objection' cases handled during 2016-17 shows that 80% of total value of contracts were awarded following "Restricted Tender" (refer data at Indicator 7(c)) even though, Open Tender is the default method of procurement as per PPD Act as well as PPA 2003. The procurement thresholds are governed by a circular from ODPP/PPDA which sets different procurement thresholds for different entities. These thresholds are dependent on the levels of procurement risks associated with each entity. Wherever a deviation is required, the procuring entities seek "no objections" either from the Office of the Director of Public Procurement or the donor agencies.

(d) Criterion partially met: Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. Section C (Preparation of Bids) and Section D (Submission and Opening of Bids) of the Instructions to Bidders provides procedures like period of validity of bids, format and signing of bids, sealing, and marking of bids, deadline for submission of bids, late bids and bid opening, among others. The documents allow bidders or their representatives to attend bid openings. The documents however do not

specifically allow civil society to monitor bid submission, receipt and opening, though they are free to attend as part of the public.

(e) Criterion partially met: Throughout the bid evaluation and award process, confidentiality is ensured. Section 18 (5) of the Public Procurement Act, 2003 and Regulation 183 of Procurement Regulations (PPR 2004) require that all public officials shall keep confidential the information that comes into their possession relating to the procurement proceeding and to bids, including bidders' propriety information. Any person who contravenes this provision shall be guilty of an offence and shall be liable to a fine and to imprisonment for two years; and shall in addition be liable to disciplinary action. ODPP has such a form on its website: http://odpp.mw/documents/oath_of_secrecy.pdf. Unfortunately, only two out of thirteen entities assessed signed this "oath of secrecy" which is mandated by the Act and the Regulation. The oath is signed by the members of the evaluation team and the Internal Procurement Committees.

(f) Criterion met: Based on the examined cases it was seen that the procurement entities are able to apply the criteria stated in the bidding documents to award the contracts and entities are able to produce evaluation reports for goods and works consistent with the evaluation criteria. Contracts are regularly being awarded to the company that had submitted the best offer based on the criteria defined. However, there is still a perception according to the survey that contract awards are pre-determined and a belief that companies are expected to give gifts to secure a contract.

(g) Criterion partially met: Contract awards are not announced for all cases as prescribed in Section 26 of the Public Procurement Act, 2003 (76.9% was compliant) which requires that a procuring entity should promptly publish notice of all procurement contract awards when the price of the award exceeds the level set by regulation, and the notice shall indicate the contract price and the name and address of the successful bidder. This notice should also indicate why other bidders failed to be awarded the contract. Of the thirteen entities assessed only one procuring entity announced the contract awards as prescribed.

(h) Criterion partially met: Contract clauses do not include sustainability considerations in most of the cases. However, these include warranty and liability clauses in all contract documents.

(**i**) **Criterion not met**: Contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance except liquidated damages as provided under GCC Clause 32 for Goods and Works, if the supplier fails to deliver or perform the Related Services within the period specified in the Contract.

(j) Criterion partially met: The selection and award process were not carried out effectively, efficiently and in a transparent way for all cases as per data at (g) above. Local shopping awards were selected and awarded effectively and efficiently.

Additional explanatory material in support of the analysis

There are no identified civil society organizations in public procurement that would dedicate themselves in following public procurement proceedings. Sometimes the media would act a

whistle-blower when irregularities in public procurement are visible.(in support of d))

While most of the procurement entities are able to apply the criteria stated in the bidding documents to award the contracts, one case was identified where evaluation criteria for selection of consultants was different from the ones specified in the request for proposals. Though most entities are able to produce evaluation reports for goods and works, it becomes a challenge to prepare evaluation reports for consulting services. Though, this case is considered as an outlier, the procurement regulatory body should prepare standard evaluation forms for all evaluations to be consistent. (In support of (f))

Step 2: Quantitative Analysis(for criterion 9 (b) (j))

The average number of days between bid submissions and contract signature were mostly not efficient for most entities.

- For the 2 cases of ICB for which information was available, the average number of days was 209.
- For the 23 cases of NCB for which information was available, the average number of days was 45.
- For the 23 cases of RFQ for which information was available, the average number of days was 15.
- For the 2 cases of single source for which information was available, the average number of days was 6.

70 processes out of 91 have been conducted in full compliance with contract award publication requirements representing 76.9% of all cases assessed.

82 cases out of 91 cases were successfully awarded representing 90.1% whilst 3 cases were cancelled and one failed. 43 out of 69 cases for which information was available were awarded within defined time frame representing 61%.

Step 3: Gap analysis/conclusions (substantive gaps)

i. For criterion (c) : Restricted Bidding Method has been found overwhelmingly used.

ii. For criterion (d) : The bidding documents do not specifically allow civil society to monitor bid submission, receipt and opening.

iii. For criterion (e): It is difficult to ascertain that information is kept confidential throughout the bid evaluation and award process. The "oath of secrecy" which is mandated by the Act and the Regulation, is not signed in all cases by the members of the evaluation team and the Internal Procurement Committees.

iv. For criterion (g): There is lack of enforcement of ODPP/PPDA on controlling officers of the procuring entities to act to publicize contract awards.
Contract award data for 2017-18 is not available on ODPP/PPDA's website – now a mandatory requirement for intention to award.

v. For Criterion (h): There is no evidence that contract clauses include sustainability considerations except warranty and liability clauses.

vi. For criterion (i): Contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance except clause for

liquidated damages.

- ✓ (vii) For criterion (j): The selection and award process were not carried out effectively, and efficiently except for local shopping.

Initial input for recommendations

a. Regarding Criterion (f): (Not related to substantial gap but suggestion for further improvement): The procurement regulatory body should prepare standard evaluation forms/template for all evaluations to ensure consistency of application.
b. For criterion (c) : Restricted Bidding Method should be used only if fully justified and reasons recorded on the file.
c. For criterion (d) : The bidding documents should be updated to specifically allow civil society to monitor bid submission, receipt and opening.
d. For criterion (e): The "oath of secrecy" which is mandated by the Act and the Regulation, should be signed in all cases by the members of the evaluation team and the Internal Procurement Committees.
e. For criterion (g): More proactive enforcement measures are taken by PPDA for controlling officers of the procuring entities to act to publicize contract awards. The ODPP/PPDA's website is made fully functional, and the announcement of contract award is enforced.
f. For Criterion (h): Bidding Documents should be updated to include clauses regarding sustainability considerations.
g. For criterion (i): Contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance except clause for liquidated damages.
h. For criterion (j): The staff are properly trained to discharge their duty related to procurement process effectively and efficiently.

Sub-indicator 9(c) – Contract management in practice

Assessment Criteria:

(a) Contracts are implemented in a timely manner. *****

(b) Inspection, quality control, supervision of work and final acceptance of products is carried out. *

(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract

(d) Contract amendments are reviewed, issued, and published in a timely manner. *

(e) Procurement statistics are available, and a system is in place to measure and improve procurement practices.

(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised. *

(g) The records are complete and accurate, and easily accessible in a single file. *

*** Quantitative indicators to substantiate assessment of sub-indicator 9(c) Assessment criterion (g):**

- share of contracts with complete and accurate records and databases (in %)

* Recommended quantitative indicators to substantiate assessment of sub-indicator 9(c) linked to different assessment criteria above as follows:

- For assessment criterion (a): time overruns (in %; and average delay in days)
- For assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)
- For assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices)
- For assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)
- For assessment criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation)

Source for all: Sample of procurement cases.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: Cannot be confirmed; not much information was not available on contracts implementation period.

(b) Criterion not met: Inspection, quality control, supervision of work and final acceptance of products seems to be a great challenge. In cases of goods, there is lack of evidence for acceptance of goods either by the technical personnel or the user departments when goods are received. In case of works contracts, there is evidence that there is inspection and quality control and supervision of works since most procuring entities engage the services of consulting engineers to carry out these tasks on their behalf.

(c) Criterion not met: Most invoices that were available were from local shopping and were endorsed by the user departments and procurement units before being processed. Copies of invoices and payment vouchers are not retained by procurement units for record keeping. This makes it difficult to trace if payments are done on time.

(d) Criterion partially met: Amendments are reviewed and issued in a timely manner. These amendments were mostly for shopping procedures. In case of open tendering these amendments were not published.

(e) Criterion not met: Procurement statistics are not available, and a system is not in place to measure and improve procurement practices. Statistics were not put together for onward forwarding to ODPP/PPDA or any other oversight stakeholder or use by the entity to monitor their procurement.

(f) Criterion not met: There are no opportunities for direct involvement of relevant external stakeholders in public procurement.

(g) Criterion not met: Records are not easily accessible in a single file. Whilst most procuring entities have all the procurement documents like the invitation for bids, bidding documents, evaluation reports, contract agreement documents, progress reports, and approval minutes from

the internal procurement committees within the procurement unit, anything after contract signature is outside their record keeping. These documents wherever they are available, are not kept in a single file but are scattered within the procurement office and/or some other offices.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

For most of the contracts full information was not available. Procuring entities do not apply remedial clauses from the contract documents when contracts are not implemented in a timely manner.

In the absence of procurement statistics, it is difficult to review whether opportunities for the improvement of procurement practices are analyzed based on both metrics and stakeholder feedback.

There is no direct involvement of civil society organizations in public procurement as this does not appear in any legal frameworks.

Most procuring entities have all the procurement documents like the invitation for bids, bidding documents, evaluation reports, contract agreement documents, progress reports, and approval minutes from the internal procurement committees within the procurement unit. Invoices from suppliers and service providers and payment vouchers are mostly not available in procurement files. Procurement records from requisition to payment vouchers are not found in a single file.

Step 2: Quantitative Analysis

(a) Regarding Criterion (a): For 16 cases for which information of delayed implementation were available, there was an average delay of 72% as time over-run over specified scheduled completion/delivery time (average delay in days does not provide any meaningful comparison).
(b) Regarding Criterion (b): There are signed delivery notes by the procuring entities but lack of certificates of acceptance especially in less complex items. Of 91 cases assessed, 33 cases had evidence of inspection, quality control, supervision and final acceptance representing only 38%.
(c) Regarding Criterion (d):
Out of the 91 cases there were only 6 cases that had contract amendments representing 6.5% of all the cases. These amendments were in 3 entities and represented 44%, 14% and 20% of the procurement cases assessed in these entities respectively. The average increase/decrease in the contract values were 66%, (minus) 23% and 28% respectively.
(d) Regarding Criterion (f): There was no evidence of direct involvement of Civil society in monitoring process.

Step 3: Gap Analysis/conclusions (substantive gaps)

(i) For criterion (a): There is substantial delay in contract implementation. Procuring entities do not apply remedial clauses from the contract documents when contracts are not implemented in a timely manner.
(ii) For criterion (b): In cases of goods there is lack of evidence for acceptance of goods either

by the technical personnel or the user departments when goods are received. There are signed delivery notes by the procuring entities but lack of certificates of acceptance especially in less complex items.

(iii) For criterion (c): Copies of invoices and payment vouchers are not retained by procurement units for record keeping. This makes it difficult to trace if payments are done on time.

(iv) For criterion (d): The contract amendments were not published.

(v) For criterion (e): Procurement statistics are not available, and a system is not in place to measure and improve procurement practices.

(vi) For criterion (f): There are no opportunities for direct involvement of relevant external stakeholders in public procurement.

(vii) For criterion (g): Procurement and contract registers are not available in any of the entities assessed. Procurement records from requisition to payment vouchers are not found in a single file.

Initial input for recommendations

a. For criteria (a), (b), (c), (d) and (g): Based on the above evidence of weak contracts management, including non-availability of invoices and payment vouchers in procurement files, there is an urgent need to train procurement and contracts management staff on all aspects of contracts management including record keeping.

b. For criterion (e): A system of generating, keeping, and transmitting the statistical data on contract management need to be developed with support from PPDA.

c. For criterion (f): Opportunities for direct involvement of relevant external stakeholders in public procurement need to be created starting with involving CSOs for contract monitoring.

Indicator 10. The public procurement market is fully functional.

Sub-indicator 10(a) – Dialogue and partnerships between public and private sector

Assessment Criteria:

(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government. *****

(b) The government has programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a):

- perception of openness and effectiveness in engaging with the private sector (in % of responses).

Source: Survey.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: The government encourages open dialogue with the private sector. Government has followed a transparent and consultative process with different stakeholder when formulating changes to public procurement systems including the formulation of Public Procurement Act, 2003 and the Public Procurement and Disposal of Asset Act, 2017. However, there is no detailed information on how such consultations were carried out, but no consultation was done with all stakeholders when finally adopting PPD Act.

(b) Criterion not met: The government has no special programmes to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace. The then Article 163 of the Malawi Procurement Regulations provided measures to promote small-enterprise participation with training of both public and private sectors in application of procurement procedures.

Step 2: Quantitative analysis
Regarding, the perception of openness and effectiveness in engaging with the private sector, based on survey results 69 % of respondents perceive that there is an openness and effectiveness in such engagements.

Step 3: Gap Analysis/conclusions (substantive gaps)

i. For criterion (a): There is no details about how the consultation was carried out between the private sector and the public sector and gives doubt about having been done properly. no consultation was done with all stakeholders when finally adopting PPD Act.

ii. For criterion (b): Training programmes on public procurement are offered regularly by the National Construction Industry Council. This training is only for works contractors and consultants and not for suppliers of goods or general services.

✓ For Criteria (b): Based on interaction in the consultation workshop with the private sector, it was noted that there is a perception that contracts are awarded to those with "connection" and contract awards are predetermined.

Initial input for recommendations (for gaps under criteria 10 (a)(a) and 10 (a) (b))

a. For criterion (a): Stakeholder consultations to be done when finally adopting a procurement policy or legislation in future. The perception that contracts are awarded to those with "connection" need to be dealt with through these consultation process to instil confidence in the private sector towards sanctity of the public procurement process.

b. For criterion (b): PPDA should action to develop training program and conducted the same for other than works contractors also. It is also, recommended that new Procurement Regulations which are under preparation should contain measures to promote Micro, Small, Medium Enterprises (MSMEs) participation.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

There are no regular forums for dialogue between the government and the private sector in particular SMEs. The government through the National Construction Industry Council has programs to build capacity especially for contractors and consulting engineers and training to help new entries into the public procurement marketplace. However, there are no special programmes that are tailored to the needs of small businesses for goods and general service suppliers to support supplier diversity. In conclusion, the government through ODPP/ PPDA has not provided guidelines concerning implementation of the programs and measures referred to the then Regulation 163 of PPR 2004 on measures to promote small and medium size enterprises. Also based on feedback from the private sector it appears provisions of the Act have not been implemented effectively.

The issue of why only few firms and those with "connection" with the government get the contracts repeatedly is further highlighted from several responses and this subject is further dealt with under Pillar IV on Accountability, Integrity, and Transparency.

Sub-indicator 10(b) – Private sector's organisation and access to the public procurement market

Assessment Criteria:

(a) The private sector is competitive, well-organised, willing, and able to participate in the competition for public procurement contracts. *

(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b)
Assessment criterion (a):

- number of registered suppliers as a share of total number of suppliers in the country (in %)
- share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers)
- total number and value of contracts awarded to domestic/foreign firms (and in % of total)

Source: E-Procurement system/Supplier Database

* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b)
Assessment criterion (b):
- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).
Source: Survey.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)
(a) Criterion not met: The private sector does not have adequate access to information and other services (including information technology) to promote their participation. Private sector appears not very willing to participate in the public procurement, on various accounts including

the perception that contract award is predetermined. Part of the information is captured through survey on private sector's perception of the public procurement market.

(b) Criterion not met: According to the survey carried out, there are major systemic constraints inhibiting private sector access to the public procurement market as detailed in gap analysis.

Step 2: Quantitative Analysis:

(a) For criterion (a): Data not available

(b) For criterion (b): Perception of firms on the appropriateness of conditions in the public procurement market according to the survey carried out:

(i) Access to financing: 55% of the respondents identify lack of access to credit as a factor to discourage participation in bidding.

(ii) Procurement methods and procedures that are proportionate to the risk and value in question: 60% of the respondents consider that the use of procurement methods is not fair.

(iii) Fair payment provisions that help offset the cost of doing business with the government: 55% of respondents consider that payment provisions in the contract are not fair and 75% of respondents consider that payments are unreasonably late.

(iv) Effective appeals mechanism and dispute resolution: 73% of the respondents consider that the complaint review system is not trustworthy and consistent with the findings of the case.

Perceptions of firms are covered in more detail in "**Results of the Survey on the Perception of Private Sector on Public Procurement in Malawi**" as given at **Annexure of Volume II of this report** including Quantitative Indicators as required by the assessment criteria.

Step 3: Gap Analysis/conclusions (describing any substantive gaps/red flags)

(i) For criterion (a): The private sector does not have adequate access to information and other services (including information technology) to promote their participation. There is perception that contract award is predetermined.

(ii) For Criterion (b): There is lack of trust in the complaints review process.

(iii) For Criterion (b): There is perception that procurement methods are not fair.

(iv) For criterion (b): Unreasonable contracting provisions that are seen not to fairly distribute risks associated with performance of contracts.

✓ (v) For criterion (b): There is lack of availability of funds and uncertainty and delays in payments.

(vi) For criterion (b): Absence of user-friendly and easily accessible e-GP systems – a constraint for participation including difficulties and expenses in obtaining tender documents by potential bidders.

Initial input for recommendations

a. For criterion (a): To partially remove a perception that contract awards are "predetermined", full justification of use of less competitive method is recorded and grounds for use of less competitive methods of procurement are stated in tender notice (advertisement) and publication of award.

b. For criterion (b): Based on data on Restricted Tender (80% by value in 2016-17 for prior review/no-objection cases by ODPP/PPDA) and a perception that procurement methods are not fair, it is recommended that use of Open Tender is maximized.

c. For criterion (b): Complaints are handled in a timely manner and the outcome is published to instil confidence in bidders about its fairness.

d. For criterion (b): Risks distribution in the contract provisions are made balanced.

e. For criterion (b): The availability of fund during execution of contract is ensured and steps taken to avoid delay in payments.

f. For criterion (b): The implementation of e-GP is fast tracked as there is high demand for the same from the private sector,

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

In order to assess the market response to public procurement solicitations and to explore perception of the private sector on the constraints faced by them a Survey Questionnaire was designed which included aspects: (i) on Perception of **openness and effectiveness of the public sector** in engaging with the private sector (sub-indicator 10 (a) on dialogue and partnership between public and private sector); and (ii) Perception about the appropriateness of conditions in the **public procurement market** such as access to credit, procurement methods and procedures, contracting provisions, fair payment provisions, existence of effective appeals mechanism and dispute resolution in the law (sub-indicator 10(b)).

The above survey was carried out electronically from February 24, 2018, on behalf of ODPP/PPDA by the World Bank team with invitations sent to 150 target audience of firms in construction (works), supply of goods and services (including Information Technology) and Consultancy with a requirement to send responses anonymously. Based on status as of April 07, 2018, 88 responses were received, with about half of the respondents (40-45), responding to most of the questions (total number of questions: 79).

In brief, the objectives of the survey were: (i) evaluate contractors, suppliers and consultants' experience as to awareness on bidding opportunities when bidding in government or donor-financed contracts; (ii) assess the reasons that may encourage or discourage firms from submitting bids; (iii) determine awareness about complaint mechanism of the government or donor agencies; (iv) gauge firms' perceptions regarding fraud and corruption risks in procurement; and (v) overall, how to facilitate the dialogue and partnerships between public and private sector through outreach and training programs to improve public procurement system in Malawi.

In addition to exploring the above aspects as per the objective and further to aspects under Indicator 10, the survey sought feedback from private sector and other stakeholders on the following aspects: (i) perception that the normative and regulatory body (ODPP/PPDA in Malawi) is free from **conflict of interest in its functions and responsibilities** that provides for separation of duties such as regulation, monitoring, oversight, procurement audit, complaints

review with clarity (sub-indicator 5(d) on Avoiding Conflict of Interest); (ii) further to the above, a perception that **in practice the appeals system is trust worthy** and appeal decisions are consistent with the findings of the case and with the available remedies provided in the legal/regulatory framework (sub-indicator 13 (c) on decisions of the appeals body); (iii) admission about **indulgence in unethical practices** including making gifts (sub-indicator 14(c)) on Effective sanctions and enforcement system; and (iv) perception of favorable opinions by the public on the **effectiveness of anti-corruption measures** (sub-indicator 14(d) on Anti-corruption framework and integrity training). These aspects are covered under Pillar II and Pillar IV.

In parallel with the above survey, half-a-day consultation workshop with private sector was held in Lilongwe on March 08, 2018, on "**Public Procurement in Malawi- Improving Competitive Effectiveness of Private Sector**" – the workshop hosted jointly by PPDA and the World Bank. The workshop was attended by more than 50 participants, with active and frank dialogue.

Sub-indicator 10(c) – Key sectors and sector strategies

Assessment Criteria:

(a) Key sectors associated with the public procurement market are identified by the government;
(b) Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: Based on the government's priority spending areas, key sectors associated with the procurement of goods, works, and services were identified**.** But no sector market analysis available. In terms of market segments, Micro, Medium and Small Enterprises (MSME) does not get fair share of business as per private sector's perception survey.

(b) Criterion not met: There is no indication that risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

In the presentation given by the World Bank on March 08, 2018, the participants were asked to reflect on the following issues related to improving the competitive effectiveness of private sector:

- Impact on competition due to existence of very small number of large firms and absence of mid-size firms
- Is joint venture with foreign firms effective in large civil works contract?
- Do foreign consultants after winning the contract effectively participate in execution of contract?

- Is there a situation of "ghost" contractors and consultants like in other countries where foreign contractors and consultants, after winning the contract, do not effectively participate in contract execution leaving it in the hands of local JV partner/ sub-contractors/sub-consultants?
- How to improve competitive situation of domestic contractors and manufactures?
- How situation of being land-locked has impact on input cost and competitive situation vis-à-vis large foreign firms?
- How high cost of finance with loan rates in excess of 40% is affecting competitive situation of private sector?
- How uncertainty and delays in payment has impact on competition?

An on-the-spot short survey was carried out to further validate the results of electronic survey (which was still ongoing to elicit maximum possible feedback) followed by an intense two-hour question and answer session. Quick feedback on result of survey based on limited response received electronically was also given to the participants. The participants engaged actively with frank questions and constructive criticism with full energy and vigor, which in itself was a good start for open dialogue and transparency in the area of public procurement. The representatives of the World Bank and PPDA handled the question assisted by MAPS Assessment Team.

Two important points raised during the interaction were: (i) why mid-size firms or SMEs fail to get government contracts in particular in civil works and (ii) why only few firms and those with "connection" with the government get the contracts repeatedly.

From the analysis of responses received for the Survey, it is seen that the response rate increased tremendously after this consultation workshop with suggestions on improvements including on the issues presented during the workshop.

These feedbacks through survey response have again highlighted the issues of access to credit, need for policy that use the capability of local contractors, need to provide support to SMEs by reserving certain procurement requirements, need for a level playing field where payment terms are fair to local bidders (compared to international contracts where there is a provision of Letter of Credit), delays in payment combined with high interest rate/cost of borrowing, need for all stakeholders to discuss issues that affect the construction industry and ensure that local sector is protected and that there are "too many foreign/international contractors and consultants tend to submit winning bids, then negotiate with a local party to do the same work for a fraction of the fee".

Section 36 of PPD Act has envisaged a margin of preference for the benefit of a bid by a micro, small and medium enterprise offering goods, works, consultancy services, and other services manufactured, grown or performed by local enterprise; and to reserve or set aside certain procurement requirements for micro, small and medium enterprise by restricting bidding to those enterprises as prescribed in the Act, which Director General of PPDA could do in consultation with the Ministers responsible for trade, economic and social policy. This is a continuation of provisions of the previous PPA 2003 as reflected in Section 28 and also in Regulation 162-166 of PPR 2004 (and draft PPR of 2018) on measures to promote small and medium enterprises.

Step 2: Quantitative Analysis – *Not applicable*.

Step 3: Gaps analysis/conclusions (substantive gaps) – applies to both criterion (a) and (b)

(i) Lack of opportunities for Micro Small and Medium Enterprises (MSME) to effectively participate in government contracts.

(ii) No sector market analysis available nor any study done on how to remove constraints that inhibit private sector's capacity to access procurement market.

(iii) Not a level playing field compared to foreign bidders due to lack of access to credit, high interest rates and payment conditions.

(iv) No regular, frank, and honest dialogue between the government and private sector.

Initial input for recommendations (to address gaps under criterion (a) and (b))

a. Sector market analysis to be done on how to remove constraints that inhibit private sector's capacity to access procurement market, in particular for civil construction sector and MSME.

b. Regular, frank, and honest dialogue between government and private sector to be instituted. by means of holding regular business outreach workshops.

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

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

Sub-indicator 11(a) – An enabling environment for public consultation and monitoring

Assessment Criteria:

(a) A transparent and consultative process is followed when formulating changes to the public procurement system.

(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.

(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.

Step 1 - Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: A consultative process is required to be followed when formulating changes to the public procurement system, but no information is available on how this was conducted. While adopting PPD Act no consultation was done with key stakeholders.

(b) Criterion not met: Programmes are not in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.

(c) Criterion not met: There is no evidence that the government takes into account the input, comments and feedback received from civil society.

Additional explanatory material in support of the analysis:

It appears that PPD Act as adopted has not taken into account concerns of major stakeholders as also any Civil Society Organization (CSO). In fact, there are not many capable CSOs in the country active in monitoring public procurement and contracts management. Civil society mostly take up for themselves to voice their concerns when there are issues in public procurement. There are no effective feedback and redress mechanisms in place for matters related to public procurement. The government does not empower civil society for them to be directly engaged in public procurement through participation, monitoring and oversight and there are no programmes to build their capacity. Therefore, civil society is not effectively involved in matters related to public procurement.

Step 2: Quantitative Analysis - *Not applicable*

Step 3: Gap Analysis/conclusions (substantive gaps)

i. For criterion (a): No consultative process followed when finally adopting PPD Act. There is absence of Open Contracting Principles.
ii. **For criterion (b):** Programmes are not in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.
iii. **For criterion (c):** There is no evidence that the government considers the input, comments and feedback received from civil society.

Initial input for recommendations

a. For criterion (a): There is need to follow a consultative process while changing legislation by means of organizing workshops. Also, the government would need to embrace and commit to implement the principles of Open Contracting.
b. For criterion (b): Civil society organisations should be encouraged/supported to focus on public procurement. Programs would need to be put in place to build the capacities of relevant stakeholders to understand, monitor and help improve public procurement.
c. For criterion (c): Consultative process by means of organizing workshops should be held to consider the input, comments, and feedback from civil society.

Sub-indicator 11(b) – Adequate and timely access to information by the public

Assessment Criteria:

(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: Requirements in combination with actual practices do not ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation. In particular:

(i) As assessed in sub-indicator 1(a), laws, regulations and policies are published and

accessible to the public at ODPP/PPDA's website at no cost. However, PPDA's website is not fully functional, and information published is limited and not updated. Laws in hard copy are sold at a nominal value.

(ii) As assessed in sub-indicator 7(a), stakeholders do not have adequate and timely access to information in each phase of the public procurement process. Stakeholders themselves do not normally request to have access to this information.

(iii) As assessed in sub-indicator 7(a), only partial information is available through the centralised online portal and open data standards are not used.

(iv) As assessed in indicator 9(c), there are no opportunities for direct involvement of relevant external stakeholders in public procurement.

Additional explanatory material in support of the analysis

Stakeholders as well do not normally request to have access to this information, despite publication of Access to Information Act No 13 of 2017. It appears there is lack of awareness of the right to access of information among members of the public and officials of all information holders.

ODPP/PPDA runs a centralised online portal where information is provided for free. The online portal is not always accessible, and it is not frequently updated. In fact, this portal was non-functional for about a year and the information on the website is very limited. The last progress report of ODPP/PPDA was published in 2010-11. Bid invitation notice is not published though required for international tenders as per PPD Act (Section 40). "Intention to Award Contract' has not been published so far though mandated as per Section 48 PPD Act the last progress report was published in 2011-12. Overall, the amount and nature of transparency and available information do not support the integrity of public procurement, including the visibility of the flow of public funds.

Step 2: Quantitative Analysis- *Not applicable*

Step 3: Gap Analysis/ Conclusions (substantive gaps)

- For criteria (a):ODPP/PPDA website is not functional and procurement data is not available
- For criteria (a):Absence of e-GP System
- For criteria (a):Overall, the amount and nature of transparency and available information do not support the integrity of public procurement.

Initial input for recommendations

Centralised online portal should be functional and frequently updated and all relevant procurement data made available.

Sub-indicator 11(c) – Direct engagement of civil society

Assessment Criteria:

(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate:

- the planning phase (consultation)
- bid/proposal opening (observation)
- evaluation and contract award (observation), when appropriate, according to local law
- contract management and completion (monitoring)

(b) There is ample evidence for direct participation of citizens in procurement processes through consultation, observation, and monitoring.

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: There is no forthright provision in the legal/regulatory and policy framework that allows citizens to participate in the above phases of a procurement process However, Section 57(2)&(3) of PPD Act stipulates disclosure of all material information by the procuring entity to any party with interest in the procurement process and compliance with the principles of transparency and accountability at all stages of project life cycle inclusive of pre-contract and post contract process as prescribed in the regulation.

(b) Criterion not met: There is no evidence for direct participation of citizens in procurement processes through consultation, observation, and monitoring.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

PPD Act does not envisage any engagement by citizen in any of the phases of the procurement process. The government does not promote and create opportunities for public consultation and monitoring of public contracting. However, there is some evidence of engagement of CSO in monitoring the contract execution. For example, MEJN, which is a leading think-tank for equitable, people-centered, and pro-poor policy interventions with over 16 years of research-based and evidence-based policy analysis and advocacy, has developed expertise in economic governance and social accountability, but not focused so far in the area of procurement and contracts management.

Step 2: Quantitative Analysis -*Not applicable*

Step 3: Gaps Analysis/conclusions (substantive gaps)

For criterion (a); There is lack of suitable enabling legal/regulatory and policy provisions for the citizen participation in the procurement process. Further, there are very few CSOs active in Malawi in particular in procurement and contracts management.

For criterion (b): There is no evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring ***Initial input for recommendations***

- For criterion (a): To allow for the implementation of OC Principles and future Open Data Standards, the legal framework would need to be amended and OC would need to be considered when developing e-GP.

- For criterion (b): Encourage CSOs to participate in consultations and monitoring including in contracts implementation. Training program for the CSOs should be organized to build their capacity and to encourage them in the process.
- For criterion (b): Fast track introduction of a revamped ODPP/PPDA website and introduction of e-GP

Indicator 12. The Country has effective control and audit systems.

Sub-indicator 12(a) – Legal framework, organisation, and procedures of the control system

Assessment Criteria: The system in the country provides for:

(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies

(b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness, and efficiency of procurement operations

(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation

(d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management

(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)

(f) clear mechanisms to ensure that there is follow-up on the respective findings.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Public Audit Act, 2003 establishes a comprehensive control framework, including internal controls, internal audits, external audits, and oversight by legal bodies.

(b) Criterion met: Section 6 (4) (d) (vi) of the Public Audit Act, 2003 states that resources are employed and managed in an effective, economic, and efficient manner. Section 14 (1) also provides for reporting of the Auditor General to the concerned Controlling Officers.

(c) Criterion met: Section 6 of the Public Audit Act, 2003 and Section 10 of Public Finance Management Act, 2003 have provisions that establish internal control and management procedures that focus on checks and balances for processing procurement transactions, on payment controls and on expenditure commitment controls.

(d) Criterion met: Independent external procurement audits are provided by the Auditor General according to Section 13 (2) of the Public Audit Act, the Auditor General shall maintain a continual programme of audits and reviews of all Ministries, agencies, and statutory bodies. Under Section 10 (1), of the Public Audit Act, 2003, the Auditor General may contract out to any other person or organization of established competence and reputation to carry out the any of the activities of the Auditor General under this Act.

(e) Criterion met: Sections 14 to16 of the Public Audit Act, 2003 provides for review of audit reports and determination of appropriate actions by the legislature. Audit reports are submitted to the legislature within three months from receipt of the financial reports by the audit office for the last three completed fiscal years.

(f) Criterion met: Section 14 (1) and (2) of the Public Audit Act, 2003 provides for review of audit reports and the concerned controlling officer must respond to the Auditor General within fourteen days of receiving the report and the AG makes recommendations which he/she deems appropriate.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

The office of the Auditor General provides oversight for internal and external control and audit systems as provided by the laws and regulations in the country. PPDA is provided for the responsibility for oversight of the procurement function in public entities. PPDA often conducts procurement reviews independent of the Auditor General. For internal control, appropriate segregation of duties is prescribed throughout the expenditure process and responsibilities are clearly laid down.

There is no evidence of effective coordination between PPDA and Auditor General as regards the issues of findings of procurement audits. Section 6 (4) (d) (vi) of the Public Audit Act, 2003 states that resources are employed and managed in an effective, economic, and efficient manner. Section 14 (1) also provides for reporting of the Auditor General to the concerned Controlling Officers. This allows for provisions to establish internal control and management procedures that focus on checks and balances for processing procurement transactions, on payment controls and on expenditure commitment controls.

Though there are expenditure commitment controls to ensure that the procuring entity's payment obligations arising from contracts remain within the limits of budget allocations, payment regulations are not followed as most suppliers are often paid outside the contractual periods and this may incur interest due to delayed payments and as per provisions of the contract.

Step 2: Quantitative Analysis: - *Not applicable*

Step 3: Gap Analysis/conclusions (substantive gaps): (suggestion for improvement)

The PPDA Act 2017 reveals a departure from the Public Procurement Act 2003, in failing to recognize the role of the National Audit Office (NAO) in procurement audits. The expectation was to include a clause in the new law reinforcing the importance of having the Auditor General to conduct procurement audits at the procuring entities. Though this does not limit the Auditor General from performing his or her statutory role including the procurement audits, the need to have complementarities spelt out in the PPD Act or arrangements should be agreed with NAO for a regular procurement audit.
PPDA conducts specialized procurement review but not procurement audits. NAO has no resources and expertise in procurement audit.

Initial input for recommendations (suggestion for improvement)

Procurement Audit to be carried out by NAO in close cooperation of PPDA

Sub-indicator 12(b) – Co-ordination of controls and audits of public procurement

Assessment Criteria:

(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.

(b) There are written standards and procedures (e.g., a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.

(c) There are evidence that internal or external audits are carried out at least annually and that other established written standards are compiled with. *

(d) Clear and reliable reporting lines to relevant oversight bodies exist.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialised procurement audits carried out compared to total number of audits (in %). - share of procurement performance audits carried out (in % of total number of procurement audits).

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Internal control routines, procedures and standards are clearly defined in most public entities. These procedures and standards are different for each entity and there is a need for verification if these are ideally complied with.

(b) Criterion not met: Written standards and procedures (e.g., a manual) for conducting procurement audits are not available.

(c) Criterion not met: There is no evidence that internal or external procurement audits are carried out at least annually and that other established written standards are complied with.

(d) Criterion not met: No clear and reliable reporting lines to relevant oversight bodies exist.

Step 2: Quantitative Analysis

(i) For criterion (c): The number of specialised procurement audits carried out compared to total number of audits as a percentage is not available.
(ii) For criterion (c): The share of procurement performance audits carried out as a percentage of total number of procurement audits is not available.

Step 3: Gap Analysis/conclusions (substantive gaps)

i. For criterion (b): Written standards and procedures (e.g., a manual) for conducting procurement audits are not available.

ii. For criterion (c): No specialized procurement audits are carried. ODPP/PPDA conducts specialized procurement reviews. National Audit Office is mandated to conduct all audits including for procurement, but they have no resources and expertise for procurement audits.

iii. For criterion (d): No clear and reliable reporting lines to relevant oversight bodies exist.

Initial input for recommendations

a. For criterion (b): PPDA in consultation with Audit Institution should take steps for developing written standards and procedures for conducting procurement audits.
b. For criterion (c): There is a need for collaboration between PPDA and Auditor General so that procurement audits can be reinforced. PPDA need to provide their technical expertise and input to NAO so that such procurement reviews by PPDA could be incorporated in the Audit Report by NAO on a regular basis.
c. For criterion (d): A clear and reliable reporting lines to relevant oversight bodies exist needs to be established with respect to procurement audit.

Sub-indicator 12(c) – Enforcement and follow-up on findings and recommendations

Assessment Criteria:

(a) Recommendations are responded to and implemented within the time frames established in the law. *

(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c) Assessment criterion (a): - Share of internal and external audit recommendations implemented within the time frames established in the law (in %). *Source:* Ministry of Finance/Supreme Audit Institution.

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: The share of internal and external audit recommendations implemented within the time frames established in the law as a percentage is not available and cannot be ascertained. At the time of assessment, no recent PEFA report was available except one done in 2011.

(b) Criterion met: Section 16 (2) of the Public Audit Act, 2003 states that the Auditor General may report to the responsible person the name of any person failing to comply with the requirements of this Act or any other written law, or of any failure by any person to comply with the recommendations or otherwise address the concerns that the Auditor General has raised in any report. It is doubtful however if the system exists in place for follow up.

Step 2: Quantitative Analysis

Data not available

Step 3 Gap Analysis/conclusions (Substantive gaps)

i. For criterion (a): No recent assessment available to understand status of implementation of internal and external audit.

Initial input for recommendations

a. For criterion (a): PEFA assessment to be completed to understand status of implementation of internal and external audit recommendations and if carried out within the time frames established.

Sub-indicator 12 (d) – Qualification and training to conduct procurement audits

Assessment Criteria:

(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits. *

(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.

(c) Auditors are selected in a fair and transparent way and are fully independent.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a): - number of training courses conducted to train internal and external auditors in public procurement audits. - share of auditors trained in public procurement (as % of total number of auditors). *Source:* Ministry of Finance/Supreme Audit Institution.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: There is no established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits. The office of the Auditor General made a deliberate effort to train personnel to conduct performance audits in procurement. The trainees were supposed to go on a pilot phase, but this did not happen due to lack of finances.

(b) Criterion not met: There is **no** evidence that the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits or that auditors that lack procurement knowledge are routinely supported by procurement specialists or consultants. Some public entities engage the services of private procurement

auditors to conduct specific procurement audits in their respective entities especially for donor funds. But as indicated in sub indicator 12(a) these audits do not find their way to the legislature.

(c) Criterion partially met: The Auditor General has a list of all certified auditors in Malawi and public entities are required to source services from these certified auditors only using the required selection methods according to the Public Procurement Regulations. NAO follows public procurement regulation for selection of audit firms in a transparent and competitive way. On procurement audit NAO relatively lacks capacity and there is a need for piloting procurement audit following a transparent criterion.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

The main issue on lack of attention by NAO on performance audit or audit on procurement cases relates to lack of finances, priority of NAO and lack of trained procurement professionals in the office NAO.

The GoM, with support from the Bank and partners have embarked on PFM reforms over the past several years with the aim to enhance the PFM environment for Malawi. Though much remains to be done, the reform efforts have yielded positive developments for Malawi including the production of backlog of consolidated financial statements (FY2012/13—FY2015/16) and brought the financial statements to current (FY2016/17) by the Accountant General Department (AGD); and the Auditor General has completed the backlog of audit reports and have brought the audit reports current (FY2015/16). The controls for the current IFMIS have increasingly been strengthened by the support of FROIP. For instance, prior to the cash gate, the IFMIS 'Super Users' had unlimited access to the system unchecked. Also, the IFMIS administration and discipline have significantly been installed and strengthened. The GoM have been able to successfully implement the payroll administration and decentralization. Through the payroll audit and the support to six identified sites which are connected to the central IFMIS. The capacity building and professionalization of the external and internal audit has now taken place and they are better equipped to conduct IT audits in the contemporary time.

Regarding resource allocation to Governance Institutions (control bodies), the allocation of national resource to the governance and integrity institutions by the GoM has been on an incremental basis. The budgetary allocations to these institutions including the NOA, ODPP and ACB reveal that the allocations have increased by about 441%, 456% and 205% for the NOA, ODPP/PPDA and the ACB respectively, comparing the FY15/16 allocations against FY17/18. The adequacy for the national resource allocation vis-à-vis the statutory responsibilities of the institutions under review is fundamental. On the other hand, the effectiveness and efficiency in the discharge of the statutory responsibilities and the quest for an increase in allocation of national resource to them is another fundamental thing to consider.

It is understood that the funds as allotted to these control institutions are not sufficient to discharge their stated function and therefore as regards procurement audit, despite its mandate and as stated specifically in Section 39 and 40 of PPA 2003.

As procurement audit has several dimensions, each entity conducts the audit using its own focus/perspective/objective. Generally, NAO merely seek/use information from other agencies (including PPDA) and conduct their own audits. There would not be sharing of procurement audit responsibilities from PPDA and NAO. NAO being the supreme audit institution is

expected to decide its audit plans and focus completely independently. But if PPDA is conducting several high-quality procurement audits, it gives assurance to NAO that risks are lower. To that extent, NAO may decide to limit the sample size and readjust audit plans.

Step 2: Quantitative Analysis

Data not available (for Criterion (a))

Step 3: Gap Analysis/conclusions (substantive gaps)

i. For criterion (a): There is no established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.
ii. For criterion (b): There is no evidence that the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits or that auditors that lack procurement knowledge are routinely supported by procurement specialists or consultants.
iii. For criterion (c): Auditors are selected in a fair and transparent way and are fully independent but there is no evidence that they will have the capacity to do procurement audit.

Initial input for recommendations

a. For criterion (a): The Audit Institution in collaboration with PPDA and with their support develop and execute training program for internal and external auditors in procurement.

b. For criteria (b) and (c): There is a need to ensure that in the selection of audit firm/team some experts with the adequate procurement knowledge are also there.

Indicator 13. Procurement appeals mechanisms are effective and efficient.

Sub-indicator 13(a) – Process for challenges and appeals

Assessment Criteria:

(a) Decisions are rendered based on available evidence submitted by the parties.

(b) The first review of the evidence is carried out by the entity specified in the law.

(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *

(d)The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.

* **Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c):**

- number of appeals.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a)

Assessment criterion (c): - number (and percentage) of enforced decisions. *Source:* Appeals body.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: There is formal complaints review mechanism in which decisions are to be rendered based on available evidence submitted by the parties. Section 38 (1) of the Public Procurement Act, 2003 allows a review in the first instance, in writing, to the head of the procuring entity prior to the entry into force of a contract. This should happen within ten working days of the bidder submitting the application becoming aware of the circumstances giving rise to the application, or of when that bidder should have become aware of those circumstances, whichever is earlier. The procuring entity shall render a decision on the application within 10 days of the submission. Similar provisions exist under Sections 59 and 60 of PPD Act under Part IX – Administrative Review and Appeal and this should happen within fourteen days.

(b) Criterion met: The first review is carried out by the entity specified in the law. However as per Section 60 (2) of PPD Act, within the period of 14 days of intention to award a contract (or within a period of 14 days the bidder submitting the application becoming aware of the circumstances giving rise to the application), an application shall be made in the first instance in writing to the Controlling Officer or the head of procuring and disposing entity or PPDA.

(c) Criterion met: However**,** as per Section 60(10) of PPD Act, decision of Review Committee shall be subject to review by the High Court.

(d) Criterion met: The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic. Sections 60 (7) and 60 (8) of the of PPD Act allows suspension of procurement proceedings for ten days upon receipt of the application for review and the period may be extended to thirty days in cases where the dispute has not been resolved.

Step 2: Quantitative Analysis

Data is not available for the number of appeals as a percentage of contracts awarded. Data is also not available for the number and percentage of enforced decisions.

Step 3: Gap Analysis/conclusions (substantive gaps)

i. Weak complaints review mechanism due to lack of independence of the appeals body (discussed under indicator 5) and lack of data which makes it difficult to assess process efficiency and effectiveness. (Suggestions for improvement- not a gap as such)

Initial input for recommendations (suggestions for improvement)

a. Ensure that records are kept, and statistics are compiled by appeals body.in a methodical manner and published on the PPDA website for being accessible to the public.

Sub-indicator 13(b) – Independence and capacity of the appeals body

Assessment Criteria: The appeals body:

(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions.

(b) does not charge fees that inhibit access by concerned parties.

(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available.

(d) exercises its legal authority to suspend procurement proceedings and impose remedies.

(e) issues decisions within the time frame specified in the law/regulations*****

(f) issues decisions that are binding on all parties

(g) is adequately resourced and staffed to fulfil its function.

*** Quantitative indicator to substantiate assessment of sub-indicator 13(b) Assessment criterion (c):**

- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).

Source: Appeals body.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: The independence of the appeals body under PPDA is questionable as PPDA is also engaged in prior review of procurement transactions, i.e., in the process leading to contract award decisions. Section 38 (6) of the PPA, 2003 states that for the purpose of hearing applications for review, the Director of ODPP shall establish a Review Committee which shall consist of members with no direct or indirect personal involvement in public procurement during the period of their service. Similar provisions exist in Section 60 of PPD Act under Part IX – Administrative Review and Appeal. Section 38(4) of PPA 2003 spells that appeals against the decision of the head of procuring agency shall be made to the concerned Minister or, in the case of procurement whose value exceeds the threshold prescribed in the Regulations, to the Director.

(b) Criterion not met: So far, the appeals body has not charged fees that inhibit access by concerned parties based on PPA 2003. But Section 60 (11) of PPD Act states that any application submitted to the Director General in the first instance or by way of appeal shall attract a fee prescribed by the Director General and the fee has not been prescribed yet.

(c) Criterion met: The appeals body follows procedures for submission and resolution of complaints that are clearly defined and publicly available. This is provided under Sections 37 and 38 under Part V- Review. Similar provisions exist under Sections 59 and 60 under Part IX - Administrative Review and Appeal.

(d) Criterion partially met: The appeals body exercises its legal authority to suspend procurement proceedings and impose remedies. Section 38 (8) of the PPA, 2003 provides a list of remedies which include suspension of procurement proceedings. This is also provided in Section 60 (12) of PPDA, 2017. However, no data or evidence is available if these provisions were implemented in practice.

(e) Criterion not met: No data is available that the appeals body issues decisions within the

time frame specified in the law/regulations. However, Section 38 (7) the PPA 2003 and Section 59 (9) of PPD Act states the Review Committee shall render a decision within ten days and fourteen days, respectively.

(f) Criterion met: Appeals body issues decisions that are binding on all parties but is subject to appeal and review by the High Court.

(g) Criterion not met: The appeals body is not adequately resourced and staffed to fulfil its function. The Review Committee is an *ad-hoc* committee which shall consist of members of high integrity with experience in fields of procurement and procurement procedures.

Step 2: Quantitative analysis (for criterion (c))

No data available for appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).

Step 3: Gap analysis/conclusions (substantive gaps)

i. For criterion (a): The independence of the appeals body under PPDA is questionable as PPDA is also engaged in prior review of procurement transactions.
ii. For criterion (b): PPD Act states that any application submitted to the Director General in the first instance or by way of appeal shall attract a fee prescribed by the Director General. As the fee has not been prescribed yet, it is not possible to determine whether that will inhibit access or not.
iii. For criterion (d): No data or evidence is available to find whether the appeals body exercises its legal authority to suspend procurement proceedings and impose remedies.
iv. For criterion (e): No data available for appeals resolved within/exceeding the time frame specified in the law or unresolved.
v. For criterion (g): Lack of data renders it impossible to assess whether the appeals body is adequately resourced and staffed to fulfil its functions.

Initial input for recommendations

a. For criterion (a): Independence of appeals body: Refer to indicator 5.

b. For criterion (b): It is expected that the new regulations will provide a list of fees which is reasonable that will be charged for appeals applications submitted to the Director General.

c. For criterion (e): Ensure that records are kept, and statistics are compiled by appeals body, in a methodical manner and published on the PPDA website for being accessible to the public.

d. For criterion (g):To be reviewed whether the appeals function (ad-hoc committee) is adequately resourced and staffed to fulfil its functions.

Sub-indicator 13(c) – Decisions of the appeals body

Assessment Criteria: Procedures governing the decision-making process of the appeals body provide that decision are:

(a) based on information relevant to the case

(b) balanced and unbiased in consideration of the relevant information. *****

(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures. *****

(d) decisions are published on the centralised government online portal within specified timelines and as stipulated in the law. *****

***Quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (d):**

- share of appeals decisions posted on a central online platform within timelines specified in the law (in %).

Source: Centralised online portal.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (b):

- share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses).

- share of suppliers that perceive appeals decisions as consistent (in % of responses).

Source: Survey.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c) Assessment criterion (c):

- outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).

Source: Appeals body.

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: No data is available to verify that decisions are based on information relevant to the case. Procedures are however in place to ensure that this is carried out. The procedures are under Section 60 of PPD Act.

(b) Criterion not met: No data is available verifying that decisions are balanced and unbiased in consideration of the relevant information. Procedures are however in place to ensure that this is carried out. The procedures are under Section 60 of PPD Act.

(c) Criterion not met: No data is available verifying that decisions that result in remedies, if required, are necessary to correcting the implementation of the process or procedures. Under Section 60 (12) remedies may include:

(i) prohibiting the procuring and disposing entity from acting or deciding unlawfully or from following an unlawful procedure;
(ii) annulling, in whole or in part, an unlawful act or decision of the procuring and disposing entity, other than any decision bringing the procurement contract into force;
(iii) revising an unlawful decision by the procuring and disposing entity or substituting

its own decision for such decision, other than any decision bringing the procurement contract into force;

(iv) compelling the procuring and disposing entity to pay the successful applicant its costs of preparing and submitting a bid and application for the review; and

(v) reporting the public official who committed the misconduct to relevant oversight bodies for proper action like disciplinary action and prosecution.

(d) Criterion not met: Decisions are not published on the centralised government online portal or PPDA/PPDA website and no specified timelines are stipulated in the law.

Step 2: Quantitative analysis:

Criterion(b) Only 27 % of respondents consider that the complaint review system is trustworthy. Only 35% of respondents perceive appeals decisions as consistent.

Criterion(c) **No,** data is not available on the outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).

Criterion (d) **No,** data is not available on share of appeals decisions published on the centralised government online portal within specified timelines and as stipulated in the law.

More details are available at **Annexure** on results of Survey.

Step 3: Gap Analysis/conclusions (substantive gaps): (for sub-indicator 13(c))

i. Data is not available to make a clear assessment, however, the survey with private sector indicates lack of effective complaints review mechanism including lack of trust in the system.

Initial input for recommendations (to address gaps under Sub-indicators 13 (c))

a. ODPP/PPDA website to publish results of appeals including time frame for resolution.

b. Appeals decisions are taken within timelines specified and to be posted on centralized website.

c. Procedures governing decision making should be published on centralised online portal.

d. PPD Act should have a provision for publishing procedures governing the decision making.

e. The remedies should include the power of the appeals body to overturn a contract award that is not in compliance with the law.

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

Sub-indicator 14(a) – Legal definition of prohibited practices, conflicts of interest, and associated responsibilities, accountabilities, and penalties

Assessment Criteria: The legal/regulatory framework provides for the following:

(a) definitions of fraud, corruption, and other prohibited practices in procurement, consistent

with obligations deriving from legally binding international anti-corruption agreements.

(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption, or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.

(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: The legal/regulatory framework provides definitions of fraud, corruption, and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements. These are found under Section 57 of PPD Act Part VIII Procurement Integrity which provides definitions of fraudulent and corruptive practices and the Corrupt Practices Act, No 17 of 2004. Section 2 of PPD Act also provides definitions of coercive and collusive practices.

(b) Criterion met: There are definitions of the individual responsibilities, accountability and penalties for government employees and private firms, or individuals found guilty of fraud, corruption, or other prohibited practices in procurement, without prejudice of other provisions in the criminal law. The Corrupt Practices Act No. 17 of 2004 prescribes offences for both public and private sectors. This involves custodial sentence for both public officers and private parties. Under Section 56 PPD Act provides a system for suspension or debarment for fraud, corruption, or any other misconduct.

(c) Criterion not met: There isn't a clear legal definition of conflict of interest but Section 23 of PPD Act provides some provisions on post engagement restriction that state that every member of PPDA or committee of PPDA shall maintain during or twenty-four months after a person's relationship with PPDA, or the Committee the confidentiality of any matter relating to this Act which comes to that person's knowledge in the course of his duty.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

The effects of the anti-corruption law are the same as in the procurement law. There is still room to improve the existing Corrupt Practices Act, No 17 of 2004, which was last reviewed in 2004 and the United Nations Convention Against Corruption (UNCAC) peer review process would therefore contribute to that through identifying gaps that exist in the law. The Corrupt Practices Act, No 17 of 2004, prescribes offences for both public and private sectors. This involves custodial sentence for both public officers and private parties.

Section 58 requires that the Director General may promulgate codes of conduct to guide behaviour of public officials and bidders and suppliers involved in public procurement or disposal processes.

Section 22 of PPD Act deals with Disclosure of Interest of members of PPDA, committee of PPDA or any public official or member of an Internal Procurement and Disposal Committee who has direct or indirect pecuniary interest in relation to matter before PPDA. The member/public official shall disclose the nature of interest before any meeting and shall not take

part in any deliberation or any decision making for the matter under consideration. Failure on disclosure of interest on conviction shall be liable to a fine of K 1,000,000 and or to imprisonment for five years.

In relation to the above situation Section 2 Interpretation of PPD Act defines "close relative" as spouse, child, sibling or parent or guardian.

In accordance with the Section 25 D of the Corrupt Practices Act of Malawi, there is a need for "Disclosure of Interest, where a contract or proposed contract in which public officer or any member of his immediate family, or other close associate of his, has a direct or indirect interest shall not take part in those cases on becoming aware of such Conflict of Interest. In this case the "members of immediate family" in relation to public officer includes that public officer's spouse, child, parent, brother, sister, grandchild, grandparent, uncle, aunt, and other close relatives.

On the same subject as above, the Public Officers (Declaration of Assets, Liabilities and Business Interest) Act, 2013, defines: "members of immediate family" in relation to a public officer, includes the public officer's spouse, any biological or adoptive child who is below the age of eighteen or any biological or adoptive child whose means of support is wholly or partially from a public officer, irrespective of age.

Section 4 2 (b) of the Act on Declaration of Assets, require that a public officer shall "… (b) to the best of his or her ability, avoid being in a position in which his or her personal interest conflict with his or her public duties; (c) avoid any activity that is inconsistent with his or her public functions, (d) not misuse or misappropriate public property entrusted to his or her care, (e) not be permitted to concurrently receive remuneration for the performance of his or her duties as a public officer and remuneration for the performance of private employment or of business or entrepreneurial activities, unless he or she makes a full disclosure of all outside employment, business interests and activities, provided that no actual or potential conflict of interest exists between the public officer's official duties and his or her outside employment, business interest or entrepreneurial activity."

Step 2: Quantitative analysis - *Not applicable*

Step 3: Gap analysis/conclusions (substantive gaps/red flags)

i. For criterion (c): Section 23 of PPD Act on post engagement restriction only states that every member of PPDA or committee of PPDA shall maintain during or twenty four months after a person's relationship with PPDA, or the Committee the confidentiality of any matter relating to this Act which comes to that person's knowledge in the course of his duty but it is not clear why even after two years a public official should disclose confidential matters which he gathered during the course of his official duty. There is no cooling off period for public officials.

✓For Criterion (c): There is lack of clarity on the understanding of: "Conflict of Interest" and definition of "close relatives" or "members of immediate family" as appearing in PPD Act, Act on Declaration of Asset and Corrupt Practices Act and based on discussions, in practice these inconsistencies are either being misused, or these are subject to misuse.

Initial input for recommendations (For criterion (c))

- Information on debarred firms and individuals should be easily accessible to PDEs on ODPP/PPDA website.
- Definition of "Close Relatives" and "Conflict of Interest" to be made consistent in different Acts to prevent its misuse.

Sub-indicator 14(b) – Provisions on prohibited practices in procurement documents

Assessment Criteria:

(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.

(b) Procurement and contract documents include provisions on fraud, corruption, and other prohibited practices, as specified in the legal/regulatory framework.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents. All the procurement and contract documents being in use have provisions and definitions of what is considered as corrupt practice, fraudulent practice, collusive practices, and coercive practices. All the documents provide the consequences of committing such acts. The instructions also include a requirement for bidders to issue a self-declaration assuring that the bidder has not engaged in any prohibited practices and has not been prosecuted or convicted of fraud, corruption, or other prohibited practices. Under Section 45 (2) of PPD Act, the use of such standard bidding documents shall be mandatory on all procuring and disposing entities.

(b) Criterion met: All procurement and contract documents include provisions on fraud, corruption, and other prohibited practices, as specified in the legal/regulatory framework.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

The procurement documents for goods, works and routine services include provisions on fraud and corruption under Instructions to Bidders Clause 3. The request for proposals includes provisions on Conflict of Interest under ITB 4 and provisions on Corrupt or Fraudulent Practices under ITB 5**.** Contract documents for goods, works and routine services include provisions on Fraud and Corruption under GCC 3**.** The contract for consultancy services includes provisions on Corrupt Practices under GCC 2 and provisions on Conflict of Interests under GCC 18**.** The consequences of committing such acts are prescribed in the clauses and these are enforceable through the Corrupt Practices Act, No 17 of 2004 and Public Procurement Act, 2003, PPD Act and Malawi Procurement Regulations.

Step 2: Quantitative analysis- *not applicable*

Step 3: Gap analysis/conclusions (substantive gaps)

None

Initial input for recommendations

None

Sub-indicator 14(c) – Effective sanctions and enforcement systems

Assessment Criteria:

(a) Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this. (b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.

(c) There is a system for suspension/debarment that ensures due process and is consistently applied.

(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties. *

* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). *Source:* Normative/regulatory function/anti-corruption body - Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. *Source:* Normative/regulatory function/anti-corruption body - Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). *Source:* Survey

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this. Section 36 of the Corrupt Practices Act requires public officials to who any advantage is given, promised of offered to make a report to the Anti-Corruption Bureau or Malawi Police within 48 hours failing which they can be liable to criminal prosecution. The procedures for reporting are enshrined in ACB standing orders and are in turn regularly publicized to the general public and specifically to public officials who include procurement personnel.

(b) Criterion not met: There is no evidence that this system is systematically applied and that reports are consistently followed up by law enforcement authorities.

(c) Criterion partially met: There is a system for suspension/debarment that ensures due process on report allegations of fraud, corruption, and other prohibited practices under Section 56 of PPDA, 2017. There is however no evidence that this system is consistently applied.

(d) Criterion partially met: There is some evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties. There are quite a number of cases that over the years and even currently the ACB has investigated and prosecuted involving corrupt practices in public procurement; however, these cases are very limited and not available in public domain.

Step 2: Quantitative analysis(for criterion (d)

Based on data posted on ACB website, the number of officers found guilty of fraud and corruption in public procurement is 1. This does not appear to be a reliable data. *Based on survey results 47% of respondent consider that companies are expected to give gifts to secure a contract (either always or sometimes).*

(i) The number of firms or individuals that have been prosecuted or convicted is not made available on a searchable electronic database from ACB.
(ii) The number of firms or individuals prohibited from participation in future procurements (suspended or debarred) is not readily available and searchable electronically from PPDA.
(iii) The number of government officials found guilty of fraud and corruption in public procurement is not readily available and searchable electronically (number of government officials prosecuted or convicted).

Step 3: Gap analysis/conclusions (substantive gaps)

i. For criterion (b): There is no evidence that requirement to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities is systematically applied and that reports are consistently followed up by law enforcement authorities.
ii. For criterion (c): There is no evidence whether the system for suspension/debarment is consistently applied or not.
iii. For criterion (d): There is very limited evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties. Further, the information is not available in public domain.

Initial input for recommendations

a. For criterion (b): ACB should enforce that the requirement to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities is complied with by the concerned MDAs and follow up such reports.
b. For criterion (d): The information regarding action taken to enforce the laws on fraud, corruption and other prohibited practices are made available in public domain.

Sub-indicator 14(d) – Anti-corruption framework and integrity training

Assessment Criteria:

(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. *

(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.

(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.

(d) Special measures are in place for the detection and prevention of corruption associated with procurement.

(e) Special integrity training programmes are offered, and the procurement workforce regularly participates in this training.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favourable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). *Source*: Survey

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: The country has a Corrupt Practices Act No 17 of 2004 which provides a framework to prevent, detect and penalise corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable e its responsibilities to be carried out. In accordance with Section 10 of the Corrupt Practices Act the Anti-Corruption Bureau takes all necessary measures for prevention of corruption in public and private bodies including receiving any procurement related complaints of any alleged or suspected corrupt practices or offence under the Act.

(b) Criterion not met: As part of the anti-corruption framework, no special mechanism is in place to be used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.

(c) Criterion not met: As part of the anti-corruption framework, the Anti-Corruption Bureau used to publish the list of concluded cases on its website which has cases on corruption-related legal proceedings and convictions up to year 2013. Further, the data compiled by Anti-Corruption Bureau is aggregated and does not specifically show which cases were relating to procurement.

http://www.acbmw.org/wp-content/downloads/concluded_cases_press_release.pdf

(d) Criterion partially met: Special measures are in place for the detection and prevention of

corruption associated with procurement. In some procuring entities, they subscribe to corruption reporting hotlines managed by third party. The Anti-Corruption Bureau also works with certain agencies to sensitize their staff on prevention and reporting to augment existing mechanisms. But there are very few cases available in public domain related to detection and prevention of procurement related corruption.

(e) Criterion partially met: The Anti-Corruption Bureau conducts some joint trainings with PPDA for specific procuring entities, however entities have to mostly use their own funds to organize such trainings for their IPDCs and other internal stakeholders such as user departments. Further, such trainings are few and far between and not on regular basis.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

The country has a Corrupt Practices Act No 17 of 2004 which provides a framework to prevent, detect and penalise corruption in government. Based on the results of the Governance and Corruption Survey of 2013, 35.5% of the public said the overall efficacy of the Government's anti-corruption strategy was effective, a decline from 75% in 2006 and 59% in the 2010 survey. There is recognition that public procurement has a high risk of corruption. Corruption risk management is also not a very well-developed practice, especially in the public sector. It is just taking off and only in a few institutions. There is a lack of capacity both in the procuring entities and in the Anti-Corruption Bureau to enhance its uptake.

The Anti-Corruption Bureau also works with certain agencies to sensitize their staff on prevention and reporting to augment existing mechanisms. Some civil society organisations on their own initiative are responsible for social audits and for monitoring of procurement to protect the public interest. These mainly include NGOs and the press.

Step 2: Quantitative Analysis: (For criterion (a))

Based on survey results, 59 % of respondents consider that anti-corruption measures are not effective **(**refer to **Annexure** for Survey Results**).**

Step 3: Gap Analysis/conclusions (substantive gaps)

i. For criterion (b): As part of the anti-corruption framework, no special mechanism is in place to for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
ii. For criterion (c): The published list of concluded cases on ACB's website has corruption-related legal proceedings and convictions only up to year 2013. Further, the data compiled by Anti-Corruption Bureau is aggregated and does not specifically show which cases were relating to procurement.
iii. For criterion (d): Some special measures, such as corruption reporting hotlines, are there but only in a few MDAs.
iv. For criterion (e): ACB does not conduct trainings for procuring entities on regular basis and the entities have to mostly use their own funds to organize such trainings.

Initial input for recommendations

a. For criterion (b): The anti-corruption framework to be amended to include mechanism for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
b. For criterion (c): The relevant information about the corruption cases needs to be compiled and reported annually.
c. For criterion (d): The special measures which are being used in some MDAs and are effective, should be expanded to other MDAs as well.
d. For criterion (e): Regular training to be organized on preventive aspect of corruption in procurement and coordinated outreach to private sector to improve trust in the system.

Sub-indicator 14(e) – Stakeholder support to strengthen integrity in procurement

Assessment Criteria

(a) There are strong and credible civil society organisations that exercise social audit and control.

(b) There is an enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.

(c) There is evidence that civil society contributes to shape and improve integrity of public procurement.*.

(d) Suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g., through internal compliance measures. *

* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c):

- number of domestic civil society organisations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement.

Source: Survey/interviews

* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d):

- number of suppliers that have internal compliance measures in place (in %).

Source: Supplier database

Step 1: Qualitative analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion not met: There is no existence of capable civil society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social audit and control.

(b) Criterion not met: There is no enabling environment for civil society organisations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.

(c) Criterion not met: There is no evidence that civil society contributes to shape and improve integrity of public procurement.

(d) Criterion not met: It is unclear, whether suppliers and business associations actively support integrity and ethical behaviour in public procurement, e.g., through internal compliance measures.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Private media play an active role in addressing integrity and ethical behaviour in public procurement though sometimes not well-informed.

There are few civil society organizations who are active and based on assessment could be partner in any endeavor towards the involvement of CSO in improving the integrity in procurement: Two examples are: (i) Malawi Economic Justice Network (MEJN); and: Catholic Commission for Justice and Peace (CCJP).

MEJN has been actively involved in pursuing open government partnership (OGP) agenda in open budget surveys (OBS) intervention. Based on material received from MEJN it is seen that: " in 2014 MEJN was also contracted by Office of the Director for Public Procurement (ODPP) as a consultant to develop and conduct the third-party procurement monitoring of selected public service contracts in selected districts. The assignment included the development, the pre-testing of a third-party monitoring tool in four Sectors (health, education, agriculture and roads and public infrastructures) as well as the orientation of civil society organizations (CSOs) in monitoring public procurement and/or projects. This project was funded by the World Bank through the PPDA". There is a need to revive such initiatives.

Step 2: Quantitative analysis:

For criterion (c): There is no existence of capable civil society groups that have a procurement focus within their agendas and/or actively provide oversight and exercise social control. No data is available for the number of domestic civil service organisations (CSOs), including national offices of international CSOs) that are actively providing oversight and social control in public procurement.

For criterion (d): No data is available on number of suppliers that have internal compliance measures in place.

Step 3: Gap Analysis/conclusions (substantive gaps)

i. For criterion (a): There is no existence of capable civil society groups that have a procurement focus and provide oversight and exercise social audit and control.
ii. For criterion (b): There is no enabling environment for civil society organisations to have a role as third-party monitors.
iii. For criterion (c): There is no evidence that civil society contributes to shape and improve integrity of public procurement.
iv. For criterion (d): It is unclear whether or to which extent suppliers and business organizations actively support integrity and ethical behaviour in public procurement.

Initial input for recommendations (to address all gaps under sub-indicator 14 (e))

- The government to involve civil society organizations in detection and prevention of fraud and corruption in procurement and contract implementation.
- Programs would need to be put in place to build the capacities of relevant stakeholders to understand, monitor and help improve public procurement.
- Dialogue with suppliers and business organizations to support integrity in procurement, e.g., through internal compliance measures.

Sub-indicator 14(f) – Secure mechanisms for reporting prohibited practices or unethical behaviour

Assessment Criteria:

(a) There are secure, accessible, and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour.

(b) There are legal provisions to protect whistle-blowers, and these are considered effective.

(c) There is a functioning system that serves to follow up on disclosures.

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion met: There are secure, accessible, and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behaviour. Cases of fraud, corruption or other prohibited practices or unethical behaviour can be reported to Anti-Corruption Bureau online or by calling their numbers. There is also a procedure on how to report corruption on their website.

(b) Criterion met: There are legal provisions to protect whistle-blowers, and these are considered effective. Provision 51A of the Corrupt Practices Act No 17, 2004 provides protection and confidentiality to whistle blowers who provide information either to Anti-Corruption Bureau or the police.

(c) Criterion not met: There is no functioning system with a reporting intake system which generates data indicating the number of investigations conducted and actions taken.

Additional explanatory material in support of the analysis: (It applies to the entire sub-indicator. Short summary provided for each assessment criteria to explain if criterion is met, partially met, or not met)

Much as Section 51A was added when the Corrupt Practices Act was amended in 2004, there is still an acknowledgement that it may not go far enough. There is consensus that whistle-blower protection can be effectively addressed in a stand-alone legislation as is the case in some countries within the region e.g., South Africa as opposed to the current situation where it is a provision within another law.

Section 20 of Public Officers (Declaration of Assets, Liabilities and Business Interests) Act No.22 of 2013 has a provision on "Whistle-blowers" which states that any person who reasonably believes or suspects that a listed public officer has submitted a false or inaccurate

declaration may report the violation to the Director.

Step 2- Quantitative analysis: *not applicable*

Step 3- Gap Analysis/conclusions (substantive gaps)

i. For criterion (c): There is no functioning system with a reporting intake system which generates data indicating the number of investigations conducted and actions taken.

Initial input for recommendations

a. For criterion (c): ACB need to develop a system with a reporting intake system which generates data indicating the number of investigations conducted and actions taken.

Sub-indicator 14(g) –Codes of conduct/codes of ethics and financial disclosure rules

Assessment Criteria:

(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement. *

(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements. *

(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.

(d) Regular training programmes are offered to ensure sustained awareness and implementation of measures.

(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilised by decision makers to prevent corruption risks throughout the public procurement cycle.

* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (a):

- share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).

Source: Normative/regulatory function

Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):

- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).

Source: Normative/regulatory function

Step 1: Qualitative Analysis (comparison of actual situation vs. assessment criteria)

(a) Criterion partially met: There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement. As indicated earlier Part VIII of PPD Act deals with Procurement Integrity including on conduct of public officials, avoidance of conflict of interest and as per Section 58 of PPD Act, a requirement that Director General may promulgate codes of conduct to guide behaviour of public officials and bidders and suppliers involved in public procurement or disposal process.

(b) Criterion partially met: There is in place a Public Officers (Declaration of Assets, Liabilities and Business Interests) Act of 2013 which mandates all public officers to declare assets, liabilities, and business interests. This declaration is for all public officers and is not specifically for procurement officials. The definition of officials involved in procurement is not clear.

(c) Criterion partially met: The Public Officers (Declaration of Assets, Liabilities and Business Interests) Act of 2013 is mandatory, and the consequences of any failure to comply are administrative or criminal. Evidence on enforcement is lacking.

(d) Criterion not met: Training programmes are not offered to ensure sustained awareness and implementation of measures.

(e) Criterion not met: There are only partial conflict of interest statements; financial disclosure forms and information on beneficial ownership are not systematically filed, they are not accessible to be utilised by decision makers to prevent corruption risks throughout the public procurement cycle.

Step 2: Quantitative analysis: (For 14 (g) (a))

The data is not available for the share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement. As of July 2016, 294 Procurement Officers have made their initial declarations representing 2.4% of all listed public officers. As of July 2017, 324 Procurement

Officers made their initial declarations representing 2.6% of all listed public officer, but total number of officials involved in procurement (including procurement officers) is not known.

Step 3: Gap analysis/conclusions (substantive gaps/red flags):

✓ (i) For criterion (a): Inconsistent definition of "conflict of interest" and "close relative" in procurement related matters in PPD Act, Corrupt Practices Act and Public Officers (Declaration of Assets, Liabilities and Business Interest" leading to its misuse or potential for misuse.

(ii) For criterion (b): This Public Officers Act 2013 is for all public officers and is not specifically for procurement officials. The definition of officials involved in procurement is not clear.

(iii) For criterion (c): The Public Officers (Declaration of Assets, Liabilities and Business Interests) Act of 2013 is mandatory, and the consequences of any failure to comply are administrative or criminal. However, evidence on enforcement lacking.

(iv) For criterion (d): There is lack of coordinated and regular training programs for public officials, control, and oversight bodies and for private sector to create awareness of integrity and transparency aspects and how to improve it.

(v) For criterion (e): Conflict of interest statements, financial disclosure forms and information on beneficial ownership are not systematically filed.

Initial input for recommendations (to address all the gaps under sub-indicator 14 (g))

- ***PPDA/Director General needs to*** consolidate existing codes of conduct to guide behaviour of public officials and bidders and suppliers involved in procurement and disposal processes as required by Section 58 of PPD Act.
- The definition of officials involved in procurement to be made clear and it should include officials in the entire procurement process including implementation, in effect it should include those who are responsible for writing technical specification, preparation of bidding document, member of evaluation committee, approving authorities, contract signing and implementation officials and those who are responsible for making payments to suppliers/contractors/consultants.
- The definitions of "Close Relatives" and "Conflict of Interest" need to be made consistent in PPD Act, Corrupt Practices Act and Public Officers (Declaration of Assets, Liabilities and Business Interest)" to prevent its misuse.
- There is a need for enforcement of existing rules on code of conduct and declaration of assets.
- Conflict of interest statements, financial disclosure forms and information on beneficial ownership are required to be systematically filed.

Annexure- II-Sample Cases – Backup Documentation

Scope, Approach and Details on Sample Cases

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.

Scope of the Assessment, Approach and Case Samples

Scope of the Assignment

The assessment of Indicator 9 requires the selection and review of a sample of actual procurement transactions (files). The assessment has covered 91 number of procurement cases sampled from 13 government ministries, government departments and parastatals. The samples were chosen as a mix of goods, works, consultancy services and routine services. It was also a mix of procurement from different financiers like the government and donors and a mix of different procurement methods.

Approach and Methodology

The procurement entities were requested to give a sample of ten completed procurement cases of which they deemed information was complete. The assessors made a further selection of between five and eight cases from this list. The assessment has covered areas related to key decision making during the course of the procurement process: the Procurement planning, Selection and contracting and Contract management.

The assessment was a mix of local financing and credits and grants from international funding agencies and governments. There were 18 cases that were funded by credits and grants. National competitive bidding and local shopping procedures for procurement were applied for donor funded projects and the procurement was handled by the procuring entities. Donor procedures were applied for International Competitive Bidding.

The assessors expect that the case file for each procurement included but not be limited to the following information:

(i) All documents related to the initiation and approval of the procurement and method of procurement; including budget, estimates technical specifications, letter of no objection and others as applicable;
(ii) All documents related to the solicitation of bids including copies of request for proposals/quotations, advertisements, notices as applicable;
(iii) All documents related to the bidding process including the bid documents; bid document approval; records of bid documents issuance, receipt and opening;
(iv) All documents related to the evaluation including approval of evaluation committee; evaluation report, approval of evaluation report; letters of no objection to award;

(v) All documents related to the contract award, implementation, and monitoring, including contract document, purchase orders, delivery notes, payment terms and payments;
(vi) All minutes of various meetings and discussions and correspondences amongst all parties.

Sub-indicator 9(a) Planning

This sub-indicator focuses the planning stage of procurement and if the basic conditions governing the entire procurement process are established. This step of the procurement process is usually performed in close collaboration with the internal client

Sub-indicator 9(b) – Selection and contracting

This sub-indicator focuses on the objective of achieving value for money through appropriate determination of procurement methods and approaches, competition, transparency, and fairness in selecting suppliers, including the quality of procurement documents and process efficiency.

The sub-indicator assesses the extent to which procurement has followed a competitive procedure on the use of procurement methods authorized in the law. It also assesses whether procedures for bid submission, receipt and opening have resulted in an appropriate level of competition.

Moreover, it assesses whether appropriate and fair techniques have been applied in the bid evaluation and award stage to determine best value for money, and whether the entire selection process has been carried out effectively, efficiently and in a transparent way.

Sub-indicator 9(c) – Contract management in practice

This sub-indicator assesses the extent to which goods, works or services, including consulting services procured, are delivered according to the contract agreement in terms of time, quality, cost, and other conditions stated in the contract, for the efficient and effective delivery of public services. The sub-indicator assesses cost and time overruns, including for payments to be made to suppliers. The sub-indicator also reviews whether opportunities for the improvement of procurement practices are analysed based on both metrics and stakeholder feedback.

Below are the total sample cases by category and procurement category.

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Plant & Equipment	2	0	0	0	0	0	**2**
Works	1	12	0	0	6	0	**19**
Goods	2	11	0	4	30	3	**50**
Consultancy Services	0	0	6	1	0	0	**7**

Routine Services	0	3	5	0	5	0	**13**
Total	**5**	**26**	**11**	**5**	**41**	**3**	**91**

ENTITY 1

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works							
Goods		1		1	2		**4**
Consultancy Services							
Routine Services		1	1				**2**
Total		**1**	**1**	**1**	**2**		**6**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the six cases that were assessed, none of the cases a had procurement plan representing 0%. This shows that the entity had not established needs analysis to come up with the estimates. This indicates that the desired results have not been properly defined and procurements are done on ad hoc basis without a guarantee for adequate funding	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP. The entity however did not use appropriate standard bidding document in in two of the six cases assessed.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were not of very satisfactory in quality and one procurement method was not justified. A case where vehicles were procured using restricted tendering without providing reasons.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. All officers in the procurement unit and members of IPC signed oath of secrecy as per ODPP regulations. The confidentiality of the information could not be ascertained however.	

(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts.	
(g)	**Contract awards are announced as prescribed.**
All contract awards are not announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the selection and award process is carried out effectively .The evaluation criteria applied in the bidding documents are used in a transparent way. Information is not available to determine the average number of days between opening of bids and contract signatures. The information available for two RFQs was an average of 28 days, 40 days for one restricted tendering and 80 days for the RFP. Three procurements out of six have been awarded in full compliance with publication requirements representing 50%. 100% of the cases that were assessed were successful awarded. Information was available for the four cases on the award period. Three of these were awarded within defined time frames representing 75 %.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**

Most of the contracts were implemented outside the contract period. An average of 176 days was assessed for two RFQs. Contracts for the RFP and restricted tendering were implemented 80 and 40 days respectively after award.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the six cases that were assessed none had evidence of inspection and quality control representing 0%.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Of the six cases that were assessed, information for payment was available for four cases that were completed or were due for payment. Three payments were paid on time representing 75% as stipulated in the contract.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as there were no procurement plans. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There was 0% of contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Evaluation report, delivery notes, invoices and payment vouchers were largely not found in the files. No evidence that contract award was announced for open tendering. All of the six cases that were assessed had partial but no complete records representing 0% of record keeping. There was no procurement or contract register available.	

ENTITY 2

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total

Works					2		**2**
Goods		1			2	1	**4**
Consultancy Services							
Routine Services					1		**1**
Total		**1**			**5**	**1**	**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the seven cases that were assessed, four cases had procurement plan representing 67%. Three of these plans did not isolate individual procurement. This shows that the entity had established needs analysis to come up with the estimates. This indicates that the desired results have been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In the six sample cases specifications for goods, specifications, and bills of quantities for works and terms of reference are available for services. This indicates that desired outcomes of the individual procurement have been clearly described. One of the procurements however for shopping for works had not defined requirements. The bidder was just shown the area to be worked on and the expected function.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**

The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of very satisfactory in quality.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. There was no record for bid opening for four cases. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations except one where the quotation was submitted directly to the requisitioning unit instead of being submitted to the chairperson of the Internal Procurement Committee. The confidentiality of the bid evaluation and award process could not be ascertained.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts except one.	
(g)	**Contract awards are announced as prescribed.**
The contract award was not announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	

(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process are carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. The information available for four RFQs was an average of 22 days. 116 days was for one NCB which does not seem effective. Six procurements out of seven have been awarded in full compliance with publication requirements representing 86%. 100% that were assessed were successful awarded. Information was available for the five cases on the award period. Three of these were awarded within defined time frames representing 60%. There is however one procurement which indicates grey areas whereby an RFQ was reissued to a single supplier verbally and the supplier submitted the quotation to user department not the procurement unit.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Information that is available for three cases indicate that all the contracts were implemented within the contract execution period representing a 0% time overrun.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the seven cases that were assessed six had no evidence of inspection and quality control. One had only a goods receiving note representing 14%.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Of the seven cases assessed, information for payment was available for three cases that were completed or were due for payment. These payments were paid on time representing 100% as stipulated in the contract.	

(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as there were no procurement plans. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There was 0% of contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Delivery notes, invoices and payment vouchers were largely not found in the files. No evidence that contract award was announced for open tendering. All of the six cases assessed had partial but no complete records representing 57% of record keeping. The database was not available for all the cases.	

ENTITY 3

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works		1					**1**
Goods		4					**4**
Consultancy Services			1				**1**
Routine Services		1					**1**
Total		**6**	**1**				**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the seven cases that were assessed, six cases had procurement plan representing 86%. This shows that the entity had established needs analysis to come up with the estimates. This	

indicates that the desired results have been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In the seven sample cases specifications for goods, specifications, and bills of quantities for works and terms of reference are available for services. This indicates that desired outcomes of the individual procurement have been clearly described.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of very satisfactory in quality.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of very satisfactory in quality.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	

(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts except one.	
(g)	**Contract awards are announced as prescribed.**
The contract award was announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. Information is not available to determine the average number of days between bid submission and contract signatures. The information available for six NCB cases was an average of 102 days. One case took exceedingly long for a period of 294 days. A contract for RFP was awarded 151 days was after submission. Four procurements out of seven have been awarded in full compliance with publication requirements representing 57%. 66% of the bids that were received were response and 100% that were assessed were successful awarded. Information was available all the seven cases on the award period. Four of these were awarded within defined time frames representing 57%.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Information that is available for four cases indicates that the three contracts were implemented within the contract execution period whilst one was executed with a 50% time overrun.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the seven cases that were assessed six had no evidence of inspection and quality control. One had only a goods receiving note representing 14%. The engineers communicated directly with Finance on inspection or progress assessment conducted. No copies were sent to procurement units as feedback of decisions made.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Of the seven cases assessed, information for payment was available for four cases that were completed or were due for payment. All these payments were paid outside payment period representing a 0% as stipulated in the contract. Invoices for goods were certified by procurement unit but could not retain a copy for file record. Procurement of works and services were being certified by requisitioning unit.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as the procurement plans that were available were not updated. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There was 0% of contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Delivery notes, invoices and payment vouchers were largely not found in the files. No evidence that contract award was announced for open tendering. All of the seven cases assessed had partial but no complete records representing an average of 68% of record keeping. The database was not available for all the cases.	

ENTITY 4

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Plant & Equipment	2						**2**
Works	1	2					**3**
Goods		1			2		**3**
Consultancy Services			1				**1**
Routine Services							
Total	**3**	**3**	**1**		**2**		**9**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the nine cases that were assessed, all of them had no procurement plans representing 0%. This shows that the entity had not established needs analysis to come up with the estimates. This indicates that the desired results have not been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In the nine sample cases specifications for goods, specifications, and bills of quantities for works and terms of reference are available for services. This indicates that desired outcomes of the individual procurement have been clearly described.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All the procurement that is done by the entity is not complex in nature.	

(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services for the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of very satisfactory in quality. There was one exception in which case an EOI was used to invite firms to submit technical and financial proposals instead of submitting expression of interests in the first instance.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations except in one case where there was no evaluation for the RFQ.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts except one case in which there was no evaluation for the RFQ.	
(g)	**Contract awards are announced as prescribed.**
There was no contract award was announced for open tendering as prescribed in the regulatory requirements.	

(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. Information is not available to determine the average number of days between bid opening and contract signatures. The information available for two NCB cases was an average of 106 days. Procurement for RFP was awarded 105 days after submission while that for an ICB took 61 days. For each procurement method, 59%, 53% and 80% of the bids were found to be responsive for ICB, NCB and RFP respectively. Five procurements out of nine cases have been awarded in full compliance with publication requirements representing 56%. There was no evidence that the three ICB procurements were advertised internationally and one case of RFQ was awarded without evaluation. 100% of the cases that were assessed were awarded successfully. Information that was available the four cases on the award period indicate that only two cases were awarded within defined time frames representing 50%.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
No information was available for all the cases in the contract implementation period.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
No information was available for all the cases.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**

Invoices were integrated in the Management Information Systems (MIS) and the system was down during the assessment period and no information was obtained. Finance Unit holds all invoices and do not share copies and payment instruction with procurement unit.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as there were no procurement plans which needed an update. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Delivery notes, invoices and payment vouchers, inspection certificates were largely not found in the files. No evidence that contract award was announced for open tendering. All of the nine cases assessed had partial but no complete records representing an average of 46%of record keeping. The database was not available	

ENTITY 5

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works		2			3		**5**
Goods					2		**2**
Consultancy Services							
Routine Services					2		**2**
Total		**2**			**7**		**9**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Two out of nine cases had procurement plans representing 22%. In the absence of procurement plans, it is difficult to establish if needs analysis are conducted which calls for the market research. This shows that the entity had established needs analysis to come up with the estimates. This indicates that the desired results have been defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works, bills of quantities and specifications are available and for services terms of reference are available.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity are not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents for goods and works for public financing are used in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. However, the entity was demanding bid securities for shopping for works which is not a standard procedure which may discourage upcoming and potential bidders.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of very satisfactory in quality. The entity however has gone a step further by posting all the requests for quotation for works at public places.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing**

	bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The award process appeared to be satisfactory in all the evaluations. The evaluation committee however did not sign any oath of confidentiality when conducting evaluation.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award the contracts. The award is not necessary the best value for money because some suppliers fail even to meet the minimum criteria because of lack of knowledge in public procurement to prepare competitive bids.	
(g)	**Contract awards are announced as prescribed.**
Contract awards are not announced for open tendering neither are the bidders notified when they are not successful.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC. The entity however did not attach these conditions to all Local Purchase Orders.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**

Generally, the evaluation criteria applied in the bidding documents are used. There are instances where the entity requests for bid security in the bidding documents but bids with bid bond and bid declaration forms are considered adequate which gives disadvantage to those who complied. The time taken for the award of the contracts was generally efficient for shopping which ranged from 21 days up to 34 days after issuance of quotation which gave an average of 28 days and within validity period. For NCB, both cases had 91 days which is 1 just a day after the expiration of bid validity period. 100% of the processes that have been conducted in full compliance with publication requirements. All the nine cases representing 100% were successfully awarded and 71% were awarded within defined time frames.

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
For three completed cases whose information is available, only one contract was completed within the timeframe. The average delay for the two cases is 73 days and the average delay in percentage is 94%.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
In case of all works contracts sampled, there is evidence that there is inspection and quality control and supervision of works by the department of works within the procuring entity. In cases of goods and routine services there is lack of evidence for acceptance of goods or services either by the technical personnel or the user departments when goods are received or when services have been rendered. 44% of the cases sampled had quality-control measures and final acceptance is carried out as stipulated in the contract.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Invoices where available were normally endorsed by the user department. But one invoice was issued on 28 April 2017 before purchase order on 20 June 2017. There is however one shopping where a down payment was made but this was not stipulated in the LPO. In one instance an advance payment was paid without evidence of advance payment guarantee as stipulated in the in the contract. Four invoices available for three sample cases were paid on time representing a 100%.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**

Evidence of contract amendments was available and reviewed. There two works contracts under local shopping in which there was an amendment. This represents 44% of the cases reviewed and average increase of contract value of 66%. These were shopping procedures and the amendments were reviewed and issued in a timely manner.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
In the absence of procurement plan or in the absence of updating procurement plans wherever available, it is difficult to measure and improve procurement systems. The absence of procurement register makes matters even worse.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
The records on average are complete from copy of invitations up to contract agreement for open tendering in a single file. But there is absence of invoices, payment vouchers and receipts as these documents are kept in accounts department and copies are not shared with the procurement department. All requests for quotations which are conducted from operational and recurrent transactions (ORT) are considered as accounting documents and are not kept in procurement department but lumped in one big file with other accounting documents which are not relevant to procurement. This represents about 70% of the records. Procurement database is not available.	

ENTITY 6

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works		1					**1**
Goods		1			5		**6**
Consultancy Services							

Routine Services			1				**1**
Total		**2**	**1**		**5**		**8**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the eight cases that were assessed, five cases had procurement plans representing 63%. All of these were funded from Local Development Fund. This shows that the entity had established needs analysis to come up with the estimates. This indicates that the desired results have been defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP	

(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only. There was a single case where procedures for bid submission and opening have resulted in the deficiency on level of competition. The tender advert indicated bid submission as 1500 Hours whilst the ITB indicated 1400 Hours, and this resulted into one bidder submitting late.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The evaluation committee did an oath of confidentiality when conducting evaluation as per ODPP regulations.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts. No deviation from the procurement documents was observed.	
(g)	**Contract awards are announced as prescribed.**
All contract awards are not announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for	

exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. The average number of days between bid submission and contract signature for RFQ was 16 days and for NCB it was 110 days. All the eight have been awarded in full compliance with publication requirements representing 100%. All eight cases (100%) that were assessed were successful awarded. Five out seven cases were awarded within defined time frames representing 71 %.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Of all the five cases of which information was available, the average delay in awarding the contracts was 7 days. Time overruns in percentage was 106%.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the eight cases that were assessed, information was available for seven cases and one case was a running contract. Out of these seven cases, five cases had evidence of inspection and quality control representing 71%.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information was not available for all the cases that were completed or were due for payment. The four cases that had invoices were all paid on time. These were all shopping cases and they represented 100%	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
In all cases examined, there were no contract amendments.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**

Procurement statistics were not available as the procurement plans were not updated. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
The records on average are complete from copy of invitations up to contract agreement for open tendering and for shopping most complete records are available on a single file. Five of the eight cases assessed had complete records representing 63% of record keeping. But the database was not available for all the cases.	

ENTITY 7

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works		1					**1**
Goods					6		**6**
Consultancy Services							
Routine Services							
Total		**1**			**6**		**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the seven cases that were assessed, two had procurement plans representing 29%. This shows that the entity had not established needs analysis to come up with the estimates. This indicates that the desired results have not been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In the seven sample cases specifications for goods, specifications, and bills of quantities for works are available. This indicates that desired outcomes of the individual procurement have	

been clearly described.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services for most procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement	

Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts except one case in which there was no evaluation for the RFQ.	
(g)	**Contract awards are announced as prescribed.**
There was no contract award that was announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. Less information is not available to determine the average number of days between bid submission and contract signatures. The information available for NCB was 38 days for a single case. Procurement for RFQ had an average of 27 days for five cases where information was available. For NCB procurement that was conducted, nine out of sixteen bids were found to be responsive for representing 56%. All the seven procurements have been awarded in full compliance with publication requirements representing 100%. 100% of the cases that were assessed were awarded successfully. Information that was available for the six cases on the award period indicates that four cases were awarded within defined time frames representing 67%.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Information was available for four cases and out of these three cases were awarded in a timely manner and the single case had a 7% time overrun.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the seven cases, only two cases had information on quality control representing 29%	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information on invoices was available for five cases. Four of these cases were made on time within the contractual obligation representing 80%	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as there were no procurement plans which needed an update. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Delivery notes, invoices and payment vouchers and were largely found in the files. These files however are in custody of the Finance Department not Procurement Unit. All of the seven cases assessed had partial but no complete records representing an average of 67% of record keeping. The database was not available for all the cases.	

ENTITY 8

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works		2					**2**

Goods					3		**3**
Consultancy Services							
Routine Services			2				
Total		**2**	**2**		**3**		**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the seven cases that were assessed, only two cases had procurement plans representing 29%. Both were funded from Local Development Fund. This shows that the entity had not established needs analysis to come up with the estimates. This indicates that the desired results have not been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services in all the procurement processes. The documents	

are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The evaluation committees of the entity in which sign an oath of confidentiality when conducting every evaluation.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts. No deviation from the procurement documents was observed.	
(g)	**Contract awards are announced as prescribed.**
All contract awards are not announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**

All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. The average number of days between bid submission and contract signature for RFQ was 37 days and for NCB it was 144 days, and the single restricted tendering was 31days. All the seven have been awarded in full compliance with publication requirements representing 100%. 71% that were assessed were successful awarded and 0% failed and 29% were cancelled. Four out seven cases were awarded within defined time frames representing 57 %.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Of all the three cases of which information was available, the average delay in awarding the contracts was 3 days. Time overruns in percentage was 60%	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the seven cases that were assessed, information was available for five cases. All the five cases had evidence of inspection and quality control representing 71%.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information was not available for all the cases that were completed or were due for payment. There was only one case that had invoice that was paid on time. This was a shopping case, and it represents 100% as stipulated in the contract	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**

There was only one contract amendment representing 14% of all the cases. This represented a negative 23% of the contract price because it was negotiated downwards due to the unavailability of funds.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as the procurement plans were not updated. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Invoices and payment vouchers were largely not found in the files. No evidence that contract award was announced for open tendering. Three of the seven cases assessed had complete records representing 63% of record keeping. But the database was not available for all the cases.	

ENTITY 9

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works							
Goods				1	3	2	**6**
Consultancy Services				1			**1**
Routine Services							
Total				**2**	**3**	**2**	**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the seven cases that were assessed, only one case had procurement plan representing 14%	

only. This procurement was funded by donors. This shows that the entity had not established needs analysis to come up with the estimates. This indicates that the desired results have been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were	

available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The evaluation committee did not do an oath of confidentiality when conducting evaluation as per ODPP regulations.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts. No deviation from the procurement documents was observed.	
(g)	**Contract awards are announced as prescribed.**
All contract awards are not announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. Information is not available to determine the average number of days between bid submission and contract signatures. The only information available for RFQ was 67 days and one restricted tendering took 234 days to be awarded. The single source had an average of 11 days. All the seven have been awarded in full compliance with publication requirements representing 100%.	

100% that were assessed were successful awarded. Four out seven cases were awarded within defined time frames representing 57 %.

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
There was only one case where information was available. Time overrun in percentage was 316% because it had a delay of 221 days as opposed to 70 days in the contract. This defeated the purpose of single sourcing.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the seven cases that were assessed, information was available for four cases only. The four cases had evidence of inspection and quality control representing 57%.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information was not available for most the cases that were completed or were due for payment. There were only two cases that had invoices that were paid on time representing 100% as stipulated in the contract	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as the procurement plans were not updated. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Evaluation report, delivery notes, invoices and payment vouchers were largely not found in the files. No evidence that contract award was announced for open tendering. All of the seven cases assessed had no complete records representing 0% of record keeping. The database was not available for all the cases.	

ENTITY 10

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works					1		**1**
Goods	1	1					**2**
Consultancy Services			2				**2**
Routine Services		1			1		**2**
Total	**1**	**2**	**2**		**2**		**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
Of the seven cases that were assessed, six cases had procurement plan representing 86%. This shows that the entity had not established needs analysis to come up with the estimates. This indicates that the desired results have been properly defined.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	

(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**

The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP

(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.

Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.

(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.

(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**

Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in six out of seven case evaluations. The evaluation committee did not sign an oath of confidentiality when conducting evaluation as per ODPP regulations.

(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**

Criteria stated in the procurement documents are applied in the evaluation to award all the contracts except in one evaluation.

In this case scores for technical evaluation are present but without a consolidated technical evaluation report and scoring did not follow the evaluation criteria as prescribed in the RFP. The RFP provided for four key experts, but the evaluation was only conducted for two personnel namely only. The evaluation of specific experience of the firm, workplan and methodology were not evaluated consistent to the evaluation criteria in the RFP. There is no

record that the technical evaluation report was approved by IPC. There is no communication in the file to inform the consultants the results of technical evaluation and the date for the opening of financial proposals. No deviation from the procurement documents was observed except for this case.	
(g)	**Contract awards are announced as prescribed.**
All contract awards are not announced for open tendering as prescribed in the regulatory requirements.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way except for one case. The average number of days between bid submission and contract signature for RFQ was 22 days and one ICB had 175 days before award. One NCB had 13 days and one RFP had 36 days before award. For the available information of five cases, they have been awarded in full compliance with publication requirements representing 71%. 71% that were assessed were successful awarded and one failed representing 14% and another one representing 14% was cancelled. Four of the remaining cases were awarded within defined time frames representing 80 %.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
There was only one case where information was available. It was completed on time.	

(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Of the five complete cases that were assessed, only three cases had inspection and quality control information representing 60%.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
No information was available for all the cases that were completed or were due for payment.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments in all cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
Procurement statistics were not available as the procurement plans were not updated. There was no contract register in place to measure and improve procurement practices.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
Evaluation report, delivery notes, invoices and payment vouchers were largely not found in the files. No evidence that contract award was announced for open tendering. All of the seven cases assessed had no complete records representing 0% of record keeping. The database was not available for all the cases.	

ENTITY 11

Category	**International Competitive Bidding**	**National Competitive Bidding**	**Request for Proposal**	**Limited Bidding**	**Shopping**	**Single Source**	**Total**
Works							
Goods	1	1			1		**3**
Consultancy Services							

Routine Services			1		1		**2**
Total	**1**	**1**	**1**		**2**		**5**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
There was no procurement plan of all of the five cases assessed representing 0%. In the absence of procurement plans, it is difficult to establish if needs analysis are conducted which calls for the market research. Budgets for the entities remain a single source of procurement plans and budgets are largely derived from annual work plans of the entities. Procurement plans were not available even with donor funded projects.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that are done by the entity are not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents for goods and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.

Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.

(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**

Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.

There was on international competitive bidding that was conducted, and the original bid submission date was 42 days against the required 45 days. It was later extended to 64 days because of the requests for clarifications. This was not advertised in international papers or on internet as per provision 31(1) of the Procurement Act, 2003.

(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**

Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The evaluation committee however did not sign any oath of confidentiality when conducting evaluation.

(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**

Criteria stated in the procurement documents are applied in the evaluation to award all the contracts.

(g)	**Contract awards are announced as prescribed.**

Contract awards are not announced for open tendering but all unsuccessful bidders who bid for national or international competitive bidding were notified through letters after award of the contract.

(h)	**Contract clauses include sustainability considerations, where appropriate.**

Warranty and liability clauses were included in the contract documents.

(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**

All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. Number of days between bid submission and contract signature for RFQ was 15 days and for NCB it was 200 days whilst for ICB it was 182 days. Four of the five processes were conducted in full compliance with publication requirements representing 80 %. The ICB was not advertised internationally. All five cases (100%) that were assessed were successful awarded. For the information available one out three was awarded within defined time frames representing 33%.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Two of the cases that were assessed had contracts which were not complete. For the other two cases information was not readily available whilst the one that had information had a 79% time overrun.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Three cases that were complete had no inspection certificates except one case representing 33% and the other two cases were waiting for final inspection and acceptance because there were not complete.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information was not available for all the cases that were completed or were due for payment. Either the invoice or payment voucher was not on file, or both were not in file.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
Evidence of contract amendments was available and reviewed. Out of the five cases assessed two cases had the addendum. The first one was just an extension of the insurance contract for	

another year and the initial price was not available. The second case was the increase in prices for a signed contract which had nine lots. Lots 3,4,7 and 9 had a percentage cost increase of 23%, Lots 1 and 8 had a percentage cost increase of 66%, Lot 5 had a percentage cost increase of 28 %, and Lot 2 had a percentage cost increase of 25 %. This gives an average increase of 28.4%	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
In the absence of procurement plan or in the absence of updating procurement plans wherever available, it is difficult to measure and improve procurement systems. The absence of procurement register makes matters even worse.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
The records on average are complete from copy of invitations up to contract agreement for open tendering in a single file. Records are 100% available for the completed shopping cases. For the request for proposal the records are not complete. This represents 67% complete and accurate records. Procurement database is not available	

ENTITY 12

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works							
Goods		1		2	3		**6**
Consultancy Services			1				**1**
Routine Services							
Total		**1**	**1**	**2**	**3**		**7**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
In the absence of procurement plans, it is difficult to establish if needs analysis are conducted which calls for the market research. Procurement plans were not available for all the cases representing a 0%.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available. This indicates that desired outcomes of the individual procurement have been clearly described	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents and standard request for quotations for goods and works and request for proposals are used for services in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question. All the documents are from the ODPP. There was however one case when the entity used RFP for goods instead of NCB and the ODPP advised them when seeking no objection.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
Correct procurement methods were chosen and justified in accordance with purpose and in compliance with legal framework. These are documents used for open tendering and request for quotations. The documents were of satisfactory quality and the procurement methods justified.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing**

	bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The evaluation committee however did not sign any oath of confidentiality when conducting evaluation.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts.	
(g)	**Contract awards are announced as prescribed.**
Contract awards are not announced for open tendering and there is no evidence if all unsuccessful bidders who bid for national competitive bidding were notified through letters after award of the contract.	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process is carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way.	

Information for effective award was available for four cases and the restricted tendering had 11 days, NCB had 74 days, RFQ had 22 days and RFP had 50 days between bid submission and contract signature. All processes have been conducted in full compliance with publication requirements representing 100 %. All five cases (100%) that were assessed were successful awarded. Three cases out of four cases which had information were awarded within defined time frames representing 75%.

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Information for contract implementation was available for three cases only which were shopping method. These three cases had average delay of 23 days as opposed to 7 days in the RFQ. This represented a time overrun of 324%.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
Only three cases out of the seven had delivery notes/goods inspection notes or inspection certificates representing a 43% of all the cases.	
(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information was available for only two cases. Both cases that were paid on time representing 100% compliance as stipulated in the LPO.	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There were no contract amendments for all the cases.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
In the absence of procurement plan or in the absence of updating procurement plans wherever available, it is difficult to measure and improve procurement systems.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There were no contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**

The records are below average as only one case had all the information kept in one file. This represents 14% of the cases. Procurement database is not available.

ENTITY 13

Category	International Competitive Bidding	National Competitive Bidding	Request for Proposal	Limited Bidding	Shopping	Single Source	Total
Works		3					**3**
Goods					1		**1**
Consultancy Services			1				**1**
Routine Services							
Total		**3**	**1**		**1**		**5**

Sub-indicator 9(a) Planning

(a)	**Needs analysis and market research guide a proactive identification of optimal procurement strategies.**
In the absence of procurement plans, it is difficult to establish if needs analysis are conducted which calls for the market research. Budgets for the entities remain a single source of procurement plans and budgets are largely derived from annual work plans of the entities. Procurement plans were not available even with donor funded projects.	
(b)	**The requirements and desired outcomes of contracts are clearly defined.**
In all sample cases specifications for goods are available. And for works the bills of quantities and specifications are available. For services terms of reference are available.	
(c)	**Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.**
Sustainability criteria are not used	

Sub-indicator 9(b) – Selection and contracting

(a)	**Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.**
In all the sampled cases there are no samples that required multistage procedures and this indicator was not assessed. All of the procurement that is done by the entity is not complex in nature.	
(b)	**Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.**
The standard bidding documents for works, standard request for proposals for service and standard request for quotation are used in all the procurement processes. The documents are developed and used depending on the need and thresholds for procurement in question.	
(c)	**Procurement methods are chosen, documented, and justified in accordance with the purpose and in compliance with the legal framework**.
All the documents that are assessed are standard documents from the Office of Director of Public Procurement. These are documents used for open tendering and request for quotations.	
(d)	**Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.**
Procedures for bid submission, receipt and opening are clearly described in the procurement documents and opening times were fully complied with. The information included that bids are to be sealed, signed, and submitted on time. In cases of open tendering minutes were available which showed the names of bidders present. There is no provision for civil society to monitor bid submission, receipt and opening and is not prescribed anywhere in the legal documents and these were not present. They are however free to attend bid opening only.	
(e)	**Throughout the bid evaluation and award process, confidentiality is ensured.**
Bid evaluation reports are available for all cases sampled. All bid evaluation reports are prepared by ad hoc relevant evaluation teams and approved by the Internal Procurement Committee before they are submitted to ODPP for "no objection" where appropriate. The award process appeared to be satisfactory in all the evaluations. The award process appeared to be satisfactory in all the evaluations. The evaluation committee does not sign an oath of confidentiality when conducting evaluation.	
(f)	**Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.**
Criteria stated in the procurement documents are applied in the evaluation to award all the contracts.	
(g)	**Contract awards are announced as prescribed.**

Contracts award especially for works are announced in local newspapers	
(h)	**Contract clauses include sustainability considerations, where appropriate.**
Warranty and liability clauses were included in the contract documents.	
(i)	**Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.**
All contract documents from the ODPP do not provide clauses for incentives for exceeding performance levels. In all cases sampled, contract clauses do not provide incentives for exceeding defined performance levels and disincentives for poor performance. But liquidated damages as provided under GCC Clause 32 for Goods and Works for open tendering, if the Supplier fails to deliver or perform the Related Services within the period specified in the Contract. In the request for quotation this is found under Clause 17 of the GCC.	
(j)	**The selection and award process are carried out effectively, efficiently and in a transparent way.**
Generally, the evaluation criteria applied in the bidding documents are used in a transparent way. The average number of days between bid submission and contract signature for NCB it was 87 days which is within the tender validity period of 120 days. Three processes have been conducted in full compliance with publication requirements representing 75%. All five cases (100%) that were assessed were successful awarded and none failed or was cancelled. 75% was awarded within defined time frames.	

Sub-indicator 9(c) – Contract management in practice

(a)	**Contracts are implemented in a timely manner.**
Of all the cases that were assessed, all the cases were completed. The shopping case was completed in 17 days against 4 weeks in the LPO representing earlier completion time of 39%. For all work cases, the contracts were completed in a timely manner with an average earlier completion time of 34%.	
(b)	**Inspection, quality control, supervision of work and final acceptance of products is carried out.**
For the entire works contract assessed, there was a supervising consultant who was responsible for inspection, quality control, supervision and final acceptance of the works representing 100% of all cases.	

(c)	**Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.**
Information was not available for all the cases that were completed or were due for payment. There were two cases that had complete information and payment was done within the contract conditions representing a 100%	
(d)	**Contract amendments are reviewed, issued, and published in a timely manner.**
There was one contract amendment that was reviewed representing 20% of total number of contracts. The amendment was for the completion period only not the contract amount.	
(e)	**Procurement statistics are available, and a system is in place to measure and improve procurement practices.**
In the absence of procurement plan or in the absence of updating procurement plans wherever available, it is difficult to measure and improve procurement systems. The absence of procurement register makes matters even worse.	
(f)	**Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.**
There was 0% of contracts with direct involvement of civil society at planning phase; bid or proposal opening; evaluation and contract award and contract implementation as this was not permitted in the bidding documents.	
(g)	**The records are complete and accurate, and easily accessible in a single file.**
The records on average are complete from copy of invitations up to contract agreement for open tendering or up to local purchase order for shopping in a single file. The records however are not found in one place as other documents are available at regional offices. Procurement database is not available.	

Annexure III- Details of Regulations and Standard Bidding Document,

Regulations:

The Regulations are compiled in single booklet cascaded into ten parts covering 196 Regulations divided as follows:

I. Preliminary
II. Institutional and organizational arrangements for procurement
III. Procurement planning
IV. Bidder qualifications
V. Procurement methods
VI. Contract formation
VII. Contract administration
VIII. Information and communication technology for public procurement
IX. Participation by small enterprises
X. Accountability and transparency in public procurement

Standard Bidding Document

Ref: http://odpp.mw/index.php/standard-bidding-documents

The standard bidding documents were categories to apply to all types and method of public procurement for use in the procurement of:

1. Consultancy
2. Procurement of Complex Time Based
3. Procurement of Lump Sum
4. Procurement of Small Lump Sum
5. Procurement of Small Time Based
6. Goods
7. Procurement of Goods (ICB)
8. Procurement Goods (NCB)
9. Procurement of Plant, vehicle, and Equipment
10. Request for Quotation
11. Works
12. Procurement of Works minor
13. Procurement of Works (ICB)
14. Procurement of NCB

15. Non-Consultancy Services

Arrangement of Sections in a Typical Bidding Document

- Section 1 of the bidding document is the Instructions to Bidders (ITB) that specify the procedures that regulate the bidding process. Specific information as regards to provisions that are particular to a bidding process is contained in section 2 of SBD.
- Section 3 contains all the factors, methods, and criteria that the Procuring Entity shall use to evaluate a bid and determine whether a bidder has the required qualifications. No other factors, methods or criteria shall be used.
- Specified in Section 4 of the SBD, there are bidding forms that the PE inserts and the bidder is required to complete and include in its bid and these forms are the Bid Submission Sheet, the Price Schedules, the Bid Security, and the Manufacturing Authorization, when applicable.
- Section 5 is where government policies including a positive or negative list of countries, as appropriate and if applicable, regarding eligibility of firms to participate in bidding process
- Section 6 details of needs depending on the type of procurement provides details of procurement needed by the procuring entity, these include:
  - The Statement of Requirements (SR) that provides sufficient information to enable Bidders to efficiently and accurately prepare bids that are realistic and competitive during procurement of goods
  - The Schedule of Requirements (SOR) that inform Bidders of precisely of the works required by the Procuring Entity during procurement of works, or
  - The Terms of Reference (TOR) that provides sufficient information as to enable bidders to understand the services required by the Procuring Entity and to therefore be able to accurately prepare proposals that are realistic and competitive, and which meet the PE's needs.
- The Section 7 of the SBD is the general condition of Contract (GCC) that contains standard provisions designed to remain unchanged and the provisions that may normally need to be specified for a particular bidding process are introduced only through the Special Condition of Contract (SCC), which is Section 8 of SBD. The GCC form part of the eventual Contract.
- Section 9 of the Bidding Documents developed in a manner that it contains forms for the Contract Agreement that will be signed between two parties, the Performance Security template for the successful bidder to adopt, and collateral process for the Advance Payment. Bidders do not submit these forms with their bids as these forms become effective after the bidder is selected.

Section 7 of the SBDs contain some of the contract conditions that are common and are mandatory in their use:

- Governing law – every contract has to be governed and interpreted
- Language – For common understanding a common language has to be chosen or applicable translation
- Notices –Any notice must be given for any changes pursuant to contract

- Assignment – No party must assign its obligation without a written consent
- Sub-contracting - sub-contracting must be agreed by either party
- Contract amendment – No contract can just be amended without consent of both parties
- Change in laws – Change of laws more often affect the contract whilst in progress
- Taxes and Duties – Contract must be clear on the obligations of taxes and duties
- Force Majeure – Acts of God are to happen, must be in teach contract
- Termination – a condition which should be known to both parties prior to signing contract
- Settlement of disputes – priority of amicable settlement must be each party's wish be in the contract
- Liquidated damages – a compensation to the procuring entity is important
- Payment terms - Contract prices and payment obligation must form part of contract
- Obligation of a bidder – including quality standards form salient features in contract
- Eligibility or country of origin – has an impact in both national and international trade and united nations security resolutions
- Indemnifications – implications of copy rights, patents right, to avoid legal violations
- Insurance – insurance obligations must be clear
- Performance Security – every contract calls for bid security for the purposed of contract fulfilment \

Ref: Standard Bidding Documents Section 7

The Desk Instructions contain procedures intended to cover the following: (Akin to Procurement Manual)

- provide working procedures;
- promote efficiency, economy, and the attainment of value for money ;
- promote transparency and accountability ;
- provide uniform procedures for application by all procuring and disposing entities; and
- provide standard procedures, against which procurement, supplies management and disposal activities can be monitored and audited.

In the new law, the function is under S5 (2) (b) and currently the Desk Instructions are in draft form.

Annexure IV: Case Example of a Specialized Centralized Procurement Organization

This case example is just an illustration of working of a specialized central procurement body and not an assessment by MAPS assessment Team on effectiveness and efficiency of procurement process of CMST

A CASE OF CENTRAL MEDICAL STORES TRUST

1.0 Introduction

1.1 Central Medical Stores Trust (CMST) was established by the Government of Malawi on 18th November 2010, replacing the old Central Medicals Stores.

1.2 The Mandate of the Trust remains essentially the same as that of its predecessor organization: to procure, warehouse and distribute medicines to public health facilities in Malawi, but this time as an autonomous and commercially viable entity.

1.3 The Trust's major customers are the country's district and central hospitals through the National Local Government Finance Committee and the Ministry of Health. To make good of its mandate, the Trust needs to be in constant contact with its customers and stakeholders and attend to any concerns that they may have on the services offered by the Trust.

1.4 An important question is the extent to which procurement and supply chain responsibilities of pharmaceuticals should be centralised (i.e., placed in the hands of a single organisation reporting to a single executive) or decentralised (i.e., devolved to procurement officers in different user departments). The question can further be highlighted in the case of CMST operating through three branches in the South, Centre and North. Should it consider a single procurement function at head office (centralisation) or separate functions at each branch (decentralisation)?

2.0 Procurement Cycle of the CMST

2.1 Selection

This is the first essential step in the procurement cycle. It is the process of deciding what to buy. It is informed by the treatment of choice for various conditions as determined by the MoH and included in the Malawi National Standard Treatment Guidelines (MSTG).

2.2 Quantification

This is the estimation of quantities to buy in order to avoid stock outs and over stocking. It also involves the reconciliation of needs with available resources and priority setting on what is to be procured considering limited available resources.

2.3 Procurement

This is the actual acquisition of medicines and medical supplies from local and international suppliers and manufacturers. Regardless of the method used the Trust is guided by the provisions of the Malawi Public Procurement Legal Framework.

2.4 Quality Assurance

Once items are delivered to the receipt warehouse, medical supplies are inspected for conformity to specifications before distribution. All medicines are sampled and quarantined pending quality control by the Quality Control Laboratory of the Pharmacy, Medicines, and Poison Board (PMPB). Distribution is only initiated after receiving clearance from the PMPB laboratory.

2.5 **Distribution**

Once cleared supplies are dispatched to the three regional warehouses in Blantyre, Lilongwe and Mzuzu. The distribution is done in an equitable manner based on population in proportions of 45% Blantyre, 35% Lilongwe and 20% Mzuzu. Regular distribution to health facilities is done once a month based on orders which are expected to be received by the10th of every month.

3.0 Advantages of Centralised Procurement System done by CMST

3.1 Specialisation. CMST staff have specialised in procurement since this is a core business area and have developed their knowledge to greater depth, with potential to improve quality and lower costs. unlike procurement staff in the hospitals who had general responsibility for a wide range of activities and requirements, fostering generalist knowledge and skills.

3.2 Potential for the consolidation of requirement: CMST puts multiple requisitions from different user hospitals and units together into single, larger orders or contracts. This reduces the frequency of small orders for commonly purchased items; reduces transaction and transport costs; and enables Government to obtain better prices (with economies of scale, bulk discounts, etc.) and higher levels of service.

3.3 With centralised procurement system through CMST, Government deals with few numbers of suppliers and order and contract administration has been more streamlined.

3.4 There has been greater co-ordination of procurement activities. All procurements are subjected to same procurement policies, procedures, and good practice, facilitating standardisation, variety reduction, better value for money and improved compliance-and minimising maverick, ad-hoc procurements that were done by hospitals and other units.

3.5 Greater standardisation of specifications, which has enhanced quality and efficiency in a number of ways: facilitating the consolidation of orders; reducing inventory and handling costs (less variety and greater utilisation); focusing the supplier base (fewer specialist requirements); improved quality management (ease of inspection); and simpler and more accurate communication about requirements.

3.6 More effective control of procurement activity. Procurement performance is easily monitored and compared by Ministry of Health and Parliamentary committee on Health with defined KPIs; budgetary control is applied to the procurement function; and the CMST is viewed as a separate cost centre for closer accountability.

4.0 Conclusion

The coming in of the centralised system of procurement in the pharmaceutical sector in Malawi has shown more advantages over the decentralised system which used to take place prior to the establishment of Central Medical Stores Trust. Hospitals and departments used to lose the benefit of a bulk purchases. There was no specialized knowledge in staff handling procurement. Sometimes there used to be over and under-procurement of materials.

Annexure V: e-GP – Key Findings and Implementation Roadmap

Provision of Consultancy Services as an e-Government Procurement (e-GP) Advisor for Malawi Government e-GP System and Services

Key Findings and Implementation Roadmap

Dated 1st April 2018 (Finalized Report given on July 16th2018 - Implementation Road Map updated)

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Background

The Private Public Partnership Commission (PPPC) has engaged the services of Dr. Ramanathan Somasundaram (RS) for provision of Consultancy Services as an e-Government Procurement (e-GP) Advisor. The e-GP system will be implemented under the *"Digital Malawi Program Phase I: Digital Foundations Project"*, the implementation agency for which is PPPC in collaboration with Ministry of Information, Communications Technology and Civic Education, represented by the Department of e-Government and the Office of the Director of Public Procurement (ODPP).

The Consultant started the engagement on-site on the 27th of February 2018 and stayed on-site in Malawi until the 23rd of March 2018. RS individually consulted with 34 key stakeholders and towards end of his stay, RS made a detailed presentation on the study findings in 2 workshops organized separately for Government officials and suppliers.

Key findings from the study are summarized herein as input for the Methodology for Assessing Procurement System (MAPS) assessment.

Key Study Findings

Adequate Information Technology and Network Connectivity

Government offices where tendering is undertaken typically have one or more computers. Further, the Government Wide Area Network (GWAN) is partially rolled out and efforts are underway to extend the network across all key Government offices. By the time the e-GP system is launched, it is highly likely that all key Government offices will have high speed internet connectivity. Besides GWAN, Wireless connectivity is readily available in major cities and in District Headquarters as well. Both Government officials and supplier community can obtain access to high-speed internet connectivity. Suppliers which do not have the requisite IT infrastructure and network connectivity can access the e-GP system from an Internet café. One of the Districts visited by the Consultant reportedly has 3 Internet cafes, which are used by bidders for printing manual bid documents. It is expected that these café owners will get trained on e-GP and provide e-GP bidding service for a certain transaction fee. The Government is in the process of setting up Tele Centers across the Country, which when operational can be availed by both Government officials and contractors for accessing the e-GP system.

Readiness of Legislation

The Government has recently enacted 2 legislations relevant for implementation of e-GP viz.

Public Procurement and Disposal of Public Assets Act (PPDPA), 2016 &

The Electronics Transactions and Cyber Security Act, 2016

The PPDPA has the requisite provisions for implementation of e-GP. Further, electronic transactions are recognized as legally valid as per the Electronic Transactions and Cyber Security Act. The Consultant has provided detailed feedback on both the legislations, as per which e-GP specific regulations will need to be published by the Government.

Functional Scope of e-GP system

Both Government officials and suppliers expressed their demand for implementation of a simplified procedure for verification of supplier identity and suppliers' capabilities. Such a requirement can be addressed only when vendor registration is handled online, and such registration data is electronically exchanged with the unified e-GP platform. The National Construction Industry Council (NCIC) currently registers civil contractors using manual procedures and it does not have an IT system to manage contractor registration activities online. As NCIC registration is widely used to qualify contractors in Government Procurement, the Government may decide to implement software to handle NCIC registration procedures as an integral component of the e-GP project. Malawi Energy Regulatory Authority (MERA) & Pharmacy, Medicines, and Poisons Board register contractors / suppliers in their respective work areas, which Government agencies use to validate contractors / suppliers' capabilities. The Government needs to evaluate whether the back-end IT systems of MERA and Pharmacy, Medicines and Poisons Board have to be developed as an integral part of the e-GP Project.

Stakeholders widely acknowledged the need for e-Bidding module to handle online tender publication, bid submission, bid evaluation and award of contract procedures. As on date, there are not any e-Bidding systems fully operational. ESCOM is in the process of implementing a full-fledged Enterprise Resource Planning (ERP) system covering the e-Bidding function as well. If the Government does not expedite implementation of unified e-GP system, it is likely that many Government agencies with high procurement spend will implement their own IT systems covering e-Bidding function. The emergence of multiple e-Bidding systems is not advisable for the reasons listed below:

Suppliers / Contractors will need to register and use multiple e-Bidding systems to participate in Government business. The ideal architecture is to develop a unified e-GP system, wherein suppliers will log into a unified e-GP system to learn about business opportunities advertised by any Government agency in Malawi

Procurement statistics will need to be collated from multiple IT systems, which will be difficult to implement in practice.

Each e-Bidding system has to be individually integrated with the common external IT systems such as NCIC, MERA, IFMIS and Banks. If there are 4 e-Bidding systems and 4 external IT systems, a total of 16 integrations has to be implemented.

e-Bidding systems are critical IT systems wherein hundreds of millions of USD worth procurement will be processed online. Such IT systems should ideally be subjected to IT security audit. It is worth investing money in subjecting one single e-Bidding system to a robust IT security audit as against auditing multiple e-Bidding systems.

A robust Project Management Unit (PMU) is required to ensure that e-Bidding systems function reliably, and unexpected shutdown of e-Bidding systems is resolved expeditiously. It will be expensive to professionally manage and maintain multiple e-Bidding systems.

In the manual system, there are not any systemic controls to validate and confirm whether purchasing agency has budget actually allocated to initiate procurement. Due to which, a purchasing agency could award a contract without budget availability. The lack of budget comes into focus only when suppliers submit their bills seeking payment. Purchasing agency representative can create payment voucher in IFMIS only if money is actually available (i.e., released budget) against the allocated cost center. Hence, the bills yet to be paid in IFMIS are pending due to procedural non-compliances and not due to lack of money. Given which, the present system does not have a mechanism to automatically record the arrear bill payments.

The implementation of Contract Management module in e-GP system integrated with budget and IFMIS can effectively enforce budget compliance provide the Government is willing to make difficult process reform decisions listed in the order of difficulty (i.e., High to low):

A tender can be published only based on released budget (i.e.) money actually available. Upon tender publication, the system will automatically freeze estimated value of the tender from the relevant cost center allocated to the Purchasing agency.

A tender can be awarded only based on released budget (i.e.) money actually available. Upon award of contract, the system will automatically freeze contract award amount from the relevant cost center allocated to the Purchasing agency. The Government shall mandate award of contract beyond certain value via e-GP system only. Such enforcement coupled with budget integration as explained will effectively introduce fiscal discipline.

The Government at the minimum mandates award of contract beyond certain value via e-GP system only, against the allocated budget amount and not the released amount. In which case, if there is lack of money the Government can in principle agree to make payment for the older invoices first (i.e.) using the First In First Out (FIFO) principle.

There is reference to e-Reverse Auction (e-RA) in the Public Procurement and Disposal of Public Assets Act (PPDPA), 2016. However, the Regulations detailing the actual procedures to be adopted for e-RA are not defined as yet.

Considering the above, the Government needs to prioritize implementation of a unified e-GP platform focusing initially on Supplier Registration followed by e-Bidding, Contract Management and finally e-Auction.

Eco-system needs Improvement

Two key areas where the eco-system needs improvement are:

A database against which uniqueness of a supplier can be established and supplier identity can be reliably verified &

A National Data Centre for co-location of the e-GP server infrastructure

Any agency (i.e., both individuals and companies) seeking to do business in Malawi is required to register with the Registrar General. Though the Registrar General has an existing IT system, it did not seem adequately ready to provide identity verification services via web services. Further, the Registrar General accepts multiple different identity documents as proof for individuals and

directors registering businesses. Due to which, it would not be possible to uniquely identify an individual or Director in the database of the Registrar General. The Government is in the process of issuing Biometric based identity to citizens of Malawi. If this ID could be interlinked with database of the Tax Authority and Registrar General, it will be possible to distinctly identify bidding identities by relying on the database of Registrar General and Tax authority.

The IT systems implemented by the Government are hosted out of their own respective data centers. Ideally, it would be cost efficient and better value for money if the Government of Malawi could have established a National Data Centre (NDC) and mandated all Government agencies to host or co-locate their servers in the NDC. If the NDC did not get ready in time, the e-GP system would need to be co-located elsewhere possibly in a rented Data Centre or a separate Data Centre needs to be built specifically for e-GP system as well.

Roadmap for Implementation of e-GP in Malawi (updated based on Report of July 16th, 2018)

Roadmap for Implementation of e-GP in Malawi

The Government will at first need to establish a Steering Committee to Govern, Monitor and manage the implementation of e-GP system. A Consultant needs to be on-boarded to prepare the Request for Proposal (RFP) to select the System Integrator (SI) for implementation of e-GP system. Few key members of the Project Management Unit (PMU) should be on-boarded and these PMU members should work together with the consultant in finalization of the SI.

By the time the SI is finalized, the Government will need to undertake multiple activities in parallel viz.:

(i) Establishment of telephonic help desk
(ii) On-boarding of resources for provision of hand-holding support to Government officials in the districts
(iii) Empanelment of Banks and Insurance agencies for online submission of bid security
(iv) Establishment of training rooms in different parts of Malawi &
(v) Selection of 3rd party audit agency to security audit the e-GP system

Roadmap for Implementation of the e-GP System in Malawi										
S.no.	Activity Description	Timeline in Months								
		Effort	T	T+3	T+7	T+11	T+15	T+19	T+27	T+75
1	ToR for RFP consultant selection	1								
2	On-boarding of Consultant	2								
3	PMU initial set-up (3 key resources)	4								
4	SI RFP Finalization	4								
5	Bid process management	4								
6	Signing of contract with the SI	4								
7	Setting up telephonic help desk	4								
8	Bank empanelment for bid security	4								
9	On-boarding of hand-holding support	4								
10	Establishment of training rooms	4								
11	Selection of 3rd party audit agency	4								
12	Launch of Vendor Registration	4								
13	Launch of basic e-Bidding	4								
14	Launch of Contract Management	6								
15	Expanded adoption of e-Bidding	6								
16	Finalization of 3rd party audit	6								
17	Start of roll-out phase	6								
18	Maintenance for 4 years	36								

Figure 1: Roadmap for Implementation of e-GP in Malawi

It is recommended that Government launches the Supplier Registration module within a period of 4 months after signing of the Contract with the SI. In 4 months subsequent to that, a basic module of e-Bidding module should be launched covering 1 or 2 predominantly followed procedures. Within 8 months of launch of the e-Bidding module, it is proposed to launch the Contract Management module.

The use of e-Bidding module should be mandated only for procurement higher than a certain prescribed threshold. This threshold should be gradually lowered and at the same time adoption of the e-GP system should be expanded to a large number of procuring and disposing entities in the Government. Thus, the e-GP system will be rolled out across Malawi in a phased manner. A 3rd party agency on-boarded immediately after selection of the SI will act as a neutral party and verify compliance of the e-GP system to requirements specified in the RFP and confirm its compliance. Based on this compliance report, the Steering Committee will approve acceptance of the Pilot Phase of the Project and launch roll-out phase of the e-GP Project. It is envisaged that the entire e-GP system will be adopted by all Government agencies within a period of 4 years after launch of the Roll-out phase.

Key principles recommended for implementation of e-GP are:

(i) Think big: The Government shall envisage implementation of a full-fledged e-GP system. The initial focus should be on implementation of Phase -1 modules viz. Supplier Management, e-Tendering and e-Payment of bid security and tender processing fees. Refer the report on *"Functional Scope & e-GP Architecture"* for details about Phase 2 and Phase 3 of the e-GP system implementation.

(ii) Breadth first, depth later: Expedite adoption (i.e., use) of Phase 1 functionality (i.e., Supplier Management, e-Tendering, and e-Payment) with simple workflows across all procuring and disposing agencies in the 1st phase of project implementation. Government can decide to implement the remaining modules (e.g., contract management and e-Auctions) and expand the workflow functionality subsequently. It would be complicated

to design and implementation software with workflows customized to procuring and disposing entity requirements. Refer Section 4.2 of the Report on *Implementation Strategy* and Section 5.1 of the Report on *Functional Scope & e-GP Architecture* for further details about the workflow design.

(iii) Start small, Scale fast: The standard operating procedure is to initially implement the Phase 1 modules during pilot phase within a period of about 7 months. Initially, it is recommended to on-board high value tenders in the e-GP platform from few procuring and disposing entities (e.g., 5 – 6 agencies).

Annexure VI: Results of the Survey on the Perception of Private Sector on Public Procurement in Malawi

Malawi- MAPS – II

- **Introduction:** An electronic survey was carried out by the World Bank from February 24, 2018, onwards on the subject of "**Perception of Private Sector on Public Procurement in Malawi"** to seek response from private sector firms from construction sector (civil works), Supply of goods and services (including Information Technology) and Consultancy. This Survey was conducted jointly with ODPP/PPDA including through a consultation workshop to get direct feedback and to validate the results of survey. 150 entities were sent the questionnaire of which 88 responded as of April 07, 2018, with about 50 % of participants (40-45) responding to all the 79 questions who also provided additional comments. 50% of the respondents were civil works contractors, about 30% were suppliers of goods with 20 % belonging to consultancy in Malawi. 90% of these respondents were those who had submitted at least one bid for the government or donor funded projects, and thus familiar with the government and donor funded procurement.
- **Results of Survey:** The following section lists the results of survey for those items which are "significant", the definition of "significant" being a substantial confirmation (like a combination of strongly agree or somewhat agree; always and sometimes), where the figure is more than 40% or situations of "yes" or "no" on a question. This is captured in the form of: (i) Significant items of response; (ii) summary of key responses received as comments; and (iii) charts on certain critical items
- **Significant Items of Response :**

Question #5*: 90% of respondents learn about bidding opportunities through newspapers and only 5% through web-portals*

Question # 15*: 60% of respondents are not aware on the existence of ODPP website htttp:odpp.mw*

Question # 16*: 60% of respondents consider that ODPP is discharging its function free from Conflict of Interest* ***(quantitative indicator in support of sub-indicator 5 (d))***

The following questions and response (from Q 20 to 49) relate to firm's view on factors that have discouraged them from participating in government/donor financed bidding opportunity in Malawi *(a quantitative indicator in support of sub-indicator 10 (b))*

Question # 20*: 55% of respondents identify lack of access of credit as a factor to discourage participation in bids*

Question # 21: *70% of respondents consider that use of procurement methods is not fair*

Question # 22: *60% of respondents consider that contracting conditions are not fair*

Question # 23: *55% of respondents consider that payment provisions in the contract are not fair*

Question # 24: *70% of respondents consider that there is no effective appeals mechanism to resolve complaints by losing bidders*

Question #25*: 55% of respondents consider technical specification to be vague*

Question #26: *70% of respondents consider that technical requirements are too restrictive compared to work being tendered for*

***Question #28**: 45% of respondents consider that they are not in a situation to meet financial turnover requirements*

***Question # 29**: 40 % of respondent consider that the company cannot meet cash flow requirement*

***Question #30:** 50% of respondents consider bid security amount to be high*

***Question #33**: 50% of respondents consider that required documentation is excessive*

***Question #36:** 45% of respondents consider that contract completion dates are unrealistic*

***Question #37:** 55% of respondents consider that evaluation criteria are not clearly defined*

***Question #40:** 50% of respondents consider that time allotted to prepare bids is insufficient*

***Question #41**: 45% of respondents consider bidding document to be too expensive*

***Question #43:** 60% of respondents have concern about fair evaluation of bids*

Question # 44: 70% of respondents consider that evaluation of bids and contract award takes too long

***Question # 47**: 75% of respondents consider that payments are unreasonably late*

***Question# 48**: Average time from Billing to Receipt is 45- 60 days at least*

***Question # 49:** 45% of respondents consider that time taken to obtain technical acceptance/completion certificate is unreasonable*

Other Kinds of Perception:

***Question # 53**: 65 % of respondents consider that contract awards are predetermined*

Question # 54: *82 % of respondents consider that there are inadequate opportunities for qualified companies to compete fairly for contracts*

Question #55**: 47% of respondent consider that companies are expected to give gifts to secure a contract (either always or sometimes)-**(quantitative Indicator in support of sub-indicator 14(c))

***Question # 56:** 73% of respondents consider that firms which are not competent and qualified are awarded contracts*

***Question# 57**: 90 % of respondents consider that donor-financed contracts are tendered in a transparent and fair manner*

***Question # 60:** 85% of respondent consider that donor –funded procurement procedure requires more time that those funded by the government*

Question #62: *85% of respondents consider that donor funded bidding documents are well-structured and easy to understand*

Question # 64:** 73% of respondents consider that the complaint review system is not trustworthy and consistent with the findings of the case (**Quantitative Indicator in support of sub-indicator 13 (c))

Question #65:** 65% of respondent do not perceive that appeals decision are consistent with the findings of the case and the remedies provided in the regulatory and legal framework **(a Quantitative Indicator in support of sub-indicator13 (d))

Question # 68: *70% of respondents are aware that they can confidentially report allegations of fraudulent and/or corrupt activity to ODPP/ other authorities or donor agencies as appropriate*

Question # 69: *59% of respondents consider that anti-corruption measures are not effective* ***(a Quantitative Indicator in support of sub-indicator 14 (d))***

Question # 77: *69% of respondent perceive that there is an openness and effectiveness in engaging with private sector* ***(a Quantitative Indicator in support of sub-indicator 10 (a))***

- **Summary of some of the key responses received as comments:**

  - Providing equal opportunity to small and medium contractors, provide financial support and training to build capacity
  - Create effective complaint and redressal system
  - Awards are rushed due to non-transparent procedure
  - Local contractors are not assured of payments, foreign contractors get paid through letter of credit
  - Inclusion of bid securing declaration instead of bid security to be considered
  - Long term contract must allow for price adjustment due to increase in input costs like labor, fuel, material, plant
  - Contracts that can be handled by local contractors are given to foreign contractors who after winning the contract get the work done through local contractors at a very low amount.
  - Employ well-qualified personnel to head procurement
  - Issue of low-priced bids (Abnormally Low Tenders) to be handled to ensure quality of work
  - Create more opportunities for open and honest dialogue with private sector on a regular basis.

- **Charts on certain critical items**

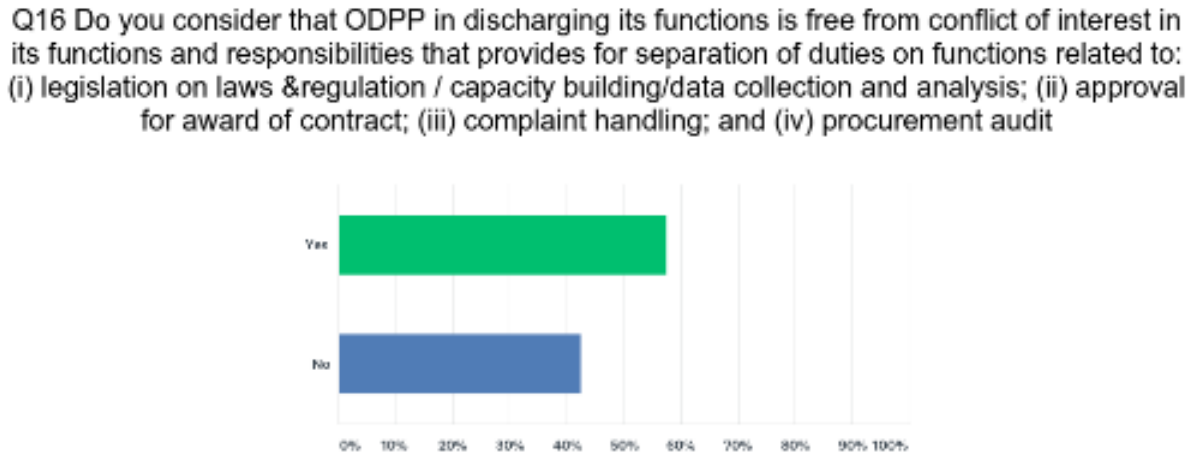


Figure 2- Quantitative Indicator for Sub-Indicator 5 (d)

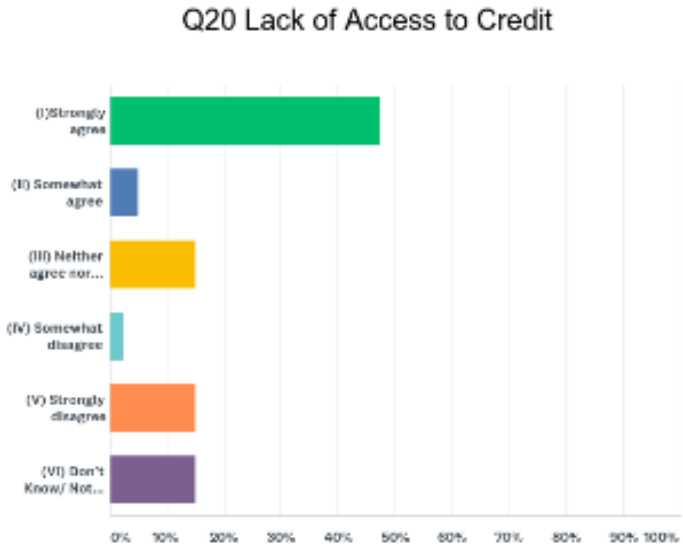


Figure 3- Factor That Discourage to participate in Bidding

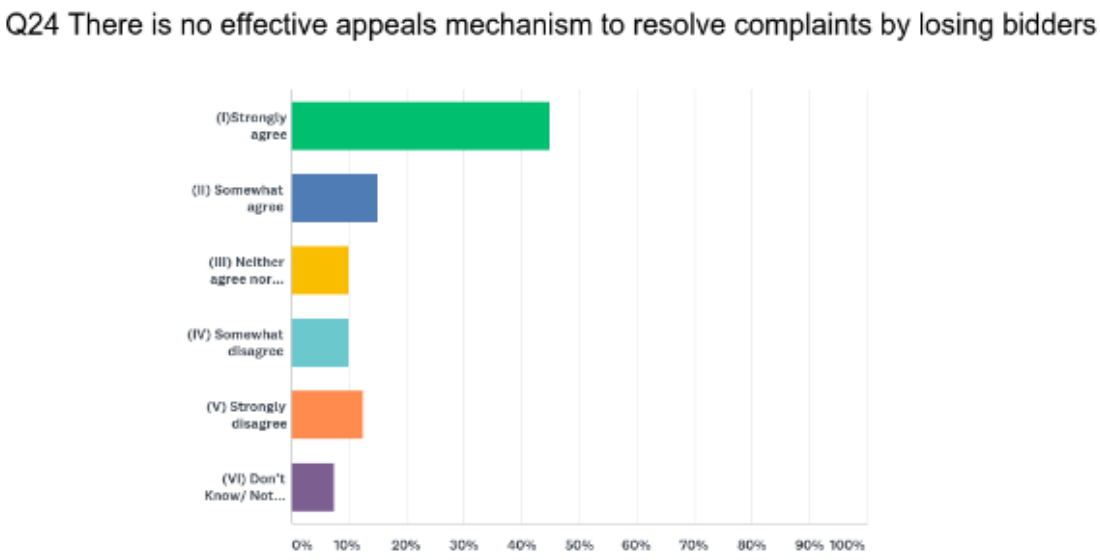


Figure 4- Indicator 13

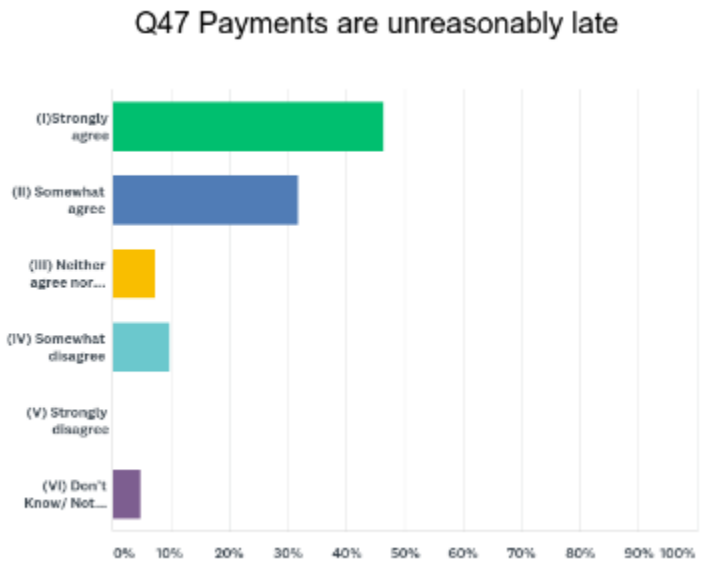
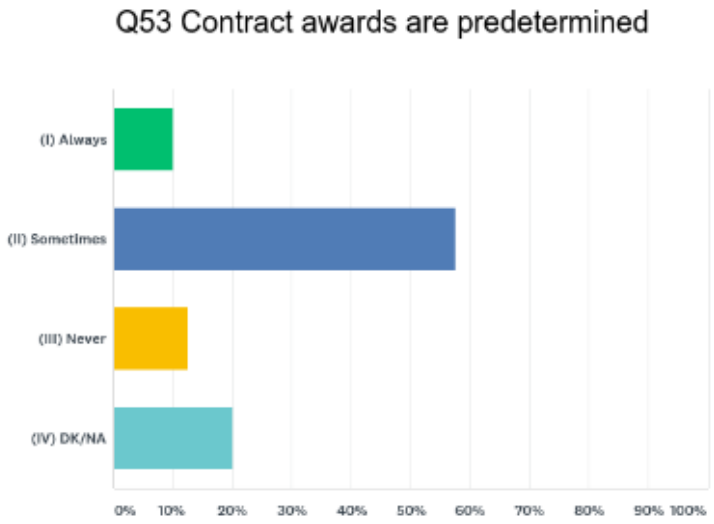


Figure 5- Between 45-60 days at least



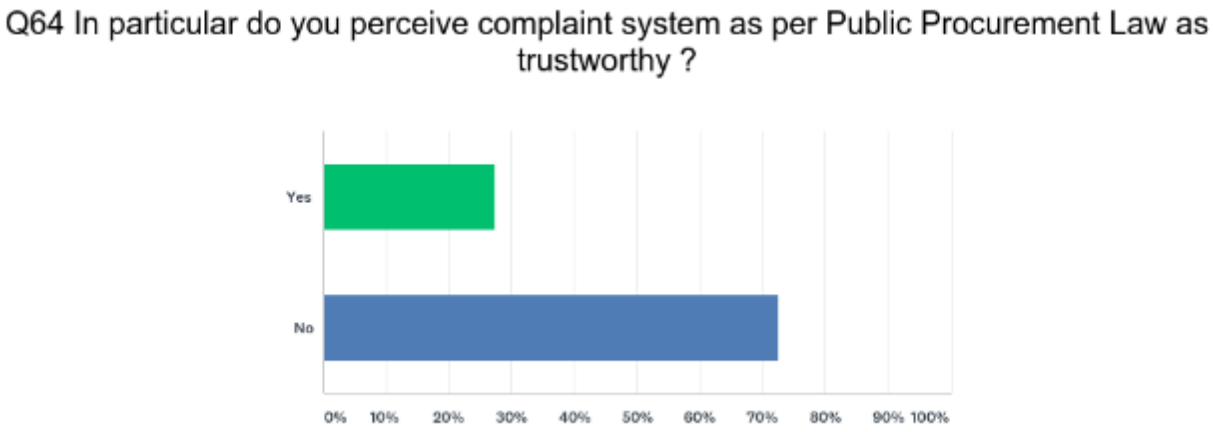


Figure 6 In support of sub-indicator 13 (c)

Annexure VII: Government Letter on MAPS Assessment Steering Committee (MASC) and Terms of Reference of MASC members

Telephone: 01 788 111/788 506
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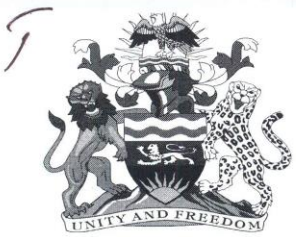

DIRECTOR OF PUBLIC PROCUREMENT
PRIVATE BAG 383
CAPITAL CITY
LILONGWE 3
MALAWI

Ref. No. ODPP/03/77

30th November 2017

The Country Manager
World Bank
P.O Box 30057
LILONGWE 3

Dear Sir

NOMINATION TO A STEERING COMMITTEE FOR THE ASSESSMENT OF PROCUREMENT SYSTEM IN MALAWI USING MAPS II

The Government of Malawi with the support of the World Bank and in collaboration with other development partners is undertaking procurement assessment of Malawi using Methodology for Assessing Procurement Systems (MAPS II). The study is being led by the Office of the Director of Public Procurement (ODPP).

The objective of the assignment is to assess the strengths, weaknesses and gaps of the public procurement system in Malawi, and benchmarking it with international best practices and standards and to help the government to prioritize efforts in public procurement reform. A MAPS Assessment Steering Committee (MASC) is being set up to provide oversight and overall direction to the assignment.

The committee, which will include representatives from key ministries, parastatal organizations, civil society, the private sector as well as development partners and shall be led by Office of Director of Public Procurement (ODPP) will be guided by the enclosed Terms of Reference (**TOR**). We would therefore request you to nominate a suitable official under your office to be part of the steering committee.

The first meeting of the Steering Committee shall be held on **December 12, 2017 from 10:00 hours at the World Bank Malawi Office, Mulanje Room, Lilongwe** and the nominated official is required to participate in this meeting.

Your due consideration of this matter is sought as it will help improve the Malawi public procurement systems and would appreciate your response **by December 7, 2017**.

Yours sincerely,

A.M.J. Chirwa
For: DIRECTOR OF PUBLIC PROCUREMENT

Procurement Assessment of Malawi using MAPS II

Steering Committee

Terms of Reference

1. Context

The Government of Malawi (GoM) with the support of the World Bank and in collaboration with other development partners is undertaking procurement assessment of Malawi using Methodology for Assessing Procurement Systems (MAPS II). The study is being led by the Office of the Director of Public Procurement (ODPP.) The new analytical framework (MAPS II) is guided by four pillars on: (i) Legal, Regulatory and Policy Framework, (ii) Institutional Framework and Management Capacity, (iii) Procurement Operations and market Practices, and (iv) Accountability, Integrity, and Transparency.

The assessment will be conducted using the Core MAPS tools. However, after completion of assessment based on Core MAPS, further assessment may also be undertaken using the supplementary modules (on sustainable public procurement, e-GP, professionalization, Public Private Partnership (PPP), selected sectors market analysis, and the engagement of civil society in the monitoring of procurement and contract performances), if some of them become available by that time and it is considered that further analysis is immediately necessary and is feasible in the course of the assessment.

The assessment would focus on sampled GoM's Ministries, Departments and Agencies (MDAs), selected based on comparative volume of procurement and risks. Independent experts will be engaged by the World Bank for the assessment.

This TOR provides a brief description of the context, objectives, tasks, and structure for a MAPS Assessment Steering Committee (**MASC**) to provide a sphere for consultations and direction in the implementation of the assessment.

2. Objectives

The specific objectives of the procurement assessment are:

1) to assess the strengths, substantial gaps, and gaps of the public procurement system in Malawi and benchmarking it with international best practices and standards.
2) to help the government to prioritize efforts in public procurement reform to enable: (i) balanced accountability mechanisms between the government, citizens, and private sectors; (ii) governance of risk management in the procurement cycle; (iii) application and monitoring sustainable public procurement; and (iv) integration of the public procurement system with the overall public finance management, budgeting, and service delivery processes.

The MASC is being set up with representation from key ministries, parastatal organizations, civil society, the private sector as well as development partners to make it a multi-disciplinary team specifically to:

(i) guide and facilitate the conduct of the MAPS Assessment,
(ii) provide inter-institutional coordination on Assessment activities,
(iii) validate the Assessment findings and recommendations, and
(iv) formulate and follow up the implementation of short, medium, and long-term actions to reform the Malawi Procurement system.

3. Tasks

1. Review the assessment methodologies and provide guidance on the approach to data collection and analyses.
2. Introduce and facilitate access of the MAPS Assessment Consultants to relevant persons and/or organizations that are sources of information, data, and documents for the assessments.
3. Ensure that any documents obtained for purposes of the MAPS Assessment are handled with due care and regard to the level of confidentiality of the documents.
4. Facilitate any meetings with stakeholders to clarify and/or justify the need for cooperation for purposes of the assessment on the basis of the benefits of MAPS Assessment to Malawi;
5. Participate in stakeholder consultative meetings with the MAPS Assessment Consultants and/or interested Development Partners;
6. Perform quality reviews and reality checks on the MAPS Assessment and reports; and
7. Participate in the formulation and follow up of time-bound action plans for implementing the MAPS Assessment recommendations.

4. Structure of the MASC

The MASC shall be established under the leadership of ODPP, and the members would be GoM officials, representatives of relevant bodies, development partners and Civil Society Organizations (CSOs) including business and professional associations whose contributions are critical for the success of this assessment.

MASC Members:

The MASC members shall be representatives from the following organizations:

1) Office of Director of Public Procurement- (**Chair**)
2) Office of Director of Public Procurement-(**Secretary**)
3) The World Bank- (**Co-Chair**)
4) Africa Development Bank (AFDB)
5) Department for International Development (DFID)
6) European Union
7) Ministry of Finance, Economic Planning and Development (Department of Debt and Aid)

8) Ministry of Local Government and Rural Development
9) Ministry of Health
10) Department of Statutory Corporations under Office of President and Cabinet
11) Anti-Corruption Bureau
12) Competition and Fair-Trade Commission
13) Malawi Confederation of Chambers of Commerce and Industry
14) National Construction Industry Council of Malawi
15) Malawi Economic Justice Network

ODPP shall convene the meetings of the Steering Committee, provide the secretariat for the MASC, and shall produce and circulate the minutes of each meeting within three working days after the meeting. The World Bank shall provide logistical support for the meetings.

The MAPS Assessment experts would have reasonable access to members of the MASC for consultations and facilitation of the assessment. However, the experts will maintain their independence in carrying out the assessment and in reporting.

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Annexure VIII: Brief Summary of CPAR of 2004

Introduction

Legislative Framework for Procurement: As per CPAR of 2004, with the enactment PPA 2003 Malawi passed a major milestone in the procurement reforms initiated in 1996 and that PPA 2003 was modelled on the UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994). After 2004, several developments have taken place worldwide on international procurement arena notably a new UNCITRAL Model Law on Public Procurement (2011), the European Union (EU) Directives on Public Procurement (2014), the procurement framework used by multilateral development banks.

Essential Features of PPA 2003: As per CPAR 2004, the essential features of PPA 2003 were to: (i) decentralize public procurement decisions and responsibility to the procuring entities; (ministries and government agencies through the Internal Procurement Committees (IPCs) and their Special Procurement Units (SPUs); (ii) provide for the establishment of a Procurement Cadre as a new professional stream within the civil service; (iii) introduce a new set of procurement methods with well-described conditions for use, thereby containing discretionary decision making within appropriate units; (iv) establish the Office of the Director of Public Procurement (ODPP) as the policy body responsible for regulation and monitoring of public procurement in Malawi, in place of the approval functions of GCU and the erstwhile Malawi Tender Board; and (v) establish a standing review committee with the office of the ODPP as a credible complaints mechanism for public procurement.

Decentralization of Procurement Function: As highlighted in the CPAR of 2004, PPA 2003 envisaged decentralization of procurement decisions and responsibilities to procuring entities. However, in practice ODPP introduced through secondary legislation control functions consisting of issuing "no-objection" to procurement procedures above a financial threshold. CPAR also recommended discontinuation of centralized purchase facility like The Central Government Stores (CGS) that were purchases, stocking, and distribution of common items (only goods). CPAR also found significant substantial gaps in the functioning of Central Medical Stores (CMS) which was responsible for procuring, stocking and distribution of pharmaceutical supplies and medical equipment and recommended that an international specialized agency be selected on competitive basis with technology transfer/capacity building component.

Procurement Practices: As per CPAR of 2004, till 2003 with few exceptions procurement planning as a prerequisite for inviting tenders was not required under Interim Guidelines and absence of procurement plan led to direct contracting for "urgent" procurement. Also, procurement planning was not integrated or linked with budget process. CPAR 2004 recommended that relevant details on procurement planning needs to be covered through Regulations. Other areas of concern were lack of standard procurement document, poor practices like lengthy and cumbersome bidder registration process and poor record keeping, inadequate contract administration compounded by delayed payments to contractor. PPA 2003 required Procuring Entities to establish procedure for contract administration and provide necessary resources for contract implementation (Section 22).

Professionalization of Procurement Function: Another area identified by CPAR of 2004 related to establishment of a professional procurement cadre Specifically the CPAR noted. **"**The new Procurement Act (Section 5 (2) (d)) calls for the establishment of a professional procurement cadre. Thus, according to the Procurement Act, the ODPP shall "promote the development of a

professional procurement workforce, including by organizing and conducting training programs, and developing government wide policies and programs aimed at establishing procurement-related positions, career paths and performance incentives". It also obliges the ODPP to set up a career development and management program, as well as a system for selection and appointment of procurement officers. The latter is important since a common feature of procurement at both central and local government level is the lack of capacity and qualified procurement professionals.

PPD Act, has altered the role of ODPP (which under PPA 2017 is transformed into PPDA) by assigning a coordinating role with the aim" to establish and maintain institutional linkages with Malawi Institute of Procurement and Supply (MIPS) and other professional bodies" The Malawi Institute of Procurement and Supply Act (No.3 of 2016) has entrusted MIPS a comprehensive function on all aspects of professional development of procurement and supply chain management professionals including those in the private sector. Assessment Team had several interactions with MIPS and other professional bodies. Based on discussion held with Central Government Stores one of their roles is to help procuring entities to have procurement officers with streamlined responsibilities and increased technical skills and in that capacity, they have a role as Government Procurement and Supplies Organization (GPSO) who keeps an inventory of procurement officers and assigns them to ministries and Procuring Entities as per requirements. Thus, there are multiple agencies now like MIPS and other professional bodies, PPDA, GPSO responsible for ensuring quality and capacity building of procurement professionals.

At the time of CPAR of 2004, World Bank was financing a capacity building consultancy service to working with Government Contracting Unit (GCU) to identify training needs, Training of Trainers (ToT) and support for identified training institutions. It was envisaged that the reform of procurement will not only cover rules and regulations but will also involve "changes in ethical and cultural ways of doing procurement".

Independent Auditing of public procurement: The roles and responsibilities for independent auditing of public procurement comes under Auditor General (AG) and his office as regulated in Public Audit Act No. 6 of 2003 (2003 PAA). In accordance with Section 6 of 2003 PAA AG's mandate is without "limiting any other written law" and thus has a higher status compared to other Act and it mandates AG of National Audit Office to ensure that "resources are employed and managed in an effective, economic and efficient manner". This role of AG is further highlighted in PPA of 2003 (Sections 39 and 40) that stipulates the requirements of regular auditing by the AG to ensure that public funds are expended for their intended purpose, with a view to maximizing value received by the public purchaser, ensuring that proper and accountable systems are in place and adhered to, and identifying any substantial gaps in procurement. As per CPAR of 2004, National Audit Office (NAO) lacked capacity to carry out audits to ensure financial integrity in the public sector procurement decisions. It was recommended that NAO should conduct performance reviews and audit and seek assistance on specialized audits where required. The Procurement Audit (or Review) as carried out by ODPP is not considered at par with an independent auditing of procurement.

Independent Complaints Mechanism: As per CPAR of 2004, till enactment of PPA 2003, bidders did not have access to formal complaints review mechanism to file grievances about the bidding process or contract administration. Therefore, complaints were filed with GCU, NAO and Anti-Corruption Bureau (ACB). Section 37 and 38 of PPA 2003 provided for a formal mechanism of complaints review first to the head of the procuring entity with a provision for appeals against the decision of head of procuring entity to the concerned Minister and for

contracts above a financial threshold to ODPP. ODPP was required to establish a standing review committee from which ODPP shall convene three-member *ad hoc* review committee to decide upon applications for review brought to the Director. PPA 2003 provided a timeline of 10 working days to render a decision after receiving the complaint. Section 38 (13) stipulated that the High Court shall have jurisdiction over action pursuant to Section 37 and 38 and over petitions for judicial review of decisions made by review bodies or of failure of those bodies to decide within time-limit. Based on CPAR 2004, private sector was reluctant to file any complaint citing fear of arbitrary blacklisting or retaliation as the main reason. CPAR 2004 indicates that there was a very limited number of complaints filed and there was a need to disseminate information on complaints review mechanism.

Competitiveness of Private Sector: As per CPAR 2004, the private sector in Malawi was composed mainly of manufacturing and distribution and manufacturing industry was small (13% of GDP), the construction industry was not yet capable to participate in relatively large contract (even the largest domestic contractors had annual turnover of not more than US$5 million), local consulting firms were not adequately developed as most of them were one –person firms and mostly limited to general consultancy, architects and quantity surveyors, economists, auditing and finance. However, there were adequate number of suppliers participating in the supply of various imported goods and commodities. Competitiveness of private sector was affected due to lack of access to credit and inability of bidders to provide bid security and performance security. There were also reports of collusion, price-fixing, cartels which deprived the procuring entities the benefits of free and open competition. CPAR 2004 had recommended the need for periodically re-examining relationship with the private sector, need for market surveys, developing competitive strategy and systematic evaluation of and improved efficiency and performance at every stage of value chain.

Monitoring by Civil Society Organization: CPAR 2004 has pointed out lack of capacity among local NGOs to monitor public procurement. One of the capable institutions mentioned in CPAR 2004 is Malawi Economic Justice Network (MEJN) which is a coalition of civil society organization which had developed and was implementing mechanisms for monitoring government budgeting process. MEJN was interested in expanding its monitoring efforts to encompass procurement. It was also reported that media was not fulfilling the "watchdog" role and there was absence of "whistle-blower" mechanism in public procurement.

Procurement information and data base: As per CPAR 2004, PPA 2003 required collection of data on public procurement and monitoring the performance of procuring entities [Section 5 (2) (d)], establishment of data and information base [Section 5 (2) (l)], publish notice of all procurement contract award (Section 26) and that procuring entities need to maintain procurement record and documentation for a period of 5 years (Section 27) and that record upon request shall be made available to any person after bid acceptance, excepting that such disclosure may be restricted in case of national defense or national security related procurement. Access to Information Act was to be developed as per CPAR 2004.

Anti- Corruption Measures and Code of Conduct and Ethical Behavior: As per CPAR of 2004, the key government institution responsible for combating corruption in Malawi is Anti-corruption Bureau (ACB) and with a role for investigation for corruption offenses within public procurement as per Corrupt Practices Act No. 18 of 1995 (since amended through CPA No 17 of 2004). At the time of CPAR 2004, ACB was in the process of establishing a specialized investigation unit focusing specifically on procurement and contract. PPA 2003 contained

specific provisions on the conduct of public officials and bidders (Section 18), on disclosure of interest (Section 19) and on debarment of bidders and suppliers (Section 20) after a reasonable notice to the bidder or supplier and after a due process.

e-Procurement: As per CPAR of 2004, PPA 2003 provided for necessary legal framework for e-GP as it allowed information exchange to be electronic as ODPP " may devise a strategy for, and to promote, the application of modern information and technology communications technology to public procurement" (Section 17).

Annexure IX: List MDAs for Sample Cases and List of Persons Met

List of 13- Entities for Sample Cases

a) Central Government Ministries
i) Ministry of Education, Science and Technology
ii) Ministry of Agriculture, Irrigation and Water Development
iii) Ministry of Health
iv) Ministry of Transport, Housing and Urban Development

b) Local government
i) Lilongwe city council
ii) Blantyre city council
iii) Karonga district council
iv) Kasungu district council
v) Mangochi district council

c) Parastatal organizations
i) Blantyre Water Board
ii) Electricity Supply Corporation of Malawi (ESCOM)
iii) Agricultural Development Corporation of Malawi (ADMARC)
iv) Roads Authority

List of Persons Met by the Assessment Team:

Mr. Stephenson D.L. Kamphasa, Auditor General, National Audit Office (NAO)
Mr. Geral Blessings Pute, Assistant Auditor General, NAO
Mr Arnold Chirwa- Acting Director of ODPP/PPDA
Ms Miriam Salika, Deputy Director, PPDA
Mr Timothy Kalembo, Assistant Director (Regulatory and Review)
Mr Peter Makanga, ODPP/PPDA
Mr. Jonathan Kantayani, ODPP/PPDA
Mr. Ipyana Musopole, Principal Corruption Prevention Officer, Anti- Corruption Bureau
Mr. Michael Chiusiwa, Deputy Director, Office of the Director of Public Officers' Declarations
Mr. Emmanuel Chisesa, Senior National Procurement Officer, African Development Bank
Ms Janet Mortoo, Programme Manager, PFM, Delegation of the European Union in Malawi
Mr. Jorge A Shepherd, PFM Consultant of EU
Mr. Bob Libert Muchabaiwa, Social Policy and Economics Specialist, UNICEF, Malawi
Mr. John Hunter, PFM Consultant of EU
Mr. Baldwin Chiyamwaka, Regional Project Manager, Open Society, Hivos
Mr Feston Kaupa, Chief Executive Officer, Central Medical Stores Trust (CMST)
Mr Moza M. Zeleza, Chief Executive Office of Lilongwe City Council
Mr Eric Moses Chikhawo, Principal Procurement Officer,
Mr. Michael S. C. Polela, Architectural Specialist, Government Contracts Unit
Mr. Dalitso Kubalasa, Malawi Economic Justice Network (MEJN)

Mr. Peterson Chamba, Ministry of Health
Mr. Andrew Bowden, DfID
Ms Martha Kankonde, CFTC
Mr. Peter Nyinrenda, National Construction Industry Council (NCIC)
Mr Paul Chibwana, DSC
Doreen Msendema, Ministry of Local Government and Rural Development

Annexure X: List of Reference Documents

Laws and Regulations and Other Documents from Malawi Government

Constitution of the Republic of Malawi

Public Audit Act No. 6 of 2003

Public Procurement and Disposal of Public Assets Act No. 27 of 2017

Public Procurement Act No. 8 of 2003

Public Procurement Regulations of 2004- draft of 2018

Desk Instructions on Procurement (2003)- draft of 2018

The Malawi Institute of Procurement and Supply Act No. of 2016

Corrupt Practices Act No. 17 of 2004

Public Finance Management Act No. 7 of 2003

Public Officers (Declaration of Assets, Liabilities and Business Interests) Act No. 22 of 2013

Access to Information Act no. 13 of 2017

Budget Document- Document No 5 – Program Based Budget

Approved 2017-18 Financial Statements

World Bank Documents

Governance and Law- World Development Report (2017)

How (Not) to fix Problems that Matter- Assessing and Responding to Malawi's History of Institutional Reform (December 2017)

From Falling Behind to Catching Up – A Country Economic Memorandum for Malawi (2018)

Country Procurement Assessment Report (CPAR 2004)

Other Sources

EC Directive on Procurement (2014/24/EC dated 26 February 2014)

UNCITRAL Model Law on Public Procurement (2011)

Report on the Governance and Corruption Survey funded by Irish Aid (2014)

HIVOS- Open Contracting Scoping Study for Malawi (2016)

Annexure XI: Concept Note

WORLD BANK GROUP
MALAWI COUNTRY OFFICE

Procurement Assessment of Malawi using Methodology for Assessing Procurement System (MAPS-II)

Concept Note

I. Context

A. General

Country Overview

Malawi is part of the sub-Sahara Africa region, and is a landlocked country located in the southeastern part of the continent. It is bordered in the north and east by Tanzania, in the east, south and southwest by Mozambique, and in the west by Zambia. It has an estimated population of 18 million (2016). With the support of the International Monetary Fund (IMF), the World Bank, and other development partners, Malawi has been able to make important economic and structural reforms and sustain its economic growth rates over the last decade. Nevertheless, poverty is still widespread, and the economy remains undiversified and vulnerable to external shocks. Gross National Income (GNI) per capita was estimated at US$ 320 in 2016.

Political Context

Malawi has had stable governments and a democratic multi-party system since the end of one-party rule in 1993. It has held five peaceful presidential and parliamentary elections, one of which included local government elections. Its current political leader, President Arthur Peter Mutharika, was elected in 2014 and is in his first five-year term. The next elections are due in May 2019.

Economic Overview

In 2017, Malawi's Gross Domestic Product (GDP) growth rate was expected to rebound to about 4.5 percent from 2.5 percent in 2016. Improved weather patterns with increased rainfall in 2017 are expected to result in higher levels of agricultural output than were recorded in 2015 and 2016. Agriculture contributes about a third of GDP. The country's headline inflation rate continues to decelerate faster than anticipated, falling to 8.3 percent in October 2017, compared to 20.1 percent in October 2016. This downward trend has largely been due to a sustained decline in food prices resulting from the increased availability of maize, and a stable exchange rate. Sustainable growth is predicated on sound macroeconomic management and structural reforms to lay the foundations for a more resilient and diversified agriculture sector. For Malawi's economy, the weather will remain a major part of the economic cycle, with the negative impact of bad weather compounded by factors such as population growth and environmental degradation.

Social Context

Encouraging progress has been made in terms of human development in recent years. However, poverty and inequality remain stubbornly high in Malawi. Rural poverty persists with one in two people still poor, driven by poor performance of the agriculture sector, volatile economic growth, population growth, and limited opportunities in non-farm activities. Life expectancy is up to 63.9 years in 2017 from 62.8 last year.

Development Challenges

The macroeconomic outlook faces significant downside risks. These risks relate primarily to Malawi's continued vulnerability to external shocks, amplified by the risks of fiscal slippages. The country (and its growth performance) is expected to remain vulnerable to climate variability for some time. Similarly, despite encouraging efforts towards fiscal consolidation, experience suggests that Malawi has struggled to contain recurrent expenditure over the political-business cycle. Elections are coming up in May 2019. Households' welfare in Malawi remains vulnerable to natural shocks such as drought and flooding, and food price inflation. Building families' resilience to shocks through investments in basic services, asset building, the improvement of early warning systems, and the revamping of safety-net programs continue to be the major challenges going forward.

B. Public Procurement

Sound and efficient public procurement system is key to the development in the country. Public Procurement reforms in Malawi started around 1996 after the Government and donor partners prepared a diagnostic study on public procurement which noted that public procurement was not effectively managed. The Government dissolved the Central Tender Board around May 2000. From June 2000 until August 2003, public procurement was managed through a circular issued by the Office of the President and Cabinet (OPC) – called the Interim Procurement Guidelines for goods, consultancy services, works and donor funded projects. The interim guidelines were not in line with sound international public practices, they did not have a legal mandate and they were poorly enforced and monitored. During this period, due to the above limitations coupled with an acute shortage of procurement knowledge, the result was that generally the public procurement system was not conducive to economy, efficiency, and transparency that also included excessive use of quotation and pre-contract negotiations.

In 2002, the World Bank together with donor partners engaged a consultant to carry out a country procurement assessment. The report (CPAR 2004) came up with several recommendations related to the legislative framework, the procurement system and processes, capacity to conduct procurement and effects of corruption in procurement process. The first Public Procurement Act was enacted in August 2003 which fully decentralized procurement functions to the procuring entities and established the Office of Director of Public Procurement (ODPP) as an oversight body. Its Regulations and Desk Instructions were issued in 2004.

Fraud and corruption are rife and award of contracts to right firms faces challenges which greatly impacts 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 the use of public systems in the implementation of Donor financed projects as well as the budget support. Malawi however has made some further progress in the field of procurement reforms by enacting the Public Procurement and Disposal of Assets Act 2017. Under the new Act, the procurement functions remain decentralized to procuring entities. To further strengthen the monitoring and oversight of public procurement a full-fledged organization "The Public Procurement and Disposal of Assets Authority" is being established under the Act. The Authority shall be responsible for the regulations, monitoring and oversight of public procurement and disposal of assets in Malawi. However, the biggest challenge is the effective implementation of the law and regulations in actual practice.

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 nineteen member countries covering a population of 390 million. In order 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 which interface with public procurement law of Malawi e.g., thresholds for ICB, Procurement Management Information Systems (PROMIS), etc. 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 Protocol on Trade that demands Members to implement measures within the Community that prohibit unfair business practices and promote competition.

The country has presently also taken initiative to introduce e-GP through the World Bank funded Malawi Digital Migration Project. Under this project six key representative procuring entities would be piloted with an intention to subsequently roll out to all the procurement entities in due course. The preparatory work for this has started and the government has recently hired an e-GP Advisor to provide technical assistance right from the stage of preparatory work through the completion of implementation of the e-GP system. The present plan for selection of pilot Ministries, Departments and Agencies (MDAs) is to include large spending Procuring Entities, two each from ministries and parastatal agencies and two PEs from local councils based on geographical location. However, this is subject to modification based on the advice of the e-GP Advisor. The implementation of the e-GP system for the six pilot agencies is expected to be done over a period of three years from July 2018

In FY12, the Bank provided technical assistance to Government through an International Development Fund (IDF) grant on Capacity Building to strengthen procurement cadres in the country and at the end of the grant, one of the recommendations of the report was that there was need for more training as most staff did not have adequate knowledge of procurement processes and procedures. No specific studies have been conducted about

the outcome of this intervention, however, generally there has been improvement in procurement processing in the respective MDAs.

In 2008 ODPP undertook its first procurement audit of all procurement entities in the country and the findings of the report indicated that procurements were poorly done in most entities as they did not follow what was in the Public Procurement Act, Regulations and Desk Instructions. Since then, it is being conducted almost every year and there have been three major ones including in 2011 and 2012. As a result of these procurement audits and recommendations, some improvements have been noticed in the areas: increased rate of approval for procurement processes; enhanced staff capacity (both in number and qualification); reduced cases of fraud; and relatively less occurrence of misprocurement.

C. Strategic Context of the Study

a. At the time of preparation of the Concept Note, the Bank was in process of developing the Malawi Country Diagnostic (SCD). The Concept paper review was conducted on September 15, 2017, and the Final Decision Review was scheduled on December 8, 2017. This was to go to the Board in March 2018. For the Country Partnership Framework (CPF) (2019-2023) which follows the SCD, the Concept Note review was planned in March 2018. The SCD 2017 identifies 'weak governance environment (policy uncertainty, weak implementation, and ineffective institutions) as one of the key issues to be addressed. 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 would be central to a well-functioning public procurement system and will greatly contribute towards improving the governance scenario in the country. Gradually Public procurement is catching attention for strategic priority. Efforts are being put to improve the procurement system and thus, a holistic procurement assessment would be critical to identify priorities of reforms towards sustainable public procurement, linking with PFM, governance, technology, market, and citizenry to achieve economic ideals as well as socio-economic objectives.

b. During the management discussion for a Development Policy Operation (DPO) in Malawi and also during presentation of the same to the Board of Executive Directors of the World Bank, concerns about oversight of public procurement was raised. It was also noted that the analytical base (namely the last Country Procurement Assessment Report (CPAR) of 2004) is quite old now and there is need to update the analytical base on public procurement.

c. The recent Malawi **Country Economic Memorandum (CEM)** launched in 2017 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 the public procurement in major programs such as fertilizer as well as in 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 neighbouring 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 over the last year rose from 13.7 percent in 2008 to 24.0 percent in 2014.

d. The **Malawi Economic Monitor of November 2017 observes that i**n Malawi, weak governance and rampant corruption have been a major constraint on economic development, with the numerous attempts to strengthen governance systems having had only limited results. The impact of prevailing structures and social norms need to be taken into consideration to inform policy design and implementation. This implies that while it may not be possible to implement first-best solutions in Malawi, the implementation of feasible, second-best solutions could lead to improved development outcomes. It notes that **the underlying functional problem of institutions in Malawi primarily relates to commitment**. The WDR report identifies three essential drivers of policy effectiveness: commitment, coordination, and cooperation. The first step towards formulating and implementing effective policies rests on credible commitment to improving development outcomes by the authorities. To establish credibility and trust, political elites need to consistently maintain support for effective policies over meaningful timeframes. However, in Malawi, when new governments have come to power, they have tended to reverse the policies of previous governments. In addition, even during the period of administration of a single government, its policies may be inconsistent and contradictory.

e. The recent procurement audits conducted by 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. Similarly, financial audits 2012, 2013, and 2015 also reveal similar substantial gaps as poor procurement record keeping including the non-availability of bid and other documents for audit purposes, irregularities in the bid evaluation processes in selection of firm etc.

f. In 2011, 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 PFM systems. Under the program steps were taken to improve the transparency of the procurement system.

g. A Public Finance Management Rolling Plan (PFM RP) 2017-2020 (in draft stage at present) is the second-generation programmatic approach to public finance management reforms in the country coming after the Public Finance and Economic Management Reform Program (PFEM RP) 2011-2014. It has the ambitious goal of restoring confidence in public finance management systems that suffered from massive internal fraud some four to five years ago. It has built on the successes and challenges of the PFEMRP and has carried forward a number of priority reform areas that were not completed under PFEM RP. The strategic areas which 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 Strengthen contract management. The *"Component-8: Procurement"* under the *"Theme 2: Budget Execution"* of the PFM RP **envisages a MAPS Assessment for the country.**

h. The Malawi Growth and Development Strategy (MGDS III) (2017-2022) in draft at present, emphasizes that during the implementation of the MGDS III, there will be need to continue with the PFM reforms including procurement in order 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.

i. Besides the World Bank, other development partners have also been engaged in the field of procurement reform in the country: African Development Bank for capacity building); DFID for development of Standard Bidding Documents and UNDP for capacity assessment. At present also development partners specifically EU and AfDB are showing keen interest in procurement reform. WB and ODPP are fully engaged with them for this exercise, and it is hoped that the outcome of the assessment would open the door further for these agencies to provide support for procurement reform initiatives.

j. The forthcoming DPO(s), besides a motivation for the study, shall also be opportunities to drive reform priorities that the study will recommend. Further, this assignment is coming at a time when e-GP is being introduced in Malawi. Its interface with the e-GP project, which will include a business process re-engineering (BPR), will create opportunity to drive reforms beyond the digitization of public procurement.

II. Objectives of the Assessment

The assignment has following development objectives:

(1) The assessment will assess the strengths, substantial gaps, and gaps of the public procurement system in Malawi and benchmarking it with international best practices and standards.

(2) The assessment will help the government to prioritize efforts in public procurement reform to enable: (i) balanced accountability mechanisms between the government, citizens, and private sectors; (ii) governance of risk management in the procurement cycle; (iii) application and monitoring sustainable public procurement; and (iv) integration of the public procurement system with the overall public finance management, budgeting and service delivery processes.

III. Tasks to meet the objectives

The procurement assessment will be guided by the MAPS new analytical framework (known as MAPS II) with four pillars on:

(i) Legal, Regulatory and Policy Framework,
(ii) Institutional Framework and Management Capacity,
(iii) Procurement Operations and market Practices, and
(iv) Accountability, Integrity, and Transparency.

The assessment will carefully consider and customize, if needed to enable fit for purpose, 14 qualitative indicators and about 15 of the 20 quantitative indicators provided in the MAPS II. The findings of the quantitative indicators will serve as the baseline for assessment of impact of procurement reforms in future. The assessment will be conducted using the Core MAPS tools. However, after completion of assessment based on Core MAPS, further assessment may also be undertaken using the supplementary modules (on sustainable public procurement, e-GP, professionalization, Public Private Partnership (PPP), selected sectors market analysis, and the engagement of civil society in the monitoring of procurement and contract performances), if some of them become available by that time and it is considered that further analysis is immediately necessary and is feasible in the course of this assignment.

Since this assessment will be carried out by the World Bank, it is planned to hire an individual international consultant to lead the analysis along with two local consultants for collection of data. On the e-GP aspect, the consultant would liaise with the e-GP Advisor and acquire necessary inputs as needed for the study. The assessment will also involve interviews with the procuring entities in the central as well as sub-central levels, development partners supporting procurement reform in the country, training institutions and universities, professional bodies, and civil society organizations. Once the data analysis is completed, considering the inputs received through the interviews, recommendations will be derived and validated with the Client and other key stakeholders. A MAPS Assessment Steering Committee (MASC) led by Office of Director of Public Procurement (ODPP) has been set up which will include representation from key ministries, parastatal organizations, civil society, the private sector as well as donors to make it a multi-disciplinary team.

Specific tasks to meet the objectives of the assessment will revolve around the following key functions:

a) Planning and Preparing the Assessment

i) Consultations with wider stakeholders to agree on the scope and prepare the assessment and finalize the concept note and the TOR,
ii) Establishing of the MAPS Assessment Steering Committee (MASC),
iii) Setting up the MAPS Assessment Team (Hiring of the consultant(s)), and
iv) Logistical arrangements for the study

b) Conducting the Assessment

The assessment phase will focus on the following elements:

i) Analysis of the Country Context including mapping of stakeholders

ii) Assessment of the Public Procurement System

- Develop and regularly update assessment schedule
- Collect data (qualitative and quantitative) (at the outset, to the extent possible, necessary data would be collected for a spend analysis to identify the major category of public procurement.)
- Apply the MAPS indicators using the following three-step approach:

Steps	Assessment
Step 1	Review of the system applying assessment criteria expressed in qualitative terms. Preparation of a narrative report providing detailed information related to this comparison (actual situation vs. assessment criteria) and on changes underway.
Step 2	Review of the system applying a defined set of quantitative indicators (applying at least the minimum set of quantitative indicators defined). Preparation of a narrative report detailing the findings of this quantitative analysis
Step 3	Analysis and determination of substantive or material gaps (gap analysis). Sub-indicators that exhibit a "substantive gap" need to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system. In case of identified reasons that are likely to prevent adequate actions to improve the system, "red flags" need to be assigned. Red flags are to highlight any element that significantly impedes the achievement of the main considerations of public procurement and that cannot be mitigated directly or indirectly through the system.

c) Reporting

Assessment Report (draft version and final report) will be prepared consisting of an executive summary and a main report following the outline suggested in MAPS including recommendations for improvement in the procurement system and a proposed action plan.

IV. Focus of the assessment

Based on the focus areas indicated in the PFM RP (2017-2020-Draft), the study will pay special focus on strengthening and promoting the procurement profession; improving efficiency and transparency of procurement process; and strengthening contract management.

The assessment will carefully consider and customize, if needed to enable fit for purpose, fourteen qualitative indicators and the list of minimum 15 quantitative indicators provided in the MAPS II. The fifteen quantitative indicators may be supplemented with the

additional indicators as provided in the MAPS tool, as considered necessary by the consultant during assessment.

Under the assignment, further assessment using some supplementary modules may also be conducted once the assessment using the Core MAPS tool is completed, as indicated under Para III above.

The study will cover the central government, local government and parastatal organisations as indicated below, however, those may get adjusted suitably during assignment as needed due to logistical or other consideration. The study of the actual procurement cases would be on a sample basis of about 5 to 8 cases from each entity covering all the three types of procurement categories of goods, works and services.

d) Central Government Ministries

v) Ministry of Education, Science and Technology
vi) Ministry of Agriculture, Irrigation and Water Development
vii) Ministry of Health
viii) Ministry of Transport, Housing and Urban Development

e) Local government

vi) Lilongwe city council
vii) Blantyre city council
viii) Karonga district council
ix) Kasungu district council
x) Mangochi district council

f) Parastatal organizations

v) Blantyre Water Board
vi) Electricity Supply Corporation of Malawi (ESCOM)
vii) Agricultural Development Corporation of Malawi (ADMARC)
viii) Roads Authority

V. Information sources

Key information sources for this study will be:

i) Procurement records of the sampled procuring entities
ii) Procurement audit reports of ODPP
iii) Interview of government personnel involved in procurement
iv) Interview of various stakeholders indicated under the heading "Stakeholders" below.

VI. Leadership and assessment team

As this is a Bank executed study, it will be managed by Anjani Kumar, Procurement Hub Coordinator, based in Dar es Salaam as TTL and Steven Maclean Mhone, Senior Procurement Specialist as Co TTL under the overall guidance of V.S. Krishnakumar, Practice Manager. The team will liaise and collaborate within the Bank with Public Sector Management Specialists, Financial Management Specialists and Task Team Leaders for the selected sectors.

On the Government side, the assessments will be led by the MAPS Assessment Steering Committee which will be chaired by the Office of Director of Public Procurement and membership will include officials from other government institutions, the private sector as well as the donor community.

The study will be carried out by a consultant, and it will be carried out over a period of 3-4 months. As part of quality control, the assessment will undergo peer review from Public Sector Specialists, PFM Specialists and other procurement specialists, MAPS secretariat and other stakeholders including other donor partners.

VII. Stakeholders

Stakeholders for the assignment will include:

Office of the Director of Public Procurement
Government Contracting Unit
Public Private Partnership Commission

Ministry of Finance, Economic Planning and Development
Ministry of Justice and Constitutional Affairs
Ministry of Local Government and Rural Development
Department of Statutory Corporations

Ministry of Education, Science and Technology
Ministry of Agriculture, Irrigation and Water Development
Ministry of Health
Ministry of Transport, Housing and Urban Development

Lilongwe city council
Blantyre city council
Karonga district council
Kasungu district council
Mangochi district council

Blantyre Water Board
ESCOM
ADMARC
Roads Authority
Anti-Corruption Bureau
National Audit office
Accountant General Office
Malawi Revenue Authority
Competitions and Fair-Trade Commission

Malawi Confederation of Chambers of Commerce
National Construction Industry Council
Council for Non-Governmental Organizations in Malawi
Malawi Building and Civil Engineering Contractors and Allied Trades Association
Indigenous Business Association of Malawi

Malawi Economic Justice Network

AFDB
DFID
European Union
USAID
UNDP

Malawi Broadcasting Corporation
Zodiak Broadcasting Station
Times Group
Nation Publications

The Polytechnic
Malawi Institute of Procurement and Supply
Malawi Institute of Management
Malawi College of Accountancy
Pentecostal Life University

Any other stakeholder identified during assignment

VIII. Validation of assessment results

To ensure that the assessment findings are valid and credible, a validation workshop involving key stakeholders will be held to agree on the findings of the assessment, reform priorities and have a shared strategy to address key substantial gaps in the system. Peer reviewer and MAPS secretariat shall also review the findings.

IX. Communication and Cooperation

External and internal partners will be engaged right from the beginning i.e., for review of the Concept Note for the study. They will also be key stakeholders to provide input during the study besides some of them being part of the steering committee. They will also be involved in the validation Workshop of the report as well as in the quality assurance exercise.

X. Outputs and timetable

Sr. No.	Output	Responsible	Cooperation with	Deadlines
1	Draft Concept Note	Bank	ODPP	Nov 17, 2017
2	Formation of Steering Committee	ODPP	Bank, Donors, and others	Dec 7, 2017
3	Decision on Concept Note by the Bank Management	Bank	Peer Reviewers	Dec 21, 2017
4	Contracts for Experts	Bank	-	Dec 21, 2017
5	Ensuring that required information and data is available	Bank/ODPP	MAPS Assessment Steering Committee (MASC)	Jan-Feb 2018
6	Analysis of Country Context	Experts	Bank/ODPP/MASC	Jan 31, 2018
7	Assessment of Public Procurement System	Experts	Bank/ODPP/MASC	Mar 10, 2018
8	Draft Assessment Report (Including recommendations for prioritized reform)	Experts	Bank/ODPP/MASC	Mar 31, 2018
9	Validation workshop	Experts	Bank/ODPP/MASC	Apr 15, 2018
10	Draft Final report	Experts	Bank/ODPP/MASC	Apr 22, 2018
11	Peer Reviewing and Bank Management Approval of the report	Bank	Peer Reviewer/MAPS Secretariat	May 31, 2018
12	TAG Review of the Report	TAG	Bank	May 31, 2019
13	Final Report	Bank		Jun 30, 2019

Activity Schedule for Assessment of Malawi Public Procurement System

Output	Deadlines																													
	Nov-17				Dec-17				Jan-18				Feb-18				Mar-18				Apr-18				May-18				Jun-18			
1. Draft Concept Note																														
2. Formation of Steering Committee																														
3. Decision on Concept Note by the Bank Management																														
4. Contracts for Experts																														
5. Ensuring that required information/data is available																														
6. Analysis of Country Context																														
7. Assessment of Public Procurement																														
8. Draft Assessment Report																														
9. Validation workshop																														
10. Draft Final report																														
11. Peer Reviewing and Bank Management Approval																														
12. Final Report																														

XI. Provision of budget

The total estimated cost of the study is US$ 100, 000.00 which has already been allocated under WPA for FY 18. The external expert for the study will be engaged by the Bank. Logistical arrangements will be done by the Bank in collaboration with ODPP and MASC.

XII. Risks and Mitigation

a) The availability/timely availability of data could be a challenge due to poor record keeping and sometimes due to unwillingness by the concerned agency to provide the data. To mitigate this risk, adequate and timely notification and information will be provided to the sampled organization. The ODPP is fully engaged for this assignment, and we expect that this risk will get mitigated. Further, formation of MASC and its support would help to mitigate this risk.

b) Formation of Public Procurement and Disposal Authority (PPDA) based on the new Procurement Act was expected in early 2018. Thus, there would be a transition from ODPP to PPDA that may affect the execution of this assignment. This aspect has been critically examined and discussed with ODPP. ODPP assured that the plan is to make the transition in a manner that does not affect any on-going work. Mostly the actual working structure including the staffing would not be disturbed in the short term at least. Thus, this risk does not appear to be affecting the assignment, however, if any adjustment during assignment would be required that would be carried out as needed.

c) The ownership of such report by the government at times is found challenging. As the ODPP is leading the exercise and MASC, which includes important government agencies (including MoF), private sector, NGO/CBO, and donor partners, we hope that the risk of ownership will get mitigated to a large extent.

XIII. Source Documents

Methodology for Assessing Procurement Systems (MAPS), Draft Version of September 2017.

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Annexure XII: Color Coded Assessment Summary (for all 210 criteria)

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(The colour coded Assessment Summary for all the 210 criteria is attached in Excel Sheet separately)