

Annex 1: BLI assessment

The matrix below presents the complete assessment of all Baseline Indicators (BLIs) included in the OECD-DAC Methodology for Assessment of National Procurement Systems (version 4, July 17 2006). Each BLI sub-indicator is assessed and scored against the criteria and key to scoring detailed in the Methodology, Section II, Part I. See the Methodology for a detailed listing of the criteria against which each sub-indicator is measured.

Indicator	Score	Comment
Pillar I – Legislative and Regulatory Framework		
Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations		
Sub-indicator 1(a) - Scope of application and coverage of the legislative and regulatory framework	2	<p>a) The legislative and regulatory body of norms for public procurement is adequately recorded and organised hierarchically. Public procurement in Malawi is governed by the Public Procurement Act (PPA) of June 2003, along with the Regulations of September of 2004 and further deliberated in the Desk Instructions for Public Procurement issued by the Office of the Director of Public Procurement (ODPP). Finally, a number of circulars have been issued by the ODPP to support the legal framework.</p> <p>b) The PPA and Regulations are available for purchase from the Government Printer in Lilongwe, Zomba and Mzuzu only. The documents cannot be purchased outside these cities. The PPA as well as the Desk Instructions can also be downloaded from the ODPP website, whereas the Regulations are not readily available.</p> <p>c) The legislative framework covers goods, works and services for all procurement using national budget funds (cf. PPA art. 3)</p> <p><i>(a) and (c) met, (b) not met</i></p>
Sub-indicator 1(b) - Procurement methods	3	<p>a) The allowable procurement methods are described unambiguously in detail in Part V of the PPA and further delineated in Part V of the Regulations.</p> <p>b) Open tender is the default procurement method as prescribed in the PPA art. 30.</p> <p>c) The PPA art. 3 (4) prohibit the division of tenders with the intention of avoiding the monetary thresholds.</p> <p>d) Standards for international competitive tendering are set forth in the PPA, art. 30 (6) (a)-(c) and further described in the Regulations.</p> <p><i>(a), (b), (c) and (d) met</i></p>
Sub-indicator 1(c) - Advertising rules and time limits	3	<p>a) PPA art. 31 (1)-(2) demands that tender opportunities be publicly advertised. This requirement is further explained in Part V, Division II of the Regulations.</p> <p>b) The Regulations art. 46 outlines the deadlines for submission of bids: 30 days for national competitive bidding, 45 days for international competitive bidding, and 5 days for quotations.</p> <p>c) According to PPA art. 31, publication of open tenders shall be published in the local press and in the Government Gazette. International tenders shall be published in internationally recognised papers as well as on the internet.</p>

Indicator	Score	Comment
		<p>d) Art. 59 of the Regulations lists the requirements to the tender publication providing ample information for potential bidders to determine their interest and ability. <i>(a), (b), (c) and (d) met</i></p>
Sub-indicator 1(d) - Rules on participation and qualitative selection	1	<p>a) The PPA and Regulations describe in details the qualification requirements. However, the legal framework does not directly prescribe for a pass/fail determination of qualification. The PPA art. 31 (17) and the Regulations art. 82 allow for domestic preference. However, the nature and value of domestic preference is not very clearly described in the Regulations.</p> <p>b) The PPA art. 14 requires bidders to be registered with the Registrar of Companies or with the National Construction Industry Council of Malawi (NCIC) or other similar entities. However, the PPA and Regulations also state that the sole absence of registration is not ground for exclusion of a bidder from participation in procurement proceedings (though registration may be a requirement for contract award, cf. Regulations art. 43 (6)).</p> <p>c) PPA art. 18 prohibit corrupt and fraudulent practices in public procurement, and the Regulations, Part X, Division III allows for debarment of bidders for up to 2 years in cases of corruption and fraud. The Regulations also specify that members of Internal Procurement Committees may be expelled in cases of corruption and fraud.</p> <p>d) The Standard Bidding Documents (SDBs) issued by the ODPP contain rules for participation of government-owned enterprises, e.g. SDBs for Works – National Competitive Bidding, section 3.6, which prescribes that government-owned enterprises in the Republic of Malawi may only participate in public procurement processes if they are legally and financially autonomous, operate under commercial law and are not a dependent agency to the Procuring Entity. <i>(a) not met, (b), (c) and (d) met</i></p>
Sub-indicator 1(e) - Tender documentation and technical specifications	3	<p>a) PPA art. 31 (3) read in conjunction with the Regulations art. 63 establish the requirements to the bidding documents.</p> <p>b) The Regulations art. 25 (a) calls for the use of neutral specifications...</p> <p>c) ...unless there is no other sufficiently precise or intelligible way of describing the procurement requirements, and words such as “or equivalent” are included in the specifications. <i>(a), (b) and (c) met</i></p>
Sub-indicator 1(f) - Tender evaluation and award criteria	3	<p>a) The PPA art. 32 (13) stipulates that tenders shall be evaluated only in accordance with the criteria, and their relative weight, as set forth in the bidding documents.</p> <p>b) The PPA art 32 (19) prescribes that non-price criteria shall, to the extent possible, be given a relative weight in the evaluation or be expressed in monetary terms wherever possible.</p> <p>c) Art. 93 of the Regulations provide detailed guidance on the evaluation of consulting services including the relation between quality and cost.</p> <p>d) The Regulations art. 54 prescribe confidentiality during bid evaluation.</p>

Indicator	Score	Comment
Sub-indicator 1(g) - Submission, receipt and opening of tenders	3	<p><i>(a), (b), (c) and (d) met</i></p> <p>a) The PPA art. 31 (11) and (12) provide for public tender opening coinciding with the deadline for submission of tenders.</p> <p>b) The Regulations art. 75 further require that records of the bid opening are kept in the record of the tendering proceedings required by Section 27 of the PPA. Also, according to PPA art. 27 (2) procurement records shall be maintained for a period of minimum five years.</p> <p>c) The Regulations art. 48 describe the reception and security of bids, and art. 54 of the Regulations prescribe confidentiality in relation to examination, clarification, evaluation and comparison of bids.</p> <p>d) The Regulations art. 48 provide guidance on reception and security of bids.</p> <p><i>(a), (b), (c) and (d) met</i></p>
Sub-indicator 1(h) – Complaints	3	<p>a) PPA part V contains the provisions for review, and PPA art. 37 stipulates the right to review.</p> <p>b) PPA art. 38 establishes the head of the procuring entity (PE) as the first recourse and the independent Review Committee as the second tier of recourse. According to the PPA art. 38 (8), the Review Committee may order remedies annulling and revising decisions made by PEs.</p> <p>c) PPA art. 37 through interpretation to the contrary establishes the matters that are subject to review.</p> <p>d) PPA art. 37 provides timeframes for decision making by both the PEs and the Review Committee.</p> <p><i>(a), (b), (c) and (d) met</i></p>
Indicator 2: Existence of Implementing Regulations and Documentation		
Sub-indicator 2(a) - Implementing regulation that provides defined processes and procedures not included in higher-level legislation	3	<p>a) The Procurement Regulations are consolidated in a single document available at the Government Printer in Lilongwe, Zomba and Mzuzu. It is noted that the PPA art. 5 requires that the ODPP ensure the availability and accessibility of the Act and Regulations.</p> <p>b) The Regulations art. 3 (2) requires the ODPP to periodically issue an updated compilation of the main legal texts governing public procurement, including the Regulations. As the Regulations were only issued in September 2004, no updates have yet been made.</p> <p>c) It is noted that the ODPP has as part of its mandate the responsibility to propose improvements in public procurement procedures (PPA art. 4 (2)(i)), which will typically be done through amendments to the Regulations.</p> <p><i>(a), (b) and (c) met</i></p>
Sub-indicator 2(b) - Model tender documents for goods, works, and services	3	<p>a) The ODPP has issued Standard Bidding Documents (SBDs) for a wide range of goods, works and services procured by PEs, the only exception being small routine services.</p> <p>b) The SBDs do include clauses and templates, e.g. the SBDs for procurement of</p>

Indicator	Score	Comment
		<p>Goods under National Competitive Bidding. Also, according to the PPA art. 5 (2)(c), the PPOA shall issue standardised and unified procurement regulations, instructions and bidding documents, which shall be binding on all Government Ministries, departments and parastatals. Thus, the SBDs, including their clauses and templates are indeed mandatory.</p> <p>c) Art. 12 of the Regulations requires the ODPP to develop and maintain SBDs and demands that PEs use the SBDs.</p> <p><i>(a), (b) and (c) met</i></p>
Sub-indicator 2(c) - Procedures for pre-qualification	3	<p>a) The PPA art. 13 regulates pre-qualification and the Regulations provide further guidance on the content of pre-qualification criteria.</p> <p>b) The PPA art. 13 and the Regulations (Part IV) are not clearly stipulating a pass/fail principle. However, the Desk Instructions, section 35 clearly states that those conducting pre-qualification must “assess each application against the criteria defined in the pre-qualification document and determine whether each bidder is qualified or not qualified.”</p> <p>c) The Regulations Part IV, Division II provide guidance on the use and applicability of pre-qualification procedures.</p> <p><i>(a) met, (b) not met, (c) met.</i></p>
Sub-indicator 2d) - Procedures suitable for contracting for services or other requirements in which technical capacity is a key criterion	3	<p>a) The Regulations art. 93 provides guidance on the choice of selection procedures, including Quality and Cost-Based Selection (QCBS), Quality-Based Selection (QBS), and Least Cost Selection (LCS). The article also provides guidance on when to use the various methods.</p> <p>b) The Regulations art. 97 provides guidance on the evaluation of quality in an easy accessible manner.</p> <p><i>(a) and (b) met</i></p>
Sub-indicator 2(e) - User's guide or manual for contracting entities	3	<p>a) The ODPP issues Desk Instructions, compiled in a consolidated document, which can be downloaded from the ODPP website. These Desk Instructions serve as a manual for PEs providing easy and simplified explanations and guidance.</p> <p>b) The ODPP has a clearly stipulated mandate for maintaining and updating the desk instructions and do so on a continued basis.</p> <p>c) See above.</p> <p><i>(a), (b) and (c) met</i></p>
Sub-indicator 2(f) - General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements	3	<p>a) There are GCC in the most common types of contracts, e.g. Goods, National Competitive Bidding, section 7; Goods, International Competitive Bidding, section 7; Complex time based consultancy, Request for Proposal, section 7; etc. Their use is mandatory according to the PPA art. 5 (2)(c), which determines that the use of the SBDs issued by the ODPP is mandatory.</p> <p>b) The content of the GCCs is generally consistent with internationally accepted practice, e.g. FIDIC rules.</p> <p><i>(a) and (b) met</i></p>
Pillar II – Institutional framework and management capacity		

Indicator	Score	Comment
Indicator 3: The public procurement system is mainstreamed and well integrated into the public sector governance system		
Sub-indicator 3(a) - Procurement planning and data on costing are part of the budget formulation process and contribute to multiyear planning	0	Malawi applies a Medium Term Expenditure Framework (MTEF) with three years rolling planning and budgeting. However, it is acknowledged within the Ministry of Finance that the second and third years are not utilised. Also, at present, there is no linkage between the budget planning and the procurement planning. Thus, so-called procurement plans are made after budget allocation and approval – if made at all. It is noted that the PPA art. 21 requires PEs to develop procurement plans. Art. 18 of the Regulations demands that Internal Procurement Committees (IPCs) verify procurement planning, and chapter III of the Regulations outlines how procurement planning must take place. In particular, the Regulations art. 23 specifies how PEs, prior to the determination of annual budgetary allocations, shall submit their procurement plans to the Ministry of Finance.
Sub-indicator 3(b) - Budget law and financial procedures support timely procurement, contract execution, and payment	3	Malawi has implemented the Integrated Financial Management Information System (IFMIS) in all central ministries. Once a Local Purchase Order is entered into the system, the funds are reserved for this procurement. The Desk Instructions deriving from the Public Financial Management Act (PFMA) provide guidance on the processing of invoices by PEs. According to the Accountant General, payments are generally authorised within 24 hours following request from the PEs. <i>(a), (b) and (c) met</i>
Sub-indicator 3(c) - No initiation of procurement actions without existing budget appropriations	3	The PFMA requires certification of availability of funds before tenders are launched. IFMIS provides for an electronic interface between the financial management and procurement systems. Though, the procurement module of IFMIS has not been implemented.
Sub-indicator 3(d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery within budget programming.	0	There is no feedback mechanism providing completion reports on the execution and completion of major contracts.
Indicator 4: The country has a functional normative/regulatory body		
Sub-indicator 4(a) - The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.	3	The PPA, art. 4 establishes the Office of the Director of Public Procurement (ODPP) as the regulatory body responsible for the administration of the PPA.
Sub-indicator 4(b) - The body has a defined set of responsibilities that include but are not limited to the following: providing advice to contracting entities; drafting amendments to the legislative and regulatory framework and implementing regulations; monitoring public procurement; providing procurement information; managing	3	The PPA art. 5 (2) sets out the functions of the ODPP. The functions assigned to ODPP include dissemination of the Act and Regulations, development of standardised documents for procurement, promotion of a professional procurement workforce, data collection and monitoring at PE level, administrative review of bid protests, establishment of a data and information base, etc. The functions established in the PPA are further detailed in the Regulations art. 10-16.

Indicator	Score	Comment
<p>statistical databases; reporting on procurement to other parts of government; developing and supporting implementation of initiatives for improvements of the public procurement system; and providing implementing tools and documents to support training and capacity development of implementing staff.</p>		
<p>Sub-indicator 4(c) - The body's organisation, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with the responsibilities.</p>	2	<p>The ODPP is at an adequate level in Government. According to the PPA art. 5 (1), the Director of the ODPP shall be accountable to and operating directly under the general supervision of the President, who also appoints the Director, cf. PPA art. 6 (1). According to the PPA art. 41 (1), the ODPP shall report on its activities to the "Minister" after each financial year. The PPA, however, does not specify which Minister the ODPP shall refer to. It is generally understood that the ODPP shall report to the Minister responsible for procurement affairs at any given time. At the moment, the Minister responsible for procurement issues is the President himself, which means that the ODPP will be reporting to the Office of the President and Cabinet (OPC), who shall lay the report before the National Assembly.</p> <p>Neither the PPA nor the Regulations specify how adequate funding for the ODPP is secured, hence leaving the issue of financing to administrative decisions which can easily be changed.</p>
<p>Sub-indicator 4(d) - The responsibilities should also provide for separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions. (Due to the nature of this sub-indicator, scoring is either a 3 or a 0).</p>	0	<p>As described in the Desk Instructions, the ODPP in addition to its other functions also carries out two "procurement management" functions described in the Act and the Regulations, namely: a) approving the use of procurement methods other than open tendering and request for proposals; and b) nominating external members of IPCs for requirements above a procuring entity's threshold.</p> <p>In addition to these roles, ODPP has also taken on a third procurement management role, namely that of carrying out prior reviews and issuing 'no objections' to award decisions made by PEs. Although no provision of this is made in the PPA, Regulations or Desk Instructions, in practice the ODPP requires all procuring entities to present award decisions (for procurements above the established threshold) to the ODPP for prior review and 'no objection' before the official award notice may be issued by the PE. The prior review arrangement goes back to the passing of the Public Procurement Act which took place in a vacuum. In this situation, the prior review function was a means to correct misinterpretations and malpractices at procuring entity level on an ongoing basis, hereby ensuring continuous compliance improvements. At the time of writing, the ODPP has step by step begun to increase the prior review threshold, hereby expecting to slowly phase out prior reviews in the coming years.</p> <p>Nevertheless, the ODPP's involvement in procurement management functions, and in particular its 'no objection' function, constitutes a major weakness to the ODPP as an oversight body by jeopardising the separation between oversight and operational functions, hereby potentially causing conflict of interest in the review and audit</p>

Indicator	Score	Comment
		process, which also falls under the ODPP's mandate. In addition, for reasons of procurement efficiency, ODPP involvement in direct procurement operations through 'no objection' is inadvisable, as it adds an extra element to the procurement chain, thus postponing the tender award decision and generating bottlenecks in the process.
Indicator 5: Existence of institutional development capacity		
Sub indicator 5(a) - The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information.	1	<p>The Regulations art. 12 (5) assigns the ODPP the responsibility of disseminating information to bidders about the rules and procedures governing public procurement and about procurement opportunities in Malawi. Previously, the Government Gazette has been the main media for collection and dissemination of tender information. However, due to lack of funds and low frequency of publication, the Gazette is now no longer used to disseminate tender and award notices.</p> <p>In September 2006, the ODPP officially launched a website developed to provide bidders and all other interested parties access to procurement information at the click of a button. The intention of the website is to provide complete information about all open and closed tenders and contract awards published by all public institutions. The website currently only hosts a few open and closed tenders and no contract awards. However, the ODPP has recently initiated training activities and provided extra computers at the PE level to correct this situation.</p>
Sub indicator 5(b) - The country has systems and procedures for collecting and monitoring national procurement statistics.	1	<p>a) The Regulations art. 10 authorises the ODPP to collect information from procuring entities and end-user entities concerning the conduct of procurement activities in Malawi. In practice, the ODPP carries out this function through two tools:</p> <ul style="list-style-type: none"> • Quarterly Procurement Reports: The ODPP has developed a template through which all procuring entities must submit Quarterly Procurement Reports on all procurement activities. • Monitoring Reports: In addition to the Quarterly Procurement Reports, the ODPP has initiated monitoring visits to procuring entities based on which a monitoring report is prepared. <p>b) Through the Quarterly Procurement Reports, procuring entities submit descriptions of all goods, works and services procured, procurement method used, number of units, unit price, total contract value, IPC minutes date, contract award, and current contract status. Similarly, the monitoring sheets enable the ODPP to collect information from the PEs about their level of compliance with the PPA and Regulations in areas such as procurement method, tender evaluation and awards, use of SBDs, etc. At the time of writing, all procuring entities in practice submit quarterly reports to the ODPP, while the ODPP has drafted monitoring reports for more than 60 PEs.</p> <p>c) The Quarterly Procurement Reports submitted by the procuring entities at the current stage do not undergo verification by the ODPP or auditors, thus constraining the reliability of the information.</p>

Indicator	Score	Comment
		<p>d) As both the Quarterly Procurement Reports and the Monitoring Reports are relatively new tools to the ODPP, neither of them yet form basis for aggregated statistics or systematic analysis of procurement trends.</p> <p><i>(a) and (b) met, (c) and (d) not met</i></p>
<p>Sub-indicator 5(c) - A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.</p>	2	<p>a) A consultant was hired by the ODPP in 2004 to develop a comprehensive national training policy for the procurement area, covering training and capacity development strategies four years ahead. The training policy covers a wide range of training and capacity development activities targeting the needs (previously established by diagnostic study) of staff of the ODPP, the SPUs, the IPCs, and those affected by the functions of the ODPP. However, the strategy does not address the needs of private sector participants in the field of procurement. The training and capacity development activities of the training policy form part of the ODPP's Strategic Plan 2006-2008.</p> <p>b) The training policy does not allow for evaluation and periodic adjustment based on feedback and needs, although adjustments in practice have been made.</p> <p>c) The training policy does not provide for advisory services or a help desk.</p> <p><i>(a) met, (b) and (c) not met</i></p>
<p>Sub-indicator 5(d) - Quality control standards are disseminated and used to evaluate staff performance and address capacity development issues.</p>	0	<p>a) While the Desk Instructions issued by the ODPP provide guidance related to good practice in many of the key stages of the procurement process, no set of quality assurance standards, such as the SPU's response time to reply for inquiries and length of time to prepare tender documents after receipt of a requirement, has been developed. Likewise, no system for monitoring performance of procurement processes exists, although the ODPP does monitor compliance in a number of fields.</p> <p>b) The DHRMD has initiated a performance appraisal mechanism according to which all government officials on performance contracts are subject to evaluation based on outcomes and professional behaviours. Since all ODPP staff is employed on performance contracts, they are covered by this performance appraisal mechanism. The performance appraisal mechanism in place, however, does not provide for performance evaluation of procurement officers at procuring entity level.</p> <p>c) N/A (see above)</p> <p><i>(a), (b) and (c) not met</i></p>
<p>Pillar III – Procurement Operations and Market Practices</p>		
<p>Indicator 6: The country's procurement operations and practices are efficient</p>		
<p>Sub-indicator 6(a) - The level of procurement competence among government officials within the entity is consistent with their procurement responsibilities.</p>	1	<p>(a) The responsibility of promoting the development of a professional procurement workforce, including developing government-wide policies and programmes aimed at establishing procurement-related positions, career paths and performance incentives, lies with the ODPP, cf. PPA art. 5 (2)(d) and the Regulations art. 13.</p>

Indicator	Score	Comment
		<p>The ODPP has developed job descriptions for all existing procurement positions, including those of Procurement Director, Chief Procurement Officer, Principal Procurement Officer, Senior Procurement Officer, Procurement Officer and Assistant Procurement Officer.</p> <p>(b) The PPA art. 11 provides for a systematic matching of skills against requirements in the recruitment of specialised procurement staff. In practice, this does not happen, partly due to the fact that the procedures for recruitment of specialised procurement staff give rise to a number of uncertainties across the recruitment system. While the Department of Human Resources Management and Development (DHRMD) is responsible for approving (to be legalised by a warrant of establishment issued by the Treasury) new procurement units and their positions upon request from the procuring entities, a system for selection and appointment of procurement officers – either at the decentralised level or in the form of a common service for the procurement cadre – is not yet in place, in practice leading to lack of new appointments in the procurement entities. The seemingly slow progress in this area appears to be partly due to poor collaboration and an unclear division of responsibilities between the DHRMD and the ODPP, in practice freezing the development of a career path and recruitments in the procurement field.</p> <p>(c) Both procurement officers and staff required to undertake procurement activities on an ad hoc basis in procuring entities suffer from an immense lack of the knowledge needed to undertake procurements. The lack of procurement competence covers a wide range of areas from a basic understanding of the legal framework in place and a core understanding of what is considered good procurement practice to a detailed technical understanding of how to use SBDs and GCCs, how to develop technical specifications, how to apply evaluation criteria, etc. While this trend is more pronounced among smaller procuring entities and at local authority level, even major central government procurers still suffer from a serious lack of procurement officers with the right set of skills, knowledge and competence.</p> <p><i>(a) met, (b) and (c) not met</i></p>
<p>Sub-indicator 6(b) - The procurement training and information programs for government officials and for private sector participants are consistent with demand.</p>	<p>1</p>	<p>(a) In 2003/2004, the ODPP contracted a consultant to conduct a diagnostic study of the needs for procurement-related training among relevant staff in procuring entities. This assessment has subsequently been used by the ODPP in the development of their training policy (see indicator 5(c)), which established relevant short-term and long-term training courses and workshops matching the needs identified. At the same time, it should be noted, however, that the long-term procurement courses currently offered by the main training providers are not based on the training needs assessment conducted. A major reason for this is that the long-term training on offer mainly follows the Chartered Institute of Purchasing and Supply (CIPS) training package based on fixed course content with little adaptation to the national context.</p> <p>(b) Information and training programmes on public procurement for the private sector</p>

Indicator	Score	Comment
		<p>exist, although at present in very limited scale. At the time of writing, a total of three short-term workshops targeting private sector participants have been held, while training courses and workshops provided by other institutions to target the private sector are virtually non-existent.</p> <p>(c) The public procurement training market is characterised by the paradoxical combination of a very extensive training need and a relatively low demand. As a result, the main providers of procurement training of Malawi report that there is no waiting time to be enrolled on a course, and some courses even face the challenge of achieving sufficient applications. The gap between training need and training demand seem to be partly attributable to the lack of funds available among individuals and line ministries to cover the fees associated with the available procurement training. Proof of this is found in the significant waiting time to become accepted to an ODPP sponsored place as well as the numerous applications so far received for the government-subsidised degree programme in procurement starting up in 2008.</p> <p><i>(a) met, (b) and (c) not met</i></p>
Sub-indicator 6(c) - There are established norms for the safekeeping of records and documents related to the transactions and contract management	2	<p>(a) The PPA art. 27 (1)-(6) establish a list of procurement records that must be kept by the procuring entity and what is available for public inspection, including conditions for access.</p> <p>(b) According to the PPA art. 27 (3), the records must include a description of the object of the procurement; a list of the participating bidders and their qualifications; bid prices; a summary of the evaluation of bids; summary of any review proceedings and decisions thereon; requests for clarification and responses thereto; a statements of grounds for cancellation of procurement proceedings; a statement of grounds for choice of a procurement method other than tendering or request for proposal for services; a statement of ground for reduction of bid-preparation periods; and information concerning rejection of bids. The requirements are further detailed in the Regulations art. 168 and 172, which also require the records to include final signed contract documents, claims and dispute resolutions, final payments and disbursement data.</p> <p>(c) The PPA art. 27 (2) establishes that documentation included in the procurement records shall be maintained for a period of five years from the date of a decision to terminate or cancel the procurement action, the date of contract award, or the date of contract completion, whichever comes later. Neither the Corrupt Practices Act nor the Public Audit Act include provisions on document retention for the purpose of conducting audits or investigating and prosecuting cases of fraud and corruption.</p> <p>(d) Neither the PPA nor the Regulations or the Desk Instructions establish security protocols to physically or electronically protect records.</p> <p><i>(a), (b) and (c) met, (d) not met</i></p>
Sub-indicator 6(d) - There are provisions for delegating authority to others who have the	3	<p>a) Delegation of decision making authority in procurement is decentralised to the lowest competent level, i.e. the level of IPCs and SPUs.</p>

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capacity to exercise responsibilities.		b) The PPA, part III regulates delegation of decision making authority to the lowest competent levels by prescribing Internal Procurement Committees and Specialised Procurement Units to be established in all Ministries, departments and parastatal organisations, and other entities and authorities of public administration in Malawi. c) Accountability for decisions is defined by the PPA, art. 8 (2), and further detailed in the Regulations, art. 20-22, and Desk Instructions, p. 11-13. <i>(a), (b) and (c) met</i>
Indicator 7: Functionality of the public procurement market		
Sub-indicator 7(a) - There are effective mechanisms for partnerships between the public and private sector.	0	a) Both Government bodies and the private sector share the perception that the Government encourages open dialogue with the private sector, both informally and formally. Influential private sector individuals, industry association and the Malawi Confederation of Chambers of Commerce and Industry (MCCCI) have on several occasions been involved in public-private consultations on macroeconomic or other macro level policy issues. In addition to the informal initiatives, a move has recently been made to formalise public-private dialogue by setting up a Public Private Dialogue Forum holding regular consultation meetings on relevant issues. The secretariat of the Forum is placed within MCCCI. In general, however, the number of established and formal mechanisms for dialogue is limited. b) The responsibility of developing procurement capacity among private companies, including SMEs, e.g. through training and other facilitation of access to the procurement marketplace, lies with the ODPP. The ODPP has recently initiated trainings for the private sector and expects to upscale these activities in the future. At present, three workshops on the use of the PPA, Regulations and SBDs have been held, and more are being planned. Except for these workshops, no SME capacity building initiatives are currently on the ground. At the time of writing, though, a consultative process has been initiated by the ODPP with the aim of promoting SME access to the procurement market in accordance with the Regulations art. 164. c) The Government is generally reported to encourage public-private partnerships (PPPs), and some forms of PPPs, e.g. concessions, have been in existence for some time. Examples of such concessions are the Malawi Railways, Malawi Lake Services and the RAIPLY Viphya Forest. At present, however, no legal framework exists to support PPP arrangements. <i>(a), (b) and (c) not met</i>
Sub-indicator 7(b) - Private sector institutions are well organised and able to facilitate access to the market.	2	The private sector in Malawi is reasonably well organised through a network of private sector associations together representing the majority of suppliers, contractors and service-providers, including SMEs. The private sector is generally perceived as being able to voice their needs and concerns to the Government and in public. Competition for public contracts in most fields is considered to be keen, with procuring entities generally receiving a large number of bids in response to tenders. However,

Indicator	Score	Comment
		<p>competition for large government contract is limited to a relatively small group of companies. E.g. less than 7% (34) of the Building Contractors and 3% (12) of Civil Contractors on the National Construction and Industry Council's List of Registered Contractors for 2005-2006 are listed in the unlimited category, thus allowing them to compete for the large scale building contracts.</p> <p>Furthermore, the private sector – and particularly SMEs – at the same time suffers from a number of capacity constraints limiting its access to the procurement market:</p> <ul style="list-style-type: none"> • Many private sector participants lack basic knowledge of the legal framework surrounding procurement, including the provisions of the PPA, Regulations and SBDs. Proof of this can be found in the number of non-responsive bids received by procuring entities. Depending on the type of contract in question, the procuring entities thus indicate that roughly 50% to 70% of the bids received are on average deemed non-responsive. • This trend is closely linked to a second constraint, namely that many bidders – particularly SMEs – often do not have the technical and legal capacity necessary to comprehend the terms and language used in the SBDs. In result, many SMEs fail to provide the required tender documents, leading to their exclusion from competition. • Lack of advanced technical and managerial skills is a challenge facing the vast majority of SMEs in the procurement market. To compensate for this lack, some companies choose to dump their prices when participating in tenders, hereby creating a situation where the contract award is made to a firm that is not able to provide the required deliverables. • The business culture of private sector participants also in some cases presents a constraint to the development of a strong private sector. For example, many SMEs display a fear of growing, which may ultimately result in inability to professionalise their business model and hence their competitiveness.
<p>Sub-indicator 7(c) - There are no major systemic constraints (e.g. inadequate access to credit, contracting practices, etc.) inhibiting the private sector's capacity to access the procurement market.</p>	<p>1</p>	<p>The public procurement market in Malawi is characterised by a number of systemic constraints inhibiting certain parts of the private sector's capacity to access the procurement market. This is in particular the case for SMEs, which face multiple constraints to participating in tenders:</p> <ul style="list-style-type: none"> • Access to tender information and tender documents is a major constraint for private sector participants located outside the main cities of Malawi, cf. indicator 5(a). • In the tendering process, the issue of collateral is prevalent among SMEs, which are often not able to provide bid securities. For small contracts, the required bid securities are in some cases oppressive to upcoming private sector providers. • A third major systemic constraint to SME participation on the procurement market is the lack of access to credit needed to implement an awarded contract. SMEs often crucially depend on these credits, as they do not have the liquidity required to initiate implementation without bank support. However, banks are generally

Indicator	Score	Comment
		<p>reluctant to provide credit to SMEs, or require high interest rates in return for their services, thus making bank credit arrangements unaffordable for many SMEs.</p> <ul style="list-style-type: none"> • Other constraints facing many SMEs include late payments, performance bonds, high tender document fees, bundling of tenders, and regulatory costs.
Indicator 8: Existence of contract administration and dispute resolution provisions		
<p>Sub-indicator 8(a) - Procedures are clearly defined for undertaking contract administration responsibilities that include inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.</p>	<p>2</p>	<p>a) The Regulations provide procedures for quality assurance, inspection and testing (art. 141), inspection of goods (art. 143), pre-shipment inspection services (art. 144), the establishment of Examination and Receipt Committees (ERCs) in the PEs (art. 145) and the issuance of Receiving Reports (art. 145). Rules for contract modifications are spelled out in art. 154 of the Regulations, and payments, including advance payment, progress payment and final payment, are regulated in art. 149-154.</p> <p>b) The SBDs generally include clauses on inspection and contract amendments, see for example the SBDs on Goods – International Competitive Bidding, sections 26 and 33. These clauses comply with international standards.</p> <p>c) The Regulations art. 141 contains general provisions for procuring entities to take such steps as are deemed necessary to ascertain or verify that goods, services or work items procured conform to the technical requirements set forth in the procurement contract. It is further prescribed that in performing that duty, the procuring entity may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.</p> <p>d) Supervision of civil works is carried out by qualified supervisors from either the Buildings Department or the National Roads Authority of the Ministry of Transport, Public Works and Housing.</p> <p>e) Although the situation of final payments has significantly improved in recent years, some procuring entities reportedly still face issues of late final payments.</p> <p><i>(a), (b), (c) and (d) met, (e) not met</i></p>
<p>Sub-indicator 8(b) - Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disputes arising during the performance of the contract.</p>	<p>3</p>	<p>a) The country has an Arbitration Act (AA).</p> <p>b) The law is consistent with accepted practices for neutrality of arbitrators, due process, expediency and enforceability.</p> <p>c) The country accepts as a matter of course international arbitration for international competitive tendering.</p> <p>d) The GCC generally include provisions for dispute resolution, e.g. the GCC within the SBD for Goods – national competitive bidding. However, none of the documents refer specifically to alternative dispute solution mechanisms.</p> <p>e) N/A, cf. item d).</p> <p><i>(a), (b) and (c) met, (d) and (e) not met</i></p>
<p>Sub-indicator 8(c) - Procedures exist to enforce</p>	<p>0</p>	<p>a) Malawi is not a member of the New York Convention on enforcement of</p>

Indicator	Score	Comment
the outcome of the dispute resolution process.		<p>international arbitration awards.</p> <p>b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts. The procedures are detailed in the Rules of Supreme Court White Paper of 1999.</p> <p>c) The Institution Compliance Assessments carried out by the ODPP include questions on contract administration. However, the country does not have a process in place to monitor the level of enforcement of the outcome of the dispute resolution process specifically, or addressing performance issues in this respect.</p> <p><i>(b) met, (a) and (c) not met</i></p>
Pillar IV – Integrity and Transparency of the Public Procurement System		
Indicator 9: The country has effective control and audit systems		
Sub-indicator 9(a) - A legal framework, organisation, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.	1	<p>The Internal Audit Unit (IAU) under the Ministry of Finance is responsible for the internal audit function across government, including the area of procurement, whereas external audit is carried out by the National Audit Office (NAO). The IAU derives its mandate from the Public Finance Management Act (PFMA). The PFMA has no specific mentioning of the IAU, but art. 11 details the responsibilities of the Secretary to the Treasury. The IAU has developed a comprehensive charter on internal audit, outlining the main principles for the office. However, this charter has not yet been approved by the Minister of Finance or the Secretary to the Treasury. In its daily operations, the IAU operates by its internal audit manual.</p> <p>The Auditor General's office derives its mandate from the Constitution section 184, whereas the mandate and operations of the NAO are detailed in the Public Audit Act (PAA). NAO audits are carried out in all public entities (including parastatals) and reports go directly to the Parliament (Public Accounts Committee). The NAO primarily conduct financial audit and consider procurement a part of this. The NAO is currently developing audit manuals for financial audit and performance audit respectively. Though, neither of these manuals have yet been issued.</p> <p>Neither the NAO nor the IAU currently have in place frameworks or procedures for risk assessment.</p> <p><i>(a) and (b) met, (c) and (d) not met</i></p>
Sub-indicator 9(b) - Enforcement and follow-up on findings and recommendations of the control framework provide an environment that fosters compliance.	1	<p>In major PEs, internal audit is carried out on an on-going basis (e.g. quarterly) and based on plans developed in each public entity. In contrast, many local government PEs do not have an internal audit function. The NAO conducts yearly audits, currently expecting to meet its target of auditing 50% of all public account.</p> <p>Enforcement of internal and external audit recommendations remains weak. The NAO is in two years in arrears, currently finalising the draft audit report for the FY 2005/2006. The arrears are partly caused by the NAO's persistent difficulty in obtaining final accounts from the Treasury. Thus, the final accounts for the FY 2004/2005 were only received in March 2007. It is observed, and both the IAU and the NAO conceded</p>

Indicator	Score	Comment
		to this, that controlling officers are generally not held accountable and no cases of disciplinary actions due to misappropriation of funds or other violations of the PFMA could be identified. This despite the fact that the PFMA does include punitive measures.
Sub-indicator 9(c) - The internal control system provides timely information on compliance to enable management action.	2	<p>a) The Internal Audit Charter and Manual provide written standards for the internal audit units throughout Government.</p> <p>b) They include standards for conveying matters to the management through regular periodic reporting. The Ministry of Finance has issued a circular prescribing the establishment of IACs in public entities. These IACs are in place in some ministries but not in all.</p> <p>c) Based on information from the NAO, which will often assess the work, strength and independence of the internal audit function, it is observed that the periodicity and written standards prescribed by the IAU are not always complied with.</p> <p><i>(a) and (b) met, (c) not met.</i></p>
Sub-indicator 9(d) - The internal control systems are sufficiently defined to allow performance audits to be conducted.	3	The IAU has issued an internal audit manual, which is widely distributed and contains sufficient information to allow performance audits to be conducted.
Sub-indicator 9(e) - Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that contribute to compliance.	0	Currently, there are no formal requirements asking that internal and external auditors have knowledge of procurement. Also, there is no formal training programme or other initiatives ensuring that auditors are well versed in procurement matters. Very limited procurement training has been conducted for auditors and the initiatives implemented have been and are sporadic and lack follow-up. Notably, the Malawi College of Accountants, from where auditors are typically recruited, has no courses on public procurement.
Indicator 10: Efficiency of appeals mechanism		
Sub-indicator 10(a) - Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.	3	<p>a) No separate procedures or guidelines for operations have been developed for the first tier complaint level, the Review Committee of the ODPP. Thus, according to the Secretary to the Review Committee, "common sense" is used when rendering decisions.</p> <p>b) The Review Committee of the ODPP serves as a second tier complaint level, the PEs being the first instance. Decisions by the Review Committee can be appealed to the High Court (only judicial review), and to the Supreme Court of Appeal.</p> <p>c) Both the Act and Regulations provide timeframes for review.</p> <p><i>(a), (b) and (c) met</i></p>
Sub-indicator 10(b) - The complaint review system has the capacity to handle complaints efficiently and a means to enforce the remedy imposed.	3	The nine members of the Review Committee were approved by the President in February 2007, and since then only two cases have been heard. The PPA art. 38 provides conditions and timeframes for decisions by the PEs and the Review Committee. The PPA leaves the Review Committee with the possibility of prescribing penalties, and enforcement authority and mechanisms are clearly described.
Sub-indicator 10(c) - The system operates in a fair manner, with outcomes of decisions balanced and	0	There are no internal procedures formulated for the Review Committee.

Indicator	Score	Comment
justified on the basis of available information.		
Sub-indicator 10(d) - Decisions are published and made available to all interested parties and to the public.	0	Decisions of the Review Committee are sent to the complainant and to the public entity involved. The Review Committee plans to publicise decisions on the ODPP website, but this is currently not taking place. In this respect it should also be noted that the PPA and Regulations are silent on publication of complaint decisions.
Sub-indicator 10(e) – The system ensures that the complaint review body has full authority and independence for resolution of complaints.	3	The Review Committee is independent with regard to resolving complaints.
Indicator 11: Degree of access to information		
Sub-indicator 11(a) - Information is published and distributed through available media with support from information technology when feasible.	2	<p>The responsibility of publishing and disseminating information about procurement lies with the ODPP, cf. the Regulations art. 12. In response to this provision, a Public Relations Office has been established within the ODPP. The office is at present operational and has embarked on several information initiatives aimed at raising awareness of public procurement-related issues and sensitising stakeholders about the system, procedures and tools in place. Activities include a weekly column in the Daily Nation on Understanding Public Procurement, issuing of the quarterly magazine <i>The Public Procurer</i>, dissemination of information brochures and flyers as well as radio and TV spots.</p> <p>In addition to being available through the respective communication channels, key information on procurement-related issues is furthermore consolidated into the website of ODPP, which includes a large documents archive, including relevant background information on ODPP and various aspects of the procurement system, newspaper articles, previous issues of <i>The Public Procurer</i>, as well as most legal documents. The information provided by the PR Office is generally relevant and easy to understand. Furthermore, the information is relatively comprehensive, although not complete. For example, the Regulations are not accessible from the ODPP website, thus only making it available from the three Government Printer offices in Malawi. The various information channels used and the consolidated website ensure easy access to information for large parts of the population. However, access to information in rural areas with no internet connectivity is virtually non-existent for public officials as well as for the private sector, civil society and the public.</p>
Indicator 12: The country has ethics and anti-corruption measures in place		
Sub-indicator 12(a) - The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behaviour.	2	<p>The issue of corruption, fraud and conflicts of interest is adequately addressed by the PPA art. 18 (1) and (2), which establish the limitations of public officials', bidders' and suppliers' behaviour in the procurement cycle.</p> <p>Neither the PPA nor the Regulations include instructions on how to incorporate the matter in standard bidding documents, in principle thus leaving it up to the procuring entities. In practice, however, the Instructions to Tenderers and General Conditions of Contract included in all standard bidding documents issued by the ODPP include</p>

Indicator	Score	Comment
		provisions adequately addressing the issue of corrupt, fraudulent, collusive and coercive practices by precisely defining the terms and setting out the actions to be taken in case such practices are detected.
Sub-indicator 12(b) - The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.	3	The PPA art. 2 precisely defines the terms "corrupt practice" and "fraudulent practice". Art. 18 (1) of the PPA defines the anti-corruption responsibilities of individual public officials with regard to corrupt or fraudulent behaviour. Similarly, the responsibilities of private firms and individuals are defined by PPA art. 18 (2). The PPA furthermore establishes how cases of corrupt or fraudulent practices shall be reported (art. 18(3)), and which actions can be taken against public officials, IPC members, bidders and suppliers in case corrupt or fraudulent practices are detected (art. 19-20).
Sub-indicator 12(c) – Evidence of enforcement of rulings and penalties exists.	1	<p>The Anti-Corruption Bureau (ACB) collects statistics on the number of complaints received, number of complaints authorised (and not authorised), number of cases awaiting action, number of convictions, and number of acquittals. The statistics are sub-divided into different areas of corruption, with one category focusing specifically on cases of procurement-related corruption.</p> <p>The statistics available for corruption in procurement suggest that reporting of cases of corruption reporting does take place, albeit to a rather limited extent. Between 1998 and 2007, the ACB Office in Lilongwe thus received 300 complaints related to corruption in procurement, while the same figure for the ACB Office in Mzuzu is 11. No data has been made available to the assessment team from the ACB Office in Blantyre, but ACB estimates that approx. 100 complaints have been received since the opening of the office.</p> <p>While no data on the number of awaiting actions, convictions and acquittals exist for the procurement-related cases specifically, the aggregated data from ACB suggests a rather weak enforcement of the legal framework. In 2007, across regions and categories only 7 cases of corruption have so far been convicted, while 6 of these have been acquitted. This data is supported by anecdotal evidence from NGOs and media of convictions related to corruption in procurement.</p>
Sub-indicator 12(d) - Special measures exist to prevent and detect fraud and corruption in public procurement.	1	<p>The Activities of the ACB is not yet coordinated in a comprehensive anti-corruption programme. At the time of writing, however, the ACB has initiated the development of the country's first National Anti-Corruption Strategy, expected to be launched in December 2007. Procurement is one of the three key areas that will be addressed by the Strategy.</p> <p>The responsibility of coordinating the development of the Strategy lies with the ACB, while the process is led by an appointed National Implementation Steering Committee with representation of a broader range of institutions, including ODPP. The work furthermore involves a larger number of stakeholders, including public sector institutions, the private sector, civil society organisations and control and oversight bodies.</p>
Sub-indicator 12(e) - Stakeholders (private sector,	1	a) The number of civil society organisations exercising social audit and control in

Indicator	Score	Comment
<p>civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviours.</p>		<p>relation to procurement is limited to a few NGOs, mainly focusing on budget analysis and public expenditure tracking. The activities of these organisations are constrained by lack of capacities, both in term of funding, human resources, leadership, and skills set. The same goes for the related field of anti-corruption, although a number of upcoming initiatives in this field are expected to spur a stronger civil society in this area. One of these initiatives is the upcoming organisation Civil Society Coalition Against Corruption, which also has a sister organisation in the private sector, Business Action Against Corruption. Similarly, private sector organisations have also been involved in other initiatives indirectly aimed at strengthening ethics in public procurement through the development of a Private Sector Code of Conduct for Combating Corruption.</p> <p>b) Civil society organisations active in procurement-related fields, such as public expenditure tracking and anti-corruption, broadly perceive the public environment as conducive to their activities. The Government is generally known to endorse the activities initiated by NGOs and the private sector in the field, and Government cooperation with civil society organisations has become widespread in recent years. NGOs working in the field of public expenditure tracking and budget analysis thus report to be successfully advising Government bodies on the budget, and to be reporting freely to the media. Likewise in the field of anti-corruption, data from the Malawi Governance and Corruption Baseline Survey conducted in 2005 by the Millennium Consulting Group Ltd. suggests that both public officials and the public at large perceive the Government as having a genuine desire to fight corruption, and as being welcoming and respectful to civil society initiatives in the field.</p> <p>c) While civil society contributions to shaping and improving the integrity of public procurement have until recently been constrained by low capacity and the non-existence of relevant organisations and initiatives, the upcoming initiatives (e.g. the Civil Society Coalition Against Corruption, the Business Action Against Corruption, and the Private Sector Code of Conduct for Combating Corruption) may change this picture. These and other initiatives are furthermore expected to become an integral element of the soon-to-be-launched National Anti-Corruption Strategy.</p> <p><i>(b) met, (a) and (c) not met</i></p>
<p>Sub-indicator 12(f) - The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behaviour.</p>	<p>1</p>	<p>The ACB has in place a mechanism for public reporting of cases of fraud, unethical behaviour and corruption. Protection of whistleblowers and informers is provided by the Corrupt Practices Act, art. 51 A, which prohibits disclosing information related to a whistleblower and allows the court to conceal details of a whistleblower or informer appearing on documents before they are exhibited in court.</p> <p>The accessibility of the reporting functions is secured through various reporting channels. Reports may be submitted either in person or via mail, e-mail or telephone. All reports are treated confidentially by the ACB, and anonymous reports are accepted. Despite this, the ACB in practice is not able to guarantee protection of reporters.</p>

Indicator	Score	Comment
		<p>Documentary evidence of reports becoming known to the reported institution or individual, in some cases leading to victimisation of the reporter, is thus known to the ACB.</p> <p>In addition to the reporting channel provided by ACB, the ODPP website also includes an e-mail function through which public officials, bidders and suppliers can report procurement malpractices observed, including cases of corruption, unfair awarding of contract, conflict of interest, and other malpractices. Reports are referred to relevant ODPP staff or ACB staff depending on their nature.</p>
<p>Sub-indicator 12(g) - Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.</p>	<p>1</p>	<p>A Code of Conduct applying to all public officials is in the process of being drafted by the OPC in consultation with a number of government ministries and departments, including the Anti-Corruption Bureau.</p> <p>In addition to the Code of Conduct, a set of Standards of Ethics particularly targeting stakeholders to the procurement system has been drafted by the ODPP and are currently awaiting print. Once disseminated, the Standards of Ethics shall serve as a guide and a resource for advice to suppliers, procuring entities and the public at large.</p> <p><i>(a) met, (b) and (c) not met</i></p>