



Office of the Director of Public Procurement

# Procurement Capacity Assessment

Final Report

November 2007

## List of acronyms

AA	Arbitration Act
ACB	Anti-Corruption Bureau
ADR	Alternative Dispute Resolution
CGS	Central Government Stores
CIPS	Chartered Institute of Purchasing and Supply
CMS	Central Medical Stores
CPAR	Country Procurement Assessment Report
DHRMD	Department of Human Resource Management and Development
ERC	Examination and Receipt Committee
GoM	Government of Malawi
IAU	Internal Audit Unit
IFMIS	Integral Financial Management Information System
IPC	Internal Procurement Committee
LCS	Least Cost Selection
MCCCI	Malawi Confederation of Chambers of Commerce and Industry
M&E	Monitoring and Evaluation
MKW	Malawian Kwacha
MTEF	Medium Term Expenditure Framework
NAO	National Audit Office
NCIC	National Construction Industry Council of Malawi
NGO	Non-Governmental Organisation
ODPP	Office of the Director of Public Procurement
OPC	Office of the President and Cabinet
PCA	Procurement Capacity Assessment
PE	Procuring Entity
PD	Professional Development
PFMA	Public Financial Management Act
PPA	Public Procurement Act
PPP	Public-Private Partnership
PVHO	Plant and Vehicle Hiring Organisation
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RAR	Regulatory, Advisory and Review Department
SBD	Standard Bidding Document
SME	Small and Medium-Sized Enterprise
SPU	Specialised Procurement Unit
UNDP	United Nations Development Programme

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## 1. Introduction

Since Malawi's Public Procurement Act came into force in 2003, Malawi has come a long way in developing a sound and efficient public procurement system. The Office of the Director of Public Procurement (ODPP) was established in 2004 as a regulatory and oversight body of public procurement and, in parallel, the procurement process was fully decentralised and specialised procurement units at public entity level were created. Similarly, vast efforts have been put into enhancing the understanding of the new public procurement framework among public officials, the private sector, civil society, and in society at large.

In light of these and other developments in the field of public procurement in Malawi, the present Procurement Capacity Assessment (PCA), supported by UNDP Malawi, sets out to:

- Measure progress since earlier diagnostic exercises, in particular the Country Procurement Assessment Report (CPAR) of 2004.
- Review the existing procurement capacity, including the legal framework and structures in place and the compliance and performance levels of the system.
- Serve as a baseline against which to measure future progress.

The findings presented in this report are based on the data collected and aggregated during and following the assessment team's mission to Malawi in August 2007. The assessment team was comprised of ODPP staff Mr. Joseph Mhango, Deputy Director, Mr. Dan Mwabumba, Principal Monitoring Officer, and Ms. Miriam Kachingwe, Project Implementation Coordinator; UNDP officers Mrs. Kirsten Ejlskov Jensen and Ms. Leda Giuffrida; and consultants Mrs. Mette Søs Lassen and Ms. Marie Louise Refsgaard from Ramboll Management (DK).

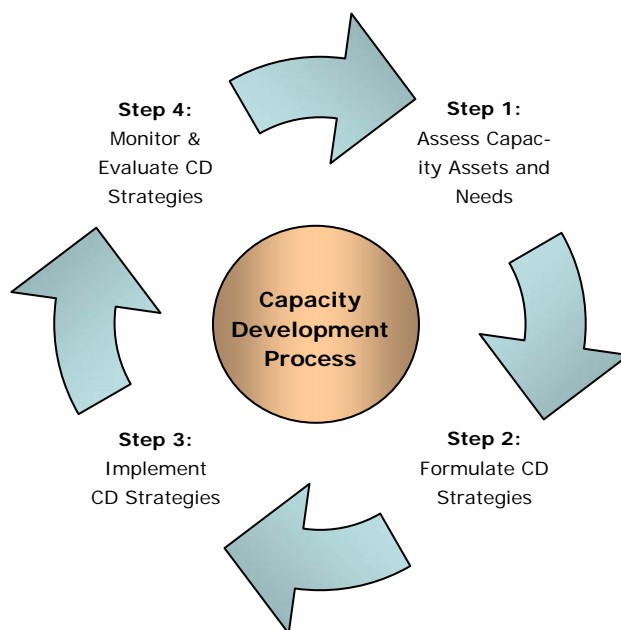
Based on the findings of this report, a detailed short-term and medium-term Capacity Development and System Strengthening Plan for procurement will be drafted. The Plan is expected to be completed by mid-October 2007.

This report is structured as follows: In chapter 2, the assessment methodology applied throughout the PCA is outlined. Chapter 3 presents the main findings of the PCA. Finally, chapter 4 presents the way forward in the development of the short-term and medium-term Capacity Development and System Strengthening Plan.

## 2. Procurement Capacity Assessment methodology

### 2.1 Procurement Capacity Assessment design

This PCA has been designed around the UNDP approach to capacity development<sup>1</sup> illustrated below.



As illustrated, the UNDP capacity development process consists of four core steps, each containing a number of activities. The main focus of this report is primarily on the first two steps, which have been covered by the work of the assessment team.

The assessment of procurement capacity assets and needs (step 1) has been carried out using the OECD-DAC Methodology for Assessment of National Procurement Systems<sup>2</sup>, which complements the UNDP approach to Procurement Capacity Assessment by offering a detailed and operational assessment framework under four pillars:

- Legislative and regulatory framework (pillar 1)
- Institutional framework and management capacity (pillar 2)
- Procurement operations and market practices (pillar 3)
- Integrity and transparency of the procurement system (pillar 4)

The four pillars are sub-divided into 12 indicators and a total of 54 sub-indicators. Moreover, each sub-indicator consists of a double set of indicators:

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<sup>1</sup> See UNDP Procurement Capacity Assessment User's Guide, November 2006, and UNDP Practice Note on Capacity Development, July 2006.

<sup>2</sup> See OECD-DAC JV for Procurement Methodology for Assessment of National Procurement Systems, Version 4, July 17, 2006.

- Baseline indicators (BLIs): Measure the quality of the legal system, formal arrangements, and structures in place in a given area. The assessment result for each indicator is summarised in a score between 0 and 3, three being the highest score.
- Compliance and Performance Indicators (CPIs): Measure the level of compliance and performance in practice achieved in the area. The OECD-DAC methodology suggests that the assessment result for each CPI indicator is summarised in a brief narrative report. However, for reasons elaborated below, the assessment team has decided to also summarise the results in a score between 0 and 3.

For more details on this assessment framework, please refer to the OECD-DAC Methodology for Assessment of National Procurement Systems, Version 4, July 17, 2006.

To facilitate the subsequent use of the OECD-DAC assessment results in the broader capacity development process, the diagnostic approach of the OECD-DAC framework was broadened to also include an explanatory dimension. In this way, the focus of the data collection was not only on “which” systems are in place and “how” these work in practice, but also on “why” this is so, hereby providing an important starting point when defining actual capacity development strategies later on in the capacity development process.

As a result of the explanatory focus, a qualitative data collection approach has been selected in contrast to the quantitative approach recommended by the OECD-DAC framework. In relation to this, the assessment team has developed a number of qualitative CPI indicators. Furthermore, to illustrate the gap between BLIs and CPIs and allow for future benchmarking, a scoring system similar to the BLI scoring system has been adopted for CPI indicators, based on the scoring system already used by the ODPP in their work on monitoring compliance at procuring entity level.

The next sections describe some key methodological considerations associated with the various steps of the PCA.

## **2.2 Stakeholder involvement in the assessment**

The assessment has been conducted based on information derived from a wide range of stakeholders to Malawi’s public procurement system. The stakeholders may broadly be categorised as follows:

- ODPP
- Procuring entities
- Public institutions carrying out functions overlapping the procurement system
- Private sector associations
- Training institutions
- NGOs
- Donors

The stakeholders included in the PCA were selected based on the criterion of relevance. In this way, the PCA has sought to cover all major stakeholders working directly with the public procurement system or linked to it, e.g. institutions working in the field of public financial management, audit, and anti-corruption.

The procuring entities selected to participate in the assessment have been chosen based on the volume of their procurements, hereby giving priority to the major spenders of the system. While this sampling strategy does not provide for generalisation across all procuring entities, it guarantees that light is shed on those issues in the procurement system likely to have the largest financial impact on public expenditure.

As previous studies have pointed to the distinctive issues associated with procuring entities at local government level, the assessment team decided to also include in the study a small sample of district assemblies and city assemblies to ensure that the peculiar issues characterising these institutions are also addressed by the procurement capacity development strategy. For similar reasons, the Central Government Stores have been included in the sample.

A complete list of the stakeholders interviewed for the PCA is found in Annex 3.

### **2.3 Data collection and analysis**

The assessment is primarily based on qualitative interviews with the stakeholders described above.

In addition to the interviews carried out, a number of written sources have been consulted. These include:

- Previous studies in relevant areas
- Legal, policy, and strategy documents
- Documentation derived from the ODPP's monitoring activities
- Available statistics

A full list of the written sources consulted can be found in Annex 4.

Preceding the actual data collection, a "data collection guide" was developed by the assessment team. The guide served as a tool for identification of all data sources to be consulted (stakeholders as well as written sources) for each sub-indicator in the PCA. Furthermore, the guide was used as a checklist throughout the data collection and the analysis, hereby guaranteeing that the data collected from the various sources did in fact feed into the relevant aspects of the final analysis and formed the basis for the final scoring.

The data collection guide is presented in Annex 5.

Based on the agreed data collection guide, an interview guide for procuring entities was developed (cf. Annex 6), covering all the areas deemed relevant according to the data collection strategy. Similarly, the data collection guide was used as a reference document during interviews with the other interviewed stakeholders.

### **2.4 Data validation and reporting**

Before the finalisation of the PCA report, the draft results of the assessment were reviewed by all stakeholders involved in the assessment.

The objective of the stakeholder validation was to provide all stakeholders with an opportunity to review and comment on the results prior to the drafting of the final report, hereby receiving valuable input and additional infor-

mation to the assessment, confirming the already established findings, and correcting errors or misunderstandings which might have emerged during the data collection and analysis. Moreover, stakeholder involvement at the validation stage also served to create buy-in and commitment to the procurement capacity development agenda, thus assisting in building a coalition for change.

The stakeholder validation was conducted as a one-day validation workshop during which the PCA findings were presented, all stakeholders were invited to discuss the findings in groups and present their comments and suggestions. Preceding the workshop, the draft PCA report was disseminated to all stakeholders for review.

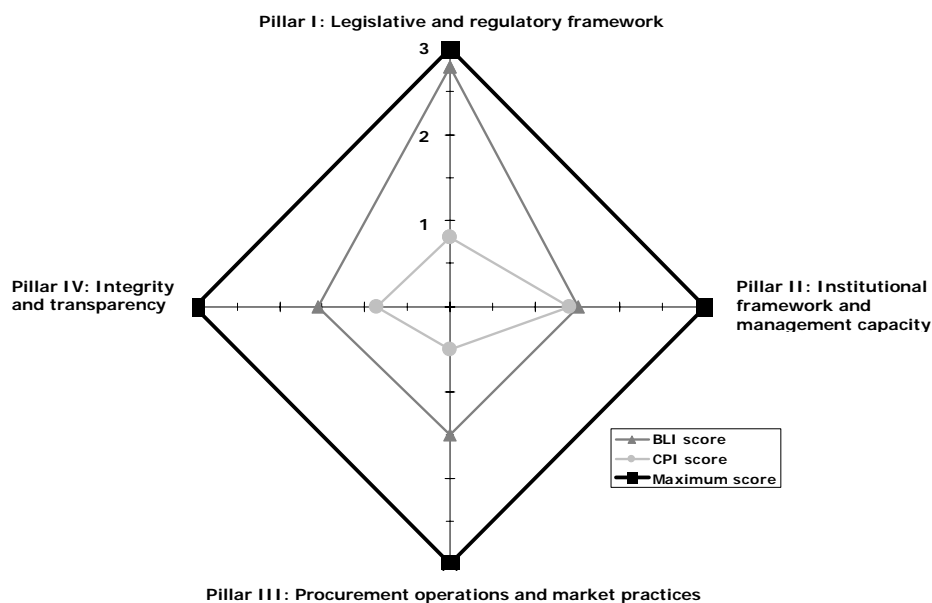
The inputs provided by the stakeholders during the validation workshop were fed into the final report as well as the Capacity Development and System Strengthening Plan which was drafted based on the assessment findings.

The assessment team's approach to developing the Capacity Development and System Strengthening Plan is detailed in chapter 4 of this report.

### 3. Key findings of the assessment

#### 3.1 Overview of findings

The overall results of the BLI and CPI assessments are illustrated in the graphic representation below, which summarises the assessment results pillar by pillar.<sup>3</sup>



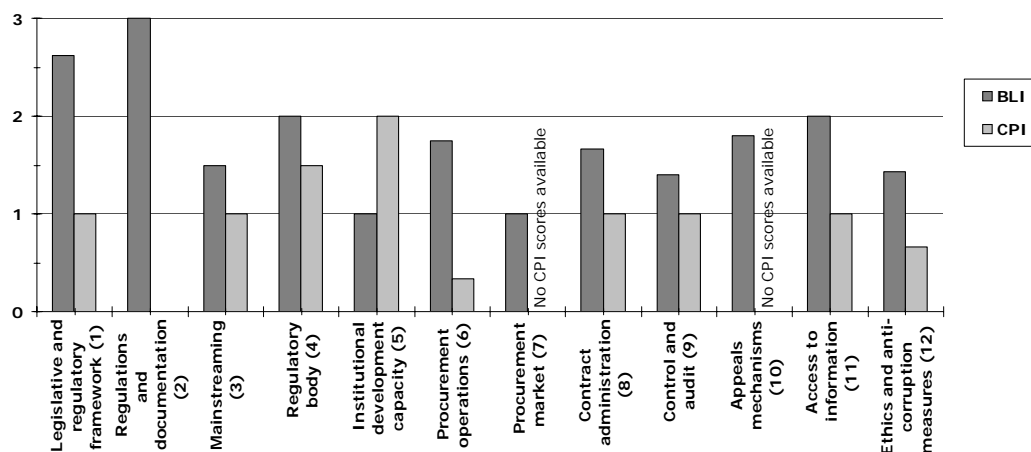
As depicted by the chart, the average BLI score for *Pillar I* comes very close to the maximum score of 3, the main reason being the existence of a sound and adequate legal and regulatory framework guiding public procurement in Malawi. In contrast, the average CPI score on the same pillar is below 1, thus creating a substantial gap between the BLI and CPIs. The gap between BLIs and CPIs on *Pillar I* illustrates the fact that the procurement processes carried out in procurement entities still only partly comply with the provisions of the legal framework in place.

In contrast, for *Pillar II*, the BLI and CPI scores almost coincide, illustrating the trend that the institutional frameworks and mechanisms in place to support management capacity are relatively weak while actual initiatives have been embarked on by the various stakeholders to the system.

<sup>3</sup> The graphic representation summarises the scoring of BLIs and CPIs respectively under each pillar. The indicated scores for each pillar have been aggregated by a simple arithmetical average of sub-indicators under the pillar. Note that some BLI indicators included in the OECD-DAC framework – particularly pillars 2, 3 and 4 – also contain aspects of a compliance assessment, hereby to some extent blurring the distance between existing systemic features and the compliance/performance of these systems. Although not allowing for a fully stringent comparison between BLIs and CPIs on those pillars, the graphic representation does however illustrate the overall trends of the PCA results.

The patterns of *Pillar III and Pillar IV* are almost identical, suggesting that some levels of control mechanisms as well as a framework facilitating efficient procurement operations and market practices have been established, while the compliance and performance in these areas are still relatively low.

The results of the BLI and CPI assessments are further compared in the figure below, which looks at the average BLI and CPI scores indicator by indicator.<sup>4</sup>



As in the previous chart, the highest BLI scores are found on the indicators measuring the legal and regulatory framework in place (indicator 1 and indicator 2). Similarly, the weakest frameworks, systems, procedures and mechanisms seem to be in the areas of institutional development capacity (indicator 5) and the procurement market (indicator 7).

As in the previous chart, the CPI scores for the indicators are generally lower than the BLI scores, the only exception being the area of institutional development capacity (indicator 5), in which the CPI score exceeds the BLI due to the simultaneous presence of a poor framework for enhancing institutional development capacity and a high number of capacity development initiatives in practice taking place on the ground.

Leaving aside the field of institutional development capacity, the highest CPI score is found in the assessment of the regulatory body, i.e. the ODPP (indicator 4), which the assessment team found to be a main player in the process towards enhancing the efficiency of public procurement in Malawi.

The key findings under each pillar are detailed in the sections below. For the complete BLI and CPI assessments, including the justifications for the scores of each indicator and sub-indicator, see Annex 1 (BLI assessment) and Annex 2 (CPI assessment).

<sup>4</sup> No average CPI score is displayed for indicator 7 (Procurement Market) and 10 (Appeals Mechanism), since compliance/performance aspects related to these indicators were already covered by the corresponding BLIs and no CPI indicators were thus developed.

### 3.2 Pillar I: Legislative and regulatory framework

Pillar I assesses the existence, availability, quality, and use of a legal and regulatory framework from the highest level (Act, Regulations, Circulars) down to detailed operational procedures, guidelines, model tender documents, and standard conditions of contract.

Public procurement in Malawi is governed by the Public Procurement Act of June 2003, along with the Regulations of September 2004 and further deliberations in the Desk Instructions for Public Procurement issued by the ODPP. Together with the circulars issued by the ODPP, this body of norms constitutes the legal framework for all public procurement in Malawi.

**The legal and regulatory framework provides a sound legal framework for efficient public procurement in Malawi.** The Public Procurement Act and Regulations adequately establish the institutional framework required to support public procurement, the stages of the procurement process, the main methods of procurement and their conditions for use, and the conditions for review and auditing. Moreover, the Desk Instructions serve as a manual for procuring entities providing easy and simplified explanations and guidance. Finally, a comprehensive set of Standard Bidding Documents (SBDs) for a wide range of goods, works, and services has been issued to assist the procuring entities in the procurement process. The legal and regulatory framework in place thus represents a key asset in the development of sound and efficient procurement.

**Procuring entities have come a long way in establishing the required procurement setup and adapting their practices to the new framework.** Albeit still new to most procuring entities, significant progress has already been achieved in terms of compliance with the legal provisions. The awareness of the legal framework is increasing day by day, leading to increasing use of, for example, the established procedures for selection of procurement method, advertisement, and tender openings.

Despite these overall encouraging trends, a number of issues still need to be addressed to ensure that procurement processes are in practice fully compliant with the legislative and regulatory framework:

- **Few procuring entities use the Standard Bidding Documents.** While the SBDs are broadly acknowledged to provide a sound framework for the development of tender documents, the assessment team encountered that many procuring entities – particularly at local government level – do not use the SBDs. A main reason appears to be that small scale bidders have difficulties obtaining the bid securities required by the SBDs. In addition, many procuring entities raised the point that the language and terminology used in the SBDs do not target small scale suppliers, and the level of detail provided in the documents often leads to misinterpretation of the essential requirements. Finally, the SBDs are highly priced and non-refundable. In worst case, these issues may lead to exclusion of otherwise qualified bidders from the tendering process. At the same time, evidence suggests that the low usage of SBDs is often due to a poor understanding among procuring entities of the SBDs issued, leading some procuring entities to employ the wrong set of SBDs for their procurements or not to employ them at all, instead relying on old and well-known procedures. Particularly IPC members are reported to have difficulties understanding the SBDs. Workshops targeting pro-

curing entities at local level are currently being conducted by the ODPP to address this problem.

- **Many procuring entities do not have a copy of the Regulations and Desk Instructions.** Most procuring entities claim not to have acquired copies of the Regulations and the Desk Instructions, although these have been sent out to all procuring entities free of charge. The problem is particularly common among local government procuring entities where the legal documents are often not passed on to the procurement officers, who in many cases are not aware of the existence of the documents. Furthermore, distribution mechanisms are weak as the Public Procurement Act and Regulations are available at the Government Printer in Lilongwe, Zomba, and Mzuzu only. The ODPP has recently carried out outreaching programmes to enhance the level of awareness of the legal framework among procuring entities.
- **The quality of technical specifications is often poor.** The development of technical specifications is a main challenge in the procuring entities. The vast majority of the procurement officers and technical departments involved in developing technical specification in procuring entities is largely unable to create generic and neutral specifications. Moreover, deliberate tailoring of specifications to suit special interests is also reported as common. The problem of developing specifications is closely related to a general lack of understanding of the procurement system among the technical officers and advisors involved in the specification process at procuring entity level. This also applies to the level of the Director of Buildings, the Government ICT Committee, and the Plant and Vehicle Hiring Organisation (PVHO) respectively. No training has yet been initiated to improve this situation.
- **Evaluation criteria are often poorly specified.** Specification of relevant evaluation criteria is still a major issue in most procuring entities, while only those few procuring entities staffed with adequately trained procurement officers are consistently capable of developing relevant evaluation criteria. Main issues in the field include application of unclear evaluation criteria, criteria irrelevant to the evaluation in question, or, in some cases, no criteria at all. One procuring entity thus reports that evaluation criteria are sometimes not at all specified in advance in the tender documents, as the entity wishes to reserve its right to choose the winning bid according to the criteria found most relevant at the time of evaluation. No training has yet been initiated to improve the situation in this field.
- **Awareness of procedures for review is very limited.** Awareness of the procedures to be followed when a complaint is received is very limited in most procuring entities. This is mainly due to the fact that the vast majority of procuring entities receives no or very few complaints and thus has very little or no experience handling complaints. The assessment team also encountered that, of the few complaints received by the interviewed procuring entities, most have been handled by the procuring entity with an informal dialogue with the complainant. Thus, the legal framework for review remains largely untested.
- **Many procuring entities have experienced political interference in the procurement process:** Approx. 50% of the procuring entities visited during the assessment openly reported that political interference sometimes (reportedly from a few times per year to very often) takes place in the procurement process. The interference is mainly reported to take place at the stages of needs identification (where new procurements replace previously planned ones) and se-

lection of procurement method (where open tendering is replaced by quotations or single sourcing). A typical scenario is when a new political initiative is taken and quick results need to be demonstrated, although several variants of the phenomenon exist. Some procuring entities also report that threats of being removed if not following orders have been experienced in the past.

### 3.3 Pillar II: Institutional framework and management capacity

This Pillar assesses how the procurement system as defined by the legal and regulatory framework in Malawi is operating through the institutions and management systems and practices forming part of the overall public sector governance.

The key assets of the institutional framework and management capacity as identified by the assessment team are:

**The legal framework in place provides a sound basis for the ODPP to exercise its duties.** The Public Procurement Act establishes the ODPP as the regulatory body responsible for the administration of the Act, placed directly under the general supervision of the President. The Public Procurement Act further sets out the functions of the ODPP, which include dissemination of the Act and regulations, development of standardised documents for procurement, promotion of a professional procurement workforce, data collection and monitoring at procuring entity level, administrative review of bid protests, establishment of a data and information base, etc. Based on the framework in place, the ODPP has embarked on carrying out substantially all the functions and responsibilities defined by the legal framework, hereby in practice also serving as a key driver towards the development of an efficient procurement system.

**A sustainable strategy and training capacity exists to provide training, advice, and assistance to develop the procurement capacity of government.** Another major step forward has been taken in the field of professional development where a comprehensive national training policy for the procurement area has been developed, 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 ODPP staff, the SPUs, the IPCs, and those affected by the functions of the ODPP. The content of the training policy is widely being adopted by the ODPP and the major initiatives of each part of the training strategy are at the time of writing in the process of being conducted.

**New electronic financial procedures are in place to support timely procurement, contract execution, and payment at central government level.** Malawi has implemented the Integrated Financial Management Information System (IFMIS) which provides for an electronic interface between the financial management and procurement systems in all central ministries. Although the procurement module of the IFMIS has not been implemented, the system in place still supports the procurement process, e.g. by reserving funds for a procurement once a Local Purchase Order is registered in the system and authorising payments within 24 hours following request from the procuring entities. In effect, the problem of late payments is generally reported to have lessened since the implementation of the IFMIS system.

The assessment team identified a number of weaknesses and capacity needs related to the compliance and performance of the established control mechanisms. The following key issues were noted:

- **Procurement is not integrated in the budget formulation process.** 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. A significant number of procuring entities still do not have a consolidated procurement plan. It should be noted, however, that the number of procuring entities who do have a plan has gone up dramatically in the new financial year as a result of intensified ODPP efforts towards encouraging the preparation of procurement plans, e.g. through the organisation's dissemination of a compulsory procurement plan template. However, the vast majority of procuring entities has not yet commenced using the template. No training in the use of procurement plans has yet been initiated.
- **Procurement plans are not followed.** For those procuring entities that have developed consolidated procurement plans, carrying out procurements in accordance with the plan remains a major challenge. Poor planning skills, time constraints, and to some extent external interferences and unexpected procurements constitute major obstacles in this regard.
- **No completion report mechanism exists.** There is no feedback mechanism providing completion reports on the execution and completion of major contracts. The procedures related to the preparation of completion reports appear to differ from procuring entity to procuring entity. Some entities thus report that completion reports are prepared, while a number of entities note that the process of preparing completion reports is often delayed. Other entities reportedly do not at all prepare completion reports for major contracts.
- **The capacity of the ODPP to carry out its functions is constrained by lack of staff.** While an establishment has been created for the ODPP, a large number of positions remain vacant, mainly due to inadequate supply of qualified staff when the positions are advertised. In addition, the ODPP has received donor support for full-time Master's degrees for nine ODPP staff. This has in practice created a situation of extreme understaffing, which has proved a major constraint to the unfolding and progressing of the organisation's activities in the past year.
- **The ODPP prior review function constitutes a potential conflict of interest.** Although no provision of this is made in the Public Procurement Act, Regulations, or Desk Instructions, in practice the ODPP requires all procuring entities to present their award decisions to the ODPP for prior review and 'no objection' before the official award notice may be issued by the entity. 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 begun step by step to increase the prior review threshold, hereby expecting to slowly phase out prior reviews in the coming years. Nevertheless, in the view of the assessors, the prior review arrangement at present 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 process which also falls under the mandate of the

ODPP. 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.

- **The system in place for dissemination and collection of procurement information is not operational.** In September 2006, the ODPP officially launched a website developed to provide bidders and all other interested parties with access to procurement information by 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. At the time of writing, however, the website hosts only a few open and closed tenders and no contract awards. To improve this situation, the ODPP has recently initiated training activities and provided extra computers for selected procuring entities.
- **Monitoring tools in place do not facilitate development of procurement statistics.** According to the legal framework, the responsibility of collecting information from procuring entities and end-user entities concerning the conduct of procurement activities in Malawi lies with the ODPP. In practice, the ODPP carries out this function via two tools:
  - Quarterly Procurement Reports: A template developed by the ODPP through which procuring entities must submit quarterly 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.
  - Monitoring Reports: On an ongoing basis, the ODPP makes monitoring visits to procuring entities for the purpose of collecting information about the institutional compliance of the entity in a number of fields (e.g. availability of legal documents, existence of procurement organs, safekeeping of procurement records, procurement planning, contract administration, procurement methods, and review procedures). Based on each visit, a monitoring report for the procuring entity is prepared. At the time of writing, more than 60 monitoring reports have been made.

Despite the comprehensive data collection following from the use of the two tools, neither the Quarterly Procurement Reports nor the Monitoring Reports form the basis for aggregated statistics or systematic analysis of procurement trends. The relevance of these tools as tools for the tracking of procurement trends and detection of compliance issues is hence limited.

- **No mechanism for measuring individual and organisational performance is in place.** 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. However, as procurement officers (ODPP staff being the only exception) are not employed on performance contracts, they are not covered by this performance appraisal mechanism and thus no targeted incentives for individual performance improvement are in place. Similarly, 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 performance measures and quality standards (e.g. covering response time to reply for inquiries; length of time to prepare tender docu-

ments after receipt of requirements, etc.) has been developed to measure the performance of each procuring entity.

### 3.4 Pillar III: Procurement operations and market practices

Having assessed the legal/regulatory and institutional systems guiding public procurement in Malawi, the third Pillar looks at how these systems operate at the level of the implementing procuring entities as well as on the procurement market.

The assessment identified a number of factors, which have contributed positively to strengthening the procurement operations and market practices in Malawi in recent years:

**Important steps towards delegation of procurement decision making authority have been taken.** The Public Procurement Act 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. In practice, this decentralisation process has substantially been implemented. Although many procuring entities are still in the process of establishing SPUs and centralised procurement organisations, such as the Central Government Stores (CGS), the Central Medical Stores (CMS) and the PVHO (see also capacity need related to CGS below), the decentralisation of decision making authority represents a milestone in the reform process towards a sound and efficient procurement system. With the removal of the ODPP prior review function (see Pillar II), this process will be complete.

**Steps have been taken towards development of a professional procurement workforce.** In accordance with the provisions of the Public Procurement Act, the ODPP has stepped up its activities in the field of professional development. For example, a career ladder for procurement officers has been defined; job descriptions to be used as a basis for future recruitments of procurement officers in procuring entities have recently been developed; and a process towards establishing an association for procurement professionals has been initiated.

The assessment team noted the following key issues related to the procurement operations and market practices:

- **Most procuring entities have inadequate procurement competence levels.** The lack of adequate procurement competence levels in procuring entities (large parastatals being a key exception) is perhaps the single most important challenge to the development of an efficient procurement system. This is the case both for SPU staff and IPC members. While SPU officers often have irrelevant and/or insufficient educational backgrounds and inadequate procurement training, IPC members are in many cases reported to not even be aware of the legal framework, hence over-relying on expert opinions. The lack of procurement proficiency furthermore 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. It should be noted that training aimed at upgrading the procurement proficiency of procurement officers is currently carried out by the ODPP. However, the training

process is still in its initial phase and much sensitisation, training, and HR capacity development still remain to be provided.

- **The available long-term and short-term training is not consistent with demand.** The short-term public procurement courses offered do not cover the existing demand. All PEs visited by the assessment team thus expressed a need for further training and sensitisation in a variety of areas. So far, the short-term training provided has largely targeted the heads of procurement units rather than the staff actually undertaking procurements on a day-to-day basis. In contrast, the long-term 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 in Malawi report that there is no waiting time to be enrolled in a course, and some courses even face the challenge of achieving sufficient applications. The gap between training need and training demand seems to be largely attributable to a lack of funds 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 in 2008.
- **Procedures for recruitment of procurement officers are unclear.** Procedures for recruitment of specialised procurement staff give rise to a number of uncertainties across the recruitment system. The Department of Human Resources Management and Development (DHRMD) is responsible for approving new procurement units and their positions upon request from the procuring entities (subject to a warrant of establishment issued by the Treasury). However, no 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 yet in place. In practice, this leads to a lack of new appointments in the procurement entities as entities are either waiting for a warrant of establishment from the Treasury or not aware that the responsibility of recruiting new officers lies with their own institution. The seemingly slow progress in this area appears to be partly attributable 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.
- **Most procuring entities are unable to attract qualified procurement officers.** While some parastatals are able to attract qualified professionals for procurement positions, the vast majority of procuring entities suffer from a serious lack of qualified candidates when attempting to recruit new officials. The problem is further aggravated by the fact that the existing qualified candidates often choose to seek employment in the private sector where the salary package is more attractive. The findings of the assessment also reveal that the procurement area is often unable to attract the best candidates on the market. One reason for this is that procurement is a new field which yet remains to become known to many young professionals. In addition, and maybe even more importantly, the field of procurement has for many years been perceived as a dumping ground for employees not capable of maintaining a position anywhere else in the government system. This image is further exacerbated by the lack of a career path facilitating promotion which has up until now discouraged many ambitious candidates from seeking employment in procurement.

- **The procurement training supply available for the private sector is very limited.** Short-term sensitisation and training programmes on public procurement for the private sector exist, although at present on a very limited scale. At the time of writing, a total of three short-term workshops targeting private sector participants have been delivered by the ODPP (to be followed by additional sessions) while short-term training courses and workshops provided by other institutions to target suppliers are virtually non-existent. This is the case in spite of the fact that the training needs and demand among private sector participants in the public procurement market are very high.
- **Unclear procurement setups at decentralised levels.** In relation to the decentralisation of procurement decision making authority to the level of IPCs/SPUs, new challenges have arisen with regard to the new organisational setup. For example, procurement units often refer to the controlling unit rather than being placed in a separate function in the organisational hierarchy, hereby failing to draw attention to the importance of the procurement function and causing unnecessary red-tape. On another issue, many District Assemblies have – contrary to provisions made by the ODPP – established multiple procurement bodies (i.e. several IPCs), hereby creating confusion among district level authorities.
- **The Central Government Stores have not regained the status as sole provider of common items to government institutions.** As addressed in detail in the CPAR 2004, the CGS has in the past years faced serious challenges in maintaining its role as the mandatory provider of common supplies to all central government institutions, hereby gaining the advantages of scale. At the time of writing the CPAR 2004, most government entities did not follow this requirement due to a combination of factors, including lack of stock, bureaucracy, and prolonged delivery. Today, the status of the CGS is not much different from 2004. The CGS concedes that it suffers from a number of capacity needs which together make the CGS unable to attract and provide supplies to government entities. The main capacity needs include lack of funds to purchase new stock (as a result of low profit levels from previously supplied items), lack of staff as a result of CGS debts leading to a freezing of recruitments since 2003/2004 (the staff of CGS has decreased from 360 in 2004 to 196 at the time of writing), and lack of support from government entities who have learnt from experience to carry out their own procurements of common items. At the time of writing, a new revitalisation strategy for CGS has been developed, which mainly consists of the upcoming approval of government financial support to CGS to buy new stocks and restart investments. Once the funding is achieved, the CGS anticipates a return to centralised purchasing among government entities.
- **Few effective mechanisms exist for partnership between the public and private sector.** While the Government encourages open dialogue with the private sector, the number of established formal dialogue mechanisms is low. Notably, the Government does not have any significant programmes to help build capacity among private companies (particularly SMEs) to facilitate their procurement market access.
- **Systemic and capacity constraints inhibit small bidders' access to the procurement market.** Although competition levels are generally reported to be high, the findings of the assessment suggest that the private sector, and especially SMEs, face a number of constraints when trying to access the procurement market. Firstly,

many bidders are constrained by various capacity issues, including lack of basic knowledge about the procurement system, inadequate technical and legal capacity to understand the SBDs, and insufficient technical and managerial skills to be competitive in the tender process. Secondly, SMEs face multiple constraints to participating in tenders, including poor access to tender information and documents, inability to meet collateral requirements, and lack of access to credit.

- **Record keeping in procuring entities remains poor.** As also noted in the CPAR conducted in 2004, the record and filing system displayed in procuring entities is poor. The findings of this assessment suggest that record keeping practices have not improved significantly since the previous assessment. Incomplete procurement records still make up a vast problem in the entities. In addition, most procuring entities make use of inappropriate filing systems (e.g. filing records according to document type or filing them according to various inconsistent systems), resulting in full procurement records (even when all documents exist) very rarely being available for public inspection. One explanation for the poor record keeping is the apparent unawareness of the advantages and disadvantages of different filing systems. In addition, complete procurement record keeping systems are often hindered by the record keeping procedures of other departments in the procuring entity. For example, payment records are in many cases kept with the accountant, completion reports in the relevant department, etc.
- **Procuring entities do not follow up on contract execution.** Although contract administration provisions facilitating effective contract execution exist, the findings of the assessment show that most procuring entities do not carry out adequate follow-up on execution of contracts, i.e. ensuring that execution is in accordance with agreement, quality assurance, and progress monitoring. The main reason for the lack of follow-up appears to be a lack of adequate procurement staffing levels in the procuring entities which leads many procurement officers to relax their least visible tasks.

### 3.5 Pillar IV: Integrity and transparency of the public procurement system

The integrity and transparency of a public procurement system rely on a number of control mechanisms, including an effective control and audit system, an efficient appeals mechanism, a comprehensive information sharing system enabling civil society and interested stakeholders to conduct social audit, and effective ethics and anti-corruption measures. Without such control mechanisms, flaws in the procurement system may not be detected and addressed. The fourth Pillar of the assessment therefore measures the existence of adequate control systems and the practices related to these.

Based on the assessment findings, the following strengths of the Malawian control system may be highlighted:

**A three-tier complaint review system has been established and is now fully operational.** The Public Procurement Act establishes clear and detailed provisions for a three-tier complaint review system, the first level being the procuring entity, the second level being the Review Committee of the ODPP, and finally the third level being the High Court (only judicial review) and the Supreme Court of Appeal. The approval of the Review Committee by the President in February 2007 represents a major step forward in

developing an efficient complaint review system and improving the transparency and integrity of the public procurement system.

**A comprehensive mechanism for dissemination of procurement information is in place.** While the level of information available about the procurement system to stakeholders has until recently been rather limited, the creation in June 2006 of a Public Relations Office within the ODPP has significantly strengthened the mechanism for dissemination of procurement information. The PR Office is at present operational and has embarked on several information initiatives which are generally relevant, relatively comprehensive and communicated in a straightforward tone of language. Activities include a weekly column in the Daily Nation on Understanding Public Procurement, issuance of the quarterly magazine *The Public Procurer*, dissemination of information brochures and flyers as well as radio and TV spots. In addition to being available through the respective communication channels, key information on procurement-related issues is furthermore consolidated into the recently established website of the ODPP, which includes a large documents archive.

**A sound legal framework for addressing corruption, fraud, conflict of interest, and unethical behaviour exists.** The Public Procurement Act precisely defines the terms “corrupt practice” and “fraudulent practice” and sets out the actions that can be taken if such practices are detected. Furthermore, the responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices are detailed. As such, the legal framework in place constitutes an excellent framework for addressing ethics and anti-corruption issues in the field of public procurement.

The assessment team encountered a number of weaknesses related to the compliance and performance of the established control mechanisms. The following key issues were noted:

- **Auditors lack procurement proficiency.** The assessment reveals that no formal requirements asking that internal and external auditors have knowledge of procurement currently exist. Also, very limited procurement training has been conducted for auditors, and the initiatives implemented have been and are sporadic and lack follow-up. In effect, the vast majority of auditors carrying out procurement audits in the procuring entities lacks the necessary procurement proficiency to carry out audits thoroughly and systematically. Many procuring entities thus have the impression that both internal and external audits are often based on limited or even irrelevant information, often leaving the key issues unaddressed. Furthermore, some procuring entities note that although external audits are conducted on a regular basis, they are done superficially (e.g. by only checking payment vouchers) and often do not cover the procurement function in broader terms. Some smaller procuring entities also report to be audited only if specific data from procurement files is required in relation to other audits.
- **Weak enforcement of audit recommendations.** 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. Furthermore, it is observed that controlling officers are generally not held accountable and no cases of disciplinary

actions due to misappropriation of funds or other violations of the Public Finance Management Act could be identified. This despite the fact that the Public Finance Management Act does include punitive measures.

- **Internal Audit Committees are not yet established.** According to a circular issued by the Ministry of Finance, each procuring entity is required to establish an internal audit committee. The assessment disclosed, however, that only approx. 6-7 ministries have complied with this requirement.
- **Very few procuring entities receive written complaints.** The procuring entities visited for the assessment generally had little or no experience of receiving written complaints from bidders. Evidence suggests that the low number of written complaints is mainly due to low awareness of formal complaint procedures among bidders and a widespread perception that complaining does not make a difference. It should also be noted, however, that a major sensitisation and awareness campaign carried out by the ODPP seems to have resulted in an increased number of written complaints. The assessment also revealed that fear of being blacklisted for filing complaints is still prevalent among bidders and in practice still constitutes an obstacle to using the complaint review system.
- **Complaint decisions are currently not being published.** Although the Review Committee is planning to publicise decisions on the ODPP website, this is currently not taking place. Decisions of the Review Committee are sent to the complainant and to the public entity involved but are currently not accessible to the public at large. It should be noted, however, that the Public Procurement Act and Regulations are silent on the matter of publication of complaint results, implying that the Review Committee is not required by law to publish these decisions.
- **Some stakeholders still have limited access to procurement information.** Despite the establishment of a comprehensive and well-functioning mechanism for dissemination of procurement information, access to this information is still limited for certain stakeholders. In particular, 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. Furthermore, key documents such as the Regulations are not yet accessible from the ODPP webpage, thus only making them available from the three Government Printer Offices in Malawi.
- **Civil society organisations monitoring public procurement are few and lack the capacity to contribute to shaping the procurement agenda.** The number of civil society organisations exercising social audit and control in 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 capacity, both in terms of funding, staffing levels, leadership, and skills set. While the public environment is generally conducive to their activities, the contributions of civil society organisations to shaping and improving the integrity of public procurement have until recently thus been limited.
- **Enforcement of the legal provisions on corrupt practices is weak.** The Anti-Corruption Bureau (ACB) collects statistics on the number of reports of cases of corruption received, number of cases authorised (and not authorised), number of cases awaiting action, number of convictions, and number of acquittals. While little data exists for corruption detected in the field of procurement only, the aggregated data from ACB suggests a rather weak enforcement of the

legal framework. Thus, in 2007, across regions and categories, only 7 cases of corruption have so far been convicted while 6 have been acquitted. The findings of the assessment suggest that the weak enforcement of existing anti-corruption provisions is partly a consequence of ACB lacking capacity in a number of areas. In this regard, the still-pending appointment of a permanent Director to the ACB also represents a challenge to the leadership of the organisation.

- **The mechanism in place for reporting cases of corruption does not guarantee confidentiality and reporting is limited.** The ACB has in place a mechanism for public reporting of cases of fraud, unethical behaviour, and corruption. 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. Although protection of whistleblowers and informers is provided by the Corrupt Practices Act and offered by the ACB, the ACB is in practice not able to guarantee protection of reporters. 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. The statistics available for corruption in procurement suggest that reporting of cases only takes place 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<sup>5</sup>. The assessment team has not been able to obtain exact data from the ACB Office in Blantyre, but ACB estimates that approx. 100 complaints have been received since the office was opened. Stakeholders suggest that typical reasons for not reporting instances of corruption or other malpractices include a fear of reprisal among employees, a belief that nothing would be done by reporting, and low awareness about the reporting mechanism in place.
- **Standards of Ethics have not yet been disseminated to procurement stakeholders.** While a set of Standards of Ethics targeting stakeholders to the procurement system have been drafted by the ODPP, they are reportedly currently awaiting print and have thus not yet been disseminated. 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.

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<sup>5</sup> It should be noted, however, that the Mzuzu Office was only opened in 2002.

## **4. Towards a Procurement Capacity Development and System Strengthening Plan**

Based on the validated findings of this capacity assessment, a short-term and medium-term Capacity Development and System Strengthening Plan for procurement will be developed.

This section outlines the way forward in developing the short-term and medium-term Capacity Development and System Strengthening Plan.

### **4.1 Defining capacity development strategies**

A first step towards a Capacity Development and System Strengthening Plan is to define the capacity development strategies to be included in the Plan. The areas in which capacity development is required have already been identified by the PCA. What remains is now to revisit the data collected with a view to identifying the reasons behind the capacity gaps and thus the potential capacity development strategies.

When defining capacity development strategies, it is necessary to keep in mind that capacity development goes beyond the traditional concepts of training and competence development at the individual level but may also include strategies at the organisational and societal levels. For example, capacity development strategies may include<sup>6</sup>:

- Institutional Reform and Incentives
- Knowledge, Training and Learning
- Leadership Development
- Accountability and Voice Mechanisms

The Capacity Development and System Strengthening Plan will include both a short-term strategy and a medium-term strategy for procurement capacity development. The short-term strategy will focus mainly on “quick wins”, i.e. areas in which capacity development may be achieved with only small efforts and resource inputs, thus contributing to fast and low-cost improvements of the procurement capacity. The medium-term strategy, on the other hand, will present a high-level work plan covering more complex and resource demanding capacity development strategies for the period 2008-2012.

In order to ensure the sustainability of the Capacity Development and System Strengthening Plan, the capacity development strategies identified must be based on the recognition that not all identified weaknesses of the system can realistically be covered by the Capacity Development and System Strengthening Plan. Prioritising the identified system weaknesses and capacity needs is hence an important aspect of defining capacity development strategies.

### **4.2 Defining progress indicators**

To be able to measure capacity development progress and adjustment, progress indicators will be defined for all capacity development strategies included in the Capacity Development and System Strengthening Plan.

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<sup>6</sup> See UNDP Practice Note on Capacity Development, July 2006, for further details on capacity development strategies.

In brief, two sets of indicators will be developed:

- “Capacity development strategy” indicators (output indicators): Indicators aimed at measuring whether the output of the capacity development strategies put forward (e.g. M&E system established, number of people trained in how to develop technical specifications) is indeed achieved.
- “Capacity development” indicators (outcome indicators): Indicators measuring whether the strategies carried out do indeed lead to their intended outcome or results (e.g. M&E capacity improved, quality of technical specifications improved).

In addition, relevant output targets (e.g. M&E system in use in 20 procuring entities; 50 senior procurement staff trained in how to develop technical specifications) and outcome targets (e.g. M&E system producing and disseminating valid statistics about the procurement system; number of non-responsive bids due to failure to comply with technical specifications reduced by 50%) will be developed.

For a detailed description of how progress indicators may be defined, see UNDP Procurement Capacity Assessment User’s Guide, November 2006.

#### **4.3 The Capacity Development and System Strengthening Plan**

The Capacity Development and System Strengthening Plan will be developed by the consultant in close collaboration with the ODPP based on input from the PCA and the stakeholder validation workshop.

The Capacity Development and System Strengthening Plan is expected completed by November 2007.

Once the plan has been endorsed by the relevant authorities, it shall form the coordinated basis for all capacity development initiatives in the field of procurement until 2012.