

Assessing Public Procurement Practice in Malawi - 2017

General Description of the Public Procurement System

X. Management of the Public Procurement System

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

Please provide the answer in a maximum of 5-10 sentences.

Prior to 2003, Malawi had a centralised procurement system characterized by the presence of the Central Tender Board, (CTB) that was responsible for all procurement above a prescribed threshold for Government Ministries and Departments. The Central Government Stores (CGS) used to procure for Government Ministries and did their own procurement without much control from the Government.

This was one of the gaps that led to the enactment of the Public Procurement Act (PPA) of 2003, which has as one of the key provisions, the decentralization of procurement responsibility to procuring entities and also establishment of the Office of the Director of Public Procurement (ODPP) as a public office with the responsibility for the regulation, monitoring and oversight of public procurement in Malawi.

However, the PPA also had gaps among them being limited enforcement powers leading to the enactment of the Public Procurement and Disposal of Assets Act (2017) which established the Public Procurement and Disposal of Assets Authority (PPDA) as an independent institution responsible for the regulation, monitoring and oversight of public procurement and disposal of assets in Malawi Section 5 (1) and in the exercise of its functions under the Act, the PPDA acts in a manner that is impartial and independent Section 5 (3).

The PPDA is now transitioning from being a government department to a fully-fledged Authority. When the transition is complete, the PPDA will be independent as Section 7 of the Act is clear that the Board, otherwise known as the Authority shall comprise one member each nominated by the Malawi Law Society, the Malawi Institute of Procurement and Supply, Malawi Institute of Engineers, Malawi Confederation of Chambers of Commerce and Industry and Institute of Chartered Accountants in Malawi.

In conclusion, the public procurement system in Malawi is decentralized but with a regulatory body, established through an Act of Parliament, responsible for monitoring and enforcement process. All public procurements are required to comply with the necessary legal requirements contained in the Act.

PPDA expressed they were not aware of any duplication of powers and in reference to the Section 5 (1) of the current act it spells out the mandate of the PPDA as the body responsible for the regulation, monitoring and oversight of public procurement and disposal of assets in Malawi while Section 51 (1) of the Act is clear that procuring and disposing entities (PDEs) shall be responsible for the administration of procurement contracts into which they enter, and to that end, shall establish procedures for contract administration and provide the necessary material and human resources for their implementation.

X. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

Please provide the answer in a maximum of 3-4 sentences.

Section 40 (1) provides that an invitation to tender or an invitation to pre-qualify be published in two national widely circulated newspapers and, in the case of international tendering, also be published in internationally recognized papers in the English language, and in other media of wide international circulation and the PPDA website. This is what the PPDA enforces.

Lack of enforcement was one of the weaknesses of the old Public Procurement Act 2003, with the passing of the new Act, we are hopeful that enforcement of PPL will be sufficient.

X. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

Please provide the answer in a maximum of 3-4 sentences.

The Malawi public procurement system is still manual, however for purposes of information, the PPDA website is the only recognized platform to engage suppliers and public institutions on procurement and disposal processes i.e. publishing lists of tenders from public institutions, Intention to Award notices, procurement thresholds, et cetera

X. If there is a register of suppliers, what is the number of registered suppliers in it?

If possible, please provide a comparison with several (at least 5) previous years?

Yes, the PPDA everyday compiles the register of suppliers as the process is ongoing, with new suppliers registering with us on a daily basis.

2018: 4, 227

2017: 4, 113

2016: 3,527

The register is available over several years and you can have access to it on request.

X. What is the total number of competitive procedures?

If possible, please provide a comparison with several (at least 5) previous years.

PPDA Did not have detailed data.

X. What is share of public procurement in the country's GDP?

Around 10-15 percent

X. What are the monetary thresholds for single source procurement (works, goods, services)? _____

Is the monetary threshold acceptable? Why or why not?

No specific threshold single sourcing works when there is only one service provider and The threshold is acceptable due to the enforcement by the PPDA Office

Public Procurement Scope and Spending Breakdown

X. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Statistic not provided for and could be found and traced- no documentation

X. What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement? _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).

This information could be deduced after checking PDEs procurement plans to come up with a total the PPDA do not have consolidated figures in this

X. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? _____

Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).

Same as above

X. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume: ____ share: ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

The PPDA indicated that there are not aware of such exemptions, therefore difficult to come up with estimates

X. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: _____ share: _____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Information pertaining to secret government procurement was challenging to source as entities claimed they do not engage in secret procurements and therefore, we could not make estimates

Competitiveness

X. What is the average number of bidders? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.

N/A

X. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? ____

If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.

This is never documented we couldn't find out information about it information is scattered

X. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? ____

If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.

See above

X. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? ____

Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?

See above

X. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

See above

X. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

See above

Efficiency

X. What is the share (%) of failed tenders in the total number of tenders? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.

Statistics not documented

X. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

No data was found

X. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? ____

If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.

Data not found

X. What is the share (%) of non-executed contracts in the total number of contracts? ____

If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.

Concrete data could not be found as in percentage of the non-executed contracts however MEJN can confidently explain that through its work as one of the third party monitor for various public procurement it was establishes that out of the sampled contracts that were monitored national wide in sectors of health, education , Agriculture Water and Sanitation 40% of the contracts were not executed some reasons being that of failure by government to disburse funds to the competitively awarded contractors, others reasons being delays in funding which result into insufficiency of the funds to achieve the intended plan due to change in time value of money. The projects monitored were Roads, Infrastructures like School Blocks, Teachers houses, Hospital staff houses, Health Centers, procurement of materials, Water boreholes, and Procurement of Farm

inputs subsidies.

The work assessed a sample of 15 Contracts in Education, 10 in Health, 25 in Agriculture 15 roads and about 12 in Water Points infrastructures out of this 40% the report (Un-published report, sent to the PPDA office, Consultancy terms and references were to submit findings to the authority for their action as a regulatory body) of the contracts were not executed.

Accountability

X. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice?

The PPD Act in Section 59 has a provision for Administrative Review and Appeal whereby any bidder that may suffer loss or injury due to breach of a duty imposed on the procuring and disposing entity or Director General may seek a review.

Section 60 (1) spells out the review procedures, among them that a review pursuant to Section (59) shall be made during the period of intention to award a contract or fourteen days of the bidder submitting the application. The application has to be made in writing to the controlling officer or head of the procuring and disposing entity or the Authority.

Where an application is made to the authority, the Director General convenes a three-member ad hoc committee from an established standing review committee, which then hears and decides upon applications for review brought to the authority.

Section 60 (4) is clear that the Review Committee shall consist of members of high integrity with experience in different fields of procurement and procurement procedures, but who should not have participated in procurement and disposal proceedings in question in any capacity as bidders, suppliers or perform any procurement functions on behalf of the procuring and disposing entity in respect of the proceedings in question. The review committee conducts its hearings as prescribed by the regulations.

X. What is the number of complaints submitted to the dispute resolution board (or equivalent body)? __

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

In 2013 more than 70 complaints

In 2014 about 15

In 2015 4

In 2016 12 complaints Mostly characterized by big officials being implicated- (Ministers)

In 2017 about 9 -

In 2015 the figures grew up because politicians and bureaucrats had plundered large amounts of cash

from public finances a scandal that became to be known as cash gate. Public officials had stolen funds through making payments to ghost workers and suppliers diverting money from original use to simply appropriating money or material resources without any trace of recording.

The first audit realized to public in February 2014 demonstrated that 16 Malawian companies received illicit payments from government departments between April and September 2013 for good and services that were not performed. The audit found that \$32 Million USD was stolen during the six month period that was under review. In October 2013 more than 70 people were arrested

X. What is the share (%) of disputed tenders in the total number of tenders? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Not exact but must be below 10%

X. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

It should be above 60%. Basically suppliers do not complain against PDEs but PDEs complain against suppliers and the PDEs are mostly on the winning side.

X. What share of decisions of the Dispute Resolution Board have been taken to courts? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Between 1-3% of decisions of Review Committee 2018

Between 1-2 % in 2017

About 1% in 2016

3% in 2015 at a time where Malawi had looting of resources big time by civil servants duped as "Cash-gate Scandal"

X. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

No statistics was found on such scenarios

X. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?

PPDA claimed not to be aware of such transactions and statistics were not established

Transparency

X. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

Public procurement data is only in PDF or word formats and is downloadable.

X. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

This is at times very subjective as quality issues will sometimes depend on the service provider, department and/or an a procuring agency or a person is using, their location plus other issues but regardless, MEJN realized that some websites of the individual procuring entities where information would be accessible are up to date, not up and running and have not been in use for quite a number of years as such quality has been of compromise

X. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

Data Transparency Table - Access to Public Procurement Related Documents							
Type of document	Is this information required to be public by law?	Is this information publicly available?	Is the database complete?	Electronic	Machine-readable *	Free of charge	Exact format
PPL documents	YES	YES	YES	YES	YES	YES on website, NO for hard copies	PDF
Annual public procurement plans	YES AND NO. Some information	Largely upon request	NO	Partly	YES	YES	Word or PDF formats

	is not mandated to be made public i.e. procurements to do with national security						
Notices of intended procurement	YES	YES	YES	YES	YES	YES	Word or PDF formats
Amendments to tender documentation	Beyond certain thresholds	NO	N/A	YES and NO	N/A	N/A	N/A
Tender candidate applications	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Bids	NO	NO	NO	NO	NO	N/A	N/A
Tender commission decisions	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Information on subcontractors	YES	NO	NO	NO	NO	NO	N/A
Procurement Contracts	Not everything but accessible to oversight institutions	See foregoing					N/A
Contract amendments	Partly, especially Information like change in completion dates has at times been communicated to the	See foregoing					N/A

	public						
Contract performance information	YES	NO	NO	NO	NO	NO	N/A
Payment receipts	YES	NO	NO	NO	NO	NO	N/A
Inspection and quality control reports	YES	NO	NO	NO	NO	NO	N/A
Complaints	YES	YES	NO	NO	NO	NO	N/A
Dispute resolutions	YES	YES	YES	YES	YES	YES	N/A
Internal and external audit reports	YES	NO	NO	NO	NO	NO	N/A

* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - document that are NOT uploaded in the form of a scanned photo or PDF file.

In the comment box below, please elaborate on any irregularities or important details related to the above table.

Comment:

It is mandatory by the law that any public procurement relation data should be made public but irregularities in terms of the practice. MEJN foresees challenge in consolidation and harmonization of procurement transaction and later alone the weak data collection mechanisms by the PPDA as a greatest loophole in Malawi, procurements are transacted in isolation for each Department, each Ministry and each procuring agency without feeding into the office is the PPDA which is a regulatory body.

X. In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (E.g. gaps in the completeness of data from specific procurers or specific time periods?)

The authorizing body (the PPDA) do not have the full information of the procuring entities MEJN realized huge data records gap

Major Strengths and Weaknesses

X. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: In-proper definition of the Powers and mandates by a regulatory body (the PPDA) is not effective to the procurement systems as such procuring entities are at times left without providing information to the authority for closer follow up and tracking of the public procurement in Malawi. This result into lack of information about public procurement at all level because there is proper enforcement by the regulatory body to the entities

Recommendation: The PPDA should be fully capacitated and supported to operate it functions of Regulatory appropriately, M and E functions need to strengthened should be properly adhered to and operational to track collect, keep and manage the records properly. In This research MEJN noted , The PPDA do not have up to date data in as far as transactions for public procurements are concerned

2.

Gap: The Board that oversees the functions of the PPDA is given open ended time of operation the provision do not stipulate time of tenure Office of the board. Which may weaken their oversight functions over the operations of the PPDA.

Recommendation: There must be a clear cut of the PPDA board time of office for effectiveness in the operations of the public procurement regulatory body

3.

Gap: The Board responsible for providing oversight to the PPDA is responsible to handle very high procurements

Recommendation: This is an executive task and the Board must not be seen to carry out the day to day task of management. It may compromise the independence of the operations of the PPDA

X. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge: Weak feedback mechanisms by the procuring entities and the PPDA Procurement is decentralized and the PPDA out prior reviews, however there has been a great challenge for the procuring entities to support the authority with data as regards to their operations

Recommendation: The PPDA proposed the Thresholds should be increased so a lot of procurements are carried out by procuring entities without seeking approvals from their office mainly because tracking progress of public procurement has been a challenge and yet they are required to provide information of any procurement conducted in the nation

2.

Challenge: Limited and untimely financial support for the operations of the PPDA, at times the office is poorly funded to carry out their oversight functions as such some work is left not done due to financial constraints for instance reviewing of complaints require financial resources to invite and accommodate the members of the Review Committee and as required by the law the complaints are to be sorted out in 14 working days.

Recommendation: Government to invest much into supporting the PPDA proper funding must be earmarked for its functions exercise so that complaints are sorted out in 14 days as required by law

3.

Challenge: Lack of harmonization of powers and unclear demarcations functions of the oversight bodies, It is noted that very high single source procurements are required to be vetted by the Anti-Corruption Bureau (ACB) whilst all other follow-up work is done by the PPDA and not the ACB, this posed a challenge of continuous follow-up of the work and functions of the two bodies. In several recommendations stakeholders have the view that the PPDA should be left to follow such processes from a start to the end

Recommendation: Government to Ensure they harmonizes the functions of the oversight bodies for effectiveness and results oriented

X. What are the 3 major strengths / successes of the country's public procurement system as a whole? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

The PPDA operates independently i.e. Director General is appointed through competitive means and not appointed by the president like in other oversight bodies i.e. ACB Director General, The Auditor General, the Inspector General of Police and many more others. This provides opportunity for independent of the procurement authority body

2.

PPDA operates independently in way that sanctions are offered whenever the PDEs have not followed the law

3.

Unlike in the past few years disposal of public assets is now regulated and monitored. Previously political officials and other key government technocrats would dispose-off public equipment without proper monitoring but to their interests but through regulating the process the government is achieving value for money in such transactions