

OFFICE OF THE DIRECTOR OF PUBLIC PROCUREMENT

Annual Report for the Financial Year 2010-2011

Table of Contents

1.0 THE OFFICE OF THE DIRECTOR OF PUBLIC PROCUREMENT – AN OVERVIEW.....	1
1.1 Introduction.....	1
1.2 Functions of the Director of Public Procurement.....	2
1.3 Institutional Structure	4
1.4 Achievements and value adding to the procurement system since 2003	4
2.0 OPERATIONS	6
2.1 MONITORING AND ENFORCEMENT DEPARTMENT	6
2.1.1 Compliance Monitoring.....	6
2.1.2 Procurement Post Reviews	7
2.1.3 Investigations	8
2.1.4 Procurement Audits	8
2.1.5 Consultative Meetings	9
2.1.6 Comparative use of various monitoring tools since FY 2008-09.....	9
2.1.7 Procurement Prior Reviews.....	10
2.2 PROFESSIONAL DEVELOPMENT DEPARTMENT	13
2.1 Introduction.....	13
2.2 Management Awareness Workshops	13
2.3 Procurement Review Workshops.....	14
2.4 Private Sector Sensitization Workshops.....	14
2.5 IPC Training Workshops	15
2.6 Technical Capacity Development of the ODPP	15
2.3 REGULATORY, ADVISORY AND REVIEW DEPARTMENT	17
2.3.1 Regulatory Section	17
2.3.1.1 Nomination of external members of IPCs.....	17
2.3.1.2 Debarment of suppliers	18
2.3.1.3 Development of a debarment brochure and misconduct reporting form ...	21
2.3.1.4 Registration of suppliers.....	21
2.3.1.5 Simplified Bidding Document for Local Councils.....	21
2.3.2 Advisory Section	22
2.3.3 Review Section.....	22
2.3.4. Law Review.....	23

2.4 FINANCE AND ADMINISTRATION DEPARTMENT	25
2.4.1 Finance	25
2.4.1.1 Budget Preparation	25
2.4.2 Procurement	26
2.4.2.1 The Procurement Plan.....	26
2.4.2.2 Execution of various procurement activities.....	26
2.4.2.3 Reported Procurements	27
2.4.2.4 Monthly procurement trends.....	27
2.4.2.5 Categories of Procurements.....	28
2.4.3 Human Resource and Recruitment.....	30
2.4.3.1 Recruitment	30
2.4.3.2 Disciplinary Matters	30
2.4.3.3 Professional Development through educational advancement.....	30
2.4.3.4 HIV & AIDS Mainstreaming.....	31
2.4.3.5 Welfare	31
2.4.3.6 Medical Association of Malawi (MASM).....	31
3.0 PROCUREMENTS CONDUCTED BY PEs DURING REPORTING PERIOD.....	32
3.1 Introduction.....	32
3.2 Number of PE reporting.....	32
3.3 Value of procurement undertaken during the year.....	33
3.4 Procurement values by category	33
3.5 Procurement methods	35
3.6 Procurements conducted by main sectors of the public sector.....	36
3.7 Procurement conducted in main sectors of central government.....	36
APPENDICES.....	37
Appendix 1: List of PEs that submitted Reports.....	37
Appendix 2: List of non-complying PEs.....	41
Appendix 3: Circulars Issued.....	42

Vision

To put in place a public procurement system that is transparent, efficient, and corrupt free.

Mission

To provide a professional, efficient and effective regulatory, monitoring and oversight function on all public procurement matters by formulating, implementing and reviewing public procurement policies in order to ensure transparency, accountability and value for money in all procurement activities.

Core Values

Efficiency, effectiveness and economy

ODPP shall discharge its duties in a cost effective and expeditious manner

Impartiality

ODPP shall exercise fairness and justice in discharging its duties

Professionalism

ODPP shall discharge its duties with high sense of responsibility

Transparency and accountability

ODPP shall discharge its duties in an open manner and shall be responsible and accountable for its actions

Integrity

ODPP shall be firm, and shall exercise honesty and trustworthiness in discharging its duties.

Client Charter

ODPP shall support all public institutions in Malawi and be accessible to assist them improve procurement activities that are guided by the Public Procurement Act.

LIST OF ACCRONYMS

ACB	Anti-Corruption Bureau
CGS	Central Government Stores
CIAU	Central Internal Audit Unit
COMESA	Common Market for Eastern and Southern Africa
DPs	Development Partners
ESAMI	Eastern and Southern African Management Institute
FISP	Farm Input Subsidy
ICC	International Chamber of Commerce
IPC	Internal Procurement Committee
IRC	Independent Review Committee
M&E	Monitoring and Enforcement
MCA	Millennium Challenge Account
MDAs	Ministries, Departments and Agencies
MG	Malawi Government
MGDS	Malawi Growth and Development Strategy
NAO	National Audit Office
NWDP	National Water Development Program
OECD	Organization for Economic Cooperation and Development
ODPP	Office of the Director of Public Procurement
PD	Professional Development
PE	Procuring Entity
PPA	Public Procurement Act
PPDI	Public Procurement Desk Instructions
PPR	Procurement Post Review/ Public Procurement Regulations
PU	Procurement Unit
RAR	Regulatory, Advisory and Review
RFQ	Request for Quotation
SADC	Southern African Development Community
SBD	Standard Bidding Documents
TCPE	Technical Committee of Procurement Experts
UNDP	United Nations Development Program
VfM	Value for Money

MESSAGE FROM THE DIRECTOR



The Office of the Director of Public Procurement (ODPP) has been in existence for some time now, implementing public procurement reforms arising from the Public Procurement Act (PPA) (2003).

Pursuant to its mandate, the office undertakes various activities designed to ensure that public procurement is an effective tool in achieving government's economic and social objectives.

In the year under review, several activities were implemented. Among others, the Office intensified its monitoring and enforcement activities. A number of Procuring Entities (PEs) were visited and their procurements were audited/ reviewed. It is the results of these reviews that informed the general focus of our operational programmes. With financial assistance from the United Nations Development Programme (UNDP), the office engaged an international procurement audit firm, SGS-Nederland to conduct a comprehensive procurement review in the country so that the Office establishes progress made so far since the last review by another international firm, AMPROC in 2008. The second audit/review by SGS was conducted from July 2011 and a subsequent annual audit/review was conducted between June and July 2012.

The office has also in the year under review strengthened the operations of its Independent Review (IR) mechanism. Realizing the centrality of the IR mechanism in ensuring trust in any public procurement system, the ODPP oriented its IR committee members to enhance their understanding of the public procurement regime for their effective decision making. Most of the formal complaints handled in this year were from PEs and a number of errant suppliers were debarred as a result. Our challenge though has always been to have suppliers coming forward to complain when they feel disadvantaged in procurement proceedings for fear of reprisals from PEs. Efforts to sensitize them to come and lodge their complaints were embarked upon to ensure that they make use of this mechanism as provided for in the legal framework.

Another important activity embarked upon in 2010 is the review of the principal legal instrument, the PPA (2003). The Act has been in place since 2003 and in line with law review procedures in Malawi, it was eligible for review after five years which was in 2008. The review, which was scheduled to be completed by December 2011, is focusing on filling the gaps identified in the existing Act and taking on board issues emerging locally and internationally.

Further to the above stated activities, the Office pursued its professional development initiatives to enhance capacity of both the ODPP and the PEs to undertake public procurement activities properly. In this regard, the Office continued to deliver public procurement training to IPCs, procurement personnel as well as public procurement stakeholders. With regards to enhancing its own capacity as an oversight institution, the ODPP exposed a number of its technical and support staff to various local and international training courses. Most of these were offered by SETYM, ESAMI, ILO-Turin, ILI Uganda as well as COMESA just to mention but a few.

On the international scene, ODPP continued to represent the country at various public procurement forums. Notable among these were the COMESA Technical Committee of Procurement Experts (TCPE) which was held in Lilongwe in March 2011, where Malawi was elected Chairman. As a Chairman, Malawi continued to participate in public procurement reforms in the economic region. Through this forum, Malawi benefited from COMESA support in terms of training and other public procurement policy issues. Another area of Malawi's contribution on the international procurement scene was on Use of Country Systems policy discussions led by the Organization for Economic Cooperation and Development/Development Assistance Committee (OECD/DAC). In the year under review, the ODPP represented government at two meetings; one in March 2010 in Nairobi and another one in May 2011 in Cusco, Peru. At both meetings, Malawi made its contribution to the world's progress in the implementation of the Paris Declaration on Aid Effectiveness of 2005 in the area of public procurement. Invaluable contribution was also been made at the SADC trading bloc. Specifically, Malawi through the ODPP participated in drafting procurement policy guidelines for the SADC secretariat and procurement guidelines for the whole trading bloc.

On operational policy issues, in the year under review, the Office developed and implemented an HIV and AIDS Policy in its efforts to address HIV and AIDS issues in the workplace. Furthermore, the ODPP developed an Institutional Integrity Committee (IIC) in accordance with the National Corruption Prevention Strategy. The Committee's key responsibility was to develop and implement a Corruption Prevention Policy of the Office as a tool for preventing and fighting corruption among staff and stakeholders in public procurement sector.

Lastly, guided by both hindsight and foresight, the Office now intends to embark on implementation of second generation procurement reforms. These include sustainable procurement, promotion of third party procurement transparency initiatives, e-procurement and massive capacity development. These will shape the focus of our future operational programmes. This is in line with developments in the international procurement environment as dictated by both development partners and beneficiary developing countries. As an Office, it is important to remain a best fit into both the local and international environment.

Dye B. Mawindo

DIRECTOR OF PUBLIC PROCUREMENT

CHAPTER ONE

1.0 THE OFFICE OF THE DIRECTOR OF PUBLIC PROCUREMENT – AN OVERVIEW

1.1 Introduction

The ODPP was established under Section 4 of the PPA (The Act) of 2003 as an oversight organization for public procurement in Malawi. The Act also gives it the mandate to oversee, monitor and regulate all public procurement in Malawi. The Office is the custodian of the Public Procurement law. It became operational in February 2004, upon the appointment of the Director of Public Procurement.

It should be noted that prior to the enactment of the Act and subsequent establishment of the ODPP, public procurement was mainly being handled centrally by a Central Buying Organization, the Central Government Stores (CGS) and in smaller amounts by Government Ministries, Departments and Agencies (MDAs) themselves. Since procurement was decentralized, and the Government agencies were buying in any amounts without regard to planning and effective decision making, there was too much wastage. Procurement principles such as transparency, accountability, economy and efficiency in the use of public funds were not fully adhered to. It was not possible to achieve value for money (VfM) in such procurement activities. In the main, public officers who had access to resources and power for decision making were at liberty to do what they wanted without legal constraints.

In the early part of the new political dispensation, Malawi witnessed several high profile cases of mis-procurement that characterized this abuse, fraud and corruption. The Government of Malawi lost a lot of resources and the beneficiaries who are members of the public and taxpayers did not benefit from the resources or the resultant infrastructure which they were entitled to.

It is worth noting, however, that since the establishment of the ODPP in 2004, there has been remarkable and visible improvement in the conduct of procurement in the country resulting in improvement in value for money for most strategic procurements in the public sector. Of course there were a few incidences where some untouchable Controlling Officers were conducting themselves against the procurement reform agenda. Apart from such few cases, many PEs were conducting procurements as provided for in the Act and that contributed to the improvement of the economy by securing public funds which would otherwise have been lost through mis-procurements. The country has saved its precious and limited financial resources simply by ensuring that there is an effective legal framework governing the conduct of procurement in all public entities. Such resources are now made available for allocation to various Government programs that contribute to the Malawi Growth and Development Strategy (MGDS). It is estimated that mis-procurements, fraud and corruption in public procurement account for 30% of losses in public finance. An improvement in this figure is the contribution the ODPP makes to the national purse.

1.2 Functions of the Director of Public Procurement

In discharging its regulatory, oversight and monitoring functions, the ODPP exercises the following functions as provided for in Section 4 of the Act:

- i) Assisting in the development and enhancement of efficient and effective public procurement operations;
- ii) Ensuring the availability and accessibility of the Act and the accompanying regulations to public officials and the general public;
- iii) Developing standardized procurement documents in consultation with concerned professional and official entities and making these available to public officials for mandatory use by all public institutions;

- iv) Promoting the development of a professional workforce by organizing and conducting training programmes and developing government-wide policies and programmes aimed at establishing procurement related positions, career paths and performance incentives;
- v) Monitoring the performance of public institutions in the way they conduct procurement proceedings in order to determine whether this is done efficiently and in accordance with the existing legislation;
- vi) Collecting data on procurement contracts in Malawi and maintaining a list of debarred bidders and suppliers;
- vii) Referring any violations of this Act to the relevant budgetary and law enforcement authorities;
- viii) Proposing improvements in public procurement procedures;
- ix) Providing administrative review of bid protests;
- x) Carrying out economic studies on procurement, comparisons and future projections so as to provide advice to Government for mid-term and long-term policy formulation in respect of public procurement matters;
- xi) Establishing a data and information base concerning procurement terminology and legislation and to set policy for and promote the application of modern information and communication technology to public procurement;
- xii)** Regularly providing qualitative and quantitative assessments of procurement activities in Malawi to the Minister who is required to lay the reports before the National Council.

1.3 Institutional Structure

To fulfil the above functions, the ODPP has three technical departments which manage the day to day operations of the Office. The technical departments are:

1. The Professional Development
2. The Monitoring and Enforcement; and
3. The Regulatory, Advisory and Review.

Each of these departments is headed by an Assistant Director who reports to the Deputy Director. The three technical departments draw their support from Finance and Administration Department which oversees finance, office services, procurement information technology and human resources.

1.4 Achievements and value adding to the procurement system since 2003

In 2004, the ODPP was established and immediately after that it started putting in place internationally accepted public procurement procedures which are now being used by all public institutions in Malawi. Since these procedures were new, the Office had undertaken to provide training on regular basis to ensure all officers involved in public procurement are competent in managing their tasks.

The Office produced and distributed the Act, the Public Procurement Regulations (PPRs), the Public Procurement Desk Instructions (PPDIs) and the Standard Bidding Documents (SBDs) to each and every PE. These are supplemented by various circulars issued by the Director from time to time to clarify and give direction on the application of Act.

The results of these initiatives have been that high value contracts like the procurement of fertilizer for the Fertilizer Subsidy Program, the National Water Development Project (NWDP), the Borehole Drilling Program, the construction of the National Council and various road construction projects are usually undertaken with minimum disruption and at acceptable costs. This shows that the public procurement process is adding value to the development of the country.

The implementation of the public procurement reforms has a positive impact on the improvement in the performance of the economy considering that up to 70% of recurrent expenditure by public institutions is through procurement. Prudence and economic gains in the conduct of procurement as a result of implementation of the Act translates to huge savings for the country and a significant contribution to the economy.

Contracts are now largely awarded on merit through a process that demonstrates transparency, fairness, and accountability. This has instilled the much needed confidence in the system and in Government operations, with those operating businesses assured of the fact that no supplier or contractor is excluded from participating in Government contracts as long as they are competitive and capable of providing the required goods, services or works.

CHAPTER TWO

2.0 OPERATIONS

2.1 MONITORING AND ENFORCEMENT DEPARTMENT

Section 5 of the PPA 2003, empowers the Director of Public Procurement to regulate and monitor public procurement activities in Malawi.

In doing so, the Director is able to guide and support various PEs in their institutional and capacity development programs and the public procurement reform agenda. There are a number of activities that the ODPP undertakes within the regulatory, monitoring and capacity development frameworks. Monitoring and enforcement activities are carried out through the Monitoring and Enforcement (M&E) Department.

2.1.1 Compliance Monitoring

Compliance monitoring is an activity whereby the ODPP monitoring staff visits PEs to review their compliance to the Act. The exercise mainly allows the monitoring teams to assess the PEs' compliance to the main provisions of the Act. Main areas of focus for compliance monitoring include availability of legal document, whether a formally appointed Internal Procurement Committee (IPC) or a well-established Procurement Unit (PU) are in place, records keeping, submission of quarterly procurement reports to the Director and knowledge of administrative review procedures among others.

Compliance Monitoring is one of the most important tools the Director of Public Procurement uses in monitoring public procurement in Malawi as it give the picture of how compliant PEs are to the legal framework. Compliance to legal framework is important for PEs because that is the essence and existence of the Act.

During the year under review, the ODPP carried out 24 missions to various PEs to assess their compliance to the Act. The main conclusions from all these missions were that procurement planning was either non-existent or poor, record keeping was still very poor, procurement quarterly reports were not being submitted to the ODPP and if where they were submitted they were either under reported or over reported, PEs were not aware of the administrative review procedures and evaluation of bids was being done wrongly. However, on a positive note, all PEs had formally established IPCs, established PUs, and knew the main principles of public procurement.

2.1.2 Procurement Post Reviews

Procurement post reviews (PPRs) are another tool the ODPP uses for monitoring public procurement in Malawi. In conducting PPRs, the ODPP Monitoring Teams review actual procurements conducted to by PEs to verify compliance with the public procurement procedures.

During the year under review 36 PPRs were conducted nationwide in the central and local governments and the parastatal sector. On average, performance by central government institutions was generally better than that from the local Councils and parastatal organizations. Specifically, central government institutions were better in use of SBDs and procurement methods while they scored poorly on procurement planning. Parastatal organizations scored better in procurement planning but were poor in use of standard bidding document. Local Councils performed poorly in all categories. Figure 1 shows that while the trend for use of Compliance Monitoring as a monitoring tool has declined, that of use of PPRs has increased, which means that now the focus is more on doing the right thing than knowing the right thing.

2.1.3 Investigations

Sometimes the ODPP receives complaints or anonymous tips from the general public about a procurement process in a PE which the reporter feels is irregular, inappropriate or plain wrong.

In such situations the ODPP commissions its investigations into the matter to establish the truth about the allegation. During the year under review, seven (7) cases were reported to the ODPP and after investigations, it was noted that three were hoaxes, while four of them were genuine and action was taken accordingly.

In the process of review of an alleged misconduct, the ODPP may come to the conclusion that the case is basically of corruption in nature. In that case there is a standing agreement with the Anti-Corruption Bureau (ACB) to forward to it such cases for action and vice versa.

2.1.4 Procurement Audits

Public procurement audit, like in any other field of operation is an essential part of monitoring public procurement processes. Procurement audit is not financial audit and should at all times be thought of and discussed as different from financial audit.

Having conducted the first ever procurement audit in 2008 for procurements conducted in 2005/2006 and 2006/2007 financial years, the second nationwide procurement audit was initiated and then commenced towards the end of the 2010/2011 financial year.

Goods, works and services valued at over K48 Billion were audited by SGS Nederland BV, during which major findings mirrored those of the 2008 AMPROC Procurement Audit Report. Main findings included poor procurement planning, poor record keeping and poor evaluation processes among others. A follow-up action on findings by the ODPP was done and the results largely confirmed the SGS audit findings.

2.1.5 Consultative Meetings

As part of strengthening business environment with the PEs, in 2007 ODPP came up with the idea of meeting with PEs representatives to discuss issues that affect their public procurement operations. These discussions are open and are done in a friendly semi-official environment and representatives have brought up genuine concerns which have been discussed and sometimes major public procurement policy decisions taken. During the year under review, the ODPP conducted the consultative meetings in the South, Centre and North. In the South, 29 public officials attended while in the Centre and North 26 and 22 public officers attended respectively.

The free semi-official nature of the meetings meant that some issues which ordinarily could not be brought formal written communication were raised and discussed during these meetings. Participants to these one day meetings requested the ODPP to continue with the meetings.

These meetings have proved very essential and the Office has institutionalized them as annual activities. It was noted during the discussions that members were participating freely but candidly.

2.1.6 Comparative use of various monitoring tools since FY 2008-09

At the disposal of the Monitoring and Enforcement Department, there are various tools that it uses to monitor public procurement activities in Malawi. These tools are:

1. **Compliance Monitoring**: Usually used when the procurement system is just being established. It looks at compliance to the legal framework
2. **Procurement Post Reviews**: This is a more detailed approach in which specific procurements are assessed based on procedures and processes.
3. **Targeted Investigations**: These are used throughout the life cycle of the procurement process. Investigations are carried out based on whistleblowers reports and other specific allegations related to mis-procurements

4. **Stakeholder Meetings**: Done once a year, these are important tool to gauge the performance of public sector procurement processes. More information is divulged than in any other forum or communication base.
5. **Procurement Audits**: Initially done rarely, procurement audits will from 2010/11 financial year be done every year. This is a detailed review of procurement practices and procedures

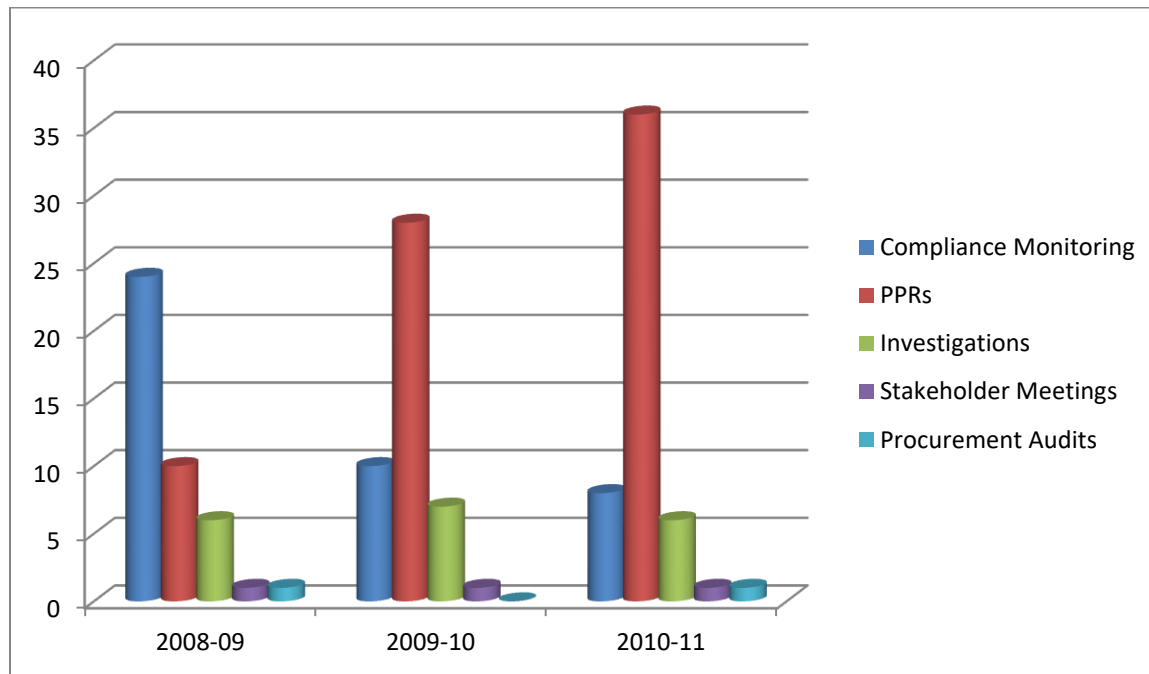


Fig. 1: Use of Monitoring Tools

2.1.7 Procurement Prior Reviews

While the ODPP monitoring teams can monitor PE’s procurement activities after they have been executed as in the three cases above, it also undertakes procurement prior reviews for procurements above set thresholds as part of a preventive monitoring mechanism. Because of its nature the activity has been generalized and is done by all technical staff and not restricted to Monitoring Department.

Upon being established, the ODPP started implementation of the various functions provided for in the Act. It, however, noted that the PEs were severely incapacitated to conduct public procurement efficiently and needed support by the ODPP to improve efficiency and professionalism.

As such and in line with Section 5 of the Act 2003, the ODPP issued instructions to all PEs advising them that procurements above certain thresholds would be subject to prior reviews and granting of 'No Objections' before contracts could be awarded. A 'No Objection' is an approval by this Office to allow a PE to proceed with a procurement award decision.

The ODPP is desirous of coming up with candid figures on prior reviews and to that effect it has just procured a data management software that will ensure the Office efficiently collects such data from PEs for public use. This should start being visible in the 2013/14 financial year.

The prior review has been one of the most effective tools in controlling unplanned and unwarranted expenditures in public service. Though quantification of data at this stage has not been possible, it is estimated that nearly 400 procurement submissions for No Objections were turned down by the ODPP with instructions to either cancel or review the decision so that the right bidders were eventually awarded the contracts, thereby ensuring VfM. The ODPP has, therefore, contributed immensely to the Government savings and the overall public purse.

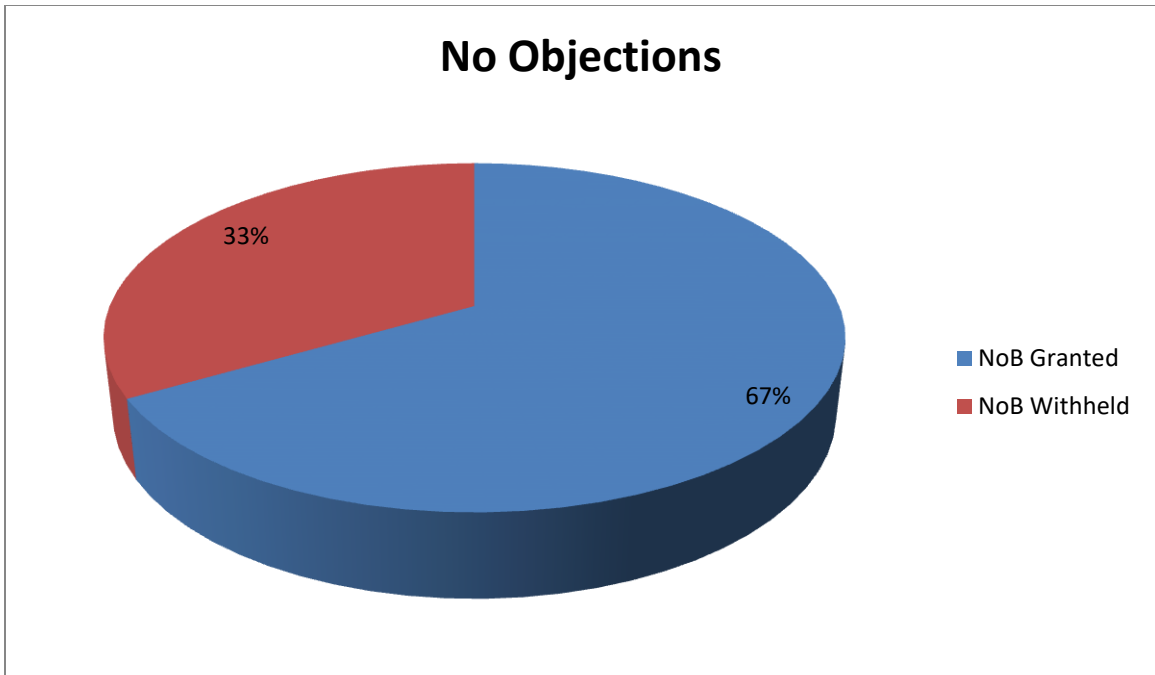


Fig. 2: No Objections (NoB) positions

2.2 PROFESSIONAL DEVELOPMENT DEPARTMENT

2.1 Introduction

The Office carries out various capacity development activities through its Professional Development (PD) department. During the year under review PD continued with the implementation of procurement capacity building programs. Most of the programs were financed by the UNDP and Millennium Challenge Account (MCA). The following are the main programs implemented in the period:

2.2 Management Awareness Workshops

The main objective of these workshops was to sensitize senior management of various PEs on public procurement regulations so that as they make decisions, they should be mindful of the requirements of the law. The other objective was to garner their support for the procurement reform agenda so that they should play a leading role in ensuring that institutional procurement set ups such as PUs, evaluation teams and IPCs are supported for smooth procurement operations.

In the period under review, a total of two workshops were conducted and a total of 53 participants were trained. The participants included Directors of government ministries, Chief Executive Officers of parastatal organizations, District Commissioners and other high ranking officials in the public sector organizations. The workshops were a success in that ODPP solicited their support for the implementation of procurement principles. Furthermore, they provided excellent forums for discussion of challenges facing the implementation of public procurement principles under the Act.

2.3 Procurement Review Workshops

The main objective of these workshops was to equip audit staff, investigations officers and procurement monitoring staff with the necessary knowledge and skills in conducting procurement audits. In the year under review, ODPP continued with the training of audit staff which was started in the previous year using funds from MCA. A total of two workshops were conducted in which 83 participants were equipped with procurement auditing skills. They were drawn from various public institutions of which the largest number was from the National Audit Office (NAO) and the Central Internal Audit Unit (CIAU). With ODPP as the advisor, the officers trained were ready to make meaningful procurement audits contrary to the past where these audits were handled like financial audits. Specifically, they were empowered to provide an expert opinion on any procurement on matters of adequacy of procurement procedures followed, control systems being used, level of compliance with the principles of the Act, fiduciary compliance, risk identification and mitigation measures among others.

2.4 Private Sector Sensitization Workshops

These are on-going workshops aimed at sensitizing the private sector on public procurement principles with a view to equip it with knowledge and skills for preparing responsive bids. Additionally, ODPP uses the workshops to sensitize suppliers on the need to abide by contractual provisions as well as ensuring a high level of ethical behaviour in participating in public procurement.

The year under review saw the PD department conducting a total of two workshops in Lilongwe and Mzuzu which drew 111 participants from Security and Cleaning Service Providers, Insurance, customs clearing agents, travel agents, and Landscapers, Printers, Catering and Contractors. Both workshops were very enlightening to the suppliers. They also sensitized them on the Independent Review Mechanism, a facility provided for in the Act that provides an 'injured' bidder/supplier to complain and have the matter reviewed by independent review committee.

2.5 IPC Training Workshops

From time to time, PEs secure their own funds and they request the ODPP for in-house procurement training workshops. These workshops aim at equipping their IPCs' members and senior management with knowledge and skills for managing public procurement in accordance with the PPA principles. In the year under review, a total of 170 participants from 39 PEs were trained. The PEs were Local Development Fund Secretariat, all the 28 District Councils, Airport Development Limited (ADL), Ministry of Agriculture, Irrigation and Water Development, Airport Commandant Department, Blantyre City Council, Malawi Energy Regulatory Authority, Northern Region Water Board, ESCOM, Malawi College of Distance Education and Malawi Prison Services.

2.6 Technical Capacity Development of the ODPP

Apart from developing capacity of PEs to manage public procurement in accordance with the Act, ODPP was also, in the year under review, preoccupied with developing its own technical capacity as a procurement oversight office. Several officers were trained in various technical areas of public procurement offered by renowned various local and international training providers. The areas included Procurement of Goods, Procurement of Works, Procurement of Consultancy Services, Public Procurement Management and a Master's Degree program in Supply Chain Management.

In conclusion, it is important to point out that training is an important element if compliance with the Act is to be achieved. The impact of the workshops conducted in the year under review will be noticed in the years to come. Limited by resources though, the department shall endeavour to continue with its training programmes, seeking support from both government and Development Partners. Much as focus has been on the implementation of procurement reforms since the enactment of the Act in 2003, it is generally agreed that the ODPP training should build on the successes of the previous programmes to embark on second generation procurement reforms which center on E-Procurement, Sustainable Procurement, Public Private Partnerships (PPP), Massive Capacity Development and enhancing procurement transparency through involvement of

stakeholders. These are currently top on agenda of many international bodies involved in public procurement such as the COMESA, OECD/DAC and, therefore, the ODPP's strategic focus in procurement training is being largely influenced by the same.

2.3 REGULATORY, ADVISORY AND REVIEW DEPARTMENT

The purpose of the Regulatory, Review and Advisory (RAR) Department is to regulate the procurement environment within which PEs operate so as to improve transparency, efficiency and VfM while providing a central advisory point of contact for PEs. The Department has three sections, namely Regulatory, Review and Advisory.

2.3.1 Regulatory Section

The Regulatory Section is responsible for the formulation, development, maintenance and amendments of public procurement legislation and all related documents and for providing advice on the interpretation of the same. This section performed a number of functions in the reporting period under review, some of which are as follows:-

2.3.1.1 Nomination of external members of IPCs

The Act of 2003 under Section 9 (1) (c) empowers the Director of Public Procurement to nominate external IPC members in a case where a procurement has exceeded a threshold prescribed by him or her. It has been a tradition that such members are nominated for one year. The services of these members are terminated in accordance with the Public Procurement Regulations (PPR), 2004 Regulation 17(7). The Regulation states that external IPC member services can be terminated based on: incapacity or inability, abuse of office, corruption or fraudulent practices and end of term.

During this period the ODPP received a number of requests for external IPC members from PEs to which the Office responded by appointing qualified external members to the IPCs in accordance with the Act.

2.3.1.2 Debarment of suppliers

a) Investigations of misconducts

The ODPP is mandated under s. 20 of the Act and regulation 192(5) of the Public Procurement Regulations, 2004 to conduct investigations into allegations of misconducts committed by bidders or suppliers. In the year under review, the ODPP intensified its efforts to investigate cases of misconducts committed by various suppliers. A number of PEs reported misconducts by suppliers to ODPP and 30 complaints on such misconducts were received. Of these 13 were fully investigated and recommended for debarment. Two were investigated and not recommended for debarment because the Office considered that the issues raised could best be handled through mediation or arbitration to ensure that the communities do not lose out of the development opportunities which were the subject of the complaints. Of the complaints that were received, 18 concerned procurement of works while the rest were for procurement of goods and services. The allegations of misconduct in procurement of works concerned mainly failure by the contractors to complete the works and also construction of substandard works.

b) Suspension of suppliers

The ODPP under the powers conferred on it by Regulation 192 (5) of the PPRs, 2004 suspended Part Quip, a supplier of P. O. Box 51265, Limbe from participating in public procurement from the 19th of April, 2011 up to 19th July, 2011. The suspension was to pave way for investigations into serious allegations of misconduct in the implementation of a procurement contract for the supply and delivery of tyres to Zomba Central Hospital. During this debarment period, PEs could not accept proposals, bids and quotations from the supplier. The supplier was also not eligible to be awarded public procurement contracts until the suspension was lifted.

c) Exclusion of suppliers

Following reported misconducts, the ODPP conducted nine debarment hearings in the period under review. The following is the list of the cases that were heard during the period:

No	DESCRIPTION OF THE ISSUE	DEBARRED CONTRACTOR/SUPPLIER	DEBARMENT PERIOD
1	Supply of five sets of desktop computers	Compufix Electronics and Networks	12 months
2	Rehabilitation and completion of Chilumba Garrison Clinic	Kays Construction Contractors	9 months
3	Construction of four EH8 staff houses at Songwe Border Post	Chilongozi Building Contractors	9 months
4	Construction of fish landing facilities	Chaweya Building Construction Company	3 months
5	Supply and installation of solar power station and electrification of houses	Bestobell (Bestsolar)	6 months
6	Rehabilitation of Magistrates Courts and other buildings	Muleso Building Contractors	6 months
7	Rehabilitation of Magistrates Courts and other buildings	Nasho Building Contractors	6 months
8	Supply and delivery of motor vehicle tyres	Part Quip	6 months

Table 1: Debarred Suppliers

All the five contractors and three suppliers that were excluded from participating in public procurement had committed serious breach of contractual obligations. Five concerned failure to complete the works by contractors, while one concerned substandard works. In the case of Nasho Building Contractors, the fact is that the contractor was awarded three contracts at the same time by the Judiciary to:

- a) renovate and rehabilitate Mzuzu Judges Mess in Mzuzu City within 12 weeks from the commencement date of 2nd June, 2010 to the completion date of the works of 2nd September,2010;
- b) maintain and rehabilitate Chintheche Magistrate Court in Nkhatabay City within 16 weeks from the commencement date of the 2nd June, 2010 to the completion date of the works of 4th October,2010;
- c) maintain and rehabilitate Emcisweni Magistrate Court in Mzimba District within 16 weeks from the commencement date of the 7th June, 2010 to the completion date of the works of 7th October, 2010.

The Contractor lacked capacity to concurrently execute all three contracts successfully due to among others, lack of sufficiently qualified key personnel, equipment and competency. This resulted in serious breach of contractual obligations by the contractor, who failed to complete the works within the agreed completion period leading to termination of the contract on 4th March, 2011.

In other cases involving works contracts, it was also found that there was inadequate supervision leading to breach of contractual obligations. Example of this problem is in the case of Chilongozi Building Contractors in which there was execution of substandard works which with proper supervision should have been detected earlier.

The debarment cases also showed that in the procurement of goods, PEs accept delivery without inspecting the goods. For example, Compufix Electronics and Networks delivered five computer sets which had components which were incompatible. The Ministry of Defence accepted delivery of these computers without inspection and it later discovered that the components were not compatible only later after full payment had been made. This would have easily been noted if inspection was done prior to acceptance and delivery of the goods.

2.3.1.3 Development of a debarment brochure and misconduct reporting form

The ODPP noted that there was need to continue raising awareness on the existence of the debarment process. In view of this the ODPP embarked on an exercise to develop a debarment brochure. The brochure will be distributed to all stakeholders. The brochure will be amended accordingly whenever there are changes to the Act and Regulations.

The ODPP also developed and will be issuing to the general public, through its website, a misconduct reporting form to be used when reporting misconducts committed by suppliers and bidders to ODPP.

2.3.1.4 Registration of suppliers

The ODPP, just like in the previous years, was to embark on the registration exercise of suppliers of both goods and services. During the year under review, the registration period was increased from one to two years. The list of registered suppliers was circulated to all Government Ministries, Departments, statutory corporations, other organs of public administration, and was also posted on ODPP website for use by the general public.

2.3.1.5 Simplified Bidding Document for Local Councils

There is an outcry mainly from the Local Councils that the existing legislation, including the SBDs developed by the ODPP, are not suitable for procurement at local Council level because they are too detailed. As a result of this, the ODPP and the Ministry of Local Government and Rural Development embarked on consultations with Local Councils to establish if there was need for the Office to develop specific regulations for Local Councils or to make changes to the existing ones to address the procurement related problems that the Councils were facing. After assessing the opinions of the stakeholders, the ODPP concluded that what was needed for the Local Councils was not a separate

set of regulations, but rather a simplified version of the SBDs that are already in circulation. A team was instituted to come up with this simplified SBD for Local Council procurements. The team completed the production of simplified SBD's for use at Local Council level and it is expected that consultations will be done before the end of the 2012/13 financial year.

2.3.2 Advisory Section

This section is responsible for providing advice to PEs on issues of procurement. During the year under review, the ODPP continued to provide advice to PEs on the public procurement legal framework. The issues that frequently came up during the period under review included methods of procurement, bid and performance bonds, bidding periods, and the evaluation process.

2.3.3 Review Section

This section provides secretarial services to the Standing Review Committee that handles complaints brought to the Director of Public Procurement. In the year under review, twelve new members of the Standing Review Committee were appointed and an orientation workshop was conducted. ODPP received 15 complaints for administrative review from suppliers and bidders as detailed on Table 2. Two complaints were dismissed for lack of merit. Four were referred for alternative disputes resolution as the issues raised concerned contract implementation rather than being bid protest as required under s. 37 of the Act. Two were set for hearing but were adjourned as the parties failed to attend the hearing. The remaining matters were pending dates for hearings before the Review Committee in the beginning of the year 2012.

No	DESCRIPTION OF THE COMPLAINT	COMPLAINANT	DEFENDANT
1	Abuse of Government Funds through procurement	Concerned Citizens of Nsanje	Nsanje District Hospital Office
2	Hire of vehicles from unregistered company called Dream Line car Rentals for COMESA Summit Conference	Anonymous	Ministry of Transport and Public Works
3	Unfair Award of Contract	Lovewater Drilling Company Limited	Ministry of Local Government/Karonga District Council
4	Complaint on the contract price for the construction of Houses	M'nyanja Health Centre	Plan Malawi
5	Supply for supply of PABX for MIM	ICT Networks (2009) Limited	Malawi Institute of Management
6	Supply of Specialist Software to the Education Project Implementation Unit	EIMU (MoE)	W.J.K. General Dealers
7	Complaint on award of RFQ Number 031/CMS/G/MMS/010/00110	SADM Pharmaceuticals	Central Medical Stores
8	RFQ Number 031/CMS/G/MMS/010/00110	Med Con. Afr. Ltd	Central medical Stores
9	The Construction, completion and maintenance of 102 Umoyo Staff Houses and associated external works	Victory Vision Constructions	Ministry of Health
11	Contract No. PUSS/BWB/G/02D: Supply and delivery of water meters	GENMEC Limited	Blantyre Water Board
12	Un-procedural award of contracts at Thyolo District Council	Muronya Wood & Steel Engin.	Thyolo District Council
13	Complaints on poor services and measures to address the concerns	Kamuzu College of Nursing	Classic and Eden Drops Catering Services
14	Results for provision of catering services, Zomba central Hospital	CGF Enterprises	Zomba Central Hospital
15	Prohibitive delivery period; supply and delivery of various line materials (ESCOM)	Mills Kagoben	ESCOM

Table 2: Administrative Reviews Conducted

2.3.4. Law Review

The ODPP has since January 2011 been reviewing the Act. It has been observed during the implementation of this Act that it has a number of shortfalls with regard to procedures and practices in public procurement and disposal of public assets, among which are:-

- 1 Lack of decentralized disposal of assets system that responds to the Procuring Entity's (PE) requirements in a transparent and accountable manner;

- 2 The Act establishes an office of Director of Public Procurement rather than an institutional structure like an “Authority” to be responsible for monitoring and oversight of public procurement activities;
- 3 The Act creates a likelihood of a conflict of interest in so far as the roles of the Controlling Officer are concerned. The Controlling Officer, under section 38(2) of the Act, has the responsibility for deciding applications for review from aggrieved bidders. Therefore, being a member of IPC, the Controlling Officer would be reviewing his/her own decision which is against rules of natural justice;
- 4 The Act makes it mandatory for PEs to submit procurement plans but there are no sanctions for failure to submit the same;
- 5 Lack of penalties which are provided under the Act e.g. there are no sanctions for a PE in slicing of procurements to avoid thresholds
- 6 The Act does not specifically provide for the powers of the Office of Director of Public Procurement. This has led to challenges in implementing the Act e.g. lack of investigative powers makes the office fail to institute investigations in a PE where procurement misconducts are suspected. As a result procurement misconducts have gone un-investigated and unpunished and this has led to an increased perception of corruption in public procurement (Malawi Government- Anti - Corruption Survey 2010);

2.4 FINANCE AND ADMINISTRATION DEPARTMENT

In order for ODPP to fulfil its mandate through the core departments, it heavily relies on the efficiency and effectiveness of the Finance and Administration sections. During the year under review, we had an increase in funding of 9% as detailed in figure 3. This increase in funding was really a relief for ODPP's activities during the year. Though we had an increase in funding, we still faced a problem of cash flow for our monthly receipts from Treasury. However, the UNDP came to our rescue and funded us an equivalent amount of MK92,306,775.02 which reduced the gap.

2.4.1 Finance

2.4.1.1 Budget Preparation

Timely and realistic budgets for both Personal Emoluments and Other Recurrent Expenditure during the 2010/11 financial year were prepared. A top up of MK41 million from Treasury during virement enabled increased activities which the ODPP conducted in the year under review.

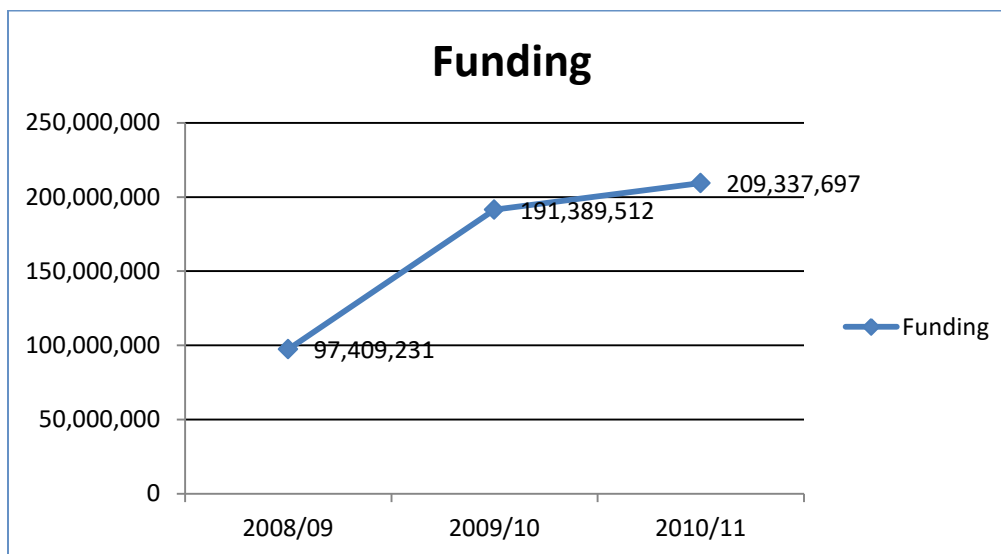


Fig 3: ODPP budget levels

2.4.2 Procurement

In order to carry out its various procurement activities during the year under review, the Office through its Procurement Unit (PU), conducted the various activities as listed here below:

- 1 Formulated a Procurement Plan
- 2 Executed various procurement activities and
- 3 Compiled and submitted quarterly procurement activities

2.4.2.1 The Procurement Plan

In order to come up with an all-inclusive Procurement Plan for the 2010/2011 fiscal year the PU liaised with all departments and sections as to their requirements. This was for the smooth running of the ODPP's operations.

During the year under review Requisitioning Units (users) followed the approved Procurement Plan in their monthly requisitions. This approach made it easy to execute procurements as users and the PU understood each other's roles. Nonetheless there were some requirements which were executed but not planned for due to unforeseen circumstances.

2.4.2.2 Execution of various procurement activities

During the year, the PU conducted various procurement activities covering the procurement of goods, and services. All procurements were done under the guidance and approval of the ODPP's IPC. The funding of the procurements was from both the Malawi Government (MG) and our Development Partners (DPs) in particular the UNDP. The total value of procurements reported in the year under review was K122, 469,004.85 as shown in table 3.

2.4.2.3 Reported Procurements

The total value of procurements reported by the PU in the ODPP in the year under review was K122, 469,004.85 as detailed below. The Unit did not carry out any procurement for works.

NO	MONTH	Goods (MK)	Services (MK)	Totals (MK)
1	July 2010	6,637,523.44	2,932,806.33	9,570,329.77
2	August 2010	7,806,642.55	5,506,546.22	13,313,188.77
3	September 2010	3,018,476.70	24,497,766.43	27,516,243.13
4	October 2010	2,899,455.30	4,725,931.64	7,625,386.94
5	November 2010	2,485,312.70	10,581,700.84	13,067,013.54
6	December 2010	3,233,046.11	14,695,819.32	17,928,865.43
7	January 2011	3,252,794.21	9,313,241.74	12,566,035.95
8	February 2011	938,331.60	653,825.16	1,592,156.76
9	March 2011	3,145,479.83	1,440,141.18	4,585,621.01
10	April 2011	755,663.20	1,569,357.25	2,325,020.45
11	May 2011	986,760.52	4,940,761.34	5,927,521.86
12	June 2011	3,948,656.65	2,502,964.59	6,451,621.24
	Totals	39,108,142.81	83,360,862.04	122,469,004.85

Table 3: Reported monthly procurements

2.4.2.4 Monthly procurement trends

As may be noted in the figure 4, during the year under review the highest value in procurements was carried out in September 2010 while the lowest was in February 2011. This is a normal trend in procurement practice as the Users tend to requisition most of their planned goods and services in the first half of the financial year.

However, the most important thing about the process is that all procurements were carried out within the planned budgets and there was no unplanned expenditure to create budgetary arrears.

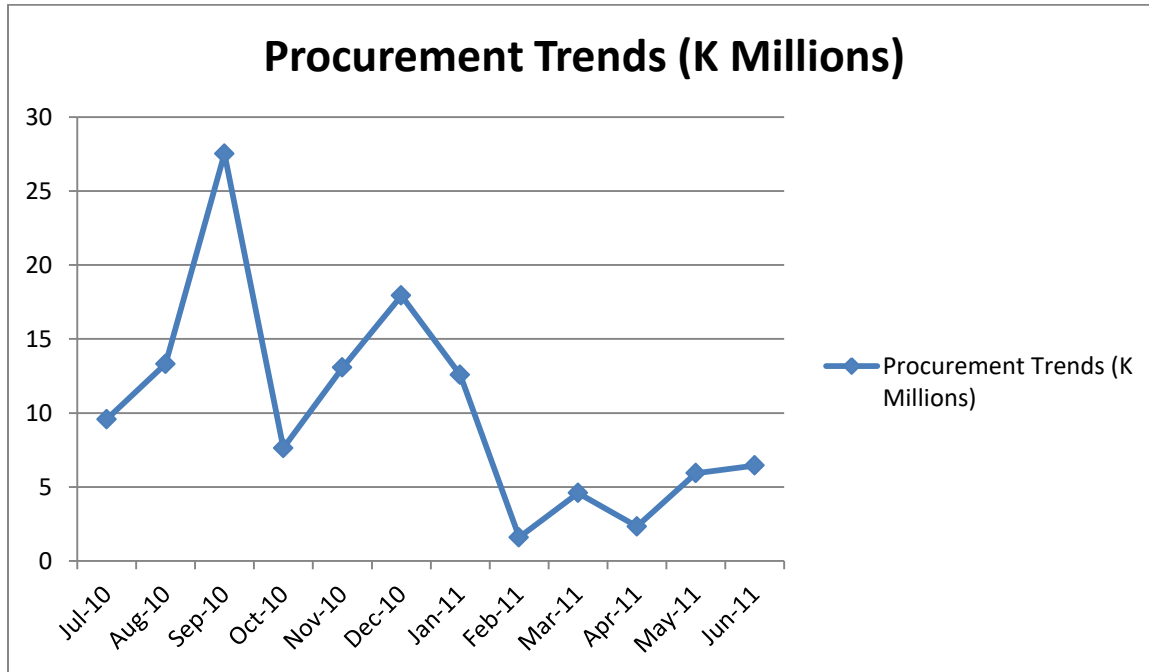


Fig. 4: ODPP procurement trends

2.4.2.5 Categories of Procurements

Like in all entities, procurement activities carried out are either for goods, works, or services (consultancy and non-consultancy). During the period under review, the ODPP did not carry out any works procurement. However, a number of services were carried out totalling to K83,360,862.04, a figure which is higher than that for the procurement of goods at K39,108,142.81 as shown in Fig 5.

Further, the figure shows that during the year under review, the ODPP spent 68% of its procurement budget on services compared to 32% on goods. The figure for services is higher largely due to hiring of consultants.

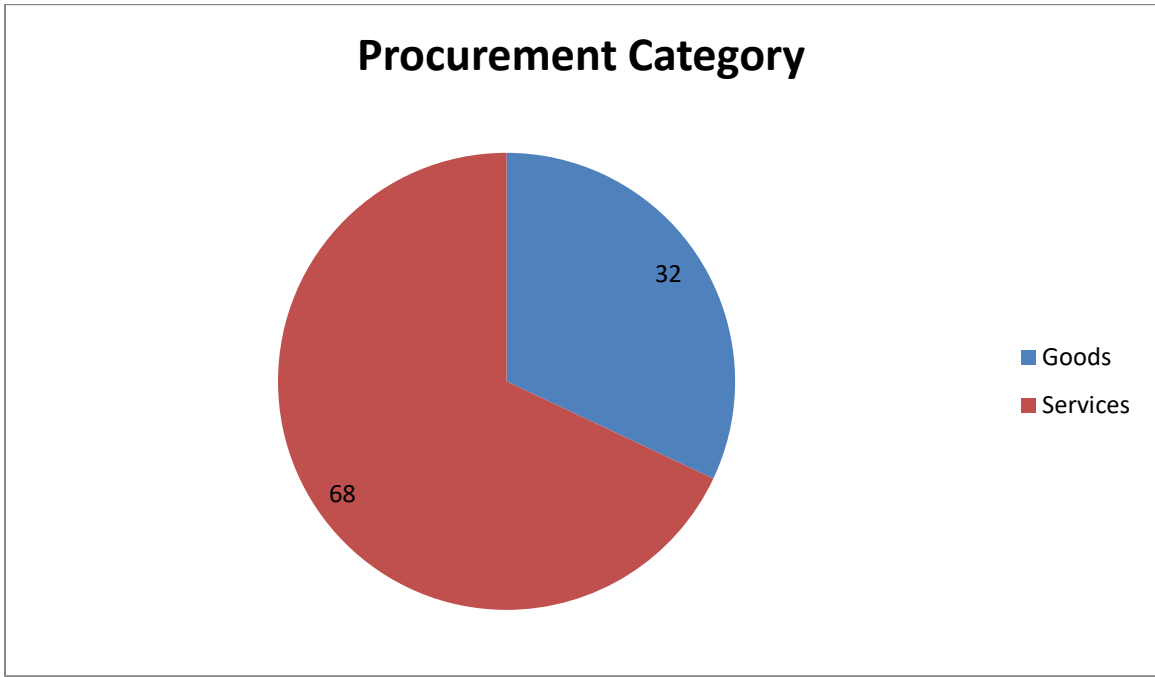


Fig. 5: Categories of procurement

2.4.3 Human Resource and Recruitment

During the 2010/11 financial year, the Section continued to provide effective human resource support services to the organization. There were a number of functions performed in this period which are highlighted below.

2.4.3.1 Recruitment

In an effort to have a fully-fledged staff contingent, the ODPP intensified the recruitment of personnel. In addition to filling positions through promotions of existing employees, new personnel were recruited from suitably qualified candidates from the general public. Gender mainstreaming took center stage so much that the ODPP has an increased number of female employees compared to the past financial years. In the same year the total number of filled posts was fifty as compared to seventy two on the establishment. Despite the revision of its Condition of Service in the 2009/10 financial year, the ODPP still experienced resignation of three members of staff.

2.4.3.2 Disciplinary Matters

No disciplinary issues were handled in the year

2.4.3.3 Professional Development through educational advancement

Several members of staff attended professional training with the Eastern and Southern African Management Institute (ESAMI) and other training institutions with the sponsorship of the ODPP

2.4.3.4 HIV & AIDS Mainstreaming

HIV & AIDS mainstreaming in the ODPP was taken to a high level by the launch of the HIV & AIDS work policy. The launch of the policy signifies the commitment which the ODPP has in the welfare of its employees. A number of HIV & Aids activities were carried out in this financial year as one way of bolstering that support for /its members of staff.

2.4.3.5 Welfare

As part of ODPP's efforts to ensure its employees' dependants are taken care of once the employee has died, it made a decision during the period under review to put all staff on Group Life Assurance Cover. This policy covers the employees spouse and four (4) biological children upon the death of the employee.

2.4.3.6 Medical Association of Malawi (MASM)

As one way of enhancing the conditions of service for its staff, the ODPP has, among other facilities, a medical scheme to improve and sustain the health of its members of staff. During the year under review, the Office continued to provide medical services to its members of staff and that employees of all grades are covered under this medical scheme.

When the scheme was initiated, members of staff were required to contribute to the scheme. However, during the year under review this approach was discontinued and all employees are now enjoying 100% coverage. The budget for MASM covered VIP, Executive and Economy services and it varies according to number of employees in each reporting year.

CHAPTER THREE

3.0 PROCUREMENTS CONDUCTED BY PEs DURING REPORTING PERIOD

3.1 *Introduction*

The Act stipulates that public procurement activities shall be decentralized to public institutions. The procurement decisions are made by the procuring entities themselves through their respective IPCs. The IPCs use PUs which are composed of procurement specialists and are directly responsible for the day to day procurement activities.

PUs are established under Section 10 of the PPA and, unlike IPCs, are part and parcel of administrative arms of any PE. Officers are recruited into this unit and are on payroll. They manage the day to day activities of the PE including provision of daily procurement statistics. The statistics or data that is presented in this section was provided by the PU of various PEs in form of quarterly reports.

3.2 *Number of PE reporting*

The number of entities which submitted quarterly reports for the 2010-2011 financial year was 127. This was an improvement from the past three years where 83 PEs submitted their reports in 2009-2010 and 112 in both 2008-2009 and 2007-2008 financial years.

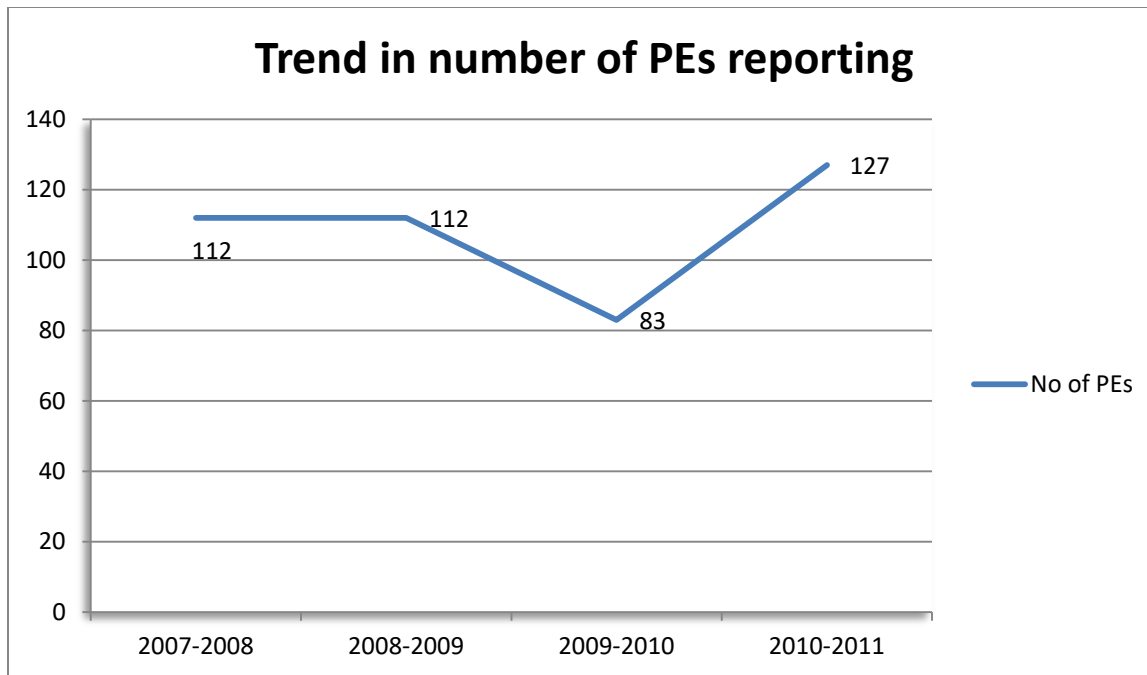


Fig. 6: PEs reporting trends

3.3 Value of procurement undertaken during the year

During the year under review, the 127 PEs that submitted their annual reports conducted procurements worth MK58,494,084,585.11. Appendix 1 lists the entities that submitted the reports and their procurement values divided into goods, services and works.

3.4 Procurement values by category

During the year under review of the total K58,494,084.585.11, procurement of goods had the highest share taking 67.6% of the total figure, followed by works with 18.7% and finally services with 13.4%. We have procurements which were reported but without known category valued at almost K133Million representing 0.30%.

The biggest component within the figure for procurement of goods is in the procurement of Farm Input Subsidy Program (FISP) at K17.8Billion for the procurement of fertilizers, seeds and transportation of same to beneficiary in rural areas.

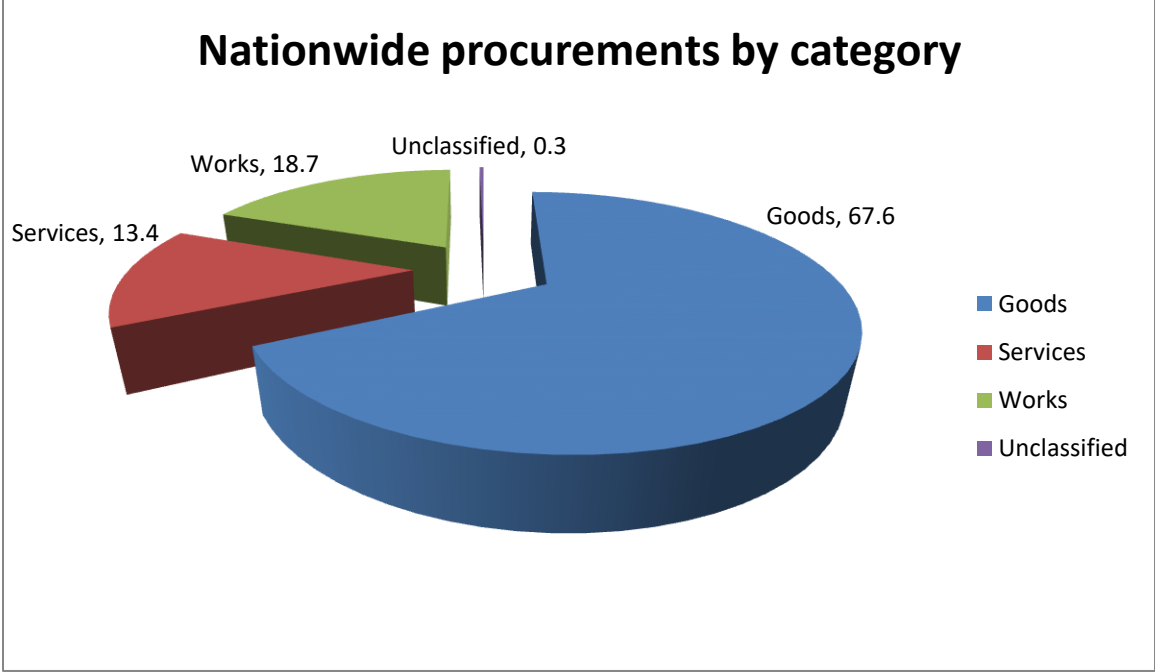


Fig. 7: Procurements by category

During the year under review, there has been a 35% increase in the total reported value of procurements from the 2009-2010 financial year. Furthermore, the total procurement figure of MK58Billion in the current reporting year represents a 28% increase in the reported values over the K42Billion reported in 2009-2010 financial year.

3.5 Procurement methods

Section 30 of the Public Procurement Act 2003 provides for various methods of procurement that can be used by any PE in a particular situation. These methods of procurement are provided as a guide and it is up to PEs to decide when to use each method provided Section 30 (11) is complied with. During the year under review various procurement methods outlined in the Act were used as can be seen in figure 7.

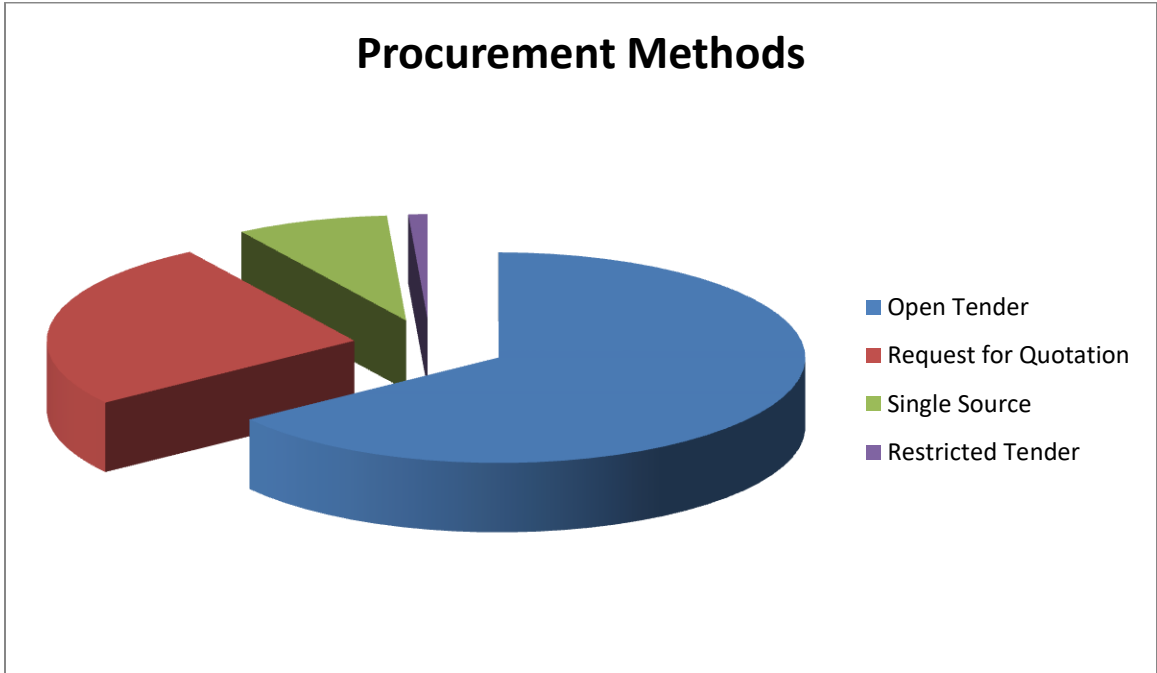


Fig. 8: Comparative use of procurements methods

The data indicates that 65% of the procurements were conducted using Open Tendering method, 26% using Request for Quotation (RFQ) method, 8% using single sourcing and 1% using Restricted Tendering method.

Overall, the data analysis reveal an improvement in the way the data has been reported in 2010—2011 financial year compared to the 2009-2010 financial year. In the 2010-2011, we have no recorded but unknown procurement methods compared to the 24% of reported in the 2009-2010 financial year.

3.6 Procurements conducted by main sectors of the public sector

There are three main sectors in public procurement and these are Central Government, Parastatal and Local Authority Sectors. During the year under review MK38.1Billion was procured by the Central Government, MK4Billion by the City, District and other Councils while MK16.3Billion was spent on public procurement in the Parastatal sectors as detailed below:

3.7 Procurement conducted in main sectors of central government

During the year under review, K35Billion worth of procurements were carried out by Agriculture, Health and Education sectors comprising almost 60% of the total procuremnt figures reported. It is important to take note of this figure beacuse these are the sectors their overall procurement performance is not improving despite the huge fainacial outlay at their disposalseconded by Parastals with 20% then the Health Sector with 19%(see table below).

Sub sector	Procurement Value
Agriculture	17,948,179,961.74
Health	10,986,845,981.25
Education	6,292,459,476.94
Total	35,227,485,419.93

Table 6: Procurements by major sectors of central government

APPENDICES

Appendix 1: List of PEs that submitted Reports

No.	PROCURING ENTITY	TOTAL PROCUREMENT VALUE
1	Accountant General Department	323,694,244.44
2	Air Malawi	154,489,083.54
3	Airport Development Ltd	70,368,474.46
4	Anti-Corruption Bureau	303,000,644.37
5	Baka Research station	2,650,564.41
6	Balaka District Council	161,245,475.31
7	Balaka Town Council	8,478,029.48
8	Blantyre ADD	46,296,208.93
9	Blantyre City Council	86,983,665.30
10	Blantyre District Council	357,050,003.94
11	Blantyre Water Board	721,886,335.78
12	Bunda College of Agriculture	351,231,218.43
13	Bvumbwe Research Station	6,524,739.38
14	Central Region Water Board	310,289,935.70
15	Chancellor College	423,154,035.11
16	Chitedze Research Station	5,446,635.76
17	Civil Service Commission	36,962,245.36
18	College of Medicine	470,121,283.08
19	Dedza District Council	193,799,853.35
20	Department of Buildings	22,014,136.92
21	Department of Climate Change and Meteorological Services	93,940,028.01
22	Department of Disaster Management Affairs	76,541,782.31
23	Department of Immigration	191,732,398.97
24	Department of Persons with Disability and Elderly	47,065,078.17
25	Department of Public Service Management	62,207,028.42
26	Department of Road Traffic	221,303,858.45
27	Domasi College of Education	92,447,116.25
28	Dowa District Council	135,125,016.76
29	Electricity Supply Corporation of Malawi(ESCOM)	1,428,376,736.69
30	Government Printing Services	180,956,429.47
31	Health Service Commission	25,792,033.17
32	Kamuzu Central Hospital	622,574,164.66
33	Kamuzu College of Nursing	182,915,201.88
34	Karonga ADD	4,128,403.56
35	Kasinthula Research Station	4,226,646.61
36	Kasungu ADD	11,826,318.22

37	Kasungu District Council	84,076,235.26
38	Kasungu Municipal Council	35,267,376.14
39	Lilongwe ADD	5,829,955.76
40	Lilongwe City Council	299,845,052.31
41	Lilongwe District Council	783,983,472.64
42	Lilongwe Technical College	14,466,558.28
43	Lilongwe Water Board	815,404,910.11
44	Luchenza Town Council	5,189,565.30
45	Machinga ADD	31,340,636.82
46	Machinga District Council	151,715,665.38
47	Malawi Accountants Board	7,456,808.01
48	Malawi Broadcasting Corporation - TV	65,698,983.55
49	Malawi Bureau of Standards	119,405,635.98
50	Malawi Catering Services	161,421,359.23
51	Malawi College of Accountancy	71,778,709.99
52	Malawi Communication and Regulatory Authority (MACRA)	427,950,004.75
53	Malawi Council for the Handicapped	19,343,885.34
54	Malawi Energy Regulatory Authority	62,371,554.54
55	Malawi Entrepreneurs Development Institute	15,954,653.89
56	Malawi Institute of Education	131,769,457.02
57	Malawi Institute of Management	98,758,378.83
58	Malawi Law Commission	57,652,677.75
59	Malawi National Examination Board	536,777,310.17
60	Malawi Police Service	1,426,289,749.47
61	Malawi Posts Corporation	97,495,566.72
62	Malawi Prison Service	404,744,227.81
63	Malawi Revenue Authority	636,006,447.63
64	Malawi Rural Finance Company Limited	185,501,129.83
65	M'mbelwa District Council	23,541,136.72
66	Medical Council of Malawi	11,779,135.71
67	Ministry of Irrigation and Water Development	373,097,890.26
68	Ministry of Justice and Constitution Affair	192,665,479.96
69	Ministry of Tourism, Wildlife and Culture	313,740,221.39
70	Ministry of Transport and Public Infrastructure	90,547,718.65
71	Ministry of Agriculture	17,798,976,860.99
72	Ministry of Development Planning and Cooperation	90,140,438.29
73	Ministry of Education, Science & Technology	3,230,706,230.39
74	Ministry of Foreign Affairs	233,544,328.26
75	Ministry of Gender, Children and Community Development	69,707,154.00
76	Ministry of Health	8,618,330,537.14
77	Ministry of Industry and Trade	98,527,517.23
78	Ministry of Internal Affairs and Public Security	58,228,719.83

79	Ministry of Labour	41,885,539.37
80	Ministry of Lands, Housing and urban development	85,237,810.29
81	Ministry of National Defence	149,445,444.31
82	Ministry of Natural Resources, Energy and Environment	22,513,688.36
83	Mulanje District Council	166,281,811.22
84	Mwanza District Council	136,949,703.51
85	Mzuzu ADD	10,668,469.90
86	Mzuzu Central Hospital	187,368,400.78
87	Mzuzu City Council	84,841,475.83
88	Mzuzu University	242,927,779.76
89	National Council of Sports	606,047,828.79
90	National Audit Office	16,066,473.49
91	National College of Information and Technology	66,299,705.49
92	National Construction Industry Council	41,097,168.93
93	National Herbarium and Botanic Gardens of Malawi	35,464,193.00
94	National Road safety Council of Malawi	44,133,241.33
95	National Statistical Office	60,310,185.10
96	Neno District Council	35,792,586.51
97	Nkhatabay District Council	123,868,016.70
98	Nkhotakota District Council	109,450,675.10
99	Northern Region Water Board	371,444,383.03
100	Ntchisi District Council	24,757,860.81
101	Nurses and Midwives Council of Malawi	15,077,671.58
102	Office of the Director of Public Procurement	143,638,734.27
103	Office of the President and Cabinet	262,092,955.49
104	Ombudsman	21,450,892.62
105	Pesticides Control Board	1,075,047.35
106	Pharmacy, Medicines and Poisons Board	26,735,295.00
107	Private Vehicle Hire Organization (PVHO)	266,809,070.97
108	Privatization Commission	43,708,296.45
109	Queen Elizabeth Central Hospital	804,916,644.57
110	Reserve Bank of Malawi	1,480,530,054.60
111	Roads Authority	4,784,860,825.68
112	Rumphi District Council	191,533,274.68
113	Salima ADD	10,607,734.01
114	Salima District Council	119,160,449.72
115	SFFRFM	100,413,167.94
116	Shire Valley ADD	9,656,787.39
117	Southern Region Water Board	299,143,987.14
118	Staff Development Institute	153,316,947.06
119	The Development of Malawian Enterprises Trust	23,666,572.82
120	The Polytechnic	153,093,550.39

121	Thyolo District Council	218,116,940.58
122	University Office	34,604,989.75
123	Zomba Central Hospital	435,979,778.07
124	Zomba City Council	16,631,048.14
125	Zomba District Council	490,561,607.33
126	Zomba Mental Hospital	291,884,422.86
127	Soche Technical College	38,091,005.06
	Grand Total	58,494,084,585.11

Appendix 2: List of non-complying PEs

City, Town and District Councils

1. Chitipa District Council
2. Karonga District Council
3. Likoma District Council
4. Mchinji District Council
5. Ntcheu District Council
6. Mangochi District Council
7. Phalombe District Council
8. Nsanje District Council
9. Chiradzulu District Council
10. Liwonde Town Council

Government Ministries and Departments

1. Ministry of Finance
2. Ministry of Local Government
3. Ministry of Information and Civic education
4. Makoka Research station
5. Lunyangwa Research Station
6. Central Medical Stores
7. Department of Statutory Corporations
8. Central Government Stores
9. Department of HIV/AIDS and Nutrition
10. Department of Environmental Affairs
11. Department of Marine Services
12. Department of Fisheries

Parastatal Organizations

1. National Aids Commission
2. TEVETA
3. Road Fund Administration
4. The High Court of Malawi
5. Malawi Human Rights Commission
6. National Library Services
7. Malawi Housing Corporation
8. Malawi Electoral Commission
9. ADMARC
10. NFRA
11. Censorship Board
12. MCDE

Appendix 3: Circulars Issued

Ref. No. ODPP/01/22

11th May, 2011

FROM : THE DIRECTOR OF PUBLIC PROCUREMENT,
PRIVATE BAG 383, CAPITAL CITY, LILONGWE 3.

TO : ALL PRINCIPAL SECRETARIES AND HEADS OF
DEPARTMENTS.

: ALL CHIEF EXECUTIVE OFFICERS OF PARASTATAL
ORGANISATIONS AND HEADS OF OTHER PUBLIC
INSTITUTIONS.

**DEBARMENT OF KAYS CONSTRUCTION CONTRACTORS,
CHILONGOZI BUILDING CONTRACTORS, CHAWEYA BUILDING
CONSTRUCTION COMPANY AND COMPUFIX ELECTRONICS
AND NETWORKS**

In exercise of the powers conferred on me by Section 20 of the Public Procurement Act 2003, I have debarred Kays Construction Contractors, Chilongozi Building Contractors, Chaweya Building Construction Company and Compufix Electronics and Networks for various misconducts (Regulation 191 e).

The debarment of Kays Construction Contractors will last nine (9) months from 11th May,2011. This debarment extends to Mr. H. Kassam of Post Office Box 584, Mangochi and is the Managing Director of the firm.

The debarment of Chilongozi Building Contractors will last nine (9) months from 11th May,2011. This debarment extends to Mr. Marcel Theu of Post Office Box 258, behind Mpico Building, Old Town in Mzuzu and is the Managing Director of the firm.

The debarment of Chaweya Building Construction Company will last three (3) months from 11th May, 2011. This debarment extends to Mr. Joshua Mzembe of Post Office Box 2226, Lilongwe but stays in Mzuzu and is the Managing Director of the firm.

The debarment of Compufix Electronics and Networks will last 12 months from 11th May, 2011. This debarment extends to Mr. Hemish Mzembe of Post Office Box 218, Area 10 Pacific Parade Shopping Mall in Lilongwe and is the Managing Director of the firm.

The effect of this decision is that the above stated firms have been excluded from participation in public procurement, specifically construction works for the three contractors and supplying of computers and computer accessories for Compufix Electronics and Networks. Therefore no public procuring entity should seek quotations, solicit bids or accept any offers of construction from Kays Construction Contractors, Chilongozi Building Contractors and Chaweya Building Construction Company or of supply of computers from Compufix Electronics and Networks until the specified debarment periods elapse or until you are advised otherwise by my office.

B. S. M. Mangulama
DIRECTOR OF PUBLIC PROCUREMENT

FROM: THE DIRECTOR OF PUBLIC PROCUREMENT, P/BAG 383,
CAPITAL CITY, LILONGWE 3.

TO : ALL PRINCIPAL SECRETARIES, CHIEF EXECUTIVES OF
PARASTATAL ORGANISATIONS, HEADS OF DEPARTMENTS
AND HEADS OF ALL OTHER PUBLIC INSTITUTIONS.

cc : The Chief Secretary, Office of the President and Cabinet,
Private Bag 301, Lilongwe 3.

: The Secretary to the Treasury, P.O. Box 30049, Lilongwe 3.

: The Auditor General, National Audit Office, P.O. Box 30045,
Lilongwe 3.

ADVANCE PAYMENTS AND INSPECTION OF GOODS
BEFORE DELIVERY

It has come to the knowledge of my Office that several Procuring Entities (PEs) are still making advance payments to suppliers without the required advance payment guarantee and also that some PEs are accepting goods delivered without inspection.

The Public Procurement Act, 2003 and the Public Procurement Regulations, 2004 require that advance payment should only be made where the supplier has furnished an advance payment guarantee. It is, therefore, not permissible to make advance payments without firstly receiving the redeemable bank advance payment guarantee. Furthermore, the law requires that goods shall not be accepted unless verified and that they are compliant with the specifications. It is, therefore, not permissible for PEs to accept delivery of goods without inspection. My office has observed that the practices highlighted above have become common and

are contributing greatly to loss of public funds in undelivered or delivery of wrong goods which should not be the case.

Controlling Officers are required to ensure that no advance payment is made to a supplier unless an advance payment guarantee is provided and that all goods are inspected before being accepted. The goods should only be accepted if they meet the specifications/standards set out in the contract.

Disciplinary action will be taken against any officer who deliberately flouts the provisions of the law and public funds are lost as a result. The disciplinary action will include surcharge for the amount lost.

The contents of this circular should be brought to the attention of all staff involved in procurement and supplies in your PEs.

B.S.M. Mangulama
DIRECTOR OF PUBLIC PROCUREMENT

FROM: THE DIRECTOR OF PUBLIC PROCUREMENT, PRIVATE BAG 383,
LILONGWE 3.

TO : ALL PRINCIPAL SECRETARIES, HEADS OF DEPARTMENTS,
CHIEF EXECUTIVES OF STATUTORY CORPORATIONS AND
HEADS OF OTHER PUBLIC INSTITUTIONS.

cc : The Chief Secretary, Office of the President and Cabinet,
Private Bag 301, Lilongwe 3.

: The Comptroller of Statutory Corporations, P.O. Box 30061,
Lilongwe 3.

: The Secretary to the Treasury, P.O. Box 30049, Lilongwe 3.

: The Auditor General, P.O. Box 30045, Lilongwe 3.

SUBMISSION OF PROCUREMENT PLANS AND
QUARTELY REPORTS FOR THE 2010/2011
FINANCIAL YEAR

You might be aware that Section 21 of the Public Procurement Act, 2003 and regulations 22, 23 and 24 of the Procurement Regulations, 2004 require all procuring entities (PEs) to prepare Procurement Plans with a view to achieving maximum value from public expenditures in accordance with budgetary provisions. These Procurement Plans are supposed to be prepared by each (PE) during the budget preparation process. On 21st September, 2006, I issued a similar circular letter advising all public institutions to submit Procurement Plans for the 2006/2007 financial year to this Office as one way of enforcing good financial management principles.

The response was, to say the least, lukewarm and has remained so to date. This activity is supposed to be done annually and without my office reminding you of this requirement.

Procurement Plans are an integral part of the whole procurement process and any procurement in any institution outside the plan is a mis-procurement. It has been observed that this function is ignored by most institutions despite a clear legal mandate from the Public Procurement Act and its accompanying Regulations. This has led to Internal Procurement Committees (IPCs) conducting procurements haphazardly without first considering the financial provisions which were made in the budget. Clearly an expenditure arising from such procurement is illegal and un-procedural and should not be accepted as it leads to poor financial management.

As you are aware, the 2011/2012 financial year starts on 1st July 2011. Once again you are all requested to submit to this Office your institutions' Procurement Plans for the 2011-2012 financial year by 31st July 2011. Please be informed that with effect from 1st August, 2011, your submissions for prior review will only be considered if such procurements are from the Procurement Plans which are themselves linked to your institutions' budgets.

Let me also take this opportunity to remind you on the procurement reporting requirement which is supposed to be done on quarterly basis. You will recall that on **23rd May 2007**, I issued a Circular on submission of quarterly procurement reports advising of the legal requirement for submission of the same to this office.

The information collected from your reports is used to compile the Annual Procurement Report which, according to Section 41 of the Public Procurement Act, is submitted to the Minister responsible for Public Procurement who would, in turn, lay it before the National Council. The report must be submitted to the Minister not later than three months after the expiry of each financial year. This is another activity that PEs have often overlooked thereby making the preparation of the annual procurement report by my office a very difficult task. In fact, my Office cannot prepare the

annual report if the public institutions which conduct the actual procurement do not report on their procurement activities. It is therefore incumbent upon all Controlling Officers to ensure that they are up to date on this reporting requirement.

The current financial year comes to an end on 30th June, 2011 and, therefore, I expect all addressees to ensure that they submit their 2010/2011 reports by the end of July, 2011. These reports can be sent electronically to our e-mail address at **clement.banda@odpp.gov.mw** or **odpp@malawi.net**.

Attached hereto are Procurement Plans and Reporting templates which you should use when preparing your Plans and Reports. Should there be need for clarifications and guidance, do not hesitate to contact my office.

Lastly, but not least, I would like to appeal to all addressees to treat this exercise with the urgency and importance it deserves and to submit these plans and reports to my Office by the due dates without fail.

I appreciate your usual cooperation.

B. S. M. Mangulama
DIRECTOR OF PUBLIC PROCUREMENT

Att'd.

20th January, 2011

FROM: THE DIRECTOR OF PUBLIC PROCUREMENT, PRIVATE BAG
383, **LILONGWE 3.**

TO : ALL PRINCIPAL SECRETARIES, HEADS OF DEPARTMENTS
AND HEADS OF ALL OTHER PUBLIC INSTITUTIONS.

DEBARMENT OF MIKE APPEL AND GATTO LIMITED

In exercise of the powers conferred on me by the Public Procurement Act 2003 Section 20, I have debarred Mike Appel and Gatto Limited for misconduct (Regulation 191e). The debarment will last six months effective from 1st January, 2011.

The effect of this decision is that Mike Appel and Gatto Limited has been excluded from participation in public procurement, specifically the supply of vehicles to any public procuring entity for the duration of the debarment. Therefore no public procuring entity should seek quotations, solicit bids or accept any offers of supply of vehicles from Mike Appel and Gatto Limited until the debarment period lapses or until you are advised otherwise by my office.

B. S. M. Mangulama

DIRECTOR OF PUBLIC PROCUREMENT

Ref. No. ODPP/01/22

23rd August, 2010

**FROM: THE DIRECTOR OF PUBLIC PROCUREMENT, P/BAG 383,
LILONGWE**

**TO: ALL PRINCIPAL SECRETARIES, CHIEF EXECUTIVES OF
PARASTATAL ORGANIZATIONS, HEADS OF DEPARTMENTS
AND HEADS OF ALL OTHER PUBLIC INSTITUTIONS**

**CC : The Chief Secretary, Office of the President and Cabinet,
P/Bag 301, Lilongwe 3**

: The Secretary to the Treasury, P.O. Box 30049, Lilongwe 3

: The Auditor General, P.O. Box 30045, Lilongwe 3

PROCUREMENT THRESHOLDS FOR 2010-2011

In accordance with powers conferred upon me by Section 9 (1) (c) of the Public Procurement Act of 2003 and Regulation 10 (2) of the Procurement Regulations (2004), I have, once again, revised the procurement thresholds (purchasing limits) following review of procurements submitted by various Procuring Entities (PEs) during the previous financial year and also taking into consideration prevailing economic and operational factors.

Consequently, Controlling Officers and Heads of Departments are hereby informed that with immediate effect, procurement thresholds for Ministries, Departments, Local and City Councils and all other public institutions will be as detailed in the attached tables 1, 2, 3, 4, 5 and 6). These thresholds supersede those contained in my circular letter Ref. No. ODPP/01/22 of 16th July, 2009.

As in the past years, my office continued to assess the performance of various PEs and as a result, the thresholds that have been allocated are not uniform but depend largely on a particular institution's overall performance and compliance with the public procurement legal framework. Some PEs have migrated into higher threshold groups while others have receded into lower groups.

While Tables 1 to 3 detail thresholds that your IPCs will use to approve procurement decisions without requesting for 'No Objection' from my office, Table 4 is for thresholds for all PEs requesting for External Members from my office to sit on the IPCs when deliberating on high value procurements in line with Section 9 (1) (c) of the Public Procurement Act and you will note that these have not changed from last year's figures. Controlling Officers shall ensure requests for External Members are received by my office at least 14 days before the date of the IPC Meeting.

Section 26 of the Public Procurement Act 2003 requires that PEs publish contract award information in the Government Gazette. In view of the current status of the Government Gazette, PEs are advised to publish in any two widely read newspapers for the public to know. This provision is one of the least adhered to by PEs. Following a series of consultations, my office has, therefore, introduced a threshold of K45Million for all PEs to publish information in the public media and this is outlined in Table 5.

My office has maintained the categorization of PEs in Tables 1 and 2 into groups with table 1 comprising groups A to E and table 2 comprising groups A to D. You will note that this time round we have added another group (E) for the consistently less performing PEs in table 1. These PEs will, during the year, be accorded special attention and assistance so that they should be able to improve their performance and migrate into higher categories. In table 2, PEs in group A will not be required to seek 'No Objection' from my office **only** for procurements under National Competitive Bidding (NCB) method but will have to follow procurement guidelines as stipulated in the law and regulations. However, in International Competitive Bidding (ICB), such procurements shall be subject to prior review by my office. You will note, further, that there has been a huge increase of

threshold values for all groups except group E in table 1 which is a new group.

In Table 3, the majority of PEs have their thresholds increased while others have theirs reduced, or unchanged depending on their performance during the previous year. Finally, Table 6 details thresholds for Procurement Methods. You will note that, except for the narration, the thresholds values have not changed.

I would be grateful if the contents of this circular are brought to the attention of Chairpersons and Secretaries of the Internal Procurement Committees (IPCs), the procurement staff and all IPC members in your organization.

B.S.M. Mangulama

DIRECTOR OF PUBLIC PROCUREMENT

2010-2011 PRIOR REVIEW THRESHOLDS (PER CONTRACT)

Table 1: Central and Local Governments and Government Projects

Group A	Group B	Group C	Group D	GROUP E
No Prior Review (PEs are requested to submit their procurement plans only)	Goods – K20million Works – K20 million Routine Services – K5m Consult. Services-K5m	Goods – K15 million Works – K15 million Routine Services – K5m Consult. Services – K5m	Goods – K10 million Works – K10 million Routine Service – K5m Consultancy Service – K5m	Goods – K5m Works – K5m Routine K3m Consult. Serv.K2m
All Malawi Government donor funded projects using donor procurement guidelines	Mzuzu Central Hospital Kamuzu Central Hospital Zomba Central Hospital Queen Elizabeth Central Hospital	OPC The Judiciary State Residences Ministry of Industry and Trade Ministry of Foreign Affairs Ministry of Lands and Natural Resources Ministry of Energy and Mines Parliament Immigration Department Malawi Prison Service Government Press Mzuzu City Council Blantyre City Council Lilongwe City Council Zomba City Council Malawi Defence Forces	Office of the Vice President Ministry of Youth Development and Sports Ministry of Labour Ministry of Justice and Constitutional Affairs Ministry of Economic Planning &Development Ministry of National Defence Ministry of Transport and Public works Ministry of Tourism Ministry of Local Government Ministry of Persons with Disabilities and the Elderly Ministry of Women and Child Development Ministry of Home Affairs and Internal Security National Statistics Office Forestry Department Department of Disaster Preparedness Relief and Rehabilitation Department of Information Systems and Technology Management Services Department of Statutory Corporations One Village One Product Plant and Vehicle Hire Organization Nasawa Technical College Salima Technical College Livingstonia Technical College	Lilongwe District Council M'mbelwa District Council Ntchisi District Council Phalombe District Council Chiradzulu District Council Mangochi District Council Karonga District Council Zomba District Council Blantyre District Council Chitipa District Council Salima District Council Mulanje District Council Chikwawa District Council Nkhata-Bay District Council Rumphi District Council Mwanza District Council Thyolo District Council Mchinji District Council Dowa District Council Neno District

			Soche Technical College	Council
			Lilongwe Technical College	Balaka District Council
			Staff Development Institute	Karonga Town Council
			Malawi Police Service	Kasungu Town Council
			Registrar General's Dept.	Kasungu Town Council
			Geological Survey Department	Luchenza Town Council
			Surveyor General's Office	Mangochi Town Council
			National Intelligence Services	Mangochi Town Council
			Financial Intelligence Services Unit	Liwonde Town Council
			Department of HIV/AIDS	Salima Town Council
			Meteorological Department	Ntcheu District Council
			Fisheries Department	Ntcheu District Council
			Civil Service Commission	Nsanje DA
			Road Traffic ODPP	Dedza DA
			National Registration Bureau	Kasungu DA
			Domasi College of Education	Machinga DA
			Malawi Institute of Education	Nkhotakota DA
			Health Services Commission	Likoma DA
			Magomero Comm. Dev. Cent.	Karonga ADD
				Mzuzu ADD
				Kasungu ADD
				Salima ADD
				Lilongwe ADD
				Liwonde ADD
				Blantyre ADD
				Ngabu ADD
				Bvumbwe Rese. St
				Baka Rese. St.
				Lunyangwa Rese.
				Chitedze Rese. St

Note: Procurement of Foodstuffs and Firewood will no longer be subject to prior reviews.

Table 2: Parastatal and other public Organizations

Group A	Group B	Group C	Group D
No Prior Reviews up to NCB only (PEs MUST submit their Procurement Plans)	Goods – K20million Works – K20 million Routine Services – K5m Consultancy Services – K5m	Goods – K15 million Works – K15 million Routine Services – K5m Consultancy Services – K5m	Goods – K10 million Works – K10 million Routine Service – K5m Consultancy Service – K5m
Anti-Corruption Bureau (ACB)	Tobacco Control Commission,	ADMARC	NCIC
Northern Region Water Board	Lilongwe Water Board	Malawi Law Commission	MARDEF
Privatization Commission	University of Malawi	Malawi Human Rights Commission,	TEVETA
Malawi Communications Regulatory Authority (MACRA)	Reserve Bank of Malawi	Malawi Broadcasting Corporation	NRC*
Blantyre Water Board	Bunda College of Agriculture	Malawi College of Health Sciences	Press Trust*
Airports Development Limited (ADL)	Southern Region Water Board	Malawi Energy Regulatory Authority	Air Malawi
Smallholder Farmers Fertilizer Revolving Fund of Malawi	Roads Fund Administration	Malawi Bureau of Standards	Ombudsman
Malawi National Examinations Board (MANEB)	Kamuzu College of Nursing	Malawi Revenue Authority	National Food Reserve Agency
Chancellor College	Malawi Institute of Education	Central Region Water Board	Pharmacy Medicines and Poisons Board
College of Medicine	The Malawi Polytechnic	Malawi Electoral Commission	Malawi Institute of Management
Mzuzu University		Lilongwe University for Science and Technology	Malawi Posts Corporation
			Nurses and Midwives Council of Malawi
			Medical Council of Malawi
			Malawi College of Accountancy
			MACOHA
			Malawi Industrial Research and Technology Development Centre
			Malawi National Commission for UNESCO
			Copyright Society of Malawi
			Malawi Gaming Board
			Censorship Board
			National Youth Council
			PAEC
			Malawi Export Promotion Council
			Malawi Accountants Board
			MEDI
			Science and Technology Commission

			National Lotteries Board National Herbarium and Botanical Gardens Development of Malawi Traders Trust National Library Service Malawi National Council of Sports Public Universities Loan Trust Fund SEDOM MIPA
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Note: Procurement of Foodstuffs and Firewood will no longer be subject to prior reviews.

Table 3: Prior Review Thresholds (per contract) for PEs with large expenditure/adequate capacity

PROCURING ENTITY	GOODS (K)	WORKS (K)	SERVICES (K)
1. Ministry of Education	30 Million	40 Million	10Million
2. Ministry of Agriculture	30 Million	40Million	10 Million
3. Ministry of Health	30 Million	40Million	10 Million
4. Medical Buying Committee	50 Million	-	-
5. Central Medical Stores	10 Million	10 Million	K10Million
6. Central Government Stores	50 Million	5 Million	K5Million
7. ESCOM	20 Million	15 Million	K5Million
8. Roads Authority	10 Million	50 Million	20 Million
9. Buildings	10 Million	50 Million	10 Million
10. Ministry of Irrigation & Water	10 Million	10 Million	10 Million
11. Malawi Housing Corporation	10 Million	50 Million	10 Million

Table 4: Thresholds for External Members to the IPCs

Category	Value (K)
1. Goods	20 Million
2. Works	30 Million
3. Consulting Services	10 Million
4. Routine Services	15 Million

Table 5: Threshold for publication by ALL PEs of contract awards in the press

Category	Value (K)
All categories	45 Million

TABLE 6: 2010/11 PROCUREMENT VALUE AND METHOD

CATEGORY	PROCUREMENT VALUE (MK)	PROCUREMENT METHOD
GOODS	Up to 3,000,000	Request for quotations (RFQ) – use Govt approved List with IPC approval only.
	>3,000,000.00 – 100,000,000	National Competitive Bidding (NCB) – subject to prior review by ODPP
	>100,000,000	International Competitive Bidding (ICB) – subject to prior review by ODPP
WORKS	Up to 5,000,000	RFQ – use NCIC approved List with IPC approval only
	>5,000,000 – 1,000,000,000	NCB – with DOB involvement and subject to prior review by ODPP
	>1,000,000,000	ICB – with DOB involvement and subject to prior review by and ODPP
SERVICES:	Up to K3,000, 000	
Routine	>3,000,000 – 50,000,000	RFQ – with IPC approval only
	>50,000,000	NCB – subject to prior review by ODPP
	Up to 300,000	ICB – subject to prior review by ODPP
<i>Vehicle Repair</i>		RFQ – if no franchise dealer, with PVHO
	>300,000-500,000	RFQ – with franchise dealer and PVHO
	>500,000.00 – 2,000,000	RFQ – with PVHO involvement only
	>2,000,000	RFQ – with PVHO involvement and subject to prior review by ODPP
<i>Printing</i>	Up to 3,000,000	RFQ – use Govt approved List and IPC approval only
	>3,000,000 – 50,000,000	NCB – subject to prior review by ODPP
	>50,000,000	ICB - subject to prior review by ODPP
Consultancy	Up to 3,000,000	Short listing – approved by the Director of Public Procurement
	>3,000,000 – 50,000,000	Request for Proposals (RFP) – subject to prior review by ODPP (local consultants only)
	>50,000,000	RFP – subject to prior review by ODPP (open to international consultants as well)

Office of the Director of Public Procurement

Private Bag 383

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