

**OECD-DAC JV FOR PROCUREMENT
COUNTRY PILOT PROGRAMME
ZAMBIA**

**ASSESSMENT OF PUBLIC PROCUREMENT
SYSTEM**

August 2007

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Acronyms and Abbreviations

| | |
|-------|--|
| ACC | Anti Corruption Commission |
| CIPS | Chartered Institute of Purchasing and Supply |
| CTC | Central Tender Committee |
| ICB | International Competitive Bidding |
| LPO | Local Purchase Order |
| MPSAs | Ministries, Provinces and Spending Agencies |
| NCB | National Competitive Bidding |
| PEMFA | Public Expenditure Management and Financial Accountability |
| SBD | Standard Bidding Document |
| ZNTB | Zambia National Tender Board |

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EXECUTIVE SUMMARY OF THE ASSESSMENT

The purpose of the Country Pilot Programme was to field test in Zambia the OECD-DAC Methodology for the Assessment of National Procurement Systems, Version 4, to measure its applicability and suitability and use the results to develop a strategy for capacity building.

(i) **Pillar I: Legislative and Regulatory Framework**

Zambia's legislative and regulatory framework is based on the Zambia National Tender Board Act. The Act establishes tender committees in all government ministries, provincial administrations and parastatal and statutory bodies which are responsible for authorizing procurements.

While the system is well documented with clear responsibilities and procedures, some major weaknesses were identified during the assessment:

- (a) open competitive bidding is not categorically stated as the default procurement method;
- (b) the complaints system structure and sequence is non-existent or at most ambiguous; and
- (c) there are no standard bidding documents for the procurement of goods, services, works. The ones in use have been adapted from the World Bank Standard Bidding Documents.

It was also noted that selective tendering was used in place of open competitive tendering due to time constraints which reason is not provided for in the regulations.

These findings are in agreement with those of the PEFA Evaluation of the PEMFA Programme undertaken in 2005.

(ii) **Pillar II: Institutional Framework and Management Capacity**

Zambia practices Activity Based Budgeting and while procurement is part of the country's financial management system, procurement planning is not part of the budgeting process. It was noted, on the other hand, that implementing institutions prepare procurement plans for donor funded projects.

The Secretary to the Treasury will issue instructions to all MPSAs to the effect that starting fiscal year 2008, all institutions should include procurement plans with their budget submissions.

ZNTB intends to hold workshops on procurement planning in 2007 as part of the procurement reforms activities.

It was noted that ZNTB is mandated by the Act to undertake regulatory functions. However, ZNTB is totally dependent on the Ministry of Finance and National Planning for its funding and therefore its independence as a regulatory body is questionable. It was also noted that there was a conflict of interest as a regulatory body because it participates in the procurement decision making process through the Central Tender Committee.

Further, there is no system and procedure for collecting and monitoring national procurement statistics.

These weaknesses will be addressed through the on-going Public Procurement Reforms under PEMFA. The proposed ZPPA Act will provide for a decentralized procurement system with the ZPPA as an oversight body.

In addition, ZNTB will develop a Procurement Information Management System under PEMFA and together with IFMIS facilitate for the collection and monitoring national procurement statistics.

(iii) Pillar III: Procurement Operations and Market Practices

Two of the major weaknesses of the system in Zambia are:

- (a) records management is very poor and there are no norms for the safe keeping of records and documents related to transactions and contract management; and
- (b) the private sector has limited access to credit which inhibits its participation in tenders.

The review and improvement of the records management system is one of the activities to be undertaken under the on-going procurement reforms.

(iv) Pillar IV: Integrity and Transparency of the Public Procurement System

The Control and audit systems are relatively effective although the auditors are not sufficiently informed about procurement requirements. It was noted that risk assessment and management is not undertaken.

Although internal audit does not undertake performance audits, the Auditor General has started undertaking performance audits.

The strengthening of both the external and internal audit functions is part of the PEMFA Programme. As a result of the reforms, the Office of the Auditor General is now current with its reports. In addition, the Public Accounts Committee of Parliament has recently been stringently following up on the Auditor General's report to Parliament.

The appeals mechanism in the current procurement system is totally inadequate and does not contain the basic tenets of an acceptable appeals mechanism. The proposed ZPPA Act has provisions for the establishment of an Independent Procurement Appeals Tribunal with a procedure that is time bound.

There is need to establish functional linkages between ZNTB and the Anti-Corruption Commission in order to ensure that ethics and anti-corruption policies and measures are effectively enforced. It was noted that the Ant-Corruption Commission had started the establishment of Integrity Committees at places of work and at the time of the assessment, 8 committees had been established.

The Methodology was found to be suitable for assessing national procurement systems. However, the emphasis of the Methodology is on open competitive bidding. Therefore, the Methodology does not assess the shopping procurement method which constitutes a larger proportion, by volume, of national procurements.

Obtaining data from civil society was very difficult and with the limited budget and time available, it was not possible to carry out surveys to obtain stakeholders' perceptions of the procurement system. However, ZNTB proposes to undertake a client survey by December 2007 to measure perceptions of the procurement system.

The assessment also revealed weaknesses in the enforcement of provisions of the Act and regulations in that institutions use non-competitive procurement methods such as restricted tenders or tender are not adequately advertised.

The establishment of ZPPA will ensure effective oversight activities and enforcement of the legal and regulatory framework.

ZNTB proposes to use the Methodology to undertake a wider assessment, to include councils and parastatal and statutory bodies in 2008.

SUMMARY OF BASELINE INDICATORS SCORES

| BASELINE INIDCATOR | AVERAGE SCORE |
|---|---------------|
| Pillar I: Legislative and Regulatory Framework | 2 |
| 1. The public procurement legislative and regulatory framework | 2 |
| 2. Implementation Regulations and Documentation | 2 |
| Pillar II: Institutional Framework and Management Capacity | 2 |
| 3. Integration and mainstreaming of the public procurement | 2 |
| 4. Normative and regulatory functions | 2 |
| 5. Institutional development capacity | 1 |
| Pillar III: Procurement Operations and Market Practices | 2 |
| 6. Efficiency of Procurement Operations and Practices | 2 |
| 7. Functionality of the public procurement market | 2 |
| 8. Existence of contract administration and dispute Resolution provisions | 3 |
| Pillar IV: Integrity and Transparency of the Public Procurement System | 2 |
| 9. Effectiveness of Control and Audit Systems | 2 |
| 10. Efficiency of Appeals mechanism | 0 |
| 11. Accessibility to information | 2 |
| 12. Ethics and anti-corruption policy and measures | 2 |

1.0 INTRODUCTION

1.1 Background

The OECD-DAC Joint Venture arose from a World Bank/OECD-DAC Round Table Initiative held in 2003/2004.

In 2005 the OECD Member Countries signed the Paris Declaration on Aid Effectiveness. The Paris Declaration was aimed at ensuring that within the framework of Aid Effectiveness, the partner countries developed reliable country procurement systems and had a sustainable capacity.

In order to assess the effectiveness of the National procurement System, the OECD-DAC Joint Venture in July 2006 developed a Methodology for Assessment of National Procurement Systems (Version 4).

In order to expand the use of the methodology it was decided to select pilot countries for the exercise. The criteria for selection were:

- (i) Adherence to the Paris Declaration;
- (ii) Submission of Expressions of Interest; and
- (iii) Support from the donor community.

Zambia, through the Ministry of Finance and National Planning submitted the expression of interest to be considered as a pilot country.

The UNDP and the Netherlands Government expressed willingness to support the programme in Zambia.

Zambia is among other developing countries around the world that field tested the OECD – DAC Methodology for the Assessment of National Procurement Systems, Version IV.

The successful implementation of the Country Pilot Programme would complement the on going public procurement reforms the Government, through the Zambia National Tender Board, is undertaking.

1.2 Scope and Nature

- 1.2.1 In deciding the size and extent of the pilot, the Zambia National Tender Board and the Donors agreed to limit the exercise to Government ministries and provincial administrations. Therefore the assessment excluded all the councils and parastatal and statutory bodies.

1.2.2 There are 22 ministries and 9 provinces in Zambia. It was decided that due to time and budgetary constraints, the sample for the pilot would comprise 8 ministries and 2 provinces outside the line of rail. The ministries were selected so as to include representation both big and small ministries. The following institutions comprised the sample:

- a) Ministry of Community Development and Social Services;
- b) Ministry of Works and Supply;
- c) Ministry of Health;
- d) Ministry of Local Government and Housing;
- e) Ministry of Finance and National Planning;
- f) Ministry of Energy and Water Development;
- g) Ministry of Commerce, Trade and Industry;
- h) Ministry of Education;
- i) Eastern Province; and
- j) Western Province.

1.2.3 The data collection was restricted to procurements undertaken in the period June to October 2006.

1.2.4 The assessment of the Base Line Indicators was undertaken by procurement specialists from the Zambia National Tender Board with Technical Assistance from the Government of Finland.

1.2.5 The steps that were taken for the assessment of the Compliance and Performance Indicators were:

1.2.5.1 The identification of Assessors to include representation from all the pilot institutions and the Regulatory Body;

1.2.5.2 Conduct a training workshop for the assessors on the OECD-DAC Joint Venture for Procurement, the Country Pilot Programme and the assessment. The procurement specialists and the Donor Representative who attended the Pilot Workshop Programme in Nairobi in February 2007 were the resource persons for the training workshop;

1.2.5.3 Consolidation of the data collection notes and development of procurement analysis form;

1.2.5.4 The actual data collection by the team of Assessors;

- 1.2.5.5 Individual groups presentation of data to the other Assessors;
- 1.2.5.6 A briefing from the groups on experiences and general overview of the exercise;
- 1.2.5.7 Consolidation of the final report;
- 1.2.5.8 Validation workshop with the stakeholders; and
- 1.2.5.9 Preparation of the validated report

1.3 Limitations

- 1.3.1 The assessment had to be undertaken within the budget for the Public Procurement Reforms component under PEMFA. The budget was approved before the Pilot Programme was known and therefore this limited the amount of funding available to the exercise.
- 1.3.2 The following limitations were identified in the assessment of the Base Line Indicators (BLIs):
 - 1.3.2.1 The scoring criteria in most cases did not provide for partial compliance. As a result when the system did not qualify on a particular criterion the scoring dictated that it be scored a zero. In other words it disregarded some achievements of the system.
 - 1.3.2.2 Certain timeframes in BLIs were not appropriate, for example, Base Line Indicator 9(b), the six months reaction period required to implement recommendations from internal and external audit is too short.
 - 1.3.2.3 The criteria only looked at what was provided for in the law and ignored the practices. In the case of Zambia, even though the procurement law has not been amended, some procedures adopted from the World Bank Procurement Guidelines were being used.
- 1.3.3 The following limitations were identified in the assessment of the compliance indicators:
 - 1.3.3.1 The tool was not suitable for informal tenders (shopping). It was noted during the assessment that most of the tenders undertaken during the sample period were through shopping

and none of the indicators were suitable for assessing this type of procurement.

- 1.3.3.2 Record keeping in most of the institutions in the sample, if not all, was generally bad. As a result, accessing information was a great challenge as there was no particular system in which procurement information was kept. In fact in most ministries, only limited information was available at the Procurement and Supplies Unit as most of the information was passed on to Accounts. The Assessors therefore had to go through various departments in order to trace the process of a particular procurement.
- 1.3.3.3 As a result of the poor record keeping, the time that was allocated to undertake the assessment at each institution proved insufficient. This imposed limitations on extensive collection and follow up of data.
- 1.3.3.4 Obtaining information from the civil society was very difficult and due to the limited time and budget, it was not possible to undertake a survey to obtain stakeholder perception of the public procurement system.

2.0 BACKGROUND

2.1 COUNTRY ECONOMIC SITUATION

The performance of the global economy in the period 2002 to 2005 was generally favourable with commodity prices rising to record levels especially for base metal and crude oil. The increase in metal prices impacted positively on Zambia's mining industry and the macroeconomic environment in general. The mining industry, which faced difficulties during the period 1998 to 2001, received a major boost as a result of the rise in prices since 2003. However, the impact of the higher world oil prices on the Zambian economy was an increase in the import bill and a rise in energy prices.

Overall, inflation and interest rates during the period 2002 to 2006 assumed a declining trend dropping from 26.7 percent in 2002 to 8.2 percent at the end of December 2006. The current account deficit (including foreign grants) narrowed to 4.6 percent of DGP in 2005 from 6.5 percent in 2002.

In order to make the financial sector play a much more effective role in national development, the Government in 2004 formulated and started implementing the first Financial Sector Development Plan (FSDP) for Zambia.

Key Macroeconomic Indicators

| Description | 2002 | 2003 | 2004 | 2005 |
|---|-------|-------|-------|-------|
| Nominal GDP at market prices (US\$ m) | 3,776 | 4,318 | 5,448 | 7,269 |
| Real DGP, % | 3.3 | 5.1 | 5.4 | 5.0 |
| Inflation Rate, % | 26.7 | 17.2 | 17.5 | 15.9 |
| Average Exchange Rate, ZMK to USD | 4,307 | 4,743 | 4,772 | 4,464 |
| Foreign Exchange Reserves, months of import cover | 2.1 | 1.3 | 1.2 | 1.6 |
| Prime lending rate (average for year), % | 45.3 | 40.5 | 30.9 | 28.2 |

Source: Bank of Zambia

The Government has set its vision for the future among other priorities, to make Zambia a middle-income nation by the year 2030 (Vision 2030). According to the Living Conditions Monitoring Survey of 2004, 68 percent of the population fell below the national poverty line. The depth and severity of poverty also remains high despite the slight decline since 1998. The persistently high-income poverty observed in 2004 was in sharp contrast to the rapid acceleration in economic growth experienced since 1999. This implies that the country's improved economic performance over recent years has not translated into significant declines in poverty.

2.2 LEGAL AND INSTITUTIONAL FRAMEWORK FOR PFM

2.2.1 The legal framework

The legal framework that governs the management and control of public finances in Zambia is made up of the Constitution, The Public Finance Act 2004, The Zambia National Tender Board Act, Local Government Act, and the Financial Regulations. The roles of the executive, legislature and judicial branches of government are clearly set out in the Constitution. Part VII of the Constitution deals with public finances and Article 107 of the Constitution deals with the appointment and the duties of the Auditor General. The Public Finance Act 2004 and the supplementary Instructions issued by the Minister of Finance and National Planning sets out the management and control of public finances, including the following:-

- The functions of the Minister of Finance and National Planning.
- The functions and powers of the Secretary to the Treasury.
- The duties and responsibilities of the Controlling Officers.
- The appointment of the Accountant General and duties of accounting officers for a ministry, department or statutory corporation.
- The appointment and the powers of the Internal Auditor
- PFM Performance Management Report.
- The establishment of audit committees for all ministries, departments and statutory corporations.
- The establishment of a consolidated fund for all general revenue and other public monies.
- The appropriation and releases of funds.
- The penalties for controlling officers who fail to perform any financial duties assigned.
- The control of statutory corporations.

Currently the legal framework relating to the management and control of public finances is undergoing reform in order to improve on financial management, accountability and transparency. The 2004 Public Finance Act is being strengthened. The Zambia National Tender Board Act is also being revised, while the Financial Regulations are also being updated.

2.2.2 The Institutional Framework

2.2.2.1 The Executive

The Republican President is the head of state. The President is chosen through a general election for the period of five years but is eligible to stand for elections for two terms only.

The President appoints the Vice-President and selects Cabinet Ministers and Deputy Ministers from among the Members of Parliament. The Cabinet Ministers head ministerial portfolios. The Secretary to the Cabinet is also appointed by the President to head the civil service while the Secretary to the Treasury is appointed to be in charge of the National Treasury. In addition, Permanent Secretaries are appointed by the President as the most senior civil servants in each ministry while the Secretary to the Treasury appoints the Controlling officers in charge of public finances in their respective Ministries, Provinces and Spending Agencies (MPSAs). Below the Permanent Secretaries are Directors heading ministerial departments as warrant holders.

The Ministry of Finance and National Planning is in charge of managing the economy, national treasury, cash management and external and internal debt management and co-coordinating the national planning processes including Medium Term Expenditure Planning and Annual Budgeting. To undertake these functions, the ministry operates through three divisions namely Budget and Economic Affairs (BEA), Planning and Financial Management and Administration (FMA) each of which is headed by a Permanent Secretary. The Ministry of Finance and National Planning performs some of the functions through statutory bodies under its portfolio such as Bank of Zambia, Pensions and Insurance Authority, Zambia Revenue Authority.

2.2.2.2 Legislative

The Zambian Parliament consists of 150 elected Members of Parliament with the tenure of five years. The Republican President is allowed by the constitution to nominate up to 10 members of Parliament.

Parliament is the source of all legislation and custodian of democratic ideals of a representative and participatory government. Through Parliament the doctrine of separation of powers is provided by performing the oversight functions of checks and balances. These functions are performed through departmental related committees, select or *Ad hoc* Committees, general purpose committees and House keeping committees which monitor policy implementation of the executive in various portfolios. The general purpose Committees such as the Estimates and Public Accounts Committees examine Bills and scrutinise Government Financial Administrations and expenditures. The Government Assurances Committee follows up on resolutions passed in Parliament as well as on recommendations arising from the Audit reports.

Select or *ad hoc* committees on the other hand are appointed by parliament from time to time to deal with specific and urgent issues such as scrutiny of appointments before they are ratified by the house. Among the legislations passed by parliament are those related to Public Finance Management. The Auditor General's office performs functions the oversight functions in the Public Financial Management and reports to Parliament through the President.

2.3 PUBLIC PROCUREMENT

Public procurement in Zambia is governed by the Zambia National Tender Board Act, CAP 394 of the Laws of Zambia and the Tender Regulations.

The Act establishes the Board which is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name. The Board comprises of a Chairman and twelve members of whom seven are ex-officio members. The Chairman and other members, other than ex-officio members, are appointed by the President.

The functions of the Board are to regulate and control the procurement of goods, services and works. The Board also monitors compliance with the provisions of the Act and Tender Regulations.

The Act establishes tender committees and their composition in all government ministries and departments and parastatal and statutory bodies. The tender committees are mandated to authorise the procurement of goods, services and works whose estimated cost is within the financial threshold of the institution. Procurements whose estimated cost is above the threshold are referred to the Central Tender Committee for consideration and granting of procurement authority.

The Act applies to all public institutions including councils and the defence.

3.0 ASSESSMENT

3.1 BASELINE INDICATORS

3.1.1 PILLAR I: LEGISLATIVE AND REGULATORY FRAMEWORK

- 1) Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.

Table 1: Public Procurement Legislative and Regulatory Framework

| 1) The public procurement legislative and regulatory framework. | Score |
|---|----------|
| a) - Scope of application and coverage of the regulatory framework and public access to legislation.. | 3 |
| b) - Procurement methods | 0 |
| c) - Advertising rules and time limits. | 3 |
| d) - Rules on participation and qualitative selection | 2 |
| e) - Tender documentation and technical specifications. | 3 |
| f) - Tender evaluation and award criteria | 3 |
| g) - Submission, receipt and opening of tenders | 3 |
| h) - Complaints system structure and sequence | 1 |
| Average Score 2 | 2 |

Key

 High risk

 Low risk

3.1.1.1 The score on sub indicator 1 (b) was zero because the procurement law did not provide for open competitive bidding as the default procurement method even though in practice open competitive tendering was the default method.

3.1.1.2 The basis for the score of 2 on sub indicator 1 (d) was that the supplier registration exercise which was carried out was exclusive to companies registered in Zambia contrary to criteria (b) which stipulated that registration, if required, should not constitute a barrier to participation in tenders.

3.1.1.3 The basis for the score of 1 on sub indicator 1 (h) was that there was no independent appeals committee to review complaints.

2) Indicator 2. Existence of Implementing Regulations and Documentation.

This indicator verifies the existence, availability and quality of implementing regulations, operational procedures, handbooks, model tender documentation, and standard conditions of contract.

Table 2: Implementation Regulations and Documentation

| Implementation Regulations and Documentation | Score |
|--|----------|
| a) – Implementing regulation that provides defined processes and procedures. | 2 |
| b) – Model tender documents for goods, works, and services. | 2 |
| c) – Procedures for pre-qualification. | 0 |
| d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion. | 3 |
| e) – User’s guide or manual for contracting entities. | 2 |
| f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts. | 3 |
| a) – Implementing regulation that provides defined processes and procedures. | 2 |
| Average Score | 2 |

Key

 High risk

3.1.1.4 The basis for sub indicator 2 (a) was that although the regulations were clear and easily accessible, they were not updated on a regular basis. The last update was in 1997.

3.1.1.5 The score for sub indicator (b) was on the basis that ZNTB did not have standard bidding documents. However, bidding documents adapted from the World Bank Standard Bidding Documents were being used but have not been institutionalised.

3.1.1.6 The basis for the score for sub indicator (c) was that there is no provision for prequalification procedures in the current law. However, in practice pre-qualification was being applied to big and complex tenders.

3.1.2 **PILLAR II: INSTITUTIONAL FRAMEWORK AND MANAGEMENT CAPACITY**

3) Indicator 3. The public procurement system is mainstreamed and well integrated into the public sector governance system.

This indicator looks at the procurement system to: a) determine its suitability to discharge the obligations prescribed in the law without gaps or overlaps; b) whether the necessary links with other sectors of government affecting procurement exist; c) whether procurement operations are constrained by other external institutional factors; and d) whether the managerial and technical capacity of the system are adequate to do procurement without unnecessary cost or delay.

Table 3: Integration and Mainstreaming of the Public Procurement System into the Public Sector Governance System

| 3) Integration and mainstreaming of the public procurement system into the public sector governance system. | Score |
|---|--------------|
| a) – Procurement planning and data on costing are part of the budget formulation and multiyear planning | 0 |
| b) – Budget law and financial procedures support timely procurement, contract execution, and payment. | 3 |
| c) – Procurement actions not initiated without budget appropriations. | 2 |
| d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming. | 3 |
| Average Score | 2 |

Key

 High risk

3.1.2.1 There were no procurement plans for most government procurements hence the score of zero for sub indicator 3 (a). Procurement planning is being done for donor funded projects perhaps because the Donors have set procurement plans are a necessary condition for funding.

3.1.2.2 Zambia uses Activity Based Budgeting (ABB). The major factor that affected planning was the slow and erratic release of funds by the Ministry of Finance and National Planning.

4) Indicator 4. The country has a functional normative/regulatory body.

This indicator examines the existence of regulatory functions within the public sector and the proper discharge and coordination of them.

Table 4- Normative and Regulatory Functions

| 4) Normative and regulatory functions. | Score |
|--|--------------|
| a) – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework. | 3 |
| b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators) | 2 |
| c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b). | 2 |
| d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions. | 0 |
| Average Score | 2 |

Key

 High risk

3.1.2.3 Although ZNTB was recognized as the regulatory body whose functions were clearly stated in the law, the major weakness was that it was, through the CTC, involved in the procurement decision making process.

5) Indicator 5. Existence of institutional development capacity.

The objective of this indicator is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans.

Table 5- Institutional Development Capacity

| 5. Institutional development capacity. | Score |
|---|--------------|
| a) – System for collecting and disseminating procurement information and accessibility. | 1 |
| b) – Systems and procedures for collecting and monitoring national procurement statistics. | 0 |
| c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity. | 2 |
| d) – Quality control standards and staff performance evaluation for capacity development. | 1 |
| Average Score | 1 |

Key

 High risk

 Low risk

3.1.2.4 There was a system that provided information on tenders that passed through the CTC. However, under PEMFA there were plans to have a database system to which all ministries could be connected.

3.1.2.5 However, it was noted that although having the system for collecting and monitoring national procurement statistics under sub indicator 5 (b) may be good if implemented, it was expensive and probably not a priority for Zambia.

3.1.2.6 ZNTB is developing a database using data collected from minutes of tender committee meetings and signed contracts. It was hoped that the system would help in providing statistics on various procurements.

3.1.3 PILLAR III: PROCUREMENT OPERATIONS AND MARKET PRACTICES

6) Indicator 6. The country's procurement operations and practices are efficient.

This indicator looks at the efficiency of the operations and operational practices as implemented by the procuring agencies.

Table 6- Efficiency of Procurement Operations and Practices

| 6. Efficiency of procurement operations and practices. | Score |
|--|----------|
| a) – Adequacy of procurement competence among government officials. | 2 |
| b) – Procurement training and information programs | 2 |
| c) – Norms for the safekeeping of records and documents related to transactions and contract management. | 0 |
| d) – Provisions for delegation of authority. | 3 |
| Average Score | 2 |

Key

 High risk

3.1.3.1 The major weakness was that record keeping was bad. There were no established norms for the safekeeping of records.

3.1.3.2 Further, there was no regulatory framework that established a list of procurement records that must be kept at the operational level. Every procurement entity had its own documents.

7) Indicator 7. Functionality of the public procurement market.

The objective of this indicator is primarily to assess the market response to public procurement solicitations.

Table 7: Functionality of the Public Procurement Market

| 7. Functionality of the public procurement market. | Score |
|--|--------------|
| a) – Effective mechanisms for partnerships between the public and private sector | 2 |
| b) – Private sector institutions are well organized and able to facilitate access to the market. | 2 |
| c) – Systemic constraints inhibiting the private sector’s capacity to access the procurement market. | 2 |
| Average Score | 2 |

3.1.3.3 There was a reasonably well functioning private sector though the participation in large tenders was concentrated in a relatively small number of firms. In addition, there was no legal framework for partnerships.

3.1.3.4 The private sector has limited access to credit which inhibiting its participation in tenders.

3.1.3.5 However, Government has put in place programmes, the Private Sector Development Project and the Financial Sector Development Project, aimed at enhancing the capacity of the private sector.

8) Indicator 8. Existence of contract administration and dispute resolution provisions.

This indicator’s objective is to assess the quality of contract administration practices which begin after contract award and continue to acceptance and final payments.

Table: 8 Existence of Contract Administration and Dispute Resolution Provisions

| 8. Existence of contract administration and dispute resolution provisions. | Score |
|--|--------------|
| a) – Procedures are clearly defined for undertaking contract administration responsibilities | 2 |
| b) – Contracts include adequate dispute resolution procedures. | 3 |
| c) – Procedures exist to enforce the outcome of the dispute resolution process. | 3 |
| Average Score | 3 |

3.1.3.6 The procedures for contract administration clearly defined responsibilities that included inspection and acceptance procedures, quality control procedures and methods to review and issue amendments. However, the processing of the final payments was a great challenge as most of the payments in a lot of contracts were delayed.

3.1.4 PILLAR IV: INTEGRITY AND TRANSPARENCY OF THE PUBLIC PROCUREMENT SYSTEM

9) Indicator 9. The country has effective control and audit systems.

3.1.4.1 The objective of this indicator is to determine the quality, reliability and timeliness of the internal and external controls preferably based on risk assessment and mitigation.

Table 9: Effectiveness of Control and Audit Systems

| 9. Effectiveness of control and audit systems | Score |
|--|--------------|
| a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement.. | 2 |
| b) – Enforcement and follow-up on findings and recommendations of the control. | 2 |
| c) – The internal control system provides timely information on compliance to enable management action. | 2 |
| d) – The internal control systems are sufficiently defined to allow performance audits to be conducted. | 2 |
| e) - Auditors are sufficiently informed about procurement requirements. | 0 |
| Average Score | 2 |

Key

 High risk

3.1.4.2 Auditors were well trained and had financial/accounting background but lacked knowledge in procurement.

3.1.4.3 While the major systems are in place, the major challenge is that risk assessment and management is not undertaken. In addition, performance audits are only being introduced.

10) Indicator 10. Efficiency of appeals mechanism.

3.1.4.4 This indicator assesses the efficiency of the appeals mechanism to contribute to the compliance environment in the country and the integrity of the public procurement system.

Table 10: Efficiency of Appeals Mechanism

| 10. Efficiency of appeals mechanism. | Score |
|---|----------|
| a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law. | 1 |
| b) – Capacity of the complaint review system and enforcement of decisions. | 0 |
| c) – Fairness of the complaints system. | 0 |
| d) – Public access to decisions. | 0 |
| e) – Independence of the administrative review body. | 0 |
| Average Score | 0 |

Key

 High risk

 Low risk

3.1.4.5 There was no appeals body provided for in the law and the current provisions are totally inadequate.

11) Indicator 11. Degree of access to information.

3.1.4.6 This indicator deals with the quality, relevance, ease of access and comprehensiveness of information on the public procurement system.

Table 11: Accessibility to Information

| 11. Accessibility to information. | Score |
|--|-------|
| Publication and distribution of information. | 2 |

3.1.4.7 Although information on procurement was available, it was not centralized.

12) Indicator 12. The country has ethics and anticorruption measures in place.

3.1.4.8 This indicator assesses the nature and scope of the anticorruption provisions in the procurement system.

Table 12: Ethics and Anticorruption Policy and Measures

| 12. Ethics and anticorruption policy and measures. | Score |
|--|--------------|
| a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behaviour. | 1 |
| b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices. | 1 |
| c) – Enforcement of rulings and penalties. | 3 |
| d) – Measures exist to prevent and detect fraud and corruption in public procurement. | 3 |
| e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors. | |
| f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior. | 1 |
| g) - Codes of Conduct/Codes of Ethics for participant and provision for disclosure for those in decision making positions. | 3 |
| Average Score | 2 |

Key

 Low risk

3.1.4.9 The basis for the score on sub indicator 12 (a) was that although the procurement law does not include anti-corruption and fraud provisions, the bidding documents which are in use provide for these clauses.

3.1.4.10 The basis for the score on sub indicator 12 (b), was that there were provisions for sanctions for fraudulent acts in the tender regulations but these only affected the purchaser and not the supplier. However, there are adequate provisions in the Anti-Corruption Act to deal with corruption in total, including in procurement.

3.2 COMPLIANCE AND PERFORMANCE INDICATORS

3.2.1 The following information was collected on the Performance and Compliance Indicators.

| | Compliance and Performance Indicator | Compliance and Performance Data | Proposed Actions |
|-------|--|--|---------------------------------------|
| 1 (b) | Percentage of procurement (in volume and in number of contracts) carried out through open tendering. | Volume : 1.3% Value: 97% | |
| (c) | (a) Percentage of invitations for open tenders publicly advertised | 36.67% | |
| | (b) - Average number of days between invitation to tender advertisement and tender opening by type of procurement. | 4 Weeks | |
| (d) | Percentage of open tender documents that include provisions barring groups of bidders from participating for reasons other than qualifications or acceptable exclusions. | 6.67% | |
| (e) | Percentage of tenders rejected in each process. | 77% | Conduct training for bidders |
| (f) | (a) Percentage of tenders including non quantifiable or subjective evaluation or post qualification criteria. | 16.17% | |
| | (b) Public perception of confidentiality of tender evaluation process. | Consultants and suppliers believe its confidential | |
| (g) | Percentage of open tenders opened publicly and recorded. | 66.66% | |
| (h) | Percentage of cases resolved within the terms established in the legal framework. | N/A | There are no terms in legal framework |
| 2 (b) | Percentage of open tenders that use model tender documents or clauses. | 63.34% | Develop SBDs |
| (c) | (a) Percentage of cases for which prequalification was used appropriately as prescribed in the legal framework. | 0.00% | |
| | b) Percentage of cases that used objective pass/fail prequalification criteria as opposed to subjective qualitative ones. | ? | |

| | | | |
|--------|---|----------------------------|--|
| (f) | Percentage of tenders that use the GCC, standard clauses or templates as applicable. | 63.34% | |
| 3 (b) | (a) Percentage of late payments (e.g. exceeding the contractually specified payment schedule). | 20% | |
| | (b) Average number of days in arrears. | 7 months | |
| (f) | a) Percentage of major contracts with completion reports. | 0.00% | |
| | b) Average time after final contract liquidation within which completion reports are finalized. | | |
| 4 (c) | Percentage of surveyed actors that perceive the function being performed as competently and timely. | 100% | |
| (d) | Percentage of surveyed actors that perceive the regulatory function being independent from procurement operations | 100% | |
| 5 (b) | Number of days by which the information is outdated. | N/A | Information is not systematically collected and disseminated |
| (c) | (a) Number of procurement officers in the central government that receives formal training in the year. | 100 | |
| | (b) Average waiting time to get in a formal training event. | 6 months | |
| 6 | Average number of days for procurement cycle from tender advertisement to contract award | 113 days | |
| (c) | Percentage of contracts found with incomplete records as per the list given for this sub indicator keeping | 56.67% | |
| 7 (a) | Percentage of favorable opinion on effectiveness of mechanisms by relevant organizations or agencies. | ? | |
| (b) | Average number of tenders submitted in each process | 12 | |
| 8 (a) | Percentage of satisfactory opinions on performance of the system. | 60% | |
| (b) | Percentage of contracts that include ADR provisions. | 100% | |
| 10 (b) | a) Percentage of complaints processed within the time | The current procedure does | |

| | | | |
|--------|---|---|--|
| | limits posted or set out in the legal framework. b) Percentage of decisions taken that has been actually enforced. | not have timeframes Data not available | |
| (c) | Percentage of favorable opinions by the participants in the system on the fairness of the process | Data not available | |
| 12 (c) | (a)Percentage of corruption accusations that go to trial. (b) Percentage of those that actually result in application of sanctions or penalties. | (a) 5% (b) 1.5% | |
| (d) | Percentage of favorable opinions by the public on the effectiveness of the anticorruption measures. | Data no available | |

Key

 High risk

 Low risk

3.2.2 PILLAR I: LEGISLATIVE AND REGULATORY FRAMEWORK

3.2.2.1 Public Procurement Legislative and Regulatory Framework

3.2.2.2 Sub indicator 1 (b); the percentage of invitations for open tenders publicly advertised was at 36.67% which was low. This was due to the fact or some tenders the special formal tendering (selective) method was used.

3.2.2.3 Sub indicator 1 (e); although the average number of tenders that were submitted for each tender were satisfactory, that is 12, for each tender, (sub indicator 7 (b)) the percentage of tenders that were rejected, on factors other than price competitiveness at each process, was very high.

3.2.2.4 Sub indicator 1 (g); it was also noted that the percentage of open tenders opened publicly and recorded was at 66.66% when it should have been 100%.

3.2.3 Implementation Regulations and Documentation

- 3.2.3.1 Sub indicator 2 (b) showed that the usage of standard bidding documents was low. However this could be attributed to the fact that ZNTB did not have standard bidding documents. The users found World Bank SBDs too elaborate and not very appropriate for their situations.
- 3.2.3.2 Sub indicator 2 (c); there were no tenders that used prequalification during the period under review. Prequalification was only applied in certain isolated tenders usually in pharmaceutical and works procurements.
- 3.2.3.3 Sub indicator 2 (f) showed that the usage of General Conditions of Contract was the same as the Sub indicator 2 (b).

3.2.3 PILLAR II: INSTITUTIONAL FRAMEWORK AND MANAGEMENT CAPACITY

- 3.2.3.1 Integration and Mainstreaming of the Public Procurement System into the Public Sector Governance System
- 3.2.3.2 Government domestic arrears are a major weakness in the system. 20% of the procurements had delayed payments with an average delay of 7 months. Some delays were as long as 1 year.
- 3.2.3.3 Sub indicator 3 (f); there were no contracts that had completion reports.

3.2.4 PILLAR III: PROCUREMENT OPERATIONS AND MARKET PRACTICES

- 3.2.4.1 Efficiency of Procurement Operations and Practices
- 3.2.4.2 56.67% of the tenders were found with incomplete documentation. This could be attributed to the fact that currently there were no norms as to what documentation should be kept.

3.2.5 PILLAR IV: INTEGRITY AND TRANSPARENCY OF THE PUBLIC PROCUREMENT SYSTEM

3.2.5.1 Existence of Contract Administration and Dispute Resolution Provisions

3.2.5.2 60% of the respondents expressed satisfactory opinions on the performance of the system.

4.0 VALIDATION OF THE FINDINGS

The findings were subjected to validation during a workshop for stakeholders.

4.1 Baseline Indicators

- 4.1.1 While the stakeholders applauded the legal requirement that funds needed to be available before a purchase can be undertaken, they stated that there was normally a misunderstanding of funds availability. While some Controlling Officers referred to funds availability as money actually in the Bank, others referred to funds in the Yellow Book. The meeting noted that funds in the Yellow Book might not all be released by the Ministry of Finance and National Planning, therefore resulting in unexecuted contracts and outstanding payments in some cases.
- 4.1.2 It was discussed that the issue of availability of funds before undertaking procurement was discussed at a workshop for Controlling Officers which was chaired by the Secretary to the Treasury, and it was agreed that with the Activity Based Funding what was in the Yellow Book should be regarded as funds available.
- 4.1.3 The Stakeholders also noted that the non-release/ late release of funds in some cases caused problems between procurement personnel and suppliers. The private sector also expressed concern on the poor payment record by government. They stated that while they were expected to pay tax for items brought in, Government was not fulfilling their part of the contract. They therefore requested that there should be some protection for them in the law.
- 4.1.4 It was discussed that Government was in the process of creating a Treasury Department within the Ministry of Finance and National Planning which would operate a single account system and will make payments directly to suppliers on behalf of all Government Ministries.
- 4.1.5 The lack of procurement planning came out as an issue that was hindering the smooth operations of procurement systems. Despite the

Zambia National Tender Board issuing circulars to all Government Ministries to prepare procurement plans at the beginning of each year, the assessments carried out revealed that there were no procurement plans prepared and most of those ministries that submitted did not prepare plans properly.

- 4.1.6 The stakeholders stated that they found it difficult to prepare procurement plans because of late disbursement of funds and a change in needs where the ministries allocated funds for some procurement were channeled to other activities.
- 4.1.7 The stakeholders agreed that procurement plans could still be prepared as they assisted in treasury management. In addition, the procurement plans could be linked to the profiles which the ministries send to the Ministry of Finance and National Planning for funding of particular programmes.
- 4.1.8 It was noted that, although Integrity Committees were only established in 8 Government institutions, the reference to the Committees in the assessment was a good thing. The Anti - Corruption Commission wanted the Integrity Committees to be established in most Public Institutions.
- 4.1.9 Stakeholders also stated that the National Anti-Corruption Commission policy, as well as a new Anti-Corruption Act were being formulated and were already before Cabinet and would strengthen the Commission in its operations once enforced.
- 4.1.10 It was further noted that there was a fair spread of business and a lot of competition in some tenders such as road construction, while in others, the same companies were always participating, e.g. motor vehicles tenders.
- 4.1.11 It was discussed that perhaps it was as a result of the larger financial base that bigger companies had which made it easier to take certain risks that smaller companies may not be willing to take.
- 4.1.12 The stakeholders also pointed out that the baseline scores were clearly indicative that the involvement in procurements by the Zambia National Tender Board had greatly compromised its position and they wanted to know whether it would de-link itself from conducting procurements. It was stated that the Zambia National Tender Board would soon undergo major reforms and would transform to a purely Regulatory Body.

4.2 Compliance and Performance Indicators

- 4.2.1 A concern that was raised was on how the sample for pilot institutions was selected and also if it was representative and why councils were left out in the assessment. The concern was on the credibility of the sample. The stakeholders were told that the sample was selected on the basis of the size of the ministries and that it included both large and small ministries and provinces.
- 4.2.2 It was noted that 77% of tenders were rejected during the tendering process. This was a high figure. It was suggested that perhaps the Zambia National Tender Board should assist in training of contractors and suppliers in order for them to know how to respond to tenders.
- 4.2.3 It was discussed that while tenders are opened publicly and recorded, bidders normally do not know where they fall out in the evaluation of tenders. The Zambia National Tender Board informed the meeting, however, that bidders had the right to know the reasons why they were disqualified in the evaluation process and therefore they should request to be debriefed.
- 4.2.4 As to whether or not a bidder could be disqualified for not attending the tender opening, the meeting was informed that it was not possible because the evaluation of a bid was only done during evaluation of tenders. The stakeholders were told that it was not mandatory for bidders to attend the tender opening but it was advantageous for them to do so as they could help clarifying and locating certain documents which may be missed.
- 4.2.5 It was noted that 63.34% of open tenders used model tender documents. However, it was discussed that some of the documents were unrealistic in delivery times and suppliers just complied with demands of the document even if they knew that it would not be possible to meet the deliveries requested. It was agreed that delivery time should be done out of an assessment of the market. The stakeholders were advised to make use of the clarification period to address unrealistic delivery periods and specifications and indeed any other queries.
- 4.2.6 It was noted that there were no major contracts with completion reports. A question was asked as to who should prepare completion reports, whether it was the buyer or the contractor. It was discussed that it was the procuring institution that was supposed to do completion reports.

4.2.7 It was noted that the average number of days for procurement cycle was 113 days. While the time between tender advertisement and tender closing was deemed appropriate (4 weeks for NCB and 8 weeks for ICB). However, the time between tender opening and contract signing was too long thereby making placing of orders for materials difficult. The stakeholders complained that their business could take risks of organizing materials in order to beat delivery time while the tenders may be awarded to other bidders.

4.3 Statement

The stakeholders endorsed the findings as a fair reflection of the procurement system in Zambia.

5.0 PROCUREMENT REFORMS

The Government, through the Zambia National Tender Board, is currently implementing public procurement reforms under the Public expenditure Management and Financial Accountability (PEMFA) Programme. The reforms are based on the recommendations of the Country Procurement Assessment Review (CPAR).

5.1 Country Procurement Assessment Review

The Country Procurement Assessment Review (CPAR) was conducted in January 2002 and in March 2002 by a team comprising officials from the Ministry of Finance and National Planning, and a multi-disciplinary Task Force representing various concerned organizations set up by the ministry, a team from Government's consultants (PLS RAMBOLL) and World Bank officials.

The CPAR analysed the existing procurement system and recommended suitable actions to improve the economy, efficiency, predictability and transparency of procurement processes.

The CPAR found that there were several factors that limited effective public procurement in Zambia.

First, a gap between intentions and practice pervades various aspects of Zambia's public procurement. Despite a legal and institutional framework, weaknesses in its structure and content allowed undesirable practices and procedures. While the ZNTB was expected to enforce procurement rules, in practice, it was liberal in permitting exceptions and allowing negotiations to replace clear procurement guidelines. Practices that fostered corruption and higher prices included using negotiations as an

accepted procurement method and misusing the registration system for purchases from short-listed firms.

The legal framework lacked robustness and featured structural and content inadequacies. Basic principles of procurement were not captured comprehensively. Further, aspects that should have been in the Act were in the regulations or guidelines and vice versa. The ZNTB's role was not limited to oversight and policy functions, as it also managed public procurement through the Central Tender Committee (CTC). As a result some oversight functions were neglected. These included: (a) monitoring and gathering statistics on public procurement, (b) developing procurement capacities and capabilities, and (c) implementing public procurement reform.

In the few departments where they existed, procurement files were often incomplete. Also, there were no instructions on how to structure an official procurement filing system and to maintain individual files. Without a proper filing system, supporting papers (such as performance guarantees) were inadequate for good contract management. Poor contract management produces avoidable losses to government. Also, procurement planning as a tool for conducting efficient and economic procurement was largely non-existent. Vital aspects of procurement planning (packaging, selecting appropriate procurement method and type of contract) are not planned early in the procurement process. Inevitably, substantial delays in processing and inefficient "urgent" procurement actions resulted.

Due to the cash budget system, funds allocated in the budget for each project and each ministry often were not fully released during the year, and there were significant delays in the release of small amounts. That seriously affected efficient project implementation, procurement, and contract management. Consequences of the budget system's weaknesses included:

- (i) Contractors' bills being held up for several months, delaying projects;
- (ii) delayed payments incurring interest charges that are paid from a ministry's limited budget, further reducing funds for product payments; and
- (iii) when contracts designated in foreign currencies had protracted payment delays, exchange rate changes cause larger amounts of local currency to be needed than originally planned.

All these contributed to higher procurement costs and avoidable losses to government.

Even though a well-trained procurement cadre was crucial to efficient procurement, there had been no progress in efforts to set up such a cadre. Although people had been trained in procurement at different levels, most had left their jobs, leaving untrained people in many positions. Trained staff left because of the lack of a career path, an unattractive salary structure, etc.

Procurement training institutions existed, but needed to upgrade their offerings to feature mid-career and specialized procurement training programmes to supplement the supply management programmes they conducted.

Lastly, activities of the Anti-Corruption Commission and OAG were critical if Zambia was to achieve a well-functioning, fair, and transparent procurement system.

5.2 PEMFA Programme

PEMFA was launched by Government in 2005 as one of the pillars of its Public Sector Reform Strategy. The objective of PEMFA is *“Improved delivery of pro-poor government services through improved public expenditure management and financial accountability.”* PEMFA is a five years Programme funded by the Government and a number of Cooperating Partners.

5.2.1 Public Procurement Reforms

The goal of the Public Procurement reforms is *“To promote and institutionalize a transparent, accountable and efficient public procurement system in order to improve expenditure management.”* The main outputs of the reforms are:

- (i) Revised legal and regulatory framework;
- (ii) Enhanced procurement procedures and practices;
- (iii) Decentralised procurement system;
- (iv) ZNTB transformed into a more effective and transparent oversight body;
- (v) Independent Procurement Appeals Tribunal established;
and
- (vi) Sensitisation of stakeholders.

5.2.2 Other Reforms

Government is currently implementing a number of reforms under the PEMFA Programme, most of which fall under the Ministry of Finance and National Planning, that will have an impact on public procurement in Zambia. These reforms are:

- (i) *Budget Preparation and Execution.* The goal of this reform project is “To establish a credible budgeting process and a transparent and clear presentation of the budget document; to implement the budget in a more efficient and predictable fashion, with reduced variance between budget and actual spending.”
- (ii) *Integrated Financial Management and Information System (IFMIS).* The goal of IFMIS is to “To improve public expenditure management through an integrated and automated financial management system in order to ensure efficient and effective use of public resources.”
- (iii) *Improved Internal Audit.* The goal of this reform is “To strengthen internal controls.”
- (iv) *Strengthened External Audit.* This reform falls under the Office of the Auditor General and its goal is “To enhance the external auditing function.”
- (v) *Enhanced Parliamentary Oversight.* The goal of this reform is “To develop the capacity of Parliament to play its oversight role in public resources management in order to promote the culture of democratic governance, transparency and accountability.”

Other reform initiatives which Government is implementing that would have an impact on public procurement are Decentralisation Programme whereby Government functions will be devolved to the district councils and the Private Sector Development Programme.

7.0 CONCLUSION

7.1 In conclusion, the Methodology was too useful and the following lessons were learnt:

- 7.1.1 Some ministries did not have the information that was required while others had the information but it was not well organized or kept in one place which made accessibility difficult. This assessment helped to appreciate the fact that record keeping was a major challenge in most ministries;

- 7.1.2 Some ministries were not free to give information because they perceived the exercise to be an audit. Information was only given after reassuring the Officers concerned that the information was to be used for purposes of the exercise only; and
- 7.1.3 Data verification could be a challenge because some of the invited representatives from the Civil Society were not ready to provide feedback on some indicators and later on participate in the validation process.

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| <p>c) - Advertising rules and time limits.</p> | | <p>3</p> | <ul style="list-style-type: none"> • formal tenders are always advertised. Informal tenders require a minimum of three quotations and are not advertised • National Competitive Bidding tenders are floated for a minimum of 4 weeks • International Competitive Bidding tenders are floated for a minimum of 8 weeks • Extensions/reductions of floatation periods are adequately provided for in the law • Reduced floatation period must be approved by appropriate authority • formal tenders are always published in the newspapers and government gazette and in some cases published in embassies • bidders can access the document on the website or check/ inspect the document and buy only when they are interested. The publication in the press includes sufficient information for the bidders to make a decision whether or not to take part. A minimal fee of K1, 000,000 is charged for documents. |
|--|--|----------|--|

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| <p>d) - Rules on participation and qualitative selection</p> | | <p>2</p> | <ul style="list-style-type: none"> • Domestic preference is only applicable to tenders for which the goods under the tender can be produced in Zambia. In normal circumstances it is not given • As a requirement to registration of suppliers, the companies have to be registered in Zambia. The register is only used for low value procurement (informal tenders) • Blacklisting of suppliers not in the Act but the guidelines provide for suspension of ailing suppliers • The tender document used in formal tendering allows government companies to participate in tenders for as long as they are financially autonomous <p>Note: The basis for the score is (a) (d) and partially (b). (b) not fully met because the supplier registration criteria is discriminatory (excludes non Zambian companies).</p> |
|--|--|----------|--|

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|---|--|---|--|
| e) - Tender documentation and technical specifications. | | 3 | <ul style="list-style-type: none"> • the law provides for minimum criteria • The Act does not allow the use of brand names in the specifications • Generally no standards are used. If they are used the phrase “ or standards of equivalent nature’ is added to allow goods of comparable quality to be tendered |
| f) - Tender evaluation and award criteria | | 3 | <ul style="list-style-type: none"> • legislation requires that evaluation criteria used is consistent with the tender documents • Pass/ fail system is used for unquantifiable criteria |

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| g) – Submission, receipt and opening of tenders | | 3 | <ul style="list-style-type: none"> • Practice is that tenders are opened immediately after the tender closes • Minutes of tender opening are kept and representatives are allowed to attend the meeting • Bids are always submitted in a sealed envelope and kept in a secure tender box • The modality of submitting and receipt of tenders is well defined |
| h) – Complaints system structure and sequence | | 1 | <ul style="list-style-type: none"> • Complainants can be told how they fared as an individual but not in comparison with other bidders. Where comparisons are made no names are mentioned. The total scores can be given but not specific scores. • However, reviews done by CTC are not completely fair because the decision being appealed against is made by the CTC itself (appealing to the same body). But appeals on decisions made by other ministries are adequately handled. Certain appeals are handles by the Board. • Losing bidder may not see the winners bid but is only debriefed • The time frames are not provided for in the Act. |

| | | | |
|---|--|---|--|
| 2) Implementing Regulations and Documentation | | | |
| – Implementing regulation that provides defined processes and procedures. | | 2 | <p>Regulations are clear, accessible and provide sufficient amount of information</p> <p>Regulations are not updated on a regular basis. The last update was done in 1997. However, the procurement thresholds are updated on a regular basis.</p> <p>ZNTB is clearly responsible for the maintenance</p> |
| Model tender documents for goods, works, and services. | | 2 | <p>Standard documents which are drawn from the World Bank SBD are available. The templates for these documents are available for use and review</p> <p>ZNTB is in the process of engaging a consultant to assist with the development of SBDs.</p> <p>As part of the reform, certain clauses in the document are reflective of the law</p> <p>The aspect of document update is lacking</p> |

| | | | |
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| <p>Procedures for pre-qualification.</p> | | <p>0</p> | <p>There is no provision for prequalification in the current law. However, in practice, it is being applied according to the World Bank guidelines. The new law has provided for prequalification</p> <p>Prequalification is applied to big and complex tenders for example in the procurement of pharmaceutical products</p> |
| <p>Procedures for contracting for services or other requirements in which technical capacity is a key criterion.</p> | | <p>3</p> | <p>The legal frame work does not provide for conditions under which selection based exclusively on technical capacity is appropriate and when price and quality are appropriate. However, the procurement guidelines for consultancy adequately provide for this.</p> <p>The technical and financial scores are usually between 70 to 80 percent and 30 to 20 percent respectively</p> |

| | | | |
|--|--|-------------------|--|
| <p>User's guide or manual for contracting entities.</p> <p>f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts.</p> | | <p>2</p> <p>3</p> | <p>There are procurement guidelines in place.</p> <p>However, the Regulations are not updated on a regular basis. The last update was done in 1997.</p> <p>The procurement thresholds are updated on a regular basis.</p> <p>ZNTB is clearly responsible for the maintenance</p> <p>The GCC are available and the use is mandatory as they form part of the Standard Bidding Document. Guidelines on the Conditions of contract are also available although they are more than 10 years old. A consultant is to be engaged to come up with Standard bidding Documents and this will include the GCC</p> <p>The percentage of tenders that use the GCC is practically 100% for all formal tenders</p> |
|--|--|-------------------|--|

| Pillar II. Institutional Framework and Management Capacity | | | |
|--|--|---|---|
| 3) Integration and mainstreaming of the public procurement system into the public sector governance system. | | | |
| Procurement planning and data on costing are part of the budget formulation and multiyear planning. | | 0 | The major concern is that there is no procurement planning for government procurements. The annual budget is based on activities for ministries. The major factor that affects the planning is that the release of funds from the Ministry of Finance and national Planning is very slow. Procurement planning only applies to donor funded projects and the officers handling the projects have an understanding on procurement planning. However, the draft bill has made a provision to have procurement plans incorporated in the budgeting process |
| Budget law and financial procedures support timely procurement, contract execution, and payment. | | 2 | The law states that funds must be available before the purchase can be made There are no published business standards for processing of invoices by the government agencies that meet obligations for timely payment stated in the contract The law is there but in practice this is not applied because of the late release of funds Legislation is there but the practice is different. |

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| Procurement actions not initiated without budget appropriations. | | 3 | <p>The law requires certification of availability of funds before solicitation of tenders</p> <p>There is a system in place to check availability of funds. The Chief Accountant signs some commitment form or on the order to confirm availability of funds</p> |
| Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming. | | 2 | <p>in the road, building/works completion reports are available whereas in goods when the final delivery is made which is tied with payment, it signals the end of the procurement but there are grey areas where completion reports are not available especially in goods contracts.</p> <p>Basis for Score Procurement planning is not part of the budgeting process</p> |

| 4) Normative and regulatory functions. | | | |
|--|--|---|---|
| – Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework. | | 3 | <ul style="list-style-type: none"> • There is a clearly defined Act and the functions of ZNTB are clearly stated in the law. ZNTB is recognized as the regulatory body |
| b) – The responsibilities include at least those required in this sub indicator (see description of the indicators and sub – indicators) | | 2 | <p>Basis ZNTB has a data base only for Supplier Registration. No statistical data on expenditure or running tenders in the Ministries procurement personnel are trained in procurement</p> |
| c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b). | | 2 | <p>Basis The regulatory body is at an adequate level but the funding is subject to administrative decisions. The role of the ZNTB is appreciated by the Ministries and Statutory bodies.</p> |
| d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions. | | 0 | <p>Basis ZNTB is involved in the procurement decision making process. In the new bill ZNTB will not be involved</p> |

| 5. Institutional development capacity. | | | |
|---|--|---|---|
| a) – System for collecting and disseminating procurement information and accessibility. | | 1 | There is a system but it only provides information for tenders that passed through the CTC. However, under PEMFA there are plans to have a database system to which all ministries can access and use. |
| b) – Systems and procedures for collecting and monitoring national procurement statistics. | | 0 | The system for collecting and monitoring national procurement statistics if implemented may be good but it is expensive and not a priority for Zambia. However, on a trial basis a system has been put in place to collect data from Minutes of Tender Committee meeting and signed contracts and logs them in the database. It is hoped that the system will help in providing statistics on various procurements. |
| c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity. | | 2 | ZNTB provided training and money has been allocated under the reforms for training of staff towards the CIPS diploma. It is also a legal requirement that procurement is undertaken by qualified personnel. Mid career workshops are also available for staff in house or outside. However, there is no specific help desk to attend to specific queries. |

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| d) – Quality control standards and staff performance evaluation for capacity development. | | 1 | Quality standards available in the Standard Bidding Document. |
| Pillar III. Procurement Operations and Market Practices | | | |
| 6. Efficiency of procurement operations and practices. | | | |
| a) – Adequacy of procurement competence among government officials. | | 2 | There is a defined skill and knowledge for the profession. Employment entry requirement is a degree then training is provided in CIPS. Procurement specialists are required to involve technical specialist in the development of the bidding document. c) it is a requirement that the PSU head is properly qualified |
| b) –Procurement training and information programs | | 2 | On average procurement training is provided on request at least once in every three months Private sector workshop have been held but the response was not good |

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| <p>c) – Norms for the safekeeping of records and documents related to transactions and contract management.</p> | | <p>0</p> | <p>There are no established norms for the safekeeping of records. This is a major weakness.</p> <p>There is no regulatory framework that establishes a list of procurement records that must be kept at the operational level</p> <p>Every procurement entity has its own documents</p> |
| <p>d) – Provisions for delegation of authority.</p> | | <p>3</p> | <p>Decision varies according to procurements and there are 5 levels of authority as follows:</p> <ul style="list-style-type: none"> (i) Senior Officer (ii) Head of Department (iii) Controlling officer (iv) Institutional Tender Committee (v) Central Tender Committee <p>In practice the 5 levels of authority are not observed</p> <p>However, Individuals are avoiding to make decisions because they are scared of the ACC and would rather make decisions as a Committee</p> |

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| 7. Functionality of the public procurement market. | | | |
| a) – Effective mechanisms for partnerships between the public and private sector | | 2 | Encourages open dialogue between the private and public sector. There is no legal framework for partnerships There is a program for building small business – private sector development |
| b) – Private sector institutions are well organized and able to facilitate access to the market. | | 2 | There is a reasonably well functioning private sector but competition for large contracts is concentrated in a relatively small number of firms |

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| <p>c) – Systemic constraints inhibiting the private sector’s capacity to access the procurement market.</p> <p>d) – Clarity and transparency of rules for determining whether to engage international or national markets.</p> <p>8. Existence of contract administration and dispute resolution provisions.</p> | | <p>2</p> | <p>The National Competitive Bidding tenders are meant for Zambian companies though foreign companies also participate.</p> <p>International Competitive Bidding tenders are competitive.</p> <p>Zambian companies have limited on access to credit.</p> <p>For Government tenders advance payment is not paid unless an equivalent guarantee is given.</p> <p>Small to medium companies cannot afford bid securities.</p> <p>Slowly the Bid Declaration form is being used as an alternative to the bid security.</p> |
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| <p>a) – Procedures are clearly defined for undertaking contract administration responsibilities</p> | | <p>2</p> | <p>They are incorporated in the Standard Bidding Documents The Clauses are adopted from the World Bank Some tenders usually for complex and sensitive goods are inspected by the SGS Competent and specialized officers inspect the works Payments delay quite often due to the delays in releasing funds. This usually applies to government funded works</p> |
| <p>b) – Contracts include adequate dispute resolution procedures.</p> | | <p>3</p> | <p>Arbitration law is available in the country Arbitrators are neutral After 30 days dispute can be referred to other international or national arbitration Standard wording is originally from the World Bank and in that way conform with international practice</p> |
| <p>c) – Procedures exist to enforce the outcome of the dispute resolution process.</p> | | <p>3</p> | <p>There is a possibility to go to the courts Yes</p> |

| Pillar IV. Integrity and Transparency of the Public Procurement System | | | |
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| 9. Effectiveness of control and audit systems | | | |
| a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement.. | | 2 | All ministries have internal auditors and no procurement is passed without auditors approval Yes established periodicity and written standards are there but not clearly defined the risk management part is not there. |
| b) – Enforcement and follow-up on findings and recommendations of the control. | | 2 | Basis Reaction is not within six months. The six months reaction period is too short |
| c) – The internal control system provides timely information on compliance to enable management action. | | 2 | National auditing standards are followed There are regular audits Compliance is usually a problem |
| d) – The internal control systems are sufficiently defined to allow performance audits to be conducted. | | 2 | Procedures manuals exist But does available to all staff mean everyone or just audit personnel |
| e) – Auditors are sufficiently informed about procurement requirements. | | 0 | Auditors have a financial/accounting back ground There is no routine support from procurement. Proposed action: Increase training in procurement for auditors |

| 10. Efficiency of appeals mechanism. | | | |
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| a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law. | | 1 | Decisions rendered on available evidence Appeals body exists. ZNTB is the appeals body and has no fixed time to consider appeals. Appeals should be made as soon as possible |
| b) – Capacity of the complaint review system and enforcement of decisions. | | 0 | Complaint review system is not defined and there are no time frames. This problem has been defined in the draft bill |
| c) – Fairness of the complaints system. | | 0 | Do not have a review body and there is no defined procedure |
| d) – Public access to decisions. | | 0 | There is no appeals mechanism. Contract decisions are made public but not the appeals decisions |
| (e) – Independence of the administrative review body. | | 0 | No complaints review body |

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| 11. Accessibility to information. | | | |
| Publication and distribution of information. | | 2 | The problem is that information on procurement is not centralized |
| 12. Ethics and anticorruption policy and measures. | | | |
| a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behaviour. | | 1 | Not provided for in the law but is covered in the Standard Bidding Documents The future bill has clauses on corruption |
| b) - Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices. | | 1 | The tender documents have clauses on corruption but leaves details to the relevant legislation of the country |
| c) - Enforcement of rulings and penalties. | | 3 | Legislation is being enforced and ZNTB is usually in court as state witness providing evidence |

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| d) – Measures exist to prevent and detect fraud and corruption in public procurement. | | 3 | <p>Integrity committee have been established in government through the ACC</p> <p>There are no special measures in place for detection, prevention of corruption associated with procurement.</p> <p>ACC is having problems to prosecute since they lack experience in procurement</p> <p>Proposed action: Prosecutors should get some knowledge in procurement</p> |
| e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviors. | | | |
| f) – Mechanism for reporting fraudulent, corrupt, or unethical behavior. | | 1 | <p>mechanism is there but the security of whistle blowers cannot be guaranteed</p> <p>whistle blowers are still required to standby the evidence Accessibility is there</p> |
| g) - Codes of Conduct/Codes of Ethics for participant and provision for disclosure for those in decision making positions. | | 3 | <p>There is a government code of conduct for civil servants There is a code of conduct for procurement being developed</p> |

Annex II

COMPLIANCE AND PERFORMANCE INDICATORS

| Compliance and Performance Indicator | Status | Compliance and Performance Data | Proposed Actions | Priority |
|--|--|---------------------------------|------------------|----------|
| NA | | | | |
| Percentage of procurement (in volume and in number of contracts) carried out through open tendering. | Noted that a number of procurements which were carried out under informal procedures should have been undertaken using formal procedures | Volume :1.3% | | |
| | | Value: 97% | | |
| (a) Percentage of invitations for open tenders publicly advertised | | 36.67% | | |
| (b) - Average number of days between invitation to tender advertisement and tender opening by type of procurement. | a. A number of procurements were undertaken through selective tendering because of time constraints | 4 weeks | | |

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| Percentage of open tender documents that include provisions barring groups of bidders from participating for reasons other than qualifications or acceptable exclusions. | | 6.67% | | |
| Percentage of tenders rejected in each process. | | 77% | | |
| (a) Percentage of tenders including non quantifiable or subjective evaluation or post qualification criteria. | | 16.67% | | |
| (b) Public perception of confidentiality of tender evaluation process. | | | | |
| Percentage of open tenders opened publicly and recorded. | One of the reasons for the low percentage was that information was not available | 66.66% | In order to enhance transparency of the system all open tenders should be publicly opened and recorded | |
| Percentage of cases resolved within the terms established in the legal framework. | | | | |

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| NA | | | | |
| Percentage of open tenders that use model tender documents or clauses. | The use of model/standard tender documents has not been formalised | 63.34% | | |
| a) Percentage of cases for which prequalification was used appropriately as prescribed in the legal framework. b) Percentage of cases that used objective pass/fail prequalification criteria as opposed to subjective qualitative ones. | | 0.00% | | |
| NA | | | | |
| NA | | | | |
| Percentage of tenders that use the GCC, standard clauses or templates as applicable. | The use of model/standard tender documents has not been formalised | 63.34% | | |
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|--|--|-------|--|--|
| NA | | | | |
| (a) Percentage of late payments (e.g. exceeding the contractually specified payment schedule). | While it was observed under the pilot that all payments were up to date it should be noted that the government suffers a lot of penalties for late payments resulting in huge domestic arrears | 0.00% | | |
| (b) Average number of days in arrears. | | | | |
| NA | | | | |
| a) Percentage of major contracts with completion reports. b) Average time after final contract liquidation within which completion reports are finalized. | | 0.00% | | |
| | | | | |
| NA | | | | |
| NA | | | | |
| Percentage of surveyed actors that perceive the function being performed as competently and timely. | | | | |

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|--|-----------------------------|----------|--|--|
| Percentage of surveyed actors that perceive the regulatory function being independent from procurement operations. | | | | |
| NA. | | | | |
| Number of days by which the information is outdated. | | | | |
| (a) Number of procurement officers in the central government that receives formal training in the year. (b) Average waiting time to get in a formal training event. | | | | |
| NA | | | | |
| Average number of days for procurement cycle from tender advertisement to contract award | Currently, there is no norm | 113 days | | |
| NA | | | | |
| NA | | | | |
| Percentage of contracts found with incomplete records as per the list given for this sub indicator keeping. | Currently, there is no norm | 56.67% | | |
| NA | | | | |

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|---|--|-----|--|--|
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| Percentage of favorable opinion on effectiveness of mechanisms by relevant organizations or agencies. | | | | |
| Average number of tenders submitted in each process | | 12 | | |
| NA | | | | |
| NA | | | | |
| | | | | |
| Percentage of satisfactory opinions on performance of the system. | | | | |
| Percentage of contracts that include ADR provisions. | The use of model/standard tender documents has not been formalised | 60% | | |
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| NA | | | | |
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| NA | | | | |
| NA | | | | |
| NA | | | | |

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|--|--|--|--|--|
| NA | | | | |
| NA | | | | |
| | | | | |
| NA | | | | |
| a) Percentage of complaints processed within the time limits posted or set out in the legal framework. b) Percentage of decisions taken that have been actually enforced. | | | | |
| Percentage of favorable opinions by the participants in the system on the fairness of the process | | | | |
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| NA | | | | |
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| NA | | | | |
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| NA | | | | |
| NA | | | | |

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|---|--|----------------------|--|--|
| <p>(a) Percentage of corruption accusations that go to trial. (b) Percentage of those that actually result in application of sanctions or penalties.</p> | | <p>a. 5% b. 1.5%</p> | | |
| <p>Percentage of favorable opinions by the public on the effectiveness of the anticorruption measures.</p> | | | | |

Annex III

LIST OF PARTICIPANTS TO THE VALIDATION WORKSHOP

| No | Name | Institution |
|-----------|---------------------|---|
| 1 | Paul Chilumbu | Zambia National Farmers Union |
| 2 | Denzil Robertson | Toyota Zambia Limited |
| 3 | Gilbert Minganja | Anti Corruption Commission |
| 4 | Sari Jormanainen | Embassy of Finland |
| 5 | Davies Chimfwembe | Ministry of Health |
| 6 | Kenneth Mapani | Ministry of Health |
| 7 | Davies Sampa | Ministry of Works and Supply |
| 8 | Chishimba Wanchinga | Ministry of Works and Supply |
| 9 | Beauty Naluyele | Ministry of Works and Supply |
| 10 | Nathan Muzungu | Ministry of Community Development and Social Services |
| 11 | Sylvia Mukuyungwa | Ministry of Local Government and Housing; |
| 12 | Beenzu Chilukutu | Ministry of Finance and National Planning |
| 13 | David Kapitolo | Zambia National Tender Board |
| 14 | James Njolomba | Zambia National Tender Board |
| 15 | Mannas Simwanza | Zambia National Tender Board |
| 16 | Thomas Lwenje | Zambia National Tender Board |
| 17 | Gloria Ngoma | Zambia National Tender Board |
| 18 | Vida Kamanya | Zambia National Tender Board |
| 19 | Dina Chisoti | Zambia National Tender Board |