

The background features a decorative graphic consisting of three blue circles of varying sizes, each composed of concentric rings of different shades of blue. These circles are arranged in a triangular pattern, with the largest circle at the top right, a smaller one in the middle, and another large one at the bottom right. Thin blue lines intersect to form a triangular shape that frames the central text.

Public Procurement System in Zambia

A case for procurement monitoring

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Summary

Public procurement plays a very critical role in the development programmes of any country and is accountable for 10 – 15% of GDP. Therefore a country's procurement system needs to be effective and efficient in order to obtain value for money. A well-functioning procurement system is based on transparency, accountability, and fairness. Proper procurement of public goods, works, and services is crucial for good economic management and addressing leakages of government funds. Failure to properly manage the procurement process can lead to wasted effort and poor development results consequently to increased poverty and deprivation of social and economic rights of the citizenry.

The observation within civil society is that there are high levels of corruption in the procurement processes in Zambia. Zambia loses millions of Kwacha due to corruption and corrupt tendencies every year. For Example, according to the Auditor General's Report of 2010, the government in 2010 lost K649,210,800 due to non-delivery of materials.

This state of affairs has been attributed to the lack of transparency and accountability in the procurement system, lack of enforcement of transparency and accountability provisions in the legal and regulatory frameworks and lack of capacity by civil society organisations (CSO) and citizens to effectively participate in the procurement process.

CSO and citizens can only participate effectively in the procurement process if they had access to adequate information about the procurement process. Release of adequate information also promotes accountability and transparency in the procurement system. However, studies undertaken in the health, education and construction sectors revealed weaknesses in the legal and regulatory frameworks with regard to release of information and accessibility to such information. The studies also revealed the lack of capacity of CSO and citizens to actively and effectively participate in public procurement. The studies further revealed poor procurement practices.

Procurement and contracts monitoring

The project proposes to establish a coalition of CSO to undertake procurement and contracts monitoring. The underlying premise for the monitoring is that the release of adequate procurement information will help enhance transparency and accountability in the procurement system. In order to do this the project proposes to train the coalition members and citizens in procurement and contracts monitoring and also engage procuring entities and the oversight and regulatory bodies to enforce provisions of relevant legal and regulatory frameworks. The coalition would then collect the released information and disseminate it to communities using various channels, including, sms, coalition website, community radio stations and community meetings.

Benefits of procurement and contracts monitoring

The benefits of procurement and contracts monitoring will accrue to government, procuring entities, industry, CSO and citizens. These benefits will include:

- Enhanced accountability of procuring entities and suppliers for the cost and quality of public sector procurement through enhanced accountability mechanisms.
- Greater public confidence in government and the procurement process.
- As a result of tackling corruption, more companies will be encouraged to bid which would lead to fairer prices and higher quality projects with higher economic and social returns.
- Increased transparency and fewer opportunities for corruption will engender confidence in the industry that a 'level playing field' exists and contract award and administration will be fair.
- Capacity of civil society to undertake procurement and contract monitoring will be enhanced.
- Civil society organisations will enjoy increased access to information and the opportunity to participate in the governance of the public procurement process.
- Citizens will be able to compare what they are getting with what they should be getting, leading to better service delivery that meets their real needs.

In order to meet its objectives, the coalition proposes to undertake activities to address the specific issues that contribute to the current state of procurement in Zambia. The specific issues to be addressed are:

- Leakages in public expenditure;
- Inadequate capacity and information;
- CSO and local communities do not act to monitor and lobby government for a transparent and accountable procurement system;
- Provisions in the procurement legal and regulatory frameworks to promote transparency and accountability not adequately enforced;
- Lack of information; and
- Lack of CSO platform.

Procurement and contracts monitoring will result into among other things, improved transparency and accountability in the procurement process, enhanced citizens' confidence in government intentions, and less opportunity for corrupt practices. The benefits that will accrue to the various stakeholders will ultimately result into an active and effective participation by the citizens in procurement decisions that affect them and an improved standard of living for the citizens.

Corruption and poverty are acts of injustice that undermine quality of life. They can be stamped out by actions of human beings. Nelson Mandela

1. Introduction

Public procurement is ' the purchase of commodities and contracting of construction works and services if such acquisition is effected with resources from state budgets, local authority budgets, state foundation funds, domestic loans or foreign loans guaranteed by the state, foreign aid as well as revenue received from the economic activity of state. Public procurement thus means procurement by a procuring entity using public funds (World Bank, 1995). The items procured range from simple goods or services such as needle or cleaning services to large commercial projects, such as the development of infrastructure, including road, power stations and airports (Odiambo et al, 2003).

Procurement has two fundamental elements to the delivery of specific services to the communities;

- it makes more transparent the actual levels of performance achieved by different ministries and spending agencies of the government, making it possible for them to be held accountable for their actions and creating a positive incentive for government agencies to improve their performance for the betterment of the people they are serving, the community; and
- it also makes it easier to estimate the volume of public money that flows through the procurement process.

Public procurement is estimated to account for between 10 and 15% of GDP and is therefore one of the top three types of spending (besides salaries and debt payments), if not the most important. In Zambia, this is estimated at 10% of GDP. Therefore, a well-functioning procurement system based on transparency, competition, economy and efficiency and accountability is critical for good economic management and addressing leakages of government funds, improving the effectiveness of public expenditure in poverty reduction and enhancing the public's confidence in government intentions and programmes.

Failure to properly manage the procurement process and systems can lead to wasted effort and poor development results consequently increased poverty and deprivation of social and economic rights of the citizenry.

A major impediment in achieving effective and efficient public procurement systems in countries like Zambia has been the fragmentation, ambiguities and limited scope of laws, implementing regulations, and procedures. This has given rise to inconsistency, confusion and lack of accountability in the procurement process. In countries where modern procurement laws have been promulgated, such as Zambia, poor implementation and enforcement of the provisions of the legal and regulatory framework has led to inefficient procurement practices and providing opportunities for corrupt practices. This has also limited the ability for political leaders to meet their promises of economic and social improvements which is strongly related to how well procurement functions.

“Corruption in procurement engenders bad choices, affects the efficiency of public spending and donors' resources, creates waste and, ultimately, affects the quality of health and education services and the opportunities they present to improve quality of life.” Centre for Global Development, 2006

2. The Zambian Public Procurement System

2.1. Legal and Regulatory Framework

Public procurement in Zambia is governed by the Public Procurement Act No. 12 of 2008 and the Public Procurement Regulations of 2011. Prior to this, public procurement was governed by the Zambia National Tender Board Act, Act No. 30 of 1982.

The objectives of the Public Procurement Act of 2008 are to:

- (i) ensure transparency and accountability in public procurement;
- (ii) regulate and control practices in public procurement in order to promote;
 - integrity;
 - fairness; and
 - public confidence.

The Act also provides for the total decentralisation of procurement whereby procuring entities will be responsible for all their procurements without referring to any other body. The Act, which is based on the UNCITRAL Model Law on Procurement, has adopted clauses for international best practice.

Institutional Framework

The Act has provided for an institutional framework for the effective and efficient implementation of the Act, with provisions for separation of functions, enhancing transparency and accountability, appeals mechanism and an oversight function.

The Act has established the Zambia Public Procurement Authority (ZPPA) as an oversight and regulatory body, responsible for policy, regulation, standard setting, compliance and performance monitoring, professional development and information management and dissemination.

Under the Act, a procuring entity is responsible for the management of all procurement activities within its jurisdiction while the controlling officer or chief executive officer is responsible and accountable for ensuring that all the procurements of the procuring entity are undertaken in accordance with the Act.

The Act requires a procuring entity to appoint a procurement committee which is the highest approvals authority in the procuring entity and responsible for ensuring that all procurement is undertaken in accordance with the provisions of the Act. The procurement committee is required to have not more than two members from the private sector.

The Act further requires the establishment of procurement units within the procuring entity to be responsible for managing all procurement activities.

2.2. Procurement system weaknesses and challenges

The Zambian procurement system despite having a relatively modern legal and regulatory framework faces a number of challenges resulting from non-enforcement or weak enforcement of the provisions of the Act, including sanctions for breach, resistance to change, limited capacity and simply incompetence in some cases. The Act for example, requires procuring entities to publish annual procurement plans and contract awards but these requirements are not being adhered to by most, if not all procuring entities. The publications are meant to enhance transparency and accountability and therefore the non-adherence to the provisions is not only a breach of the law but also inhibits transparency and accountability. The Auditor General has, year in year out, been reporting cases of procuring entities not complying with procurement procedures in the procurement of goods, works and services with no sign of this practice coming to an end.

The general challenges which are still being faced include, but are not limited to, the following;

- 1) **Non-preparation of Annual Procurement Plans:** Although the law requires procuring entities to prepare annual procurement plans as part of the budget preparation process, many have not developed these plans leading to haphazard implementation of programmes. Associated with this has been the underfunding of the work plans which dampens the interests of the staff and disorganises activity plans
- 2) **Lack of Capacity by the private sector to participate in public procurement:** Private sector participation in the supply of goods, works and services to the public sector are minimal. Local traders, suppliers, consultants, contractors, architects and engineers have not built enough capacity to participate in procurement opportunities particularly when the values are big. Local suppliers and contractors often do not have capacity to raise credit and bid securities from local banks and insurance companies due to the high interest rates and other conditions such as collateral. As a result a large proportion of contracts are awarded to foreign companies.
- 3) **Suppliers who would like to participate in public procurement find the procurement procedures cumbersome:** Local suppliers are sometimes excluded when the procurement is too big and they find the procedures unfamiliar and cumbersome.
- 4) **Poor Procurement practices:** An assessment of procurement practices in the Zambian procurement system undertaken in 2007 (OECD-DAC, 2007), revealed that:
 - 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.
 - there were no contracts with completion reports.
 - the percentage of open tenders opened publicly and recorded was at 67% when it should have been 100%.

- 77% of tenders were rejected during the tendering process. This was a high figure. This could be an indicator of lack of capacity of the private sector to submit responsive bids or a faulty tender evaluation process.
 - It was noted that the average number of days between tender closing and contract signing was 113 days.
- 5) **Enforcement:** There is particular concern about the lack of enforcement of the provisions of the procurement legal and regulatory framework by the ZPPA. The result of which is the poor compliance by MPSAs leading to misprocurements, increasing opportunities for corrupt practices, etc.
- 6) **Oversight:** The Office of the Auditor General exercises oversight over public procurement and has been doing a commendable job in exposing weaknesses, poor practices, corruption cases etc. in the public procurement system resulting in losses to Government and poor service delivery.

Over the years these revelations by the OAG have been submitted before Parliament but there does not seem to be any improvement in the performance of MPSAs in this regard. Every year the Auditor General's Report contains recommendations by the Public Accounts Committee which remain outstanding. There is therefore, particular concern with how Parliament keeps an eye on the activities of the Executive. It is precisely in the oversight function that many commentators detect the greatest weakness of the Zambian Parliament. Various studies have noted serious lack of ministerial accountability to Parliament. Parliament is not able to hold individual ministers accountable for their performance because they are supposed to be collectively accountable, and moreover doing so is perceived as infringing upon the presidential prerogative since the President appoints the ministers and they are accountable to him for their performance, and only he has the power to sanction them.

These weaknesses and challenges are highlighted in the specific cases of the Ministries of Health, Education and Works and Supply and the construction sector.

2.3. Specific Institutional Challenges

2.4.1. Ministry of Health

Procurement in the Ministry of Health is the responsibility of the Procurement and Supplies Unit (PSU). The procurement of pharmaceuticals and related supplies is one of the key roles of the PSU. The procedure for the procurement of drugs and medical equipment and supplies is that the user department initiates the procurement through a purchase requisition which is submitted to the PSU. The PSU confirms the availability of funds and counter checks the requirements in terms of quantities and specifications. The PSU then determines the method of procurement and develops the appropriate solicitation document, invites offers and coordinates the evaluation of the offers received. The PSU then obtains the necessary approvals to proceed with the procurement. Once due approvals are obtained the PSU arranges for the signing of the contract. In most cases the goods when delivered are consigned to storage.

The storage and distribution of pharmaceuticals and medical supplies is done by the Medical Stores Ltd, a parastatal company owned by the Ministry of Finance and National Planning and the Ministry of Health. The management of Medical Stores Ltd has been contracted to Crown Agents. The mandate of Medical Stores Ltd is the storage and distribution of medicines and allied products to district health offices and hospitals. District health offices in turn distribute to health centres and clinics within their districts.

In an effort to strengthen procurement and supply chain management, towards the end of 2006, the government and donors established an adhoc entity called the Drug Supply Budget Line (DSBL) Unit. The role of this unit is to coordinate and monitor drug-related activities relating to procurement and supply chain management in the sector. In addition, the DSBL also compiles information relating to drug consumption and schedules.

The process of procuring drugs and medical supplies always starts at the hospital or the District Health Management Team (DHMTs) levels. Requirement schedules are prepared for all hospitals and clinics by the DHMTs and sent to the DSBL Unit which raises the purchase requisition.

Procurement in the Zambian health sector has been a subject of great attention to a number of stakeholders. Several evaluations have raised concerns on the lack of transparency, poor adherence to standards of good governance and risks of corruption in procurement (OECD-DAC, 2007). Furthermore, internal reviews of MoH Procurement and Supplies Unit have identified many areas of risk for corruption and weaknesses in procurement (CYMA, 2011).

Major weakness in MoH procurement procedures and practices

- Several assessment reports have pointed out that there is insufficient or no follow-up on goods and services to ensure adherence to quality specification, timely delivery etc., after contracts are signed. Assessment reveal that many pharmaceutical consignments arrive without the standard documentation, with expired or about-to-expire drugs, inappropriate quantities, discrepancies between goods received and tender specifications, etc.
- The oversight function is not institutionalized and many suppliers and apparently many officers in the PSU are aware of this weakness. Oversight is supposed to be conducted by the Office of the Auditor General and ZPPA. However, the Auditor General often conducts the audit after 2 years or more. Even then, the Auditor General's reports of the past four years point out that procurement procedures are still being flouted in the Ministry. The ZPPA has never undertaken any procurement audit of the Ministry.
- Political interference is also a major problem in procurement process (MoH, 2008).
- Finally, the lack of access to information at the PSU has been cited as a major cause of concern about the transparency of the procurement process and activities.

The result of these weaknesses is that many stakeholders remain apprehensive about the procurement procedures and practices in the Ministry. In 1999, donors in the sector withheld their financial support on account of dissatisfaction with procurement practices. In 2008/09 the Global

Fund for HIV/AIDS, TB and Malaria (GFATM) withheld its certification of the PSU to procure drugs under the Programme and outsourced it instead. In 2009 the donors again suspended aid due to embezzlement of resources by civil servants, a case that is equally related to procurement practices.

2.4.2. Ministry of Education (MoE)

Like in other Ministries, procurement in the Ministry of Education is the responsibility of the Procurement and Supplies Unit (PSU). The procurement procedure is similar to that in MoH in that the user department raises a purchase requisition. The purchase requisition is authorized by Head of Department and submitted to the PSU. The PSU verifies the budget allocation, specifications, determines the procurement or selection method, and proceeds with inviting offers or proposals. Upon receipt of offers, the PSU coordinates the evaluation of the offers or proposals and obtains the necessary authorities to proceed with the procurement. The PSU then arranges for the signing of the contract.

Major weakness in MoE procurement procedures and practices

- 1) The current practice within the Ministry requires the School Infrastructure Section (SIS) to carry out all activities for the construction of schools from detailed engineering design and preparation of tender documents, participation in the tendering and evaluation process to construction supervision. The decision by the Ministry to use in house capacity to carry out all activities for civil works has proved to be a challenge given the wide geographical spread of the sites and the need for close supervision at all sites. This results in poor quality of works since there is inadequate supervision or checks on projects.
- 2) Although the Ministry of Education has adopted best procurement practices, the institutional arrangements tend to delay procurement processes. It has been observed that procurement delays mainly occur during: a) the approval of draft bidding documents by ZPPA, or the Ministry Procurement Committee (MPC), b) the approval of the recommendations for contract award by the MPC, d) the approval of draft contract by the MoE management and Ministry of Justice (MoJ) respectively. The review and approval of draft contracts by MoJ before the successful bidder is invited to contract negotiations or signing sometime takes as long as 90 days in the worst scenario. Another source of delay is the issuance of “No Objection” by donors, especially for World Bank funded projects.
- 3) At the district level, the Assistant Buildings Officer (ABO), the District Education Board Secretary (DEBS) and heads of schools are involved in procurement. At this level the procurement is delayed or hampered by: a) lack of transport; b) inappropriate procurement structures; c) low qualifications among those involved in procurement processes; d) low staffing levels; e) lack of capacity to prepare tender documents and tender inquiries; f) poor capacity to evaluate bids; g) low thresholds; and h) delays in the granting of No Objections by donors in some cases (where applicable).
- 4) Poor procurement record management at all the levels, Headquarters, province and district.

2.4.3. Construction industry

Studies undertaken in this sector (Colmak Associates, 2010) revealed a number of weaknesses in procurement procedures and practices. These weaknesses included:

- 1) Procurement files are often incomplete and files missing. This was attributed to the procurement department not having procedures or instructions on how to structure an official procurement filing system and to maintain individual files. Without a proper filing system, supporting papers are inadequate for good contract management. Poor contract management has resulted in many avoidable losses to government.
- 2) Bidding Statistics- For the works contract sampled there were no invitations for expression of interest undertaken. For consultancy work, most design and supervision assignments were done in-house except for RDA which outsourced consultancy work. The low availability of statistics on the number of bidders in most of the cases could be attributed to all sampled PEs never disclosing pre-contract MPI such as the tender evaluation report which would invariably contain information on the number of companies bidding or expressing interest.
- 3) Duration- From all the sampled projects only one was delivered within the original contract period. All the other sampled projects experienced contract overruns, typifying the experiences of most projects in Zambia. On average the sampled projects experienced contract schedule overruns of 137%
- 4) Procurement planning was inadequate and in certain instances was not in existence, a component that is essential for an efficient and economic procurement system.

The net result of these weaknesses in the procurement system is lack of transparency and accountability, misapplication of funds, corruption, inefficiency and loss of confidence by the population in government programmes. For instance according to the Auditor General's Report of 2008 Report, there were various overwhelming financial irregularities in the procurement of 100 hearses in the Ministry of Local Government and Housing. Contrary to the Application Act of 2008, out of the total amount of **K50, 000,000,000.00** provided for Recurrent Grants to Local Authorities, the Ministry of Local Government and Housing misapplied a total of **K 14, 920,000,000.00** on the procurement of one hundred (100) hearses from Beijing Automobile Works Company of China. The purchase of the hearses raised a lot of public outcry and Government vehemently defended this decision.

The malpractices have continued as shown in the latest Auditor General's Report. The Auditor General's Report for the Year ended December 2010, contains 75 paragraphs on issues that could not be resolved. The major irregularities result from d above are mostly due to failure to adhere to regulations. In addition, there were weaknesses in internal control systems, wastage in the use of resources, poor management of contracts, failure to follow tender procedures, delays in completion of projects, poor workmanship and non-adherence to contract terms and conditions among others as shown in the table below.

Table: Auditor General's Report 2010

Findings	2010 (K)	2009 (K)	2008 (K)
Misapplication of Funds	220,628,818,731	95,238,162,121	7,865,627,697
Unvouched Expenditure	74,793,881,735	89,325,590,024	28,337,559,092
Unaccounted for Stores	43,921,118,882	32,676,447,022	20,805,216,887
Failure to Follow Tender Procedures	2,540,559,305	1,189,103,954	2,627,420,322
Undelivered Materials	649,210,800	345,542,984	894,335,504
Unauthorised Expenditure	4,808,969,418	13,684,411,726	4,916,418,128

This state of the Zambian procurement system has been attributed to a large extent, on the lack of disclosure of information which could make it possible for stakeholders, including civil society, to monitor and oversee effectively the system.

3. Procurement and Contract Monitoring

3.1. Background

The principle underpinning the disclosure of information to the public is that transparency and accountability are enhanced. Governments need to be accountable in the management of public resources as the citizens have a right to know that their money was being used properly.

Transparency through the release of information is an effective way of improving value for money by reducing opportunities for corrupt practices. Transparency enhances investor confidence. The lack of an Information Act, however, has been identified as one of the weaknesses in information disclosure. The other major hindrances to information disclosure are the provisions and/or lack of them, in the Public Procurement Act of 2008 and the non-enforcement of laws.

Material Project Information (MPI)

Material Project Information simply means sufficient information about a project that should be provided to enable stakeholders make informed judgements on the quality and cost of the procurement. The CoST study undertaken in 2010 (Colmak Associates, 2010) revealed that the legal requirement for the release of MPI from the Public Procurement Act No. 12 of 2008 of the laws of Zambia, which is law that governs procurement, is focused on the disclosure of the best evaluated bidder. Clause 53 of the Act states that “a procuring entity shall, within seven days of the decision to award of a contract, prepare a notice indicating the best evaluated bidder and the value of the proposed contract and send the notice to all bidders who submitted bids”.

The Act further provides that “it’s a requirement that normative texts issued by the government should be published or otherwise made available to the general public”. The Act has a clause which leaves the confidential parts of the bids kept secret, while open information is left accessible for all.

The CoST study found the following to be the most obvious barriers to the release of Material Project Information:

- a) Procedure for obtaining authority to access information is very bureaucratic;
- b) Information Management Systems – In some cases it is apparent that the filing systems are not working very well. It has been difficult for instance to find project documents such as evaluation reports, final accounts, and contract documents in one place;
- c) Suspicion on the use of the information requested – It appears that with many corruption cases going on in the country public officers are not very free to release information. The levels of trust are quite low; and
- d) Inadequacy in the legal requirements to compel PEs to release MPI.

The table below gives the CoST findings on the release of MPI.

Legal requirements for the release of MPIs

Stage in Project Cycle	Initial List of Disclosures	Required to be released	Legal references	Comment	
Prior disclosures in support of CoST	Project identification	Project specification	No		Usually put in the tender document/solicitation document. Its not a legal requirement per se
		Purpose	No		Usually put in the tender document/solicitation document. It's not a legal requirement per se
		Location	No		Usually put in the tender document/solicitation document. It's not a legal requirement per se
		Intended beneficiaries	No		Usually put in the tender document/solicitation document. It's not a legal requirement per se
		Feasibility study	Yes	The Environmental Council of Zambia regulations demand that this should be made public	
	Project funding	Financing agreement	No		
		Budget	No		
		Engineer's estimate	No		Usually kept confidential although the information seems to leak privately
	Tender process for the contract for project design	Tender procedure	Yes	PP ACT under Part Six – Procurement Process	
		Name of main consultant	Yes	PP ACT under Part Six – Procurement Process	
Tender process for the contract for project supervision	Tender procedure	Yes	PP ACT under Part Six – Procurement Process		
	Name of main consultant	Yes	PP ACT under Part Six – Procurement Process		

Stage in Project Cycle	Initial List of Disclosures	Required to be released	Legal references	Comment	
			Process		
<i>Tender process for the main contract for works</i>	Tender procedure	Yes	PP ACT under Part Six – Procurement Process		
	List of tenderers	Yes	Under clause 49 of PP ACT under Part five – General Procurement Rules	A procuring entity shall maintain record of all procurement proceedings and at tender opening any interest member of the public may attend	
	Tender evaluation report	No		Usually treated as confidential. An unsuccessful bidder may be given information on request only relating to their bid	
<i>Details of the contract for project supervision</i>	Contract price	Yes	Under clause 53 of PP Act		
	Contract scope of work	Yes	Under PP ACT		
	Contract programme	Yes	Under PP ACT		
<i>Details of the main contract for works</i>	Contractor name	Yes	Under PP ACT		
	Contract price	Yes	Under PP ACT		
	Contract scope of work	Yes	Under PP ACT		
	Contract programme	Yes	Under PP ACT		
<i>Core disclosures in support of CoST</i>	<i>Execution of the contract for project supervision</i>	Significant changes to contract price, programme, scope with reasons	No		No law requires this to be disclosed
	<i>Execution of the main contract for works</i>	Individual changes to the contract which affect the price and reasons for those changes	No		No law requires variations to be disclosed
		Individual changes to the contract which affect the programme and reasons for those changes	No		
		Details of any re-award of main contract	Yes		It can be linked to the law that requires the successful bidder to be publicized
<i>Post contract completion details of the main contract for works</i>	Actual contract price	No		No law requires the disclosure of this information	
	Total payments made	No		No law requires the disclosure of this information	
	Actual contract scope of work	No		No law requires the disclosure of this information	
	Actual contract programme	No		No law requires the disclosure of this information	
	Project evaluation	No		No law requires the disclosure of this	

Stage in Project Cycle	Initial List of Disclosures	Required to be released	Legal references	Comment
	and audit reports			information

The CoST study revealed that weaknesses in the provisions of the Public Procurement Act hinder the release of information to civil society. Inadequate enforcement of legal provisions has also been cited as one of the reasons for lack of information disclosure.

In a study of the pharmaceutical industry in Zambia, the study found that civil society and the public did not have the capacity to participate in and contribute to government decisions affecting them (Medicines Transparency Alliance, 2010).

3.2. Justification for procurement and contract monitoring

“Our Lives begin to end when we keep quiet on things that matter”. Dr Martin Luther King.

The application of the principles of integrity, transparency, accountability, fairness and efficiency to all decision making on public investments and purchases will minimise corruption and maximise the economic, financial, social, environmental and political benefits of public procurement. This will require the enforcement of existing legal frameworks and the participation of the citizens in the decision making process.

A well-functioning public procurement system will not only result in improved service delivery but also build the confidence of development partners that resources they commit to development activities are being properly utilised.

Procurement however, still represents one of the weak areas in the fight against corruption in Zambia. It is therefore important to collect information which would help to address this impediment in service delivery and development functions of the government. The observation within civil society is that there are high levels of corruption in the procurement process. Oversight bodies (Auditor General’s Office, The police and the Anti Corruption Commission) and other CSOs are aware of instances of corruption in procurement of public goods. They report high favouritism and lack of transparency in the allocation of contracts in procurement of goods and services. The view held is that the procurement staff and people with responsibility for procurement, allocate procurement works to their own friends and relatives, own companies and proactively seek out bribes from those who win contracts. The entrenched nature of corruption which has pervaded every aspect of the Zambian society, from procurement to everyday lives is seen as a key contributory factor. While the CSOs appreciate the role of the Anti Corruption Commission (ACC), they hold that the ACC has not been effective in combating corruption resulting in uncompetitive behaviour in the procurement process.

The *“rent seeking behaviour”* of public officials and the *“rent giving behaviour”* of the contractors thus work to counteract quality and timeliness in the implementation of approved public procurement contracts. It is the perception of local government authorities in Zambia and elsewhere that NGO commissioned pieces of work tend to be of better quality although implemented at a lower cost while government projects take more resources and yet, the final product is always

poorer compared to those by NGOs. This is compounded by limited and inadequate supervision of projects.

CSO need to monitor the procurement system in Zambia believing that an effective and efficient public procurement system is essential to the achievement of the Millennium Development Goals, (MDGs) and the promotion of sustainable development. Procurement monitoring would be an important component of efforts to improve social and economic well-being and a necessary feature of programmes designed to meet the international commitment to reducing poverty.

Procurement and contracts monitoring will lead to the procuring entities promoting transparency and the enforcement of provisions in applicable legal frameworks to enhance transparency and accountability. This will also give the citizens a platform to participate in decisions which affect them.

3.3. Benefits of procurement and contracts monitoring

The overall benefits will be:

- Enhanced accountability of procuring entities and suppliers for the cost and quality of public sector procurement through enhanced accountability mechanisms.
- Improved management of public finance and strengthened governance of public procurement.
- Greater efficiency of public procurement of infrastructure projects, leading to higher quality infrastructure at lower cost.

3.3.1. Benefits to government

The benefits to government will be:

- Greater public confidence in government and the procurement process
- Governments learn what they should get using public funds and can compare this with what they are getting. Empowered with this information they can reform procedures and improve delivery
- Tackling corruption will encourage more contractors to bid and lead to fairer prices and higher quality projects with higher economic and social returns
- Financial transparency will develop improved business confidence and trust, and increased prospects for investment, both domestic and foreign.

3.3.2. Benefits to industry

The benefits of procurement and contracts monitoring to industry will include:

- Increased transparency and fewer opportunities for corruption will engender confidence in the industry that a 'level playing field' exists and contract award and administration will be fair.
- Reduced levels of corruption and greater accountability mechanisms will improve the chances of local companies winning contracts.
- Companies will enjoy reduced risk to their reputation from association with projects or enterprises where corrupt practices are suspected.

3.3.3. Benefits to civil society

The benefits of monitoring to civil society will include:

- Capacity of civil society to undertake procurement and contract monitoring will be enhanced.
- Civil society groups will enjoy increased access to information and the opportunity to participate in the governance of the procurement process.
- Increased access to information and active involvement in the gathering and dissemination of information will enable civil society to hold procuring entities and suppliers accountable for the cost and quality of goods, works and services. Stakeholders will also be able to demand better project selection and oversight in the future.

3.3.4. Benefits to ordinary citizens

The benefits to ordinary citizens will include:

- Ability to compare what they are getting with what they should be getting, leading to better service delivery that meets their real needs.
- Implementation of environmental and social safeguards, ensuring that hazardous materials are not used and health and safety laws are observed as a result of greater transparency in the procurement process.

3.4. Proposed procurement and contract monitoring activities

The project proposes to address the weaknesses identified in order to attain the overall objective of enhanced transparency in the Zambian public procurement system resulting in improved service delivery, citizens' confidence in government programmes and citizens, participation in projects affecting them.

The specific areas that will be addressed by the project include:

- 1) **Leakages in public expenditure** - It is reported that government loses a lot of money through leakages in the financial management systems and public expenditure processes. There is therefore need to tightening the loopholes in the public expenditure management systems so as to if wastage in public resources is to be stopped. Further, there is need to strengthen the procurement oversight function, including supervision, monitoring, audit, and the sanctioning of errant officials.

The problems of participatory development can best be overcome by developing more effective mechanisms for organizational accountability designed to strengthen both agency and capacity and the leverage and welfare of the poor, the users of these services. Questions have been raised about procurement with regard to quality of services delivered and whether the spent revenues equate to the services/goods purchased (Value for Money). It is because of such questions that the CSOs are inspired to embark on procurement and contracts monitoring for government to get value for money. This will help the communities track and monitor allocations to their communities. The tracking of project funds is required because such expenditures probably represent the largest disbursements to communities and is a matter of great concern that these funds are spent and to areas that effect positive change in people's lives.

- 2) **Inadequate capacity and information** - There is need to implement affirmative action to encourage local firms (small, medium and big) to compete for contracts. The government has provided for preferential procurement through the Citizens Economic Empowerment Act and the Public Procurement Act but there is need for effective training if local firms are to compete effectively and produce quality works. Increased participation by Zambian companies in the procurement process will lead to capacity building, employment and wealth creation and economic development.

The project proposes to undertake advocacy activities to ensure that sensitisation and training of Zambian companies on how to prepare bid documents is undertaken using various channels including local radio programmes. While the country is endowed with well distributed FM radio stations the stations have not been well utilised. Hosting talk shows on local radios throughout the country is one way of enhancing knowledge on the procurement process in the country.

- 3) **CSO and Local communities do not act to monitor and lobby government for a transparent and accountable procurement system** - CSO do not have adequate capacity to monitor the procurement process and therefore the project seeks to raise awareness within communities about the importance of participation in procurement process, decision-making and development in their communities and establish a mechanism for following up on participation.

Civil society organizations and local communities can play a significant role in improving the procurement process and reduce wastage of public resources because of bad workmanship and quality of goods, works and services. CSOs and local communities can challenge the

government to inform the public on the general criteria used in deciding to allow a company to provide a service and also monitor the whole procurement process.

The project proposes to enhance capacity of civil society and citizens in procurement and contracts management so that they can effectively participate in public procurement and service delivery.

- 4) **Provisions in the procurement legal and regulatory frameworks to promote transparency and accountability not adequately enforced-** Current legal and regulatory frameworks are not properly enforced. The CSOs and communities will engage the procurement oversight and regulatory body (ZPPA) to enforce the pertinent provisions of the law.
- 5) **Lack of information- Contracts are not transparent-** Access to procurement information by stakeholders, including civil society, is limited. This makes it difficult for civil society organisations and communities to monitor and understand the value of procurements affecting them.

The project aims at advocating for the release of and easier accessibility to adequate procurement information which it will in turn disseminate to citizens.

- 6) **Lack of CSO platform** - CSOs are not organised in relation to procurement and contracts monitoring. This has led to some companies, individuals and government not following procurement procedures. The project aims at establishing an organised CSO coalition so that it becomes more active in procurement and contracts monitoring. The coalition will also help in strengthening mechanism for enforcement of the existing laws and thus promote compliance with legal requirement.

4. Conclusion

There has been a convergence of concern with regard to the procurement system and process in Zambia. This has been exacerbated by not only lack of information but also the inadequate capacity of the CSO and communities resulting into little participation in procurement deliberations by the communities and the private sector in contributing effectively to the process. In many cases there is no institutionalized participation to provide for opportunities for improved assessment of needs and service responsiveness to the communities. This has caused the inadequate procurement space in which users could develop their own identities and voice as the authorities decide what is best for the communities instead of the communities deciding for themselves.

Procurement and contract management will result into improved transparency and accountability in the procurement process, enhanced citizens' confidence in government intentions, less opportunity for corrupt practices. The benefits that will accrue to the various stakeholders will ultimately result into an active participation by the citizens in procurement decisions that affect them and an improved standard of living for the citizens.

References

1. Afronet, 2003, Is Corruption endemic in the Clearing and Forwarding Industry? Report of a Thematic Study of Corruption in the Financial Sector, Lusaka, Zambia.
2. Betley, M., 2005. Zambia Public Financial Management Performance Report And Performance Indicators, PEMFA Programme Evaluation
3. Caritas Zambia, 2007, Decentralization through the District Development Coordinating Committee (DDCC) And Provincial Development Coordinating Committee (PDCC)
4. Chanda Alfred, 2002, The National Integrity System Study in Zambia, Lusaka
5. Cheelo C et al, 2009, Preliminary findings from an evaluation of user fee removal policy in Zambia. presented at the Ministry of Health Care Financing Technical Working Group Meeting August 17, 2009
6. Colmak Associates and University of Zambia, 2010, Zambia CoST Baseline Study Report
7. CYMA Chartered Public Accountants and Management Consultants, 2011, Ministry of Health Procurement and Systems Audit – Final Report, Lusaka, Zambia
8. Daka OA, Boury S and Tuba M., 2008, The Zambia Health Workers Retention Scheme: A Beneficiary Perspective.
9. Goma FM., 2008, *Human Resources for the Delivery of Health Services in Zambia: External Influences and Domestic Policies and Practices (A case study of four districts in Zambia)*. Unpublished Report, The Centre for Health, Science and Social Research (CHESSORE) and Wemos Amsterdam, The Netherlands
10. International Law Institute-Uganda, African Centre for Legal Excellence 2002, First Interim Report Baseline Diagnostic Study of Public Procurement Practices in 20 Member States Comprising The Common Market for Eastern and Southern Africa (COMESA).
11. Lake S, Daura M, Mabandhla MK, Mulenga SB, Masiye F, Antezana I, 2002, *Analysing the process of health financing reforms in South Africa and Zambia. Zambia Country report*. PHR Major Applied Research paper
12. Odhiambo, W and Kamau,P 2003, *Public Procurement: Lessons From Kenya, Tanzania and Uganda*, Working Paper No. 208. OECD Development Centre
13. OECD-DAC JV for Procurement, 2007, Country Pilot Programme Zambia Assessment of Public Procurement System. OECD website. [Accessed June 9, 2009].
14. Phasuma Pharmaceutocal Supply Consulting Company, 2007, *Review of Management and Operations at Medical Stores Ltd*. Document accessed through MOH Directorate of Policy and Planning.
15. Transparency International-Zambia,2002, A Call for Effective, Accountable and Transparent Local Authorities in Zambia, Lusaka
16. TRIONFETTI, F.,2000, “*Discriminatory Public Procurement and International Trade*”, The World Economy, Vol. 23
17. Vian T., 2008. *Review of corruption in the health sector: theory, methods and interventions*, Heath Policy and Planning 23: 83-94
18. World Bank, 1995, Public Sector Procurement, Washington. DC, USA
19. World Bank, 2007 Zambia Public Expenditure Tracking and Quality of Service Delivery Survey in the Health Sector. Findings and Implications