

Annex A. Terms of Reference (TOR) for the Procurement Oversight Agent for Malawi's Health Sector Strategic Plan (HSSP) II

Procurement Oversight to HSSP II partners

1. Purpose

The general purpose is that the HSSP II procurement practice follows the Government of Malawi (GoM) Public Procurement Act 2003 and Procurement Regulations 2004 and that procurement is done with due regard to principles of efficiency, economy and the achievement of Value for Money. Whilst the primary role of the Procurement Oversight Agent (POA) is oversight for the development partners (DPs) and the Government of Malawi who are signatories to the Health Services Joint Fund HSJF) and the Common Fiduciary Oversight Arrangement (CFOA), the post will also provide technical assistance.

2. Objectives

2.1 Procurement Oversight under HSSP 2:

Provide oversight of all requested HSSP 2 procurements from eligible HSJF expenditures and in respect of Government funded health sector resources through procuring entities. To review and co-approve each decision point on the procurement process (bid documents, evaluation of bids or selection of consultants and contract award) conducted within the health sector – for both Government and DP's. Joint approval will be provided by the POA and Chair of the Internal Procurement Committee, or such other official as the Ministry of Health (MoH) may designate, for all HSSP procuring entities (i.e. Central Medical Stores Trust (CMST), the MoH Procurement Unit as mandated by ODPP, the Central Hospitals (CH) and District Health Offices (DHOs)). Such co-approval shall be required independent of the procurement method. Only a joint approval of both parties (i.e. MoH and POA, CMST and POA, CH's and POA and DHO's and POA) is acceptable; an approval by one party only is not considered valid.

3. For the HSJF:

3.1 Under eligible national level investments, the POA will

- Review and co-approve at each required decision point (tender documentation, bid award and contract signature) in the procurement process and endorse/not endorse to IPC and FA/MoH.
- Review and co-approve the procurement processes of eligible HSJF expenditures through MoH HQ, CHs, DHOs and CMST.

3.2 Under Eligible budget lines in central hospital/district health office ORT, the POA will

- Review and co-approve all procurements that are above an agreed threshold, both for the HSJF and the broader ORT budget.

4. For the CFOA, the POA will

- Provide oversight of Government regular procurement processes and transactions in respect of Government funded health sector resources (including MoH and DHO ORT, as well as procurements by the Central Medical Stores Trust) with the ability of the POA to recommend improvements.
- Above an agreed threshold, review and co-approve each procurement process and endorse/not endorse to IPC each procurement transaction by MoH, CHs, CMST and DHOs, in respect of Government funded health sector resources. The POA will also conduct spot checks on procurements below the agreed threshold.

5. To approve the annual HSSP 2 procurement plans

6. Technical assistance

- to the capacity development of the procuring entities falling under the remit of MoH (HQ, Central Hospitals, CMST, district health offices (DHOs) (each health facility has an Internal Procurement Committee) to produce accurate Bidding Documents which accord with the requirements by ODPP. To produce Bid Evaluation Reports (BER) and Recommendations for Award of Contract without fear or favor, which accurately and conscientiously reflect the Bids submitted by potential suppliers/providers. To enhance the capacity of the staff of the MoH Internal Audit Department and Procuring Entities to perform procurement audits using material available from the files being compiled during the procurement process.

7. To participate in appropriate working groups.

8. To provide co-approval to the TORs and selection of the annual independent audit firms.

9. The Recipient

The recipient of the oversight function is DFID and the other HSJF DPs. The recipient of the technical assistance function is the MoH and other procuring entities.

10. Scope of Services

10.1 With respect to objective 1.1 and 1.2

1. With regard to HSJF financed procurements by MoH procurement Unit, Central hospitals, DHOs, CMST undertake prior (before action is taken) review of technical, commercial and legal aspects of these procurements at

all stages of the procurement cycle to include planning, bidding documents, bid evaluation reports (BER), recommendations for awards of contract as per generally accepted procurement supervision guidelines;

2. Carrying out checks that procurement files requiring a No Objection Letter (NOL) from ODPP are submitted to ODPP have been corrected in line with the POA review recommendations and that all the papers required to accompany such a submission for NOL by the terms of the Public Procurement Act 2003, Procurement Law 2004 and the ODPP Desk Instructions to GoM procuring Entities have been included with the procurement file. The POA will attempt to complete prior reviews with recommendations within ten working days, subject to extension if the procurement is of such complexity that this schedule cannot be maintained;
3. In the event that any HSJF procuring entity does not follow the recommendations of the POA or unreasonably delays the procurement procedure for more than four weeks, and such a situation cannot be solved through dialogue between the entity and the POA within four weeks, the IPC Chair shall request the Chair of the HSJF Management Group or the Executive Committee to call an extraordinary meeting. Those DPs who provide financial support for this procurement will be invited to attend;
4. Co-signing with such signatory as MoH and CMST CEO, to authorize procurements duly approved by POA and ODPP to proceed to contract award and signature and the disbursement of the HSJF funds in payment thereof. (N.B. The POA shall have the right to independently check that deliveries have been made as stated on delivery notes and payment vouchers, that the supplier has correctly delivered the goods specified in the Bidding Document and to make such other checks and to seek such other technical advice as is considered prudent);
5. Assisting the procuring entities to resolve complaints from bidders resulting from procurements managed by them;
6. Support the timely and accurate maintenance of the procurement schedules, including requests and responses for all documents requiring prior review under these terms of reference, including dates submitted for prior review as well as recommendations given;
7. Maintaining a log of all decisions by any of the IPC's requiring co-approval by the POA, including dates submitted as well as any objections raised to requests for review received and detailing how these objections were resolved;
8. Providing evidence-based operational advice to the procuring entity as required by the case files encountered in accordance with GoM Law and Regulations and in accordance with generally accepted procurement principles and practice;

9. Review cases made by a procuring entity for any waiver of the requirement for competition in the use of HSJF funds and, in the first instance, send copies to the DPs. All requests for emergency procurement will be dealt with as a matter of urgency by the POA who will advise the HSJF DPs on the merits of each individual request; and
10. Undertake a post review of any procurement event of any value and from any procurement route if deemed appropriate by the POA or the MoH or the DPs in the event of concerns being expressed.

10.2 With respect to objective 2.

11. Review the annual procurement plan and its budget of the MoH HQ, the CH's and the CMST.

10.3 With respect to objective 3.

12. Provide a range of technical assistance inputs to colleagues in the MoH and other HSJF procuring entities using the material presented by the files being reviewed. These will include assisting in the design and conduct of issues-based workshops to educate MoH, and other, procurement staff on specialized procurement and common problems in procurement observed from prior review processes.

10.4 With respect to objective 4.

13. Participate in the HSJF Management Group or the Executive Committee meetings as an observer and of the Finance and Procurement Technical Working Group (FM&P TWG). Present reports on procurement and advice as requested by members.

10.5 With respect to objective 5.

14. Endorse the procurement process for the annual procurement and financial audits, if applicable, prior review the TORs for the financial and procurement audits and the selection of auditors.

11. Method and Deliverables

The POA will set up a Procurement Oversight Agent Office (POA-PMU) in the MOH, which will assist in effective management and monitoring of the project.

Clear communication channels and/or approval processes will be established between the POA and DFID-M. The DFID-M Project Manager, will be kept informed of all relevant issues that are likely to affect the implementation of the project.

12. Reporting and accountability

The POA will prepare and submit quarterly procurement reports, and annual procurement reports, to:

- the Director of Finance, MoH

- the HSJF DPs through DFID-M
- the HSJF PIU
- the CMST Board.

The reports will detail:

- the nature of each procurement undertaken or in progress
- the procurement method being used in each procurement
- the status of each procurement
- any issues requiring follow-up and the time taken by the POA and MoH to address the issues and to make amendments or recommendations
- details of both formal and informal training (desk-training) provided to identified staff at MoH procuring entities.

These reports will provide information on all procurements undertaken, issues for follow up and the period taken by the POA and MoH to address these issues. The reports will also include an annex summarizing the procurement log. The annual report will also include higher level outputs, including progress on external procurement audits

For the oversight DFID-M and through DFID other HSJF partners will receive reports on compliance on proper national and international procurement standards

The performance of the POA will be monitored on a six-monthly basis using a Performance Assessment Framework agreed between the HSJF DPs in consultation with MoH.

13. Institutional Arrangements

The POA will work directly with the DOF/ DOP of the MoH. The POA will have access to all concerned departments in the MoH, the CMST, National AIDS Commission and other procuring entities funded by HSJF

14. Project completion Review.

At the end of the project, the POA and DFID-M will undertake a joint Project Completion Review (PCR) process to confirm the results achieved, Value for Money, success of the project in delivering outputs, lessons learnt and challenges encountered. This PCR will include a final financial report. This will be carried out in consultation with GoM-MoH. The timing for the PCR process on DFID's Activities Reporting Information Electronic System (ARIES) will begin within three months of the project's end date. The PCR will be done in accordance with DFID's PCR procedures and using DFID's PCR templates.

15. Time Frame

The call down contract will be issued for a one year period from October 2017 – October 2018 with a break clause after 6 months (April 2018).

16. Break Point

A break point will be included at the mid-point of the call down contract, six months after contract award. At this point, DFID and the recipients will:

- assess whether the programme is meeting/ is likely to meet its core objectives
- assess whether the programme continues to offer good value for money;
- consider the supplier performance and
- request changes to strengthen programme implementation or address gaps.

17. Background Information

The focus on health procurement will improve the effectiveness of procurement during HSJF and reduce corruption and misprocurement and thus will deliver greater VFM. Globally, an estimated 10-25% of public spending on health linked to procurement is lost each year to corrupt practice. Hence, DFID-M is confident that a strong focus on strengthening health sector procurement and oversight in Malawi will result in significant savings and a greatly enhanced service to users of the public health system.

DFID MALAWI

DATE: October, 2017