



# CoST MALAWI ASSURANCE REPORT FOR 2017



CoST Malawi  
C/O National Construction Industry Council (NCIC)  
Private Bag A146  
Lilongwe  
Website: [www.costmalawi.org](http://www.costmalawi.org)



## LIST OF ACRONYMS

ADB	African Development Bank
CRWB	Central Region Water Board
CoST	Construction Sector Transparency Initiative
EIMU	Education Infrastructure Management Unit
ESCOM	Electricity Supply Commission of Malawi
IDA	International Development Agency
IDS	Infrastructure Data Standards
IPC	Internal Procurement Committee
IPC	Interim Payment Certificate
LDF	Local Development Fund
LWB	Lilongwe Water Board
MMSG	Malawi Multi Stakeholder Group
NCB	National Competitive Bidding
NCIC	National Construction Industry Council
ODPP	Office of the Director of Public Procurement
OFID	OPEC Fund for International Development
PEs	Procuring Entities
PIEQM	Project to improve Education Quality in Malawi
PPA	Public Procurement Act
UFW	Unaccounted for Water

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## **Executive Summary**

This report covers disclosure of infrastructure data standards for 33 projects covering 10 Procuring Entities selected by the CoST Secretariat. Projects under this study were scattered throughout Malawi in all the 3 regions.

The recurring themes in this study are delayed payments, delayed completion of projects, project cost overruns, and poor filing systems.

Single sourcing has emerged in this report as a vehicle through which Government has implemented such projects as Road Development Projects and the findings show that PEs should apply this provision of the Procurement Act judiciously to avoid flouting procedures.

Sustainability of projects has emerged as an issue in this report where the New Vaccine Refrigeration Centre at Mzuzu Hospital did not have prepaid electricity units at the time of the site visit; albeit there were no vaccines in the refrigerators at the time.

This study finds that Lilongwe City Council should in future not consider the budget as the primary driver for designs. It will be better to construct fewer kilometers of roads that are robust to meet the ever increasing vehicular traffic and at the same time meet the people's expectations.

The study finds the quality of the roads built under the Lilongwe City Council generally to be of poor standard. This mainly has to do with the workmanship and the standard of design adopted.

This study finds that for the future, the provision for correction of errors in bids where, if the correction is made, puts other competing bidders at a disadvantage is an issue that the NCIC, ODPP and other agencies should examine and compare with other jurisdictions to come up with an equitable solution. In this particular case for Mzimba Water Supply Project, other bidders had already been disqualified when the corrections were made and therefore did not affect the outcome.

Another key finding is that although there is an awareness by the PEs of CoST, there is need for a one- day seminar after the study consultant is engaged to further sensitize the PEs in order to assist the data collection process which has under this study taken too long.

# **The Construction Sector Transparency Initiative (CoST)**

## **1.1 Introduction**

Construction Sector Transparency Initiative (CoST) is a Multi-Stakeholder initiative designed to increase transparency and accountability in publicly financed infrastructure development projects. CoST aims to strengthen transparency in the construction sector in Malawi through enhanced disclosure of Infrastructure Data Standards (IDS) to the public, throughout the construction project life cycle. The process aims at providing sufficient information to enable stakeholders make informed judgments about the cost and quality of the infrastructure concerned and influence appropriate actions by implementers.

The Malawi Multi-Stakeholder Construction Sector Initiative is under the championship of **Rt. Hon. Dr. Saulos Klaus Chilima**, Vice President of the Republic of Malawi.

In its 6th year of operation in Malawi, the CoST programme initially conducted an Assurance and a baseline study in 2010. This was followed by an assurance consultancy for disclosure of Infrastructure Data Standards (IDS) on publicly funded projects in 2014. Hence this assurance study in 2016 the third round to be conducted in Malawi.

## **1.2 Background**

CoST is principally about increasing transparency through the release of project information into the public domain. But it is recognized that the disclosure of this information may not be sufficient on its own to achieve greater accountability. This is because some of the information is likely to be complex and not easily understandable to the general public.

## **1.3 Objectives of the Assignment**

The objectives of the Assurance Study are:

1. To Collect, Verify and Analyze the IDS collected from selected projects under this study
2. To ensure that the information released by CoST is accurate and is available in a form that can easily be understood by the non-specialist.
3. To capture and disclose the individual significant changes which affect the price or programme of the selected contracts which affect the price or programme and reasons thereof.

## **1.4 The Scope of the Assurance Study**

The Assurance Study covered the following core activities: -

- (a) Collection of Infrastructure Data Standards (IDS) from the selected Procuring Entities (PEs) and where it was necessary information was sought from consultants in order to collect complete data sets.
- (b) Verified the accuracy and completeness of IDS disclosed on the selected projects and presented this report as required by the Malawi MSG.
- (c) Analyzed the disclosed and verified data on the selected projects order to make informed judgments about the cost, time of delivery, and quality of the built infrastructure.
- (d) Produce a report that is clearly intelligible to the non-specialist, highlighting any cause for concern the analyzed information reveals.
- (e) Present the findings to stakeholders and to the general public.

## **2.0 Approach and Methodology to the Study**

In accordance with the Terms of Reference, the Assurance Consultant adopted the following approach in the data collection process:

### **2.1 Meeting CoST Secretariat on number of projects to be evaluated**

An initial meeting was held at the CoST Secretariat to determine the number of institutions and projects to be reviewed under the Individual Assurance Consultancy. The MSG selected projects as listed in Table 2.1.1 below.



**Table 2.1.1 - List of Projects Selected by MSG**

<b>Nr</b>	<b>Name of Project</b>	<b>District</b>	<b>Sector</b>	<b>Client</b>
1	Construction of 5No. staff houses at Tedzani	Blantyre	Energy & Mining	ESCOM
2	Construction of 8No. staff houses at Tedzani	Blantyre	Energy & Mining	ESCOM
3	Construction of 8No. Staff houses and rehabilitations of 2No. houses at Nkula	Blantyre	Energy & Mining	ESCOM
4	Construction of 5No. staff houses at Nkula	Blantyre	Energy & Mining	ESCOM
5	Construction of water kiosks and associated pipeline works in low income areas in Bangwe, Namiyango and Mudi	Blantyre	Water	Blantyre Water Board
6	Construction of water kiosks and associated pipeline works in low income areas in Lunzu, Mitsidi and Soche	Blantyre	Water	Blantyre Water Board
7	Construction of EPI Cold-room Building at Mzuzu Central Hospital	Mzuzu	Health	Ministry of Health
8	Construction of perimeter fence at Sonda in Lilongwe	Lilongwe	Energy & Mining	
9	Infrastructure design and construction management of the New Phalombe District Hospital	Phalombe	Health	Ministry of Health
10	Eastern Zone Landscape Development- Bingu National Stadium	Lilongwe	Youth & Culture	Youth & Culture
11	Western Zone Landscape Development- Bingu National Stadium	Lilongwe	Youth & Culture	Youth & Culture
12	Consultancy to undertake infrastructural design and construction management of national cancer treatment center at Kamuzu Central Hospital	Lilongwe	Health	Ministry of Health
13	Partitioning works of office block for Commercial Court in Lilongwe	Lilongwe	Justice	Ministry of Justice
14	Construction of new Health Centre and new staff houses at Mphelero in Mchinji	Mchinji	Health	Ministry of Health
15	Construction of new Health Centre and rehabilitation of existing staff houses at Kazyozyo in Mchinji	Mchinji	Health	Ministry of Health
16	Design review and construction supervision for upgrading and	Mzimba	Water	Ministry of Agriculture,

<b>Nr</b>	<b>Name of Project</b>	<b>District</b>	<b>Sector</b>	<b>Client</b>
	extension of Mzimba Water Supply System			Irrigation & Water Development
17	Design and supervision for the rehabilitation and expansion of Gravity fed systems and construction supervision of boreholes in M19angochi and Ntcheu districts	Mangochi, Ntcheu	Water	Ministry of Agriculture, Irrigation & Water Development
18	Design and supervision for the rehabilitation and expansion of Gravity fed systems and construction supervision of boreholes in Phalombe district	Phalombe	Water	Ministry of Agriculture, Irrigation & Water Development
19	Design and supervision for the rehabilitation and expansion of Gravity fed systems and construction supervision of boreholes in Rumphi and Nkhotakota districts	Rumphi, Nkhota Kota	Water	Ministry of Agriculture, Irrigation & Water Development
20	Construction of Sanitation facilities in schools, markets and health centres in Rumphi District- Lot 1	Rumphi	Water	Ministry of Agriculture, Irrigation & Water Development
21	Construction of Sanitation facilities in schools, markets and health centres in Rumphi District- Lot 2	Rumphi	Water	Ministry of Agriculture, Irrigation & Water Development
22	Construction of the Jenda - Edingeni Road Project (Phase I)	Mzimba	Roads	Ministry of Housing & Public Works
23	Construction of the Mzuzu-Nkhata Bay (M05) road	Mzuzu, Nkhata Bay	Roads	Ministry of Housing & Public Works
24	Construction supervision of the Mzuzu-Nkhata Bay (M05) road	Mzuzu, Nkhata Bay	Roads	Ministry of Housing & Public Works
25	Construction supervision of the Mzimba -Eswazini -Mzarangwe road	Mzimba	Roads	Ministry of Housing & Public Works
26	Construction of the Jenda- Edingeni road	Mzimba	Roads	Ministry of Housing & Public Works
27	Nkula A Hydro Power Plant rehabilitation and Upgrade	Blantyre	Energy & Mining	Ministry of Natural Resources

Nr	Name of Project	District	Sector	Client
				Energy & Environment
28	Construction of 173 km 400 kv Phombeya-Nkoma Overhead Line	North, South	Energy & Mining	Ministry of Natural Resources Energy & Environment
29	Construction of various Overhead Line (80 km 132 kV Chintheche to Luwinga; 50km 132 kV Luwinga to New Bwengu; 32 km 132kV Nkhoma to Bunda turn off; 30km 66kV Lilongwe Ring; 1.6km 66kV Bwengu Sub station to New Bengu substation; Loop in/out of the existing single circuit 66kV overhead line at Lilongwe A at Bunda T-off sub-station; Loop in/out of the existing double circuit 132kV overhead line at Phombeya sub-station; Loop in/out of the existing single circuit 132kV overhead line at Phombeya sub-station; Loop in/out of the existing double circuit 132kV overhead line at Nkhoma sub-station; Loop in/out (Lilongwe Ring 66kV overhead line) at Kauma sub-station; New 132kV overhead line Chintheche-Luwinga-New Bwengu; the 132kV Nkhoma- Bunda T-off overhead line; New 66kV Lilongwe Ring.	All Malawi	Energy & Mining	Ministry of Natural Resources Energy & Environment
30	Construction of the 400/132 kV substations-Phombeya and Nkhoma (PA/MCA-MW/IDB/WKS/021/2015)	South, Central	Energy & Mining	Ministry of Natural Resources Energy & Environment
31	Rehabilitation, and extention of 132/66/33 kV Chintheche sub-station; rehabilitation and upgrading of 132/33 kV Luwinga sub-station; rehabilitation and upgrading of 132 kV/66/11 kV Bunda T-off sub-station; Construction of the New Bwengu 132/66/33 kV new Bwengu sub-station	North, Central	Energy & Mining	Ministry of Natural Resources Energy & Environment

Nr	Name of Project	District	Sector	Client
32	Design, supply, installation and Commissioning of Scada/EMS and Telecommunication Systems	General	Energy & Mining	Ministry of Natural Resources Energy & Environment
33	Develop an independent Power Producer (IPP) framework for GoM	General	Energy & Mining	Ministry of Natural Resources Energy & Environment

## 2.2 Send introductory letters from the CoST Secretariat to PEs

The Assurance consultant requested for and was given an introductory letter from the Secretariat underscoring the importance of the initiative under the supervision of its Multi-stakeholder Group (MSG) and the leadership of its champion, Rt. Hon. Dr. Saulos Klaus Chilima, Vice President of Malawi and introducing the Assurance Consultant to be given access to information pertaining to Material Project Information (MPI) on various publicly funded infrastructure development projects undertaken by Procuring Entities.

The consultant sent these letters to participating PEs attaching lists of projects to be reviewed and requesting access to information.

## 2.3 Obtain a list of Liaison Persons from the CoST Secretariat

The Assurance Consultant next obtained a list from the CoST Secretariat of liaison persons from the participating Procuring Entities. This list was given to assist the Consultant in having a single contact within the PEs for ease of access. It should be noted that the list was requested and given to the consultant following unsuccessful attempts to gain access to most of the PEs. The introductory letters were sent to Permanent Secretaries and Chief Executive Officers of the various PEs. These introductory letters were acted upon immediately where the letters were addressed to Chief Executive Officers. Letters addressed to Ministries did not get immediate action. This led to delays in obtaining data. Upon the consultant requesting for and obtaining names of liaison officers from the various PEs where data collection was delayed, immediate contacts were made and data collection improved.

The study recommends that the list of Liaison Persons for PEs should be given at the very beginning of data collection.

## **2.4 Hold meetings with the liaison officers in the PEs for obtaining data**

Delivery of introductory letters was followed by appointments with liaison officers in the participating PEs in order to brief them of the objectives of the study and to agree on dates when the Assurance consultant was to commence the data collection exercise and to agree dates for site visits.

## **2.5 Receive requested data from the PEs**

The consultant visited all institutions earmarked for data collection in order to collect MPI for the projects identified for the study.

## **2.6 Conduct Site Visits**

Site visits were conducted to confirm that the projects were constructed and to verify quality of the structures.

# **3.0 Institutional Framework for the Study**

In this report, data analysis and verification were guided by the provisions of the NCIC Act of 2009 and the Procurement Act No. 8 of 2003.

## **3.1 National Construction Industry Act**

The construction industry in Malawi is primarily governed by the National Construction Industry Council (NCIC). The NCIC was established through an Act of Parliament in 1996 and was given the mandate to regulate the construction industry in Malawi and further, to promote and develop the construction industry in Malawi. In 2009, the NCIC instituted CODE OF ETHICS aimed at instilling and enhancing ethical conduct by the participants in the construction industry to promote best practices.

The core functions of the NCIC are to: -

- keep and maintain a register for each category of persons engaged in the construction industry;
- conduct training, within Malawi and co-ordinate the training conducted by others, of persons engaged in the construction industry;
- make available, from time to time, to persons engaged in the construction industry published information, advice and assistance in relation to the construction industry;

- publish, from time to time, such technical and commercial information as it deems necessary or expedient for the benefit of persons engaged in the construction industry;
- review, from time to time, the process of awarding contracts;
- monitor and evaluate, from time to time, the capacity and progress of persons engaged in the construction industry;
- Encourage competition in the professions or trades of persons engaged in the construction industry.
- regulate the activities of the construction industry in Malawi through the concerned Boards and Association;
- co-ordinate construction industry councils within or outside the region;
- standardize quality control, contract documentation, codes of practice, procurement processes, legal contractual procedures in liaison with other organizations;

### **3.2 Procurement Act No. 8 of 2003**

The Public Procurement Act ((No. 8 of 2003) provides “...for the principles and procedures to be applied in, and to regulate, the public procurement of goods, works and services; to provide for the establishment of the office of Director of Public Procurement as the main authority responsible for the monitoring and oversight of public procurement activities, and for the development of the related regulatory and legal framework and professional capacity of public procurement; and to make provision for matters connected therewith or incidental thereto.”

The Act further states that the Director of Public Procurement’s office is responsible for the administration of the Act. The functions of the Office of the Director of Public Procurement (ODPP) are inter alia to: -

- (a) assist in developing and enhancing the efficiency and effectiveness of public procurement operations;
- (b) ensure the availability and the accessibility to public officials and the general public of this Act and regulations made hereunder;
- (c ) develop, in consultation with concerned professional and official entities, for issuance by the relevant authorities for use throughout Malawi, standardized and unified procurement regulations, instructions, and bidding documents, which shall be binding on all Government

**In particular, this study examines the provisions of this Act in terms of single sourcing and how it**

- Ministries, departments and parastatal organizations;
- (d) promote the development of a professional procurement workforce, including by organizing and conducting training programmes, and developing government-wide policies and programmes aimed at establishing procurement-related positions, career paths and performance incentives;
- (e) collect data on public procurement and monitor the performance of Government Ministries, departments and parastatal organizations, and persons conducting procurement proceedings so as to ascertain efficiency and compliance with applicable legislation, regulations and instructions;
- (f) collect data on the performance of procurement contracts in Malawi by suppliers, and to maintain and circulate lists of debarred bidders and suppliers;
- (g) provide, periodically, a quantitative and qualitative assessment of procurement activities in Malawi to the Minister, who shall lay the report before the National Assembly;
- (h) refer violations of this Act and the Regulations relating to public procurement to the relevant budgetary and law enforcement authorities;
- (i) propose improvements in public procurement procedures;
- (j) provide administrative review of bid protests in accordance with section 38;
- (k) carry out economic studies on procurement, comparisons, and future projections, so as to provide advice to the Government in respect of the mid-term policy it may formulate in public procurement matters; and
- was applied on some projects. Single sourcing has emerged in this report as a vehicle through which Government has implemented such projects as Road Development Projects and the findings show that PEs should apply this provision of the Procurement Act judiciously to avoid flouting procedures.**

- (l) establish a data and information base concerning procurement terminology and legislation, and to set policy for, and promote the application of, modern information and communications technology to public procurement.

In particular, this study examines the provisions of this Act in terms of single sourcing and how it was applied on some projects. Single sourcing has emerged in this report as a vehicle through which Government has implemented such projects as Road Development Projects and the findings show that PEs should apply this provision of the Procurement Act judiciously to avoid flouting procedures.

## 4.0 Data Analysis and Verification

This study reviewed projects in the 3 regions of Malawi namely Northern, Central and Southern as follows: -

### 4.1 Ministry of Sports and Youth Development and Welfare

This study reviewed two contracts for Landscaping at Bingu National Stadium in Lilongwe. Both contracts were awarded in December 2015 concurrently to enable official opening of the stadium after completion of construction funded and built by the Chinese Government.

Due to funding constraints, the work on the projects has not been completed. The Ministry has included in the 2017/18 Government Budget the sums owed to the contractors and the amounts required to complete the works.

**Table 4.1.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Landscaping Works – Eastern Zone at Bingu National Stadium in Lilongwe	Lilongwe	Site Clearance, cultivating and levelling of grounds, lawns, preparation and supply of top soil, manure, fertilizer to all plant beds, planting of grass, trees, palms and installation of water irrigation system	To undertake works not included in the main contract undertaken by the Chinese Government and to enable official opening of the facility	K51,848,637.50	Project has been suspended due to delayed payments by Government of Malawi



<b>Name of Project</b>	<b>District</b>	<b>Description of Scope of Works</b>	<b>Purpose of the Project</b>	<b>Contract Value (MK)</b>	<b>Contract Final Value (MK)</b>
Landscaping Works – Western Zone at Bingu National Stadium in Lilongwe	Lilongwe	Site Clearance, cultivating and levelling of grounds, lawns, preparation and supply of top soil, manure, fertilizer to all plant beds, planting of grass, trees, palms and installation of water irrigation system	To undertake works not included in the main contract undertaken by the Chinese Government and to enable official opening of the facility	K55,328,693.75	Project has been suspended due to delayed payments by Government of Malawi

#### **4.1.1 Landscaping Works – Western Zone at Bingu National Stadium in Lilongwe**

For this study, IDS were collected for the above project and procurement procedures and analysis of the data collected is presented below: -

##### **Funding**

Malawi Government funded the project. The Engineer’s Estimate for the project was for 2 projects for landscaping to Western and Eastern Zones of the Bingu National Stadium in Lilongwe. The approved budget was MK131, 340,618.75.

##### **ii. Tender Process - Consultant**

Supervision of the project was done internally and was supervised by the Department of Buildings in the Ministry of Transport and Public Works.

##### **iii. Tender Process - Contractor**

The tender process was National Competitive Bidding and the contract type is Malawi Government Minor Works Contract.

**iv. Contract Award - Contractor**

Mchepea Landscapers were awarded the contract at a cost of K51, 848,637.50 for a duration of 30 Weeks.

**v. Scope of Works**

The scope included Site Clearance, cultivating and levelling of grounds, lawns, preparation and supply of top soil, manure, fertilizer to all plant beds, planting of grass, trees, palms and installation of water irrigation system

**vi. Contract Execution - Contractor**

Significant changes to the Contract:

1. The contractor experienced late payments on the project which forced him to temporarily suspend activities on site. He has since not returned to site. During the data collection phase, Ministry of Sports indicated to the study that Valuation No. 3 in the amount of K16, 332,663.22 had not been paid. This amount together with the balance on the contract for works which are yet to be executed have been included in the 2017/2018 National Budget on the expectation that the works shall recommence once the budget is approved.

**vii. Project Evaluation Report**

Due to suspension of the project based on funding problems, the Final Report has not been produced.

**viii. Quality of the Works**

The Assurance Consultant visited the site and due to the suspension of the works, the landscaping works show that some work was done but some shrubs have withered and died.



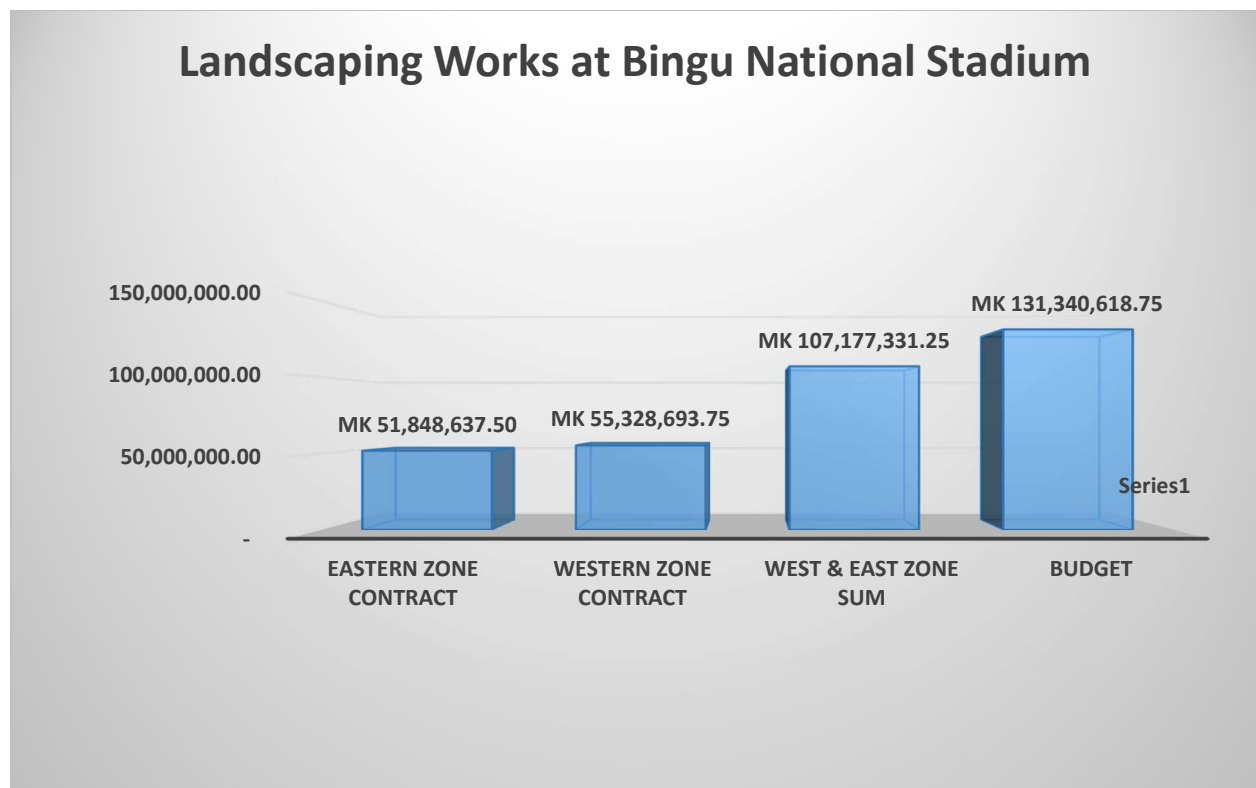
**Photo 4.1.1.1 – Landscaped Area showing shrubs some have withered and died**

### 4.1.2 Landscaping Works – Eastern Zone at Bingu National Stadium in Lilongwe

Funding for the project was by Malawi Government. The Engineer’s Estimate and Budget for the project was for 2 projects for landscaping to Western and Eastern Zones of the Bingu National Stadium in Lilongwe. The budget was MK131, 340,618.75.

#### i. Funding

Malawi Government funded the project. The Engineer’s Estimate for the project was for 2 projects for landscaping to Western and Eastern Zones of the Bingu National Stadium in Lilongwe. The approved budget was MK131, 340,618.75.



**Graph 4.1.2.1 – Shows Total Budget against Eastern and Western Landscaping Projects**

#### ii. Tender Process - Consultant

There was no Consultant for this project as it was internally supervised by the Department of Buildings in the Ministry of Transport and Public Works.

**iii. Tender Process - Contractor**

The tender process used was National Competitive Bidding and the type of contract is Malawi Government Minor Works Contract.

**iv. Contract Award - Contractor**

Green Space Landscapers and Contractors were awarded the contract at a cost of K55,328,693.75 for a duration of 30 Weeks.

**v. Scope of Works**

The scope included Site Clearance, cultivating and levelling of grounds, lawns, preparation and supply of top soil, manure, fertilizer to all plant beds, planting of grass, trees, palms and installation of water irrigation system

**vi. Contract Execution - Contractor**

Significant changes to the Contract:

2. The contractor experienced late payments on the project which resulted in abandonment of the works. To date the contractor has not returned to site. During the data collection phase, it was indicated to the study that Valuation No. 3 in the amount of K15,225,616.77 was not paid. This amount together with the balance on the contract for works yet to be executed have been included in the 2017/2018 National Budget with the plan to recommence the works once the budget is approved.

**vii. Project Evaluation Report**

Due to suspension of the project based on funding problems, the Final Report has not been produced.

**viii. Quality of the Works**

The Assurance Consultant visited the site and due to the suspension of the works, the landscaping works show that some work was done but some shrubs have withered and died.



**Photo 4.1.2.1 – Showing Landscaped area some shrubs have withered and died**

### **4.1.3 Findings and Recommendations**

1. This study finds that delayed payments resulted in suspension of the project and although there are currently no claims for Extension of Time and Interest on Delayed Payments including claim for default by the Government; it is prudent for Government to provide a budget for unforeseen costs. Further, the Government needed to provide an appropriate budget for this work in the commensurate Financial Year (2015) when these works were planned. If for the past 2 years the works have not been funded, this study finds that the likelihood of the funding being appropriated in the 2017/2018 National Budget is very small.
2. Filing of documents shows that some documents were missing from the files including some Certificates for payment which were paid but were not on file.

## 4.2 Ministry of Health

This study reviewed three contracts for construction of Health related infrastructure namely in the following districts: Phalombe, Lilongwe, and Mzuzu.

**Table 4.2.1 – Description of Projects**

Ref.	Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
1	<p>Construction of Phalombe District Hospital and supply, Installation and Commissioning of Medical Equipment at Migowi in Phalombe District, Malawi</p> <p>Contract No. : 06/2015</p> <p>Procurement ref No. : 031/SFD/BADEA/W01/12-13</p> <p>Loan Agreement No.: 594/3</p>	Phalombe	<p>The project description and components are as follows:</p> <p>Civil works and ancillaries for construction of the new general hospital with an average capacity of 250 beds and staff housing for 60 doctors and student housing.</p> <p>Installations, medical equipment, and medical and non-medical furniture which includes provision of installations, medical equipment and medical non furniture needed for different sections of the hospital and staff housing according to the specifications made by Ministry of Health and provision of two ambulance vehicles.</p> <p>Consultancy services which includes</p>	<p>The project is considered within the Government of Malawi program for the development of health facilities in the country. The project aims at the promotion of the social and economic development in the Southern region of the country through the improvement and provision of health facilities especially for women and children. The project will also help in reducing the suffering of people in reaching health centers.</p>	US\$22,756,243.83	Project has just commenced



Ref.	Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
			<p>preparation of detailed design and tender documents, assisting the executing agency in tenders analyses and supervision of construction.</p> <p>Capacity Building to the project implementation unit: provision of one vehicle, offices furniture, office supplies, and two computers and their accessories</p>			
2	<p>Construction (Civil Works), Supply, Installation and Maintenance of Medical Equipment for Cancer Treatment Centre at Kamuzu Central Hospital in Lilongwe – Malawi.</p> <p>Contract No.: 17/2015</p> <p>Procurement Ref.: 031/OFID/W/01/14-15</p>	Lilongwe	<p>The project components are as follows:</p> <p>Civil works, involving the construction of a one-story hospital building with a total area of 3,153m<sup>2</sup> consisting of several blocks including administration, public amenities and stores, treatment planning/imaging , consulting, brachytherapy, nuclear medicine, radiotherapy, chemotherapy and wards blocks. Further included under</p>	<p>The main objective is to facilitate access of the population to quality health care facilities and thereby aims at reducing the mortality of cancer patients and improve their quality of life.</p> <p>The first primary objective is the initial roll out of the new National Oncology Centre at the Kamuzu Central Hospital in</p>	<p>US\$8,107,695.05</p> <p>Mk5,843,434,733.4</p>	Project has just commenced

Ref.	Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
			<p>this component are site clearance, building finishing, ancillary facilities, fencing landscaping, share laundry, waste handling, kitchen and mortuary facilities;</p> <p>Equipment, covering the supply, installation and commissioning of the medical equipment and furniture required for the different services to be provided at the cancer treatment center.</p> <p>Consultancy services, including review of detailed designs, preparations of tender documents, procurement of equipment, management, supervision and preparation of progress reports for the project.</p>	<p>Lilongwe, to provide the citizens of Malawi with an efficient and technologically current center for treatment and care of cancer patients.</p> <p>The second primary objective is to provide the Ministry of Health with a National Health Strategic Master plan that addresses the country's vision for providing the balance of effective and efficient cancer treatment for all people of Malawi within the overall health framework. Both objectives are closely interlinked and will be developed in parallel.</p>		
3.	Construction, Completion and Maintenance of Cold Rooms at Mzuzu Central	Mzuzu	Construction of Cold Rooms and Associated External Works	Improve storage of	Original Contract Mk161,516,903.75	Project in progress

Ref.	Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
	Hospital in Mzuzu City, Malawi. Procurement Ref No.: 031/SW/W/11/09-10		at Mzuzu Central Hospital	medical related items.	Revised Contract Mk343,495,400.23	
4.	Construction of New Health Centre and New Staff Houses at Mphelero in Mchinji	Mchinji <sup>1</sup>				
5.	Construction of New Health Centre and Rehabilitation of Existing Staff Houses at Kanzyozyo in Mchinji District	Mchinji <sup>2</sup>				

#### **4.2.1 Construction of Phalombe District Hospital and Supply, Installation and Commissioning of Medical Equipment at Migowi in Phalombe District**

For this study, IDS were collected for the above project and procurement procedures and analysis of the data collected is presented below: -

##### **i. Funding**

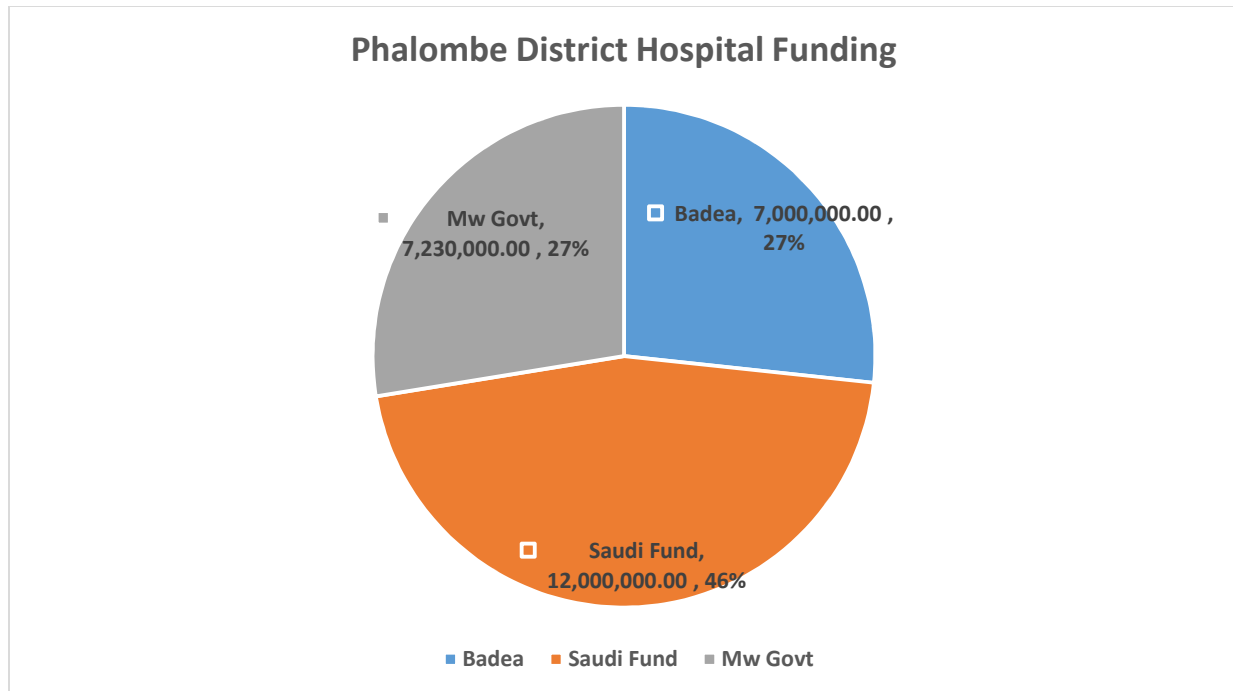
This project was funded by three parties, namely BADEA, SAUDI Fund and the Malawi Government. Details are as below:

- (a) BADEA 27.7% - US\$ 7,000,000.00
- (b) SAUDI Fund 45.7% - US\$ 12,000,000.00
- (c) Malawi Government 27.6% - US\$ 7,230,000.00

The proposed project budget was US\$ 28,461,210.00

<sup>1</sup> The Study did not review this project as at first was directed to Ministry of Health and it transpired that files are with Ministry of Transport and Public Works, by this time the data collection period had ended.

<sup>2</sup> The Study did not review this project as at first was directed to Ministry of Health and it transpired that files are with Ministry of Transport and Public Works, by this time the data collection period had ended.



**Graph 4.2.1.1 – Funding Structure for Phalombe District Hospital**

### **iii. Tender Process – Consultant**

An expression of interest for consultancy services was advertised in the newspapers; and these were later on submitted by the interested parties but however none of them were selected at the time 2007-2008.

A decision was therefore made to re advertise the expression of interest for consultancy services for the New Phalombe District Hospital. Interested bidders submitted their bids for evaluation.

Later on, the Ministry of Health received a ‘No Objection’ from BADEA in regards to the evaluation of the expression of interest for consultancy services. In a letter dated 5<sup>th</sup> October 2010; BADEA wrote to Ministry of Health having reviewed the tender evaluation report for the expression of interest for consultancy services; that it was pleased to inform the Ministry of a no objection order for the recommendation to include three consultancy firms from Malawi (Kanjere and Associates, DDC and Norman and Dawban) in the short list of consultants, on the condition that these firms were of African or Arab origin. Ministry of Health was also requested to provide evidence to this effect to comply

with the requirements of 'Annex B' to the Loan Agreement for the project which stipulates that procurement of consultancy services should be obtained through a short list of Arab, African or Arab/ African firms. The following Arab consultants were also added to the short list as per BADEA request: Comete Engineering/ Comete International, Hayder Ali Ahmed, Dar Al Handasah Shair & Partners, Saud Consult, and Dr. Nabeel Abdul- Raheem.

The evaluation for the selection of the consultants was done in February 2014 and the report was sent to BADEA and Saudi Fund on the 12<sup>th</sup> May 2014. The report's recommendation was in favor of Norman and Dawbarn.

A separate email was sent to Saudi Fund on the 19<sup>th</sup> May 2014. Apart from this, a reminder was sent on 26<sup>th</sup> May 2014 to the Saudi Fund, with no response. The Ministry however got a NO OBJECTION from BADEA in the month of July 2014 and went ahead to award the contract to Norman and Dawban. This contract was later on signed on the 19<sup>th</sup> of August 2014 with a contract price of **US\$837,432.00**.

In the process of all this, a letter was submitted by Zingano and Associates asking for justification why they were not shortlisted Zingano and Associates further claimed that it did not make sense to them because they thought they were a suitable candidate since they were managing the Construction of Nkhatabay District Hospital. Regardless of this the donors were satisfied with their decision in the selection of Norman and Dawbarn as the consultants to the Phalombe Hospital.

#### **iv. Tender Process - Contractor**

The tender process was International Competitive Bidding and the contract type being used is FIDIC conditions of contract.

A No Objection Order to proceed with the tendering process was given on the 28<sup>th</sup> of August 2016; the Works were advertised in the News Papers, namely 'The Nation' and 'The Daily Times' on the 15<sup>th</sup> of October 2016. The tender was also advertised on the BADEA website.

The bidding process occurred in two stages, these were technical and financial stages.

A total of 14 bidders collected bidding documents; and out of these five were medical equipment suppliers. This means that the nine bidders were expected to return the bids, however out of the nine only four managed to submit the bids namely; SR Nicholas Limited, Alghanim International General Trading & Contracting Company W.L.L/ Plem Construction Limited Joint Venture, United Gulf Construction Company (UGCC)/ Fargo Limited Joint Venture, and Lucios Engenharia E Construcao Mocambique. The bid documents included medical equipment suppliers bidders as subcontractors. The respective medical equipment subcontractors were as follows: Paramount Holdings Limited, Intermed, and Sheena Investment. Lucios Engenharia E Construcao Mocambique did not include a medical equipment supplier.

During the evaluation process Lucios Engenharia E Construcao Mocambique was disqualified on the basis that the contractor is barred from performing public works as indicated on the registration certificate documentation among other items which were submitted. Further the bidders were evaluated in terms of their capacity and capabilities in key areas. Upon satisfying the qualification criteria in major key areas the bidders were assessed and awarded points. The results of the points were as follows; SR Nicholas LIMITED 75.1 points, Alghanim International General Trading & Contracting Company W.L.L/ Plem Construction LTD Joint Venture 89.3 points, United Gulf Construction Company (UGCC)/ Fargo Limited Joint Venture 85.5 points. The medical equipment suppliers were also evaluated and it was noted that they satisfied the preliminary examination and administrative compliance as subcontractors to the civil works contractors.

The following bidders therefore satisfied the key requirements and therefore were accepted to have their financial bids opened. The bidders were as follows; SR Nicholas Limited, Alghanim International GENERAL trading & Contracting Company W.L.L/ Plem Construction Limited Joint Venutre, United Gulf Construction Company (UGCC)/ Fargo Limited Joint Venture with their respective medical equipment subcontractors who are PARAMOUNT Holdings Limited, Intermed, and Sheena Investments.

On 7th February 2017, the Ministry of Health received a No Objection order from BADEA and Saudi Fund to proceed with the opening of the financial bids.

The total three bidders, each composed of teams of civil works contractors and medical equipment suppliers qualified to have their financial bids opened and be further evaluated for financial competence.

During the evaluation process, it was noted that SR. Nicholas limited and PARAMOUNT holdings Limited made alterations to their bidding documents and in accordance with ITB 17.1 were not considered for further evaluation due to alteration of the bid documents and as this was deemed an alternative proposal and therefore non responsive.

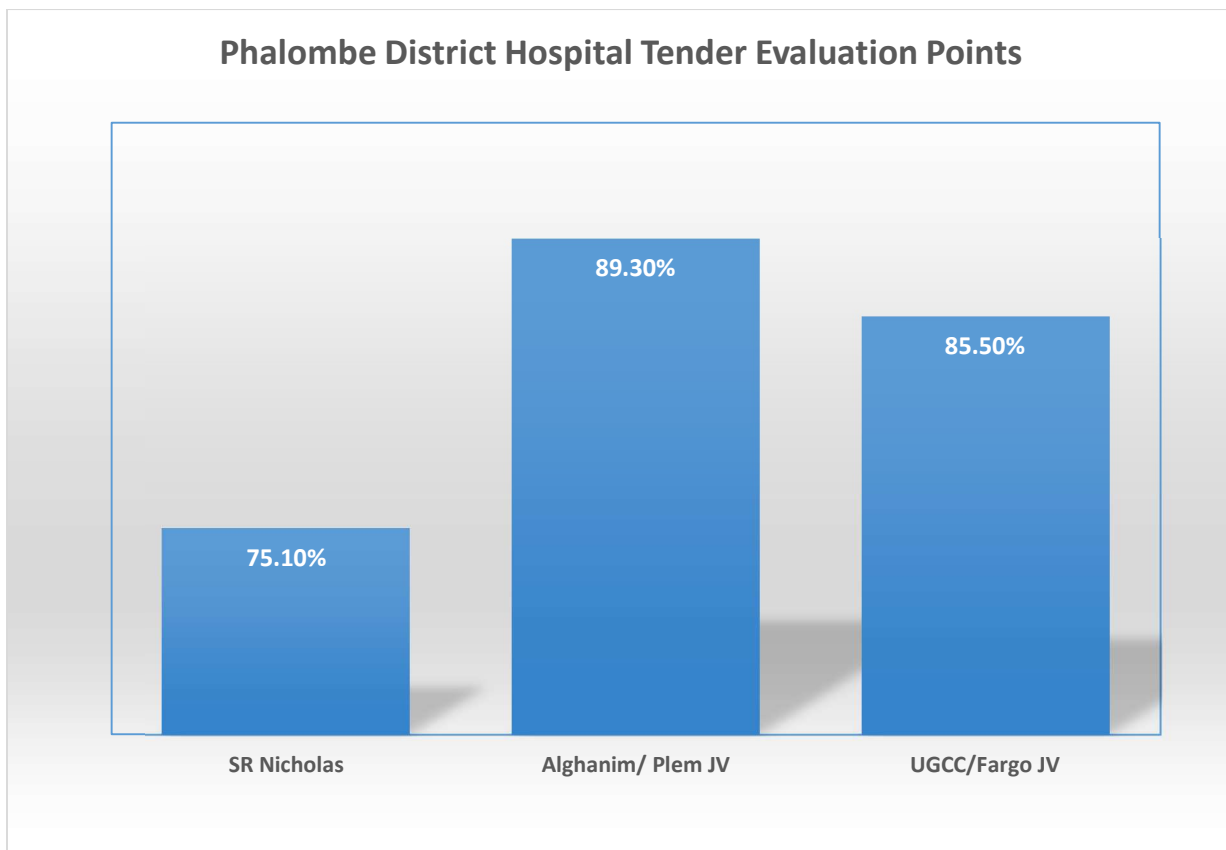
A clarification was sought from Intermed in accordance with ITB 25.2 with regards to pricing of their bid document. Intermed confirmed that the cost of equipment listed under the category B was included within their overall price.

Bids from Alghanim International General Trading and Contracting Company W.L.L/ Plem Construction Limited Joint Venture and United Gulf Construction Company (UGCC)/ Fargo Limited Joint Venture on civil works and all medical supply bids were further checked for errors. Both of the civil works bids and one medical equipment supply bid were found to have errors that marginally increased their bid sums. After making adjustments for these errors, the civil works bids were further adjusted for provisional quantities and thereafter both of these and the medical equipment supply bids were ranked accordingly.

The ranking of the combined civil and medical equipment supply bids upon evaluation indicated that Alghanim International General Trading & Contracting Company W.L.L/ Plem Construction Limited Joint Venture/ Intermed had the lowest evaluated bid followed by United Gulf Construction Company (UGCC)/ Fargo Limited Joint Venture/Sheena Investment Bid.

All the evaluated bids were generally analyzed for pricing using a detailed rate comparison and were found to be competitive.

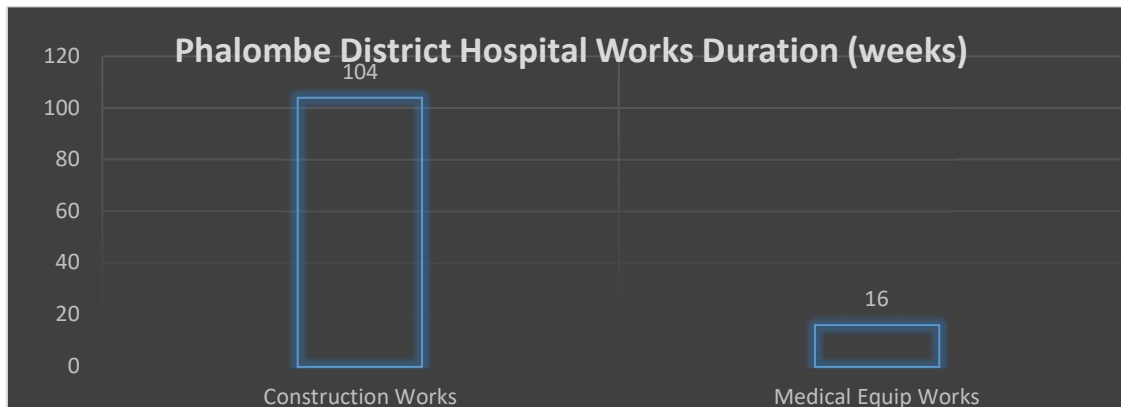
In conclusion the report recommended that the Construction of Phalombe District Hospital be awarded to Alghanim International General Trading & Contracting Company W.L.L/ Plem Construction Limited Joint Venture for Civils and Intermed for supply installation and commissioning of medical equipment for a gross sum of US\$ 22,756,243.83 to be completed in a period of 104 weeks for civil works and 12 to 16 weeks for supply, installation, and commissioning of medical equipment.



**Graph 4.2.1.2 – Evaluation Points for Bids Phalombe Hospital**

### v. Contract Award - Contractor

The contract was awarded to Alghanim International General Trading & Contracting Company W.L.L/ Plem Construction Ltd Joint Venture for Civil Works at a contract price of US\$ 22,756,243.83 for a period of 104 weeks. The supply, commissioning and installation of medical equipment was awarded to the main contractor's subcontractor Intermed for a period of 12 to 16 weeks.



Graph 4.2.1.3 – Graph showing Works Duration

### vi. Scope of Works

The scope of works are as follows:

Construction of Administration Block, Primary Health Care, OPD and Registration, Drugs Store, Teaching Unit, Main Theatre, Ablution Blocks, Pediatrics Ward, Gynecology, Antenatal, Maternity Ward, Female Medical/Surgical Ward, Male Medical Ward/Surgical Ward, Consultation Ward, Restaurant, Kitchen, Male/Female TB ward, Isolation Ward, Laundry, Bulk Stores, Mortuary and Mourners Shed, Medical Incinerator, Maintenance workshops, Generator house, Transformer house, Waiting mothers, Nurses Hostels, Staff Houses, VIP Latrines, Brick Incinerator, Placenta Pit, Cooking shelter, Guardian Shelter, Ablution blocks, Oxidation pond, Guard house, Water Tank and associated external works including equipment supply of anesthetic and critical care general, mechanical, medical instruments and hollow care laboratory, medical furniture, ophthalmology, orthopedic, plastic surgery and dermatology, radiology, rehabilitation/physiotherapy, dental, IT, office, workshop working tools, workshop, catering, general hospital and furniture.

### vii. Contract Execution - Contractor

At this point there are no significant changes to the contract since the project has just recently commenced in the month of July 2017.



### **viii. Project Evaluation Report**

The final report has not yet been produced since the project has just begun.

### **ix. Quality of the Works**

The Assurance Consultant visited the site in Phalombe to appreciate the site as the project was commissioned in June 2017 and the only works done was laying of the foundation stone and site clearance. Pictures below show the site. One of the pictures shows the foundation stone laid by His Excellency the President of the Republic of Malawi, Professor Peter Arthur Mutharika on 27<sup>th</sup> June 2017 – refer to Picture 4.2.1.1.



**Photo 4.2.1.1 - Foundation Stone for Phalombe District Hospital – Public Disclosure of Project**



**Photo 4.2.1.2 – Site Clearance Works in Progress**

The above picture 4.2.1.2 shows site clearance works in progress. The supervisor has not been equipped with safety equipment and protective wear. As a minimum he was required to wear:

- ◆ Safety boots
- ◆ Work suit
- ◆ Helmet
- ◆ Reflector jacket
- ◆ Goggles

**✚ This study recommends stricter enforcement of safety regulations on work sites. Generally, violations are not punished as there is no mechanism unless there is an injury on site when the Labour Department gets involved with compensation issues. The NCIC, as a governing body could look into this aspect of enforcement and tightening the existing regulations and as a means for income generation.**

## **x. Findings and Recommendations**

This study has the following findings: -

- Donor funded projects are stricter than locally funded projects in adherence to specific guide lines and procurement procedures set forth subject to which if not followed may lead to projects taking long to commence because procurement of consultants and contractors has not met the requirements of the donor. This as a result led to re advertisement for expression of interests and the procuring process beginning again from scratch on the procurement of works for Phalombe District Hospital.
- Filing of documents is a problem with this PE as some documents were misfiled or were missing from the files. This includes the tender evaluation report on selection of the consultants and some certificates for payment to the consultant.
- The works have commenced on site and so far the quality and progress is good. If payments are not delayed as with most Government projects, accompanied with very little change in scope; this project will be completed within the planned duration and budget.
- This study recommends stricter enforcement of safety regulations on work sites. Generally, violations are not punished as there is no mechanism unless there is an injury on site when the Labour Department gets involved with compensation issues. The NCIC, as a governing body could look into this aspect of enforcement and tightening the existing regulations and as a means for income generation.

## **4.2.2 Construction (Civil Works), Supply, Installation and Maintenance of Medical Equipment for Cancer Treatment Centre at Kamuzu Central Hospital in Lilongwe, Malawi**

### **i. Funding**

The Republic of Malawi (Borrower) requested a loan from OPEC Fund for International Development (OFID) for part financing of the Construction of the National Cancer Treatment Center. The agreement was dated on October 2014 and OFID approved the loan to the Borrower in the amount of \$13,150,000.00 upon the agreed terms and conditions set forth.

### **ii. Tender Process - Consultant**

The procurement process of selecting a consultant begun with a letter of recommendation from International Atomic Energy Agency (IAEA). In a letter dated 31<sup>st</sup> of January 2011, International Atomic Energy Agency (IAEA) highly recommended to the Government of Malawi the selection of Osmond Lange Architects and Planners of South Africa to carry out the consultancy works of coming up with the designs, feasibility and designs of a radiotherapy center. IAEA further states that it had worked with the firm on other radiotherapy projects in countries like Zambia, Mozambique, Botswana and Angola, hence saw no reason why Malawi should not work with this firm.

With this recommendation the Government of Malawi selected Osmond Lange Architects and Planners to carry out the feasibility and design works for the new Cancer treatment center. A team from the Ministry of Health visited RSA from the 23<sup>rd</sup> of June to 25<sup>th</sup> June 2011 for the purpose of negotiations and contract signing with the proposed architectural firm. The team comprised of Dr. M. Chaponda, Dr. T. Dzowela, Mr. M Kasambala and Mr. Arthur Kavike Chiphiko. The contract was signed on the 27<sup>th</sup> day of June 2011 at a contract price of ZAR 3,760,664.36 (Three million seven hundred and sixty thousand six hundred and sixty four South African Rand and thirty six cents).

The Principal Consultant agreed to undertake the project on Standard Service Contract in which the work starts from the project inception until the project close out without considering the element of timeline on the firm's fee scale (refer to the updated South African Government Gazette on Professional Fees Guidelines, and Architectural Profession Fees Guidelines, and Architectural Profession Act, 2010).

The principal consultant was advised to find a local team of consultants (Malawian firms) for partnership on the project as per the National Construction Industry Council (NCIC) regulations for foreign consultants practicing in Malawi. It was clearly understood that the Principal Consultant will pay the local consultants from the agreed fees with the Malawi Government. This meant that the Government of Malawi would not pay the local consultants for their services.

In a meeting held on 4<sup>th</sup> May 2014 between the consultant and the Ministry of Health, the following items were discussed in term of recent developments:

- (a) The Government of Malawi had now secured a loan from OPEC Fund for International Development for the construction of the project. The Ministry indicated that as part of the loan conditions, the Government of Malawi is required to use OFID procurement guidelines for both the supervising engineer and the contractor of the project. This being the case, there was need that the current contract between the Ministry of Health on one part and the Consultant, Osmond Lange on the other part be limited to works that have already been done and the outstanding works under item 4.2 of the contract agreement.
- (b) That it was in the understanding of the Consultant that the contract they signed with the Ministry of health could be changed subject to the developments on the area of financing the project.
- (c) That the consultant fully completed detailed designs of the project and that they are to finalize the detailed Bills of Quantities.
- (d) That the consultant completes the Bills of Quantities which will include all Medical and Office furniture by the 30<sup>th</sup> of June 2014 and submit to the client, Ministry of Health.
- (e) That the initial contract should end at stage 4.2 after which the Ministry of Health will pay the consultant inclusive of the Quantity Surveyor and Equipment Specialist's disbursements and terminate the current contract.

This meant that the next contract would include stages 5 and 6 which would involve the supervision of the actual construction works.

The Ministry mutually terminated the contract with the consultant after obtaining a loan from OPEC Fund for International Development (OFID), whose conditions required that Government should use OFID procurement guidelines for hiring both supervising engineer and contractor of the project.

Later on, after a series of meetings; Osmond's contract of service was renewed.

### **iii. Tender Process - Contractor**

The tender process used was International Competitive Bidding. The identification of the construction contractors followed a two stage procurement process commencing with the prequalification of interested contractors who were required to collect the prequalification documents from Quant Consultant Associates who were selected by the Principal Consultant Osmond. The prequalification documents were to be returned to The Chairman, Internal Procurement Committee, Buildings Department, Private Bag B365, Lilongwe 3, Malawi not later than 14:00 hours local time on Thursday 25<sup>th</sup> June 2015.

Following the prequalification stage the following contractors were successful and shortlisted:

- (a) Plem Construction Ltd, P.O. Box 1259, Lilongwe, Malawi.

- (b) Enraf- Nonius BV, United Kingdom.
- (c) SR Nicholas Ltd, P.O. Box 287, Lilongwe, Malawi.
- (d) Terrastone Construction Ltd, P.O. Box 995, Lilongwe, Malawi.
- (e) Shire Construction Ltd, P.O. Box 129, Lilongwe, Malawi.

The shortlisted contractors submitted their priced bids for evaluation. The project tender results were way above the project budget with the lowest evaluated bidder's cost amounting to \$36 million against a loan amount of \$13.5 million; as result this led to the decision of retendering the project.

As a result of the above the Ministry was requested by OFID to retender both the civil works and the revised scope of the equipment. Nevertheless, despite the instructing the consultant to move on with the process of retendering the project, there was a slight delay as a result of the issue of non- payment of the consultant fees. The three consultant parties therefore had a meeting to discuss the way forward on the project. The meeting was chaired by the Buildings Department and the Ministry was represented by the Department of Planning and PAM and the following issues were discussed and agreed:

- (a) The proposal to negotiate with the lowest bidder on the current bid was turned down as OFID already issued out an instruction to retender such that any contrary decision on the instruction will have to go through another approval process by OFID which would take even more time.
- (b) Buildings department also reported that the Ministry of Health will not save time by negotiating with the lowest bidder as retendering the project and negotiating with the lowest bidder will take almost the same time.
- (c) Consultant to immediately start the retendering process as per OFID's instruction.
- (d) Consultant to submit to the Ministry of Health fee bid proposal for the additional works.
- (e) Contractors to be requested to extend the bid validity bond.
- (f) Ministry of Health to fast track the remaining 60 percent payment for the Consultant.
- (g) Consultant to submit the draft program.
- (h) The consultant assured the meeting that the contractor would be on site by end April 2016 if all approvals are given within time.
- (i) Ministry of Health committed to pay for the payment that was overdue and also for the extra retendering cost.
- (j) The consultants were to remove the prime cost sums in order to have measured works.

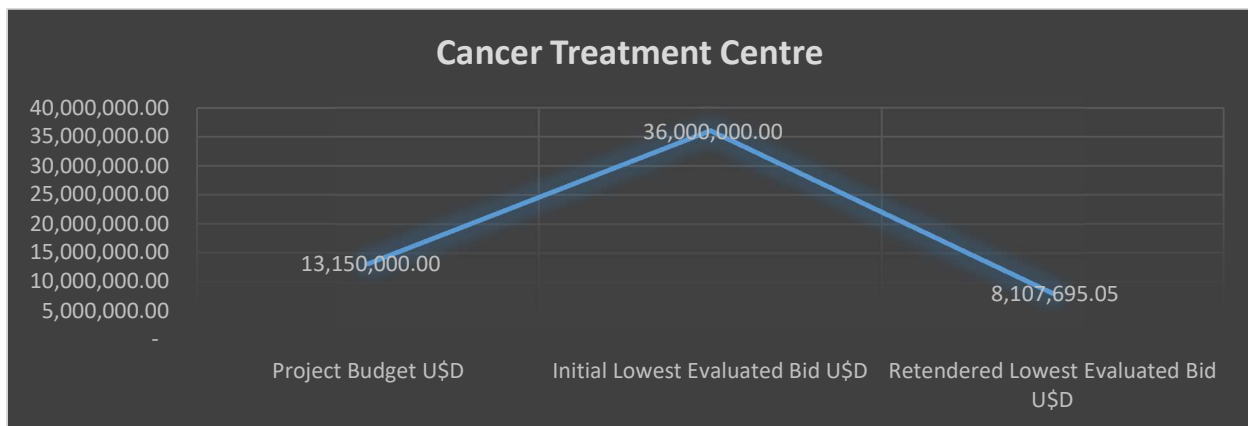
At this point it was also noted that the Ministry currently owned the consultant Mk 100 million excluding the additional costs that were to be paid for the retendering process.

In a quest to reduce costs the Ministry of Health requested the International Atomic Energy Agency to procure the major radiotherapy equipment since IAEA buys directly

from the manufactures and they also procure the equipment VAT free. This meant that the contractors would only bid for the civil works and the Ministry of Health would procure the remaining pieces of equipment and furniture for the hospital.

Later on as a result of the reduction in the scope of works the Consultant contract had been revised such that there was an additional sum of \$36,650.16 on the contract.

The tender was re advertised after revising the scope as instructed by the Donor. Interested bidders collected and submitted their bidding documents for evaluation. The evaluation report recommended that the contract be awarded to Terrastone Building Contractors at a contract sum of US\$ 8,107,695.05 with a contract period of 82 weeks.



**Graph 4.2.2.1 – Budget against Lowest Evaluated Bid**

#### **iv. Contract Award - Contractor**

This contract was awarded to Terrastone Building Contractor, P.O. Box 995 Lilongwe; at a contract price of US\$ 8,107,695.05 and a contract duration of 82 weeks.

#### **v. Scope of Works**

The works comprise of the following:

- (a) 1 No. administration block with approximately 275m<sup>2</sup> floor area on two levels.
- (b) 2 No. public amenities and pharmacy block all on level with approximate 280m<sup>2</sup>.
- (c) Treatment planning and imaging block with 420m<sup>2</sup> approximate area, all on one level.
- (d) Consulting block with approximate floor area of 280m<sup>2</sup> on one level.
- (e) Brachytherapy suite block on one level with 385m<sup>2</sup> approximate floor area.

- (f) Nuclear medicine block on one level with 320m<sup>2</sup> approximate floor area.
- (g) External beam radiotherapy block on one level with 430m<sup>2</sup> approximate floor area.
- (h) Chemotherapy block on one level with 365m<sup>2</sup> approximate floor area.
- (i) Court yard
- (j) 3 No. ward blocks on one level with 365m<sup>2</sup> approximate floors area.
- (k) 3 No ward blocks on one level with 2200m<sup>2</sup> approximate floor area.
- (l) Associated external works.

**vi. Contract Execution - Contractor**

At this point there are no significant changes to the contract since the project has just recently commenced in the month of February 2017.

**vii. Project Evaluation Report**

The final report has not yet been produced since the project has just begun.

**viii. Quality of the Works**

A site visit was conducted and the following is a gallery of the pictures taken. The works after 23 weeks of construction for a total period of 59 weeks are still at foundation level.





Photo 4.2.2.1- Project Sign Board as Public Disclosure



Photo 4.2.2.2 – Project works under construction, Foundation Stone in fore front



Photo 4.2.2.3 – Foundation works under construction

## **i. Findings and Recommendations**

The following are findings and recommendations for this study:

- This study finds that cost estimates must reflect clearly on the scope of works so as to avoid situations where bid submissions from contractors are way above the project budget as was the case on the Construction (Civil Works), Supply, Installation and Maintenance of Medical Equipment for Cancer Treatment Centre at Kamuzu Central Hospital in Lilongwe.
- Filing of documents is a problem with this PE as some documents were misfiled or were missing from the files. This includes the tender evaluation report on selection of the consultants and some certificates for payment to the consultant.
- The works have commenced on site and so far the quality and progress is good. If payments are not delayed as with most Government projects, accompanied with very little change in scope; this project will be completed within the planned duration and budget.

### 4.2.3 Construction, Completion and Maintenance of Cold Rooms at Mzuzu Central Hospital in Mzuzu City, Malawi.

#### i. Funding

Funding of this project was from Ministry of Health with funding from Global Alliance for Vaccines and Immunization (GAVI).

#### ii. Tender Process - Consultant

The consultants of this tender were Norman and Dawbarn (Mw) Chartered Architects & Project Managers of P.O. Box 1046, Blantyre, and SFS Property Consultants of P.O. Box 30837, Lilongwe. Further information in regards to the selection of consultants could not be traced at the time of preparation of this report.

#### iii. Tender Process – Contractor

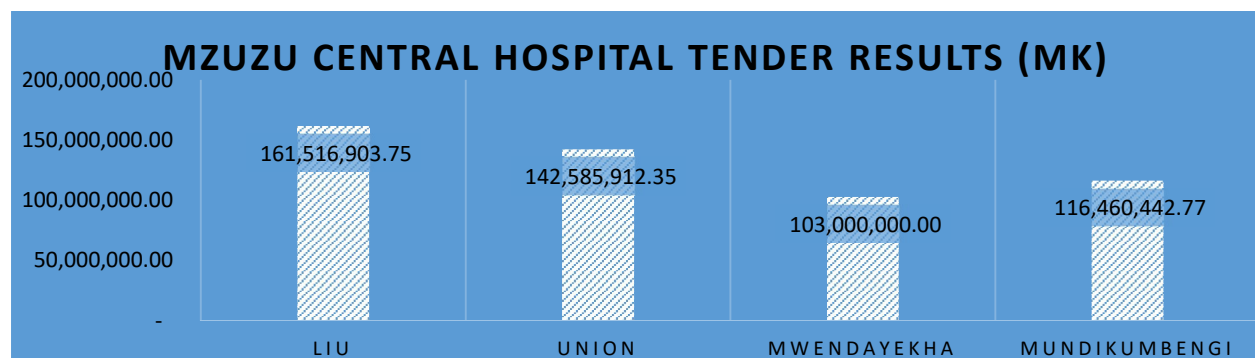
A total number of six bidders purchased the bid documents but only four managed to submit. The two that did not submit were: Fukumele Building Contractors and Built Environs.

The following contractors submitted their bids and their read out results were as follows:

- (a) LIU Construction Ltd – Mk 161,516,903.75
- (b) Union Building Contractors – Mk 142,585,912.35
- (c) Mwendayekha Building Contractors –Mk 103,000,000.00
- (d) Mundikhumbengi Building Contractors – Mk 116,460,442.77

During the preliminary stage of evaluation Union Building Contractors were disqualified for not submitting a bid security. Mundikhumbengi was disqualified for only submitting a certificate of registration for surtax and not submitting compliance letters from MRA demonstrating that they had been remitting form taxes. Mwendayekha Building Contractors were also disqualified on the grounds that they did not provide a written Power of Attorney as stipulated in Section 3 Evaluation and Qualification Criteria 2.4.

LIU Construction qualified for the Technical Evaluation stage and in the end were recommended for the award of the project at a contract sum of Mk 161,516,903.75.



Graph 4.2.3.1 – Tender Results for Mzuzu Hospital

**iv. Contract Award- Contractor**

LIU Construction of P.O. Box 31059, Lilongwe were awarded the tender at an original contract sum of Mk161, 516,903.75. A no objection order was granted by The Office of the Director of Public Procurement on 26<sup>th</sup> May 2014 (Ref No. ODPP/03/19).

**v. Scope of Works**

The scope of works include the construction of a cold room and associated external works at Mzuzu Central Hospital.

**vi. Contract Execution – Contractor**

**Escalation to the Contract Price:**

Works on this contract came to a stop when the client was failing to pay the advance payment, and it was realized that funds for this project were no longer there. GAVI conducted an audit which revealed that MK 423 Million was not accounted for. GAVI demanded that Malawi Government should open a GAVI dedicated account where the unaccounted funds should be deposited before disbursements of the funds could be allowed. By January 2016, Malawi Government transferred the MK423 million into GAVI dedicated account, which would be administered by GAVI with assistance from UNICEF and Price Waterhouse Cooper who would disburse the funds to the contractor.

Once the funds were deposited, the contractor was asked to come up with revised rates. The contractor was given two weeks starting form 17<sup>th</sup> February 2016 to submit the new rates.

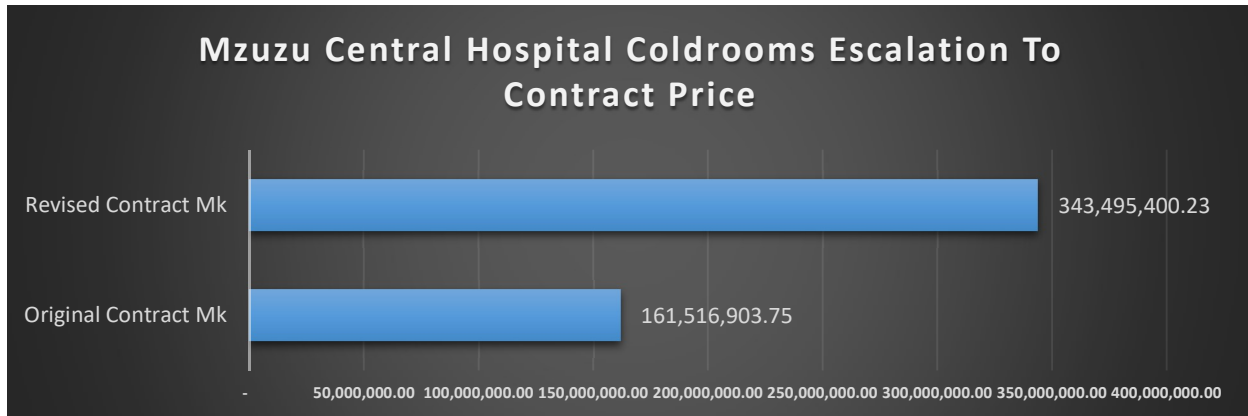
The contractor submitted the re priced Bills of Quantities at a construction sum of Mk 390,632,596.75. The evaluation team however noted the following:

- (a) The contractor’s revised construction cost is 141.85% above the original contract sum.
  - (b) An assessment of the rates using the then current market rates was that there should have been an increase of about 96% on the original contract rates.
  - (c) According to the National Statistics Office (NSO) of Malawi, consumer index (CPI) increase between September, 2013 to February, 2016 is 89.37% (it should be noted that these indices include non- construction materials).
  - (d) The value of the local currency against the United States Dollar had increased by 124.74% in the period. The depreciation had more effect on cost of imported material.
- The consultant further revised and recommended on 24<sup>th</sup> May 2016, the contractor’s submission to an amount of Mk 343,495,400.23 which was 112.67% above the original from the previous amount of Mk 390,632,596.75 which was 141.85% above the original contract sum.

The consultants were advised to prepare an addendum to the original contract to be signed by Ministry of Health and LIU Construction Ltd.



The contractor was also advised to prepare and submit a new performance bond based on the revised contract sum and contractual documents including working capital advance bond and insurance of the works.



**Graph 4.2.3.2 – Escalation of Contract Price for Cold Rooms**

### **Variation to Contract Duration**

Once the re priced bills of quantities were submitted, evaluated and approved the works on the new site commenced. The client requested that the construction period be reduced from 6 to 3 months.

In a letter dated 27<sup>th</sup> February 2017, the consultant wrote to the contractor in response to their extension of time application. The contractor gave the following reasons for the extension: delay in the advance payment, modification to foundation drawing, continuous heavy rainfall, and delay from the Ministry of Health in acquiring a Duty/Vat free waiver from Malawi Revenue Authority.

In response to the above the consultant under item of delay of advance payment responded that under the contract clause 43.1 there was no breach as the payment was made within the stipulated period. However, under separate negotiations the contractor was requested by the client to reduce the construction period from 6 to 3 months on conditions that 50 % of the advance payment would be paid to accelerate the works. The client made a payment of 20% Advance Payment in accordance with the contract. However, the contractor was granted 6 weeks for extension of time. The completion date thus changed from 13<sup>th</sup> March 2017 to 1<sup>st</sup> May 2017.

As of the 22<sup>nd</sup> of March 2017 the project had registered 75% completion.

At the time of this report the project was in its very final stages with most of the works complete and the final certificate being evaluated and processed for further action.

### **Variation to Contract Scope**

The following architect instructions were issued:

1. Erection of project sign boards as per revised drawings issued.
2. Footing and ground beams to be constructed with reinforcements.
3. Construction of plinths under storage container units. Quotations from Mzuzu city being payment for scrutiny fees.


Regardless of the instruction issued, these had very little impact on the contract scope.

### **vii. Project Evaluation Report**

Due to suspension of the works as a result of nonpayment of the advance payment, the project completion date was extended and because of this the project is still on going and the final report has not been produced.

### **viii. Quality of Works**

The site visit showed that the quality of the works is very good. External works to the gate are on-going with very little work to complete around the gate. On the day of the site visit on 7<sup>th</sup> July 2017, the study found that the facility was not running as the pre-paid electricity units had run out. Fortunately, the vaccines were expected the following week and the freezing compartments had no vaccines in them.

 **A finding of this study is that the Ministry of Health should consider sustainability of the operational budget of the cold rooms ensuring that money for running the facility is readily available.**

The following is a picture gallery showing the facility: -



**Picture 4.2.3.1 – Refrigeration Units in Cold Room**





**Picture 4.2.3.2 – Picture Showing Inside the Refrigeration Unit inside**



**Picture 4.2.3.3 – Picture Showing the Cold Room Facility Externally**

**ix. Findings and Recommendations**

The following are the findings and recommendations for this study:

- This project was delayed because the donor funds allocated for this project could not be accounted for once the works had commenced on site. This study was unable to establish exactly what happened to the project funds and how the project was re-funded.
- filing of documents is a problem with this PE as some documents were misfiled or were missing from the files. This includes the tender evaluation report on selection of the consultants and some certificates for payment to the consultant and contractor including correspondence on Extension of time.
- Ministry of Health should consider sustainability of the operational budget of the cold rooms ensuring that money for running the facility is readily available.

### 4.3 National Oil Company of Malawi

This study reviewed one contract for the Construction of a Perimeter Fence at Sonda in Lilongwe.

**Table 4.3.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Construction of Perimeter Fence – National Oil Company of Malawi – Kane'ngo in Lilongwe (Lot 7) Contract No.: 02/2015	Lilongwe	Construction of Perimeter Fence and all associated Electrical Works	Provide a boundary and improve on security	231,272,734.56	In progress

#### i. Funding

This project was funded by National Oil Company of Malawi.

#### ii. Tender Process – Consultant

The supervision of the project was done internally and was supervised by the Department of Buildings in the Ministry of Transport and Public Works.

#### iii. Tender Process – Contractor

Open bidding procurement was used in this tender and a total of 7 contractors purchased the bidding documents. The deadline of submission was on the 15<sup>th</sup> of May 2015 at 14:00 hour's local time. No extension of time was granted.

The bids were opened at Buildings Department Headquarters Offices, Ministry of Transport and Public Infrastructure at Capital Hill on Friday 15<sup>th</sup> May 2015. Out of the 7 contractors that purchased the bid documents only 6 managed to submit. The results were read out in the presence of all contractors' representatives and were as follows:

- (a) DHB B. Contractors: Mk 199,159,010.96
- (b) Rays Construction: Mk 206,115,311.82
- (c) China Jiangxi: Mk 230,828,568.69
- (d) OPCO Ltd : Mk235,618,408.38
- (e) PMC : Mk 267,285,173.70
- (f) World Changers J &F JV: Mk 387,085,935.75

In the technical evaluation stage out of the six that submitted their bids only three were recommended for the financial evaluation stage. These three were Rays Construction, OPCO, and PMC Ltd. The other three that were disqualified were for reasons such as:

- (a) DHB – inadequate average annual volume of works.

- (b) China Jiangxi- inadequate required key personnel.
- (c) World Changers – inadequate average annual volume, inadequate required key personnel, and inadequate liquid and credit facility.

The bidders’ arithmetical checks were made for the three contractors for the correction of the read out bid sum. The corrections were as follows:

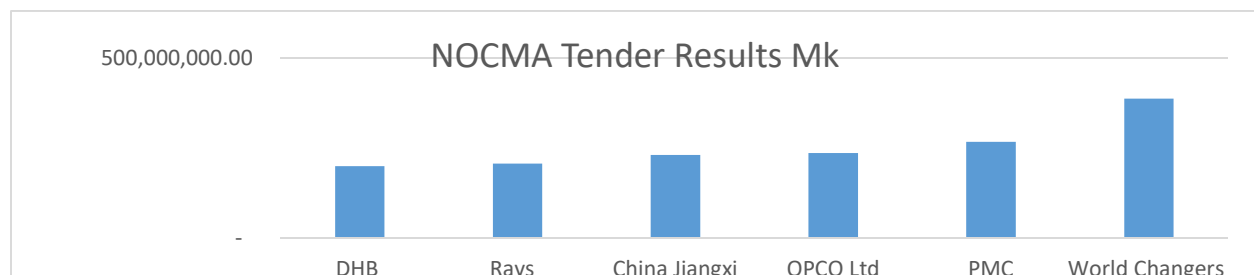
RAYS-MK206, 115,311.82 corrected to MK 231,272,734.56  
 OPCO- MK235, 618,408.38 corrected to MK 241, 636,917.00  
 PMC-MK267, 285,173.70 corrected to 278,906,268.24

After the Internal Procurement Committee evaluated the bids, they recommended that Rays Construction of P.O. Box 30792, Chichiri, Blantyre be awarded the contract at a contract sum of Mk 231,272,734.56 and at a contract period of 40 weeks.

The internal procurement committee comprised of the following:

1. H.J.K CHIUDZU- DOB (CHAIRMAN)
2. W.B. GONDWE CQS & CO
3. S.O. NGOMA-ASSISTANT CHIEF ARC
4. C.M. MUAGA- SENIOR STRUCTURAL ENGINEER
5. P.MPAYA- NOCMA
6. M.SOKO- NOCMA
7. MR. SOKO –MINISTRY OF NATURAL RESOURCES, ENERGY AND MINING

A No Objection Order was granted by ODPP in a letter dated 4<sup>th</sup> September 2015 (ref No.: ODPP/03/300) is response to a request from NOCMA.



**Graph 4.3.1 – NOCMA Tender Results**

**iv. Scope of Works**

The scope included construction of perimeter fence and all associated electrical works.

**v. Contractor Execution – Contractor**

The contract start date was on the 1<sup>st</sup> February 2016 with a contract running period of 42 weeks, ending on the 5<sup>th</sup> of August 2016 and a defects liability period running till the end of 5<sup>th</sup> August 2017.

During the course of the contract, there were extra works added but this did not cause any variations to the contract sum; however, the extra works were one of the factors that led to an extension of time. The extra works were within the contingency sum of the contract and they included: construction of drains to take the water from the depots and dispose to natural waterways, additional construction to the perimeter wall, and changing of the front wall finish from rendered finish to pebble brushing finish to minimize the unwanted writings on the wall (graffiti).

The contractor on 12<sup>th</sup> December 2016 wrote to the consultant an application for an extension of time. Reason behind the extension of time were as follows:

- 1) Additional works which the client had requested in form of the construction of drains.
- 2) Extension to the perimeter fence.
- 3) Change of front wall finish from rendered finish to pebbled finish to minimize the unwanted writings on the wall.
- 4) Delay in the provision of drawings for electric poles and lighting system.

Following the application the contractor was given an extension of time of 28 weeks. This meant that the contract completion date changed from 5<sup>th</sup> August 2016 to 10<sup>th</sup> February 2017 and a defects liability end to 10<sup>th</sup> February 2018.

As of to date the project is in its very final stages with payments of up to Mk 218,285,128.26 and a balance of Mk 12,987,606.30.

#### **vi. Project Evaluation Report**

The final report has not yet been produced.

#### **vii. Quality of the Works**

A site visit was made and quality of the works was verified to be very good. The following are pictures taken: -



Photo 4.3.1 – Project Sign Board showing the project was disclosed to the Public





**Photo 4.3.2 – New Fence at NOCMA Yard**

### **4.3.1 Findings and Recommendations**

The following are the findings and recommendations for this study:

- filing of documents is a problem with this PE as some documents were misfiled or were missing from the files. This includes payment certificates to the contractor.



#### 4.4 Roads Authority

The study reviewed five (5) contracts implemented by the Roads Authority in the Northern Region of Malawi.

1. Upgrading of Jenda – Edingeni Road to Class 1 Bitumen Standard – Lot 1
2. Consultancy Service for Supervision of the Upgrading of the Jenda – Edingeni Road to Class 1 Bitumen Standard
3. Design and Supervision ofr Upgrading of Ekwendeni – Ezondweni Road in Mzimba
4. Construction of Mzuzu – Nkhata Bay (M05) Road
5. Construction Supervision of the Mzuzu – Nkhata Bay (M05) Road

It is a general observation by this study that the Roads Authority did not disclose procurement information.

Infrastructure Data Standards were disclosed for selected projects at Roads Authority as listed below:

**Table 4.2.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value	Contract Final Value
Upgrading of Jenda – Edingeni Road to Class 1 Bitumen Standard – Lot 1	Mzimba	Construction to bitumen standard 15 km of road section from Jenda to Chindoka.	To upgrade gravel standard road in Mzimba District to Class 1 bitumen standard.	K 2,357,231,749.65	K3,954,817,546.31
Consultancy Service for Supervision of the Upgrading of the Jenda – Edingeni Road to Class 1	Mzimba	Supervision of Construction to bitumen standard 15 km of road section from Jenda to Chindoka.	To upgrade gravel standard road in Mzimba District to Class 1 bitumen standard.	\$1,187,707.50	Most Invoices for payment are not on file and therefore the final cost could not be determined based on the information on files.
Design and Supervision of Upgrading of Ekwendeni – Ezondweni Road in Mzimba	Mzimba	Scope of the Works originally was for Design (25 Kms) and Supervision (5 Kms) of the Ekwendeni – Ezondweni Road. The design was being done ahead of the construction and scope was changed several times to include design of other roads and supervision of 25 kms.	To upgrade gravel standard main, secondary , and Tertial roads in Mzimba District to Class 1 (M Roads) and Class 2 (S and T Roads) bitumen standards.	K 100,167,870	Total Final Value is not clear from the documents on file. However, Invoice No. 32A dated 15 December 2010 shows gross valuation of <b>K239,796,691.36</b>

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value	Contract Final Value
Construction of Mzuzu – Nkhata Bay (M05) Road	Mzimba	To Construct the Mzuzu – Nkhata Bay Road to 6.7m carriageway and 1.5m shoulders each side	To rehabilitate the Mzuzu – Nkhata Bay Road which is part of the Mtwara Corridor linking Malawi to Tanzania Port of Mtwara on the Indian Ocean in order to ensure efficient utilization of Bridge and Road infrastructure to meet future and current development needs of the economy through seamless transportation		Project is still on-going.
Construction Supervision of the Mzuzu – Nkhata Bay (M05) Road	Mzimba	To review existing designs and update the detailed engineering design of the road including production of bidding documents. The consultant shall assist the Roads Authority during pre-contract stage and supervise and monitor physical progress and financial status of the construction works to ensure timely completion and within budget and the project meeting acceptable engineering and safety standards.	To rehabilitate the Mzuzu – Nkhata Bay Road which is part of the Mtwara Corridor linking Malawi to Tanzania Port of Mtwara on the Indian Ocean in order to ensure efficient utilization of Bridge and Road infrastructure to meet future and current development needs of the economy through seamless transportation of goods and services on the road network.	\$999,550	Project is still on-going but as at 30 January 2017 this was the status: Design Review Contract \$293,420 US\$ 293,420.00 or 100%  Supervision Contract: \$706,130 US\$ 192,480.00 or 27% Total to Date Contract \$999,550

#### 4.4.1 Upgrading of Jenda – Edingeni Road to Class 1 Bitumen Standard – Lot 1

IDS were collected for the above project for this study and procurement procedures and analysis of the data collected is presented below: -

##### i. Funding

The project was funded by the Abu Dhabi Fund. The Engineer's Estimate for the project was not provided for this study

##### ii. Tender Process - Consultant

Tender process was International Competitive bidding.

**iii. Tender Process - Contractor**

The tender process was International Competitive Bidding and the contract type admeasure contract for the works contract.

**iv. Contract Award - Contractor**

Four contractors submitted bids for the works contract as follows: -

◆ Unik Construction, Botswana	K9,297,216,926.96
◆ China Railway No. 5 Engineering Co LTD, China	K2,357,231,177.97
◆ Ma Al Kharafi & Sons, Kuwait	K6,392,618,649.00
◆ Mota Engil, Portugal	K3,430,440,259.32

The contract was awarded to China Railway No. 5 Engineering Co. Ltd of China at a price of K2, 357,231,177.97.

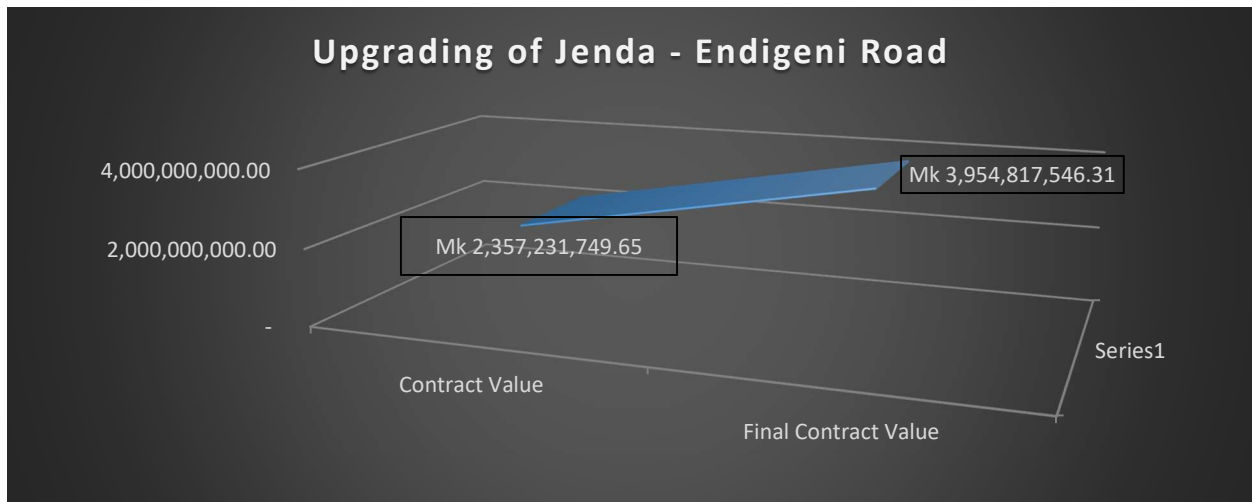
**v. Scope of Works**

The scope was to construct the road to Class 1 standard consisting of a 6.7 metre carriageway and 1.5 metres shoulders each side.

**vi. Contract Execution - Contractor**

Significant changes to the Contract:

- ◆ Original contract was K2, 357,231,749.65 with an addendum of K1,597,585,796.66 giving a revised contract sum of K3,954,817,546.31. The final value of work paid is K3,954,817,546.31 presented graphically below: -



**Graph 4.4.1.1 – Shows Original Contract Value against Final Value**

**Contract Administration:**

- ◆ A dispute arose early in the Contract where the Engineer sought the views of RA on the model of vehicles to be bought under the contract by the contractor for use by the Engineer for eventual ownership by the employer. It was agreed at the commissioning meeting (Minutes not on file but referenced in letter Ref: GC-JEDRD-MRA-CON1401.06 dated 29 January 2014 from the Engineer to the client) that the preferred vehicles were either Toyota, Isuzu, or Ford and that Nissan was not acceptable. The contractor was thus instructed to provide the preferred vehicles above. However, the contractor wrote the consultant on 23 January 2014 seeking approval for purchasing Nissan Hardbody vehicles contrary to the instruction. The client took the view that Nissan vehicles were suitable due to the cost savings if the Nissan was bought in lieu of the Toyota, Isuzu or Ford. The consultant felt that by allowing the contractor to purchase Nissan vehicles contrary to the instruction would weaken the consultant's authority with respect to the contractor. The consultant therefore requested the client to reverse the instruction if he so wished.


On 9 February 2014, the contractor wrote the consultant seeking approval for Ford Ranger type vehicles for the contract.

**✚ This study finds that the whole issue emanated from lack of details in the specific conditions of contract that could have removed all ambiguity.**

- ◆ During execution of the Works contract, it became apparent that the contractor was not performing. The Client wrote to the funding agency, the Abu Dhabi Fund for Development (ADFD) expressing concern regarding the non-performance of the Contractor. The letter (25 July 2014) cited lack of progress on site 6 months from commencement and advising ADFD that there were no permanent road works that had been produced and that Government was contemplating to close the contract and engage another to complete the works. On 14 April 2014, the RA writes to the contractor inviting them to a meeting on 16 April 2014 to be attended by the Minister of Transport & Public Works. Unfortunately, this study did not find the minutes of this meeting on file. On 27 May 2014, the client writes to Group Consult Global as consultants on the project to write a letter of notice to the contractor with relevant justification to terminate the contract.

However, it transpired that without involving the consultant, the client entered into an agreement with the contractor through a Memorandum of Undertaking which was signed on 15 September 2014 giving the contractor 2 a months-period to show improvement on site giving conditions precedent:

- Resubmit program of works
- Site facilities e.g. laboratory, accommodation and bridge investigations to be fully completed or operational
- Plant and equipment specified in the contract to be available on site
- Key personnel to be mobilized within 2 weeks who are fluent in English
- Performance Bond extra to the contract bond to be submitted cashable on a local bank
- The MOU gave the contractor the following Milestones
- 5km to road bed level completed
- 4km to subbase level to be completed
- 3km of road base to be completed
- 3km of base protected by prime to be completed
- The MoU to be effective from 15 September 2014
- On 14 October 2014 the RA received a due diligence report from Economic Counsellor's office of Republic of China confirming that the bonds for Advance and Performance from the contractor were authentic.

 **This study finds the client erred by not involving the consultant on such important decision to defer termination of a contractor despite there being evidence of non-performance.**

Progress was reviewed on 9<sup>th</sup> January 2015. The consultant had made an assessment of the contractor's progress measured against the milestones as follows: -

- 5km to road bed level; completed 5.1km
- 4km to subbase level: 1.5km completed
- 3km of road base to be completed; 0km completed
- 3km of base protected by prime; 0km completed

In their justification for not achieving the milestones, the contractor stated that they had done other activities outside the MoU and therefore should be considered to have achieved the milestones. The client and consultant went into a sustained disagreement pertaining to the above performance of the contractor. The client stated that they had different milestones achieved by the contractor showing that the contractor had capacity:

- 5km to road bed level; completed 5.3km
- 4km to subbase level: 3.3km completed
- 3km of road base to be completed; 30km completed
- 3km of base protected by prime; 0km completed

The consultant stood by their report challenging the client for a site visit which could verify the actual status.

A further argument was the issue of bridge design and its incorporation into the works program. The consultant did not accept the contractor's program if the bridge was not included in the program. The contractor on the other hand did not accept that the bridge be included on the program as he did not have adequate details from the consultant to competently include this on the program. The client took the contractor's side by blaming the consultant.

Regarding the program, the RA stated that the reason it was not acceptable to the Consultant because the latter wanted the bridge to be included on the program whilst the contractor was not furnished with drawings. Further, the consultant was asking the contractor to carry out geotechnical investigations when this was the duty of the consultant. The client further stated that a lot of work had been done within the two months given showing that the contractor had capacity. With regards to the bridge, the RA stated that the bridge on this contract could easily be done within 6-8 months. Finally, the consultant was chastised not to deliberately hinder the contractor and hoped to see improvement in the performance of both the contractor and engineer so that the project would be completed within the agreed duration.

In his defense, the consultant wrote a rebuttal letter defending their performance and advising the client that the contractor had not performed as stated by the client in their letter of 9 December 2014.

Subsequently, the minutes of progress meeting between the contractor and client would somehow vindicate the report by the consultant that the contractor had failed to perform.

In the end, the contractor was allowed to complete the project albeit with a sour relationship between the consultant and contractor and between contractor and client.


An Addendum was given to the contractor to design and build the bridge at a price of K1,597,585,796.66.

On 12 December 2016, the RA approved a certificate releasing half retention. This certificate shows an extension of time of 442 days and an Addendum of K 1,597,585,796.66

The same certificate shows Interest on delayed payments of K13,495,986.45.

Original contract was K2, 357,231,749.65 with an addendum of K1,597,585,796.66 giving a revised contract sum of K3,954,817,546.31.

The final value of work paid is K3,954,817,546.31.

 **This study finds payment of original bill of quantities items without re-measurement to be very irregular as an admeasurement contract should not have a final account for re-measured works exactly the same as the original contract. This applies to the bridge variation which shows that the quoted price was paid as a lump sum.**

**vii. Project Evaluation Report**

There was no project evaluation report on file.

**viii. Quality of the Works**

A site visit was conducted and quality of the works was good. Pictures are displayed under section 4.4.2 of this report.

#### **4.4.2. Consultancy Service for Supervision of the Upgrading of the Jenda – Edingeni Road to Class 1 Bitumen Standard**

IDS were collected for the above project for this study and procurement procedures and analysis of the data collected is presented below: -

##### **i. Funding**

The project was funded by the Abu Dhabi Fund. The Engineer's Estimate for the project was not provided for this study

##### **ii. Tender Process - Consultant**

Tender process was International Competitive bidding.

Tender information was not provided by the Roads Authority; however, the contract was awarded to Group Consult Global in Association with Pamodzi Civil Engineering at a contract price of \$1,187,707.50

##### **iii. Scope of Works**

To supervise the Works contract for the improvement the Jenda – Edingeni Road to Class I road consisting of a 6.7m carriageway and 1.5m shoulders each side

##### **iv. Contract Execution - Contractor**

Significant changes to the Contract:

###### **1. Purchase of Vehicles for Supervision – Ambiguity in the Contract**

A dispute arose early in the Contract where the Engineer sought the views of RA on the model of vehicles to be bought under the contract by the contractor for use by the Engineer for eventual ownership by the employer. It was agreed at the commissioning meeting (Minutes not on file but referenced in letter Ref: GC-JEDRD-MRA-CON1401.06 dated 29 January 2014 from the Engineer to the client) that the preferred vehicles were either Toyota, Isuzu, or Ford and that Nissan was not acceptable. The contractor was thus instructed to provide the preferred vehicles above. However, the contractor wrote the consultant on 23 January 2014 seeking approval for purchasing Nissan Hard Bbody vehicles contrary to the instruction. The client took the view that Nissan vehicles were suitable due to the cost savings if the Nissan was bought in lieu of the Toyota, Isuzu or Ford. The consultant felt that by allowing the contractor to purchase Nissan vehicles contrary to the instruction would weaken the consultant's authority with respect to the contractor. The consultant therefore requested the client to reverse the instruction if he so wished.



On 9 February 2014, the contractor wrote the consultant seeking approval for Ford Ranger type vehicles for the contract.

The whole issue emanated from lack of details in the specific conditions of contract that could have removed all ambiguity.

**✚ This study recommends that in future details pertaining to model of vehicles required should be in the specific conditions of Contract.**

## 2. Performance of the Contractor and Consultants

The client wrote to Abu Dhabi Fund for Development (ADFD) expressing their concern regarding the non-performance of the contractor on 25 July 2014. The letter cited lack of progress on site 6 months from commencement and advising ADFD that there were no permanent road works that had been produced and that Government was contemplating to close the contract and engage another to complete the works.

On 27 May 2014 client writes to Group Consult Global as consultants on the project to draft a letter of notice to the contractor with relevant justification to terminate the contract. This draft is not on file. However, the consultant wrote to the client on 7 August 2014 stating that they had been informed by the associate consultant Pamodzi Consulting that the contractor may have been served with termination notice.

**✚ According to this study, the approach taken by the client by not informing the consultant of the action taken to terminate the contract is not procedural.**

Notwithstanding this, the consultant gave advice to the Roads Authority (RA) as follows:

- The RA to demand from contractor performance security money
- Contractor's equipment on site to be taken over by RA
- Contractor to be prevented from removing site facilities
- The Engineer to be formally notified for him to discharge obligations stated in the contract
- The RA to notify relevant Authorities and creditors of the termination for recovery of debts before contractor demobilizes

The consultants further advised the RA that the above matters had serious financial consequences to the RA if immediate action was not taken.

On 4 September 2014, the client wrote to the Consultant notifying them that the contractor had requested for a 3-month period to improve progress and after consultation with Government, a decision was made to give the contractor 2 months. The RA was therefore seeking advice on reasonable targets to be achieved during the 2-month period. The RA had drafted a letter to the Contractor seeking input of the consultant.

**✚ This study finds that the contractor by by-passing the consultant in requesting for deferment of the termination, did not follow accepted procedure in the management of contracts and the Roads Authority should not have tolerated this.**

The consultant responded through letter dated 5 September 2014 stating that the RA had no right to prescribe to the contractor resources such as plant and equipment required to improve progress. rather, the client should ask the contractor for an action plan for the two months and also ensure completion within the remaining period. the consultant further advised the RA that they felt 2 months was inadequate to measure tangible progress and that was of the opinion that the remaining works could not be done in the remaining period. On 16 August 2014, the contractor writes to the RA requesting withdrawal of letter for termination making a guarantee of K50 Million for improvement of the works for a period of 3 months. There is no explanation on file as to why the consultant was left out in these negotiations to give guidance to the client. However, the contractor's letter referenced above in part states that it would ***"...be highly appreciated if one Employer's representative could be sent on site for coordination of the relationship between the contractor and the consultant in order to implement the project smoothly."*** This would suggest that at this point, the relationship on site between the consultant and the contractor was not good.

In their letter dated 9 September 2014, the consultant noted that the contractor's submission for plan of action was not satisfactory citing that the proposed resources could not be used for measuring performance for the two- month period. He further proposed that the contractor should submit a resourced program and method statement which were not submitted as part of the action plan. The consultant also refuted the contractor's statement quoted above stating that the statement implies that the ***"...contractor's failure to perform is due to poor relationship between him and the consultant. This is a serious allegation which together with the rest of the allegations ought to be investigated and resolved."*** The consultant also commented upon the contractor's letter which stated that ***"In conclusion the contractor kindly advises the Employer to reverse the letter of Notice to Terminate the Contract."*** The consultant was of the opinion that this statement seemed to be a threat of some kind.

On 5 August 2014, the RA invites the consultant to a meeting stating that they had received communication from Abu Dhabi Fund that they were “**...not financing the consultancy services but only the civil works. This is not what we expected. We feel contractually obliged to ensure that you get paid for services...on the project.**” On 4th September 2014, the consultant was owed (letter of same date) \$449,090 and had not been paid from the beginning of the contract. In the above letter, the consultant was hopeful that the RA had resolved the matter of funding which was brought to the attention of the consultant in the meeting held on 15 August 2014. This issue was addressed in the meeting by the RA stating that the Consultancy services would not be paid for by the Abu Dhabi Fund “...as previously assumed, but by Malawi Government. Accordingly, the Consultant was requested to accord the RA time to make...arrangements for payments to be made from Government coffers.” The consultant agreed to this arrangement but requested speedy resolution of the matter as they had not been paid since December 2013.

 **This study finds that the RA should have known the terms of the funding from the beginning and not 10 months into the contract.**

In a letter dated 10 July 2013, the Fund wrote to Ministry of Transport copied to Ministry of Finance and received by the Roads Authority in July 2013 by the Roads Authority, the Abu Dhabi Fund wrote **that “Kindly note that as per the revised list of Goods, the loan proceeds will be utilized only to finance 60% of the Road Construction Works item.”** This letter shows that only the works component of the project was to be financed by the Abu Dhabi Fund.

In their letter dated 18 August 2014, the consultant expressed their displeasure that crucial issues pertaining to the termination were not discussed at the meeting of 15 August 2014 and that the consultant felt that they were treated as adversaries and not as advisers. The consultant’s view was that the meeting should have discussed:

- Amendment of the existing documents which contain some terms which are not favorable to the RA
- Selection of new contractor
- Recovery of Securities in case of termination
- Holding on to contractor’s equipment and plant
- Course of action to minimize costs during the hand-over period

In the event that the RA was not terminating the contract consultant was of the opinion that the meeting should have discussed the merits or demerits of retaining the contractor, proposal for the contractor to provide additional security if given a reprieve to guarantee performance and thereby minimizing financial loss to the Government, and action required to rescinding termination notice to amend serious defects in the contract.

The consultant was of the opinion that the issues raised by the contractor were accorded some importance after he was served termination notice. The consultant was concerned that they were not copied and given an opportunity to comment before the meeting. The dilemma faced by the consultant was that they were concerned that when they give advice to RA it is taken as underestimating the intelligence of the RA. On the other hand, not giving advice would be construed as the consultant is failing to discharge his duties.

The meeting of 15 August 2014 had the following highlights:

- Funding for consultant not to be paid by Abu Dhabi Fund but by Malawi Government
- RA informed the consultant that the contractor had alleged that he had not been given sufficient information to undertake construction of the works. The consultant stated that this was the first time in 8 months the contractor is alleging that his performance failure was due to lack of information. The consultant said that it was strange that the contractor was raising the issue after being served notice of termination. The RA stated that according to common law the contractor may raise issues at any time to which the consultant stated that issues relating to the project should only be determined by General Conditions of Contract. The RA reiterated their stand that rules of natural justice and common law will also apply.
- The client wanted to know if the contractor was required to compete designs according to Terms of Reference. The consultant stated that design was not part of the TORs as this work was only instructed after discovering that the previous design had errors and were instructed to undertake the designs concurrently with procurement of contractor and the road designs were completed in October 2013 and bridge in March 2014. It appeared that the RA did not have this design information and consultant was asked to submit the same at a cost and the same presented at a date to be advised.
- The RA presented a list of equipment and plant purported to be on site and requested the consultant to confirm its authenticity. The consultant stated that equipment on site is listed in the latest monthly progress report. The RA asked the consultant if in his opinion the equipment mobilized is sufficient to which the latter stated that they had repeatedly advised that the contractor has insufficient equipment on site.
- The meeting was also advised that although the contractor had many foreign personnel, they do not appear to possess relevant engineering knowledge to plan and execute the works.
- The client enquired whether the consultant would be able to work with the contractor if contract was not terminated stating that they were posing the question as it appeared that there was bad blood between the two. The consultant stated that the presumption was surprising as there were no personal issues between the two and stated that their actions to date were in accordance with the contract.
- The RA also stated that the contractor had alleged that the Resident Engineer had not been given powers as he was always referring matters to head office. This was

refuted by the consultant stating that both RA and contractor had letters issued to RE spelling out his authority on construction matters except variations which were referred to the Engineer in accordance with the contract.

- Issue of testing materials was also raised by the contractor stating that the RE refused to approve results of tests carried out by contractor and had not carried out tests expeditiously. Upon being asked for written communication regarding this the contractor had failed to substantiate this allegation.
- The consultant advised the RA against granting advance payment to foreign contractors as they are selected based on their financial and technical capabilities.
- The consultant advised that the client may experience problems in obtaining payments relating to Securities from foreign banks and further stated that in the event that RA decides not to terminate the contract, then the documents should be re-issued on local banks.
- The consultant advised the contractor for fixed contracts without price variation clause.
- The consultant advised that interest on late payments should have different components and the foreign component nit linked to Reserve Bank of Malawi Prime Lending Rate which was at around 40%. In terms of delayed advance payment, the advice was not to pay interest as this is loaned free of interest.
- The consultant lamented that there was no communication protocol as most issues are supposed to be dealt by or through the engineer. In this case, the consultant stated that from commencement, the contractor had been communicating certain issues directly with the employer and this had seriously undermined the authority of the engineer. In some instances, the contractor was implementing things discussed with RA prior to receiving approval of the engineer.
- The consultant stated that parties failed to respond timely to correspondence and sometimes not at all on major contract issues which negatively affected the administration of the project.
- The consultant stated that the contractor failed from time to time to follow procedures stipulated in the contract and this is the primary reason for failure to perform.

The minutes of this meeting revealed the unhealthy relationships between the three parties involved in the contract.

**✚ This study finds that the relationship between the client and consultant, and between consultant and contractor was strained at best and there was a need for the parties to work together. It would appear that the client and the contractor had a good relationship. Normally the opposite should be true as the consultant is deemed to always act, in respect of any matters relating to the**

**contract as a faithful adviser to the client and shall at all times support and safeguard the client's legitimate interests. A close relationship between the client and the contractor is therefore not healthy.**

On 17 November 2014, the consultant gave an update on progress for works undertaken as per Memorandum of Undertaking to postpone termination. The update shows that the contractor was only able to prepare road bed for the two-month duration given and concluded that the contractor was not capable of completing the works within the contract period.

On 29 November 2014, the consultant wrote to the client again advising of lack of progress on site after 12 months for a contract duration of 18 months citing that the contractor has failed to put in place an acceptable program for implementing the works. He also stated that excessive time had been spent hoping that the contractor would start performing and that it was impossible to complete the works within the contract period given that the bridge would require a minimum of 12 months to build.

The client wrote to the consultant refuting the claim that there was no tangible progress on site as the RA engineer had been given verification by the Resident Engineer that 5km of road bed preparation had been completed, 3.3km of subbase was completed and 3km of base was also completed. Regarding the program, the RA stated that it was not acceptable to the Consultant because the latter wanted the bridge to be included on the program whilst the contractor was not furnished with drawings. Further, the consultant was asking the contractor to carry out geotechnical investigations when this was the duty of the consultant. The client further stated that a lot of work had been done within the two months given showing that the contractor had capacity. With regards to the bridge, the RA stated that the bridge on this contract could easily be done within 6-8 months. Finally, the consultant was chastised not to deliberately hinder the contractor and hoped to see improvement in the performance of both the contractor and engineer so as the project would be completed within the agreed duration.

The consultant wrote a rebuttal letter defending their performance and advising the client that the contractor had not performed as stated by the client in their letter of 9 December 2014. The consultant alleged that the RA was giving the impression that they were protecting the contractor despite that he had failed to prove his capability even after being given the opportunity to do so through a Memorandum of Agreement. Regarding the bridge, the consultant stated that the program by the contractor now showed that he would complete the bridge in a period of 12 months validating the consultant's observation that it was impossible for it to be built within the remaining time on the contract. The RA had advised that the bridge could be built within 6 – 8 months.

On 13 January 2015, the RA wrote a letter giving notice to the consultant of their intention to terminate and to wind up his activities within 30 days from the contract citing Clause 17.1 of the GCC on the basis that:

1. The consultant had failed to take instruction and left the site during Christmas leaving the site unattended
2. The consultant failed to provide appropriate bridge designs which included an uneconomical design which overprovided the piling.
3. The consultant failed to maintain an amicable working relationship with both client and contractor

The official letter of notice is not on file but there is a copy of the draft from RA lawyers which was apparently sent and is referenced in the subsequent correspondence.

The consultant hired lawyers who wrote a letter dated 25 January 2015 claiming that the termination was not procedural as to them, the relevant clause 16.1(a) which states that termination can happen only if the consultant does not remedy a failure in the performance of his contract within 30 days after being notified. The consultant was relying on the provision that the consultant was never served with any notice to remedy a failure.

**✚ This study finds that the letter of notice for termination of the contract for the consultant did not follow the procedure laid out in the contract. It is a requirement of the contract under clause 16.1 for the RA to have given a 30-day notice to the consultant to remedy a failure in the performance of his obligations. The RA erred by submitting a notice of termination prior to the implementation of the notice for rectifying the failure as provided for in Clause 16.1**

In their response dated 9 February 2015, the RA rectified this anomaly by writing to the consultant to rectify the outlined failures in line with Clause 16.1 of the contract.

The consultant's lawyer wrote to RA on 12 February 2015 making reference to the letter from RA dated 9 February 2015 and proceedings of the High Court, Commercial division. The consultant's letter does not refer to what transpired in the High Court suffice to say that they offered for amicable resolution of the disputed issues.

On 12 March 2015, the lawyers for RA wrote to lawyers for the consultant submitting a consent order for the latter to sign and file the same in court signifying closure of the matter. Minutes of meeting held between the parties were also submitted under different cover.

The above minutes are not on file and therefore this study cannot comment on how the matter was resolved; suffice to say that it was resolved amicably.

- ✚ **A finding of this study is that had the parties started to talk from the outset, the matters should not have deteriorated to such a situation where legal intervention was consulted resulting in the parties resolving the issue by amicable settlement**

A letter from ODPP dated 16 February 2017 states that a No Objection had reluctantly been granted for two projects one of which was the Supervision contract of Jenda – Edingeni Road. The letter states *“This is because we expect that the provisions of the Public Procurement Act will be adhered to even in circumstances whereby the Authority is implementing a Government Directive. The PPA clearly indicates that a waiver can be granted in certain situations, given that the conditions pertaining to that waiver are met. As such, this office should have been consulted long ago, before addenda were already effected, not to seek for approval just for the sake of processing payments to suppliers.”*

- ✚ **This study finds that that the RA did not follow procedure in procurement for the Consulting Services due to a Government directive. Notwithstanding this, it would have been easier for the RA to “Pass the Buck” to the ODPP to make the decision and they would just have implemented it.**

There is no information on file to on the Addendum and therefore this study is unable to analyze this matter.

#### B. Filing System

- ✚ **One of the findings of this study is that there are a lot of gaps in the correspondence filed. There are very few Minutes of Meetings put on file. Some letters are not on file and letters from the same consultants on a different project are filed in the main files for the Jenda – Edingeni**



**Road. On such contracts where a foreign consultant and contractor are involved, it is important for full records to be kept so that information is available even if the foreign firms have returned to their respective countries.**

**v. Project Evaluation Report**

There was no project evaluation report on file.

**vi. Quality of the Works**

A site visit was conducted to confirm the project and to ascertain the quality of the works. The following is a gallery of the pictures taken during this visit:



Picture 4.4.2.1 – Section of the Road near Jenda



Picture 4.4.2.2 – Project Sign Board Showing Disclosure of Project to General Public

#### **4.4.3 Design and Supervision for Upgrading of Ekwendeni – Ezondweni Road in Mzimba District**

The study collected IDS for the above project and procurement procedures and analysis of the data collected is presented below: -

##### **i. Funding**

The project was funded by the Government of Malawi. The RA did not provide Engineer's Estimate for the project for this study.

##### **ii. Tender Process**

This information was not provided by the PE.

##### **iii. Contract Award – Contractor**

The contract was awarded to Connex Consultants at a contract price of MK100, 167,870

##### **iv. Scope of Works**

Original scope of the works was for design of 25kms and supervision of 5 kilometre section of Ekwendeni – Ezonweni Road. An Addendum was later given for supervision of the full 25 kms of this Road. An addendum was given later for design of a further 160 kms of road.

Whilst the contract had a defined scope at the beginning, the project did not have a defined scope.

- ✚ One of the findings of this study is that the scope for the project was not given for this study. From the contract documents, it is seen that this was defined as time went. The original scope for the contract was for 25 kms design and 5 kms supervision of the Ekwendeni – Ezondweni Road. The supervision component was changed to 25kms.**
- ✚ This study finds that because work was added on as the project progressed, there was no defined scope before commencement. The consultant was designing the road as it was being built. At some point the RA questioned the criteria taken by the consultant in designing the earthworks as it could not be justified.**
- ✚ The study finds that cost overruns were therefore a direct result of having no feasibility study, preliminary design and Detailed design prior to commencement of the project. In actual fact, the name of the project also evolved with time as different roads were added to the original scope.**

- ✚ **One of the findings of this study is that the project did not have an Environmental and Social Impact Assessment. This was done during design and construct period.**

#### **v. Contract Execution - Contractor**

Significant changes to the Contract:

Originally, the Design component of the project had 25 kms whilst the construction supervision had 5kms. During negotiations, the client confirmed that the scope of the supervision services had increased:

- Length of road to be upgraded increased from 5 to 25kms
- Two bridges and 1 box culvert added which were not in the 5km section
- Transport rates were adjusted to take into account price increases which had gone up since submission of proposal

- ✚ **The study finds that the Bid Validity ties the consultant to his prices and the rates for transport should not have been adjusted at negotiations stage; the purpose of a bidder maintaining bid validity is to ensure that the consultant maintains his prices. The PE therefore erred in making this adjustment.**

- ✚ **The increase in scope from 5kms to 25kms may have been supported by RA application and ODPP approval and reasons thereof validating the increase; however, this information is not on file and therefore this study cannot comment on the procurement process. That said, this study finds that this is an unorthodox way of procuring works and as it was seen during the period when designs and construction were undertaken at tandem, it was difficult to control quantities of earthworks.**

An Addendum was later given to Connex Consultants for the Detailed Design for the Upgrading of the following roads:

1. M22 – Mzimba – Mtangatanga Road Section (25kms)
2. S107 – Mtangatanga T/off – Eswazini – Mzalangwe – Kafukule – Ezonweni Road section (85kms)
3. T308 – Ezondweni – Engucwini – Njakwa Road Section

The Addendum included an Environmental and Social Impact Assessment of the project

The submitted design by Connex Consultants for the design of the Upgrading of Mtangatanga– Eswazini – Mzlangwe Section of the Contract was rejected by the client through letter reference RA/07/05(CON) dated 4 November 2010 because it was not acceptable and did not meet industry standards.

A further Addendum was approved by ODPP raising the supervision component by 125% from K80, 158,050 to K206, 267,147.21. There is no letter to ODPP justifying the increase. An internal memo shows that the Addendum was required for the following reasons:

To synchronize the works contract and supervision contract periods as the supervision contract had 9 months less

Take into account extension of time for works contract of 8 months

Revise the transport costs due to increase in fuel prices

Increase fee rates for resident engineer by 25% to be in line with similar projects.

**✚ The study finds that the increase in resident engineer fees were not warranted as the consultant should have been bound by his tender; unless the consultant demonstrated valid reasons for increasing the fee structure i.e. Government legislation; if the same was provided for in the contract (This study did not access copy of the contract document for Connex Consultants). It is not contractual to increase rates to be in line with similar projects; hence the PE erred in approving this increase**

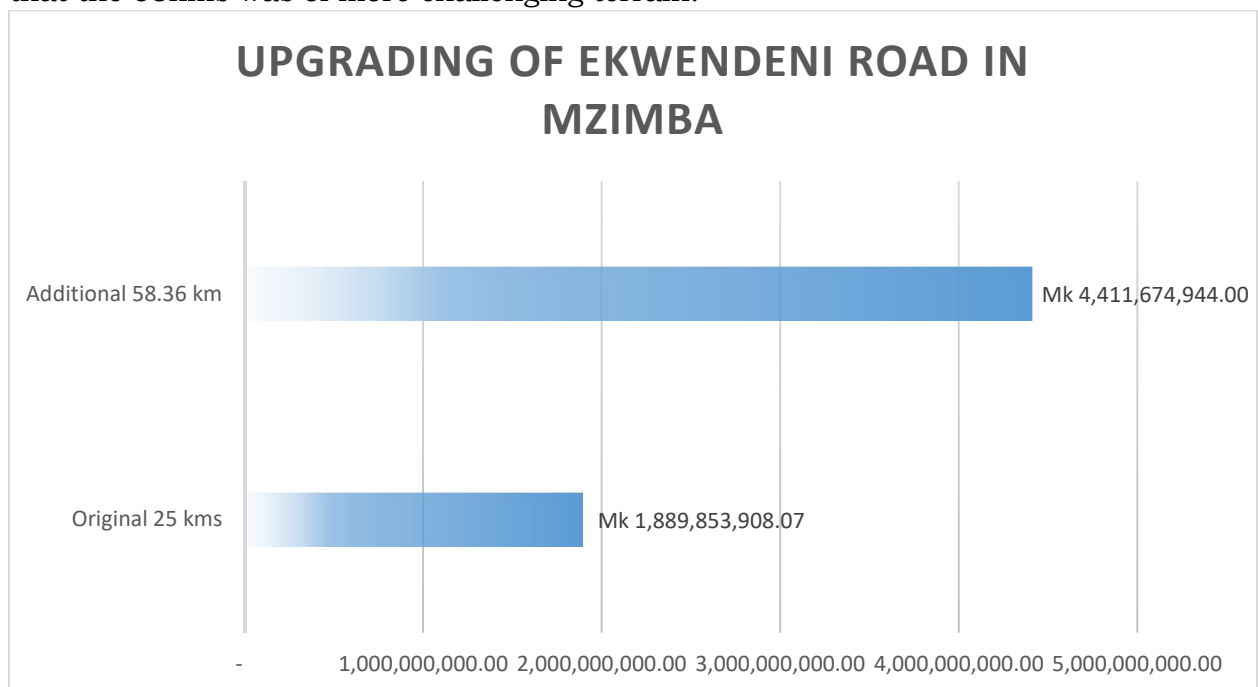
The Government gave an instruction for further work. This necessitated that the RA negotiate with both the contractor and the consultant to take the additional works. In a memo to the minister, the RA requested the Ministry to choose from 3 options which road was to be taken into consideration:

- Mzimba – M22/S107 Junction at Mtangatanga Turnoff 16.15km
- Mzimba – Eswazini
- Mzimba – Mzlangwe
-

The RA guided the Ministry that the Mzimba – Eswazini Road made economic sense given the distance and cost for site establishment; this is the optimum compromise. However, Government opted for the Mzimba – Mzlangwe Road (58.36km).

It should be noted that the original contract which is Ekwendeni – Ezondweni is only 25kms at MK1, 889,853,908.07. The Government had approved an addition of 58.36kms and recommended that the contractor and consultant on the project should be engaged to do this work. This work could only be approved under Single Sourcing Procurement. On August 1, 2008, the RA wrote to ODPP seeking approval for single sourcing for both the contractor and consultant.

The estimate for the 58kms on the additional works by RA was MK4, 411,674,944 by straight extrapolation. However, in one of the internal memos, the RA were aware that the 58kms was of more challenging terrain.



**Graph 4.4.3.1 – Graph shows Value of Original Works against revised budget**

- ✚ It is the finding of this study that the RA should have provided realistic estimates for this project.**
- ✚ This study finds that the RA should have advised Government to formally procure these works under a new and separate bidding procedure for both the consultant and contractor. In this instance, the single sourcing application**

**made by RA did not meet the criteria set in the Public Procurement Act: -**

- **Clause 30(10) A-D of the Procurement Act allows only the following instances where Single Sourcing is permitted:**
  - a. Public procurement by means of the single-source procurement method is permitted only in the following circumstances, namely -**
  - b. when the estimated value of the procurement does not exceed the amount set in the Regulation;**
  - c. when only one supplier has the technical capability or capacity to fulfill the procurement requirement, or only one supplier has the exclusive right to realize manufacture of the goods, carry out the works, or perform the services to be procured;**
  - d. when there is an emergency need for the goods, works and services, involving an imminent threat to the physical safety of the population or of damage to property, and engaging in tendering proceedings or other procurement methods would therefore be impractical; or**
  - e. when the procuring entity, having procured goods, works and services from a supplier, determines that additional goods, construction or services must be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, construction or services, taking into account the effectiveness of entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question**



**None of the above 4 criteria were met by the RA in applying for single sourcing. This study finds that PEs should enforce the clauses of single sourcing vigorously and the onus should be on Government to procure services using established guidelines.**

The Government gave a further instruction for the contractor through the RA (Letter Ref. NRA/19/1 dated 7 May 2009) to make a payment through the contract for a billboard depicting Public Works Program at a cost of K3,145,500. The billboard had already been placed at Genda and payment was to be effected to Smart Ads Company.

**+ This study finds that procurement guidelines were not followed. The RA should have sought approval from ODPP notwithstanding that it was a Government directive.**

The RA wrote to the consultant through letter Ref. RA/07/05 dated 5 June 2009, some 15 months on a 24-month project, the designs for 5 kms had not yet been completed. The letter showed concern by the RA stating that the designs for first 5kms of the Mzimba – Eswazini – Kafukule –Ezondweni Road section had deficiencies and did not meet the TORs. The letter cited that the first submission had alignment deficiencies such as unwarranted land acquisition and excessive cut and fill which could not technically and economically be justified. The second and third submissions were reviewed and found to be lacking in design data and details giving the impression that the design engineer had not physically run through the road with a surveyor to fix the alignment. The horizontal alignment therefore did not show the existing road in relationship with the new alignment.

The RA further stated that both the supervision consultant and contractor were already on site and because of this delay, the RA was exposed to incurring unproductive supervision costs and unwarranted potential risk for extension of time on the supervision and works contracts. The RA gave warning for termination in the above letter if the design was not submitted by 12 June 2009.

In his response to the above letter, the consultant on 8 June 2009 acknowledged the delays and requested a further 14 days to complete the design. He also highlighted the fact the RA had not made a payment since commencement of the design work in August 2008 and had not received comments in time thereby affecting the delivery of the design.



On 12 June 2009, the consultant submitted Final Design Drawings for the project. No reference was made to the Design Report in this submission.

On 25 November 2009 the RA wrote to the consultant giving comments for the Final Design Report submitted on 17 November 2009 (No copy of this was found on file by this study. The RA found the report to be unacceptable and therefore rejected it in its entirety).

**✚ This study finds that the consultant was in breach of contract by not making any tangible submissions of deliverables 15 months into the contract on a 24-month contract for 5 km road section. The contract should have been terminated long before this time. The client therefore made an error in not enforcing the provisions of the contract.**

**✚ This study further recommends that the NCIC may be interested in undertaking a study on the issue of design capacity for consultants and perhaps introduce training in this area.**

On 3rd June 2009, the RA wrote to the Consultant stating that earthworks activities had exceeded the tender quantities when only 5kms of the tendered 25kms road had been opened for works. The client further stated this was so despite the fact that the consultant's estimated quantities had been increased by the RA by a factor to cater for the 25 kms.

**✚ This study finds that a proper estimate based on an actual inventory for the additional 20 kms should have been taken instead of basing quantities on the first 5 kms to estimate for the 20kms.**

The design of the Upgrading of Mtangatanga– Eswazini – Mzalangwe Section of the Contract was rejected by the client through letter reference RA/07/05(CON) dated 4 November 2010.

**✚ This study finds that the RA should have terminated this contract at the stage when it was obvious that the consultant did not have the capacity to perform. All the ample signs were there in the course of the contract.**

**i. Project Evaluation Report**

There was no project evaluation report on file.

**vi. Quality of the Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit. The quality of the road works was generally of good quality although the road surface was rough making rideability to be not too smooth. Drainage for the road was very good as it is evident that the consulting engineer paid special attention to this aspect of the works.



Road Section at Kasito Bridge



Road showing neat drainage layout; and irregular surfacing

#### **4.4.4 Rehabilitation of Mzuzu to Nkhata Bay (M05) Road**

IDS were collected for the above project for this study and procurement procedures and analysis of the data collected is presented below: -

##### **i. Funding**

The project was funded by the African Development Bank. The total budget for the project was as follows: -

##### **Project Budget: ADF Financing (UA21.89) Million**

Civil Works	UA19.30
Design Review	UA 1.70

##### **ii. Tender Process - Contractor**

Procurement information was not provided by the PE. However, the following are the consulting firms that participated in the procedure:

Number of Firms Tendering: 7 No.

1. Conduril-Engenharia SA
2. Strabag International GmbH
3. Kilin Insaat Turizm Sanayi Ve Ticaret AS
4. Consolidated Contractors Company WLL (Kuwait)
5. Sogea Salom
6. China Geo Engineering Corp.
7. Mota Engil Engenharia SA

##### **iii. Contract Award – Contractor**

Strabag International GmbH were awarded the contract at a contract price of K16,780,172,038

##### **iv. Scope of Works**

**Purpose:** To rehabilitate the Mzuzu – Nkhata Bay Road which is part of the Mtwara Corridor linking Malawi to Tanzania Port of Mtwara on the Indian Ocean in order to ensure efficient utilization of Bridge and Road infrastructure to meet future and current development needs of the economy through seamless transportation of goods and services on the road network.

##### **Performance Indicators**

###### **Output Indicators:**

- Kms of road improved from 0Km to 47 km after completion.
- Road condition: International roughness index (IRI) reduced from >5 (poor condition) to <3.5 (good condition)

###### **Outcome Indicators:**

- Travel time reduced by 33% from the current 1 hour by passenger transport to less than 40

minutes

- Vehicle operating costs (VOC) reduced by 25% from an annual average cost of \$0.49 per vehicle-km
- Employment of women and youth (10% and 50% respectively)

**Impact indicators**

A socio-economic index which measures the socio-economic welfare of people in the project catchment area.

**✚ This study finds that completed projects by this PE are likely to benefit from a post-construction assessment of such indicators as listed above to measure whether the PE has achieved the purpose for constructing the projects. It is recommended that all projects should have such indicators prior to commencement.**

**v. Contract Execution - Contractor**

Significant changes to the Contract:

As at 30 September 2016 (Period covered by Payment Certificate information on file), there were no escalations.

So far, there is every indication that the duration shall change by looking at the progress of the works contract. By end of October 2016, as per Minutes of Site Meeting No. 3, the contractor was reporting that the delays were due to stoppage of works due to stoppage of production at Dunduzu Quarry by the Department of Mines, weather and to a greater extent, delayed issuance of drawings by the consultant. The records however show that the contractor was issued with drawings to enable him to advance the works and the only record for official notification for such delays is only for the quarry closure for which a notice for delays has been issued.

**vi. Project Evaluation Report**

There was no project evaluation report as the project is on-going



**vii. Quality of the Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit. The works are of excellent quality. The contractor is adhering to quality and safety standards.



Picture 4.4.4.1 – Benching Slope Protection against Earthworks Collapse



Picture 4.4.4.2 – Road Surfacing circa km18+000

#### **4.4.5 Consulting Services for Design Review, Pre-contract Services and Supervision of the Rehabilitation of Mzuzu to Nkhata Bay Road**

IDS were collected for the above project for this study and procurement procedures and analysis of the data collected is presented below: -

##### **i. Funding**

The project was funded by the African Development Bank. The total budget for the project was as follows: -

##### **Project Budget: ADF Financing (UA21.89) Million**

Civil Works	UA19.30
Design Review	UA 1.70

##### **ii. Tender Process - Consultant**

Procurement information was not provided by the PE.

##### **iii. Contract Award – Consultant**

The contract was awarded to Group Consult Global In Association with Pamodzi Civil Engineering at a contract sum of \$999,550.

##### **iv. Scope of Works**

To review existing designs and update the detailed engineering design of the road including production of bidding documents. The consultant shall assist the Roads Authority during pre-contract stage and supervise and monitor physical progress and financial status of the construction works to ensure timely completion and within budget and the project meeting acceptable engineering and safety standards.

#### **V. Contract Execution - Contractor**

Significant changes to the Contract:

##### **Variation to Contract Price**

As at 30 January 2017 (Period covered by information on file) there were no variations to the contract issued.

So far, there is every indication that the duration shall change by looking at the progress of the works contract. By end of October 2016, as per Minutes of Site

Meeting No. 3, the contractor was reporting that the delays were due to stoppage of works due to stoppage of production at Dunduzu Quarry by the Department of Mines, weather and to a greater extent, delayed issuance of drawings by the consultant. The records however show that the contractor was issued with drawings to enable him to advance the works and the only record for official notification for such delays is only for the quarry closure for which a notice for delays has been issued.

**✚ This study finds that the period for the contract is likely to increase due to the above delays.**

**Escalation of Contract Price:**

As at 30 January 2017 (Period covered by information on file), there were no escalations. Clause 42.3 of the Contract is meant to precludes price adjustment for the duration of the contract.

During the procurement phase for the contract, the Funding Agency African Development Bank (ADB) in their letter dated 16 April 2014 had requested the client to delete the escalation clause in the draft contract citing “...***that the price adjustment clause should not be included in a consultancy services contract as this is more suitable for civil works w(h)ere cost of materials may be subject to price fluctuation.***”

**✚ It is noted by this study that although the amendments were made, there are still some loop holes in the drafting of this contract that can be taken advantage of by the consultants.**

**General Conditions of Contract Clause 42 states “Remuneration and Reimbursable Expenses:**

***The client shall pay to the consultant (i) remuneration that shall be determined on the basis of time actually spent by each expert in the performance of the services...and (ii) reimbursable expenses that are actually and reasonably incurred...***

**Clause 42.3: Unless the SCC provides for price adjustment of remuneration rates, said remuneration shall be fixed for the duration of the Contract.”**

The Special Conditions of Contract Clause states:



**SCC 42.3: Price Adjustment on remuneration:**

**(a) No Adjustment for the duration of the contract.**

**✚ The above provisions of Clause 42 open up the possibility of the consultant to claim for adjustment of price for reimbursable items under the contract as the special conditions made changes to remuneration and left reimbursable costs open for fluctuation.**

This observation is further reinforced by the provisions of General Conditions of Contract Clause 37 which states in part that ***“If after the date of this contract, there is any change in applicable law...with respect to taxes and duties which increase or decrease the costs incurred by the consultant...then remuneration and reimbursable expenses ...shall be increased...accordingly...”***

This clause is not amended in the SCC.

**✚ This clause of the contract, this study finds, was therefore drafted not in keeping with the ADB requirement that this contract should not be subject to fluctuations. The contract was drafted correctly by fixing the remuneration but failed to fix the reimbursable cost element which is still subject to adjustment in the event that taxes and duties have been adjusted by change in the applicable law; contrary to ADB requirements.**

**Environmental impact:**

An environmental and Social Impact Assessment Report was submitted in 2008.

**Land Settlement Impact:**

This report was prepared in 2012

In a letter dated 10 September 2014, the Road Fund Administration was advised to make the following payments:

- |                               |               |
|-------------------------------|---------------|
| 1. Structures (hawkers/shops) | MK 26,298,325 |
| 2. Trees and crops            | MK 15,805,800 |

3. Telecommunication assets	MK 44,815,508
4. Water supply assets	MK 139,569,989
Total	MK 226,489,622

The compensation exercise for structures and trees and crops was organized by the Road Fund Administration and Roads Authority between 30 September and 7 October 2014 and was attended by the Anti-Corruption Bureau (ACB). In their report, the following recommendations were made:

1. There is a need to physically verify properties that will be compensated as it was difficult to prove the existence of properties being compensated and hence giving room for fraud. A further recommendation was for the verification process to be independent from the actual payment.
2. Cash counting machines were essential to cut time it takes for cash to be verified by the cashiers and beneficiaries. Further, it was noted that prior arrangements should be made with banks so that the bank transactions are processed quickly
3. The ACB noted that more than 10 deceased beneficiaries were paid in Nkhata Bay. The bureau recommended that the list of deceased beneficiaries should be drawn in advance to allow confirmation and verification as this is a risky area where ghost beneficiaries could have been created.

Generally, the ACB was satisfied with the procedure adopted for undertaking the compensations noting that the process was well planned and organized. The engagement of the community through a committee led to the reduction in the number of grievances registered. The lessons learned, the ACB recommended, should be part of the standard procedure to be adopted for the compensation process.

### **vii. Project Evaluation Report**

There was no project evaluation report on file as this is an on-going contract.

### **viii. Quality of the Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit. Quality of the works was very good and the finished sections are enjoyable to drive.



### **1.5.1 Construction of Staff Houses at Tedzani Power Station (ESC476/NCB/W/FY14-Lot 2)**

#### **i. Funding**

This project was funded by Electricity Supply Commission of Malawi (ESCOM).

### **4.4.6 Tender Process – Consultant Findings and Recommendations**

- 1) This study found that the specific conditions of contract on one of the projects by this PE was ambiguous and this led to a delayed decision in the procurement of vehicles. This study recommends that in future the PE should review specifications of vehicles in the special conditions for clarity
- 2) . This study finds that payments made to the contractor on one of the projects for this PE were irregular as an admeasurement contract should not have a final account for re-measured works exactly the same as the original contract. This also applies to the bridge variation which shows that the quoted price was paid as a lump sum on the same contract.
- 3) This study finds the client erred by not involving the consultant on such an important decision as deferment of termination of a contractor despite there being evidence of non-performance.
- 4) This study finds that on one of the projects under this study, the RA did not know the terms of the funding from the beginning and were surprised 10 months into the contract that the loan only covered the works contract and not the consultancy.
- 5) This study finds that the relationship between the client and consultant and between consultant and contractor on one of the projects was strained at best and things were left too long to deteriorate before action was taken. This led to the client and consultant suing each other and it is this study's finding that matters should not have deteriorated to such a situation where legal intervention was consulted resulting in the parties resolving the issue by amicable settlement with a court order.
- 6) This study finds that the letter of notice for termination of the contract for the consultant on one of the projects did not follow the procedure laid out in the contract. It is a requirement of the contract under clause 16.1 for the RA to have given a 30-day notice to the consultant to remedy a failure in the performance of his obligations. The RA erred by submitting a notice of termination prior to the

implementation of the notice for rectifying the failure as provided for in Clause 16.1.

- 7) One of the findings of this study is that there are a lot of gaps in the correspondence filed. There are very few Minutes of Meetings put on file. Some letters are not on file and letters from the same consultants on a different project are filed in the main files for another project. On such contracts where a foreign consultant and contractor are involved, it is important for full records to be kept so that information is available even if the foreign firms have returned to their respective countries.
- 8) One of the findings of this study is that the scope for Ekwendeni – Ezondweni was not given for this study. However, from the contract documents, it is seen that this was defined as time went. The original scope for the contract was for 25 kms design and 5 kms supervision of the Ekwendeni – Ezondweni Road. The supervision component was later changed to 25kms. This study finds that because work was added on as the project progressed, there was no defined scope before commencement. The consultant was designing the road as it was being built. The increase in scope from 5kms to 25kms may have been supported by RA application and ODPP approval and reasons thereof validating the increase; however, this information is not on file and therefore this study cannot comment on the procurement process

This study also finds that the RA should have advised Government to formally procure the varied works under a new and separate bidding procedure for both the consultant and contractor. In this instance, the single sourcing application made by RA did not meet the criteria set in the Public Procurement Act: -

- a. Clause 30(10) A-D of the Procurement Act allows only the following instances where Single Sourcing is permitted:
- b. Public procurement by means of the single-source procurement method is permitted only in the following circumstances, namely -
- c. when the estimated value of the procurement does not exceed the amount set in the Regulation;
- d. when only one supplier has the technical capability or capacity to fulfill the procurement requirement, or only one supplier has the exclusive right to realize manufacture of the goods, carry out the works, or perform the services to be procured;
- e. when there is an emergency need for the goods, works and services, involving an imminent threat to the physical safety of the population or of damage to property, and engaging in tendering proceedings or other procurement methods would therefore be impractical; or
- f. when the procuring entity, having procured goods, works and services from a supplier, determines that additional goods, construction or services must be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology,

construction or services, taking into account the effectiveness of entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question

None of the above 4 criteria were met by the RA in applying for single sourcing. This study finds that PEs should enforce the clauses of single sourcing vigorously and the onus should be on Government to procure services using established guidelines.

This study finds that procurement guidelines were not followed. The RA should have sought approval from ODPP notwithstanding that it was a Government directive.

Further, the study finds that cost overruns were therefore a direct result of having no feasibility study, preliminary design and detailed design prior to commencement of the project. In actual fact, the name of the project also evolved with time as different roads were added to the original scope. Another finding of this study is that the project did not have an Environmental and Social Impact Assessment. This was done during design and construct period.

This study finds that the consultant was in breach of contract by not making any tangible submissions of deliverables 15 months into the contract on a 24-month contract for 5 km road section for the Ekwendeni – Ezondweni road project. The contract should have been terminated long before this time. The client therefore made an error in not enforcing the provisions of the contract.

This study further recommends that the NCIC may be interested in undertaking a study on the issue of design capacity for consultants and perhaps introduce training in this area.

- 9) On one of the projects run by this PE, the study finds that they erred in making an adjustment to the consultant's rates during contract negotiations prior to commencement after he had raised the issue of increased prices. The Bid Validity ties the consultant to his prices and the rates for transport should not have been adjusted at negotiations stage; the purpose of a bidder maintaining bid validity is to ensure that the consultant maintains his prices and this is a basis for award. Further, during the construction period, a further increase in rates for the resident engineer fees was not warranted as the consultant should have been bound by his tender; unless the consultant demonstrated valid reasons for increasing the fee structure i.e. Government legislation; if the same was provided for in the contract (This study did not access copy of the contract document for

Connex Consultants). It is not contractual to increase rates to be in line with similar projects; hence the PE erred in approving this increase.

- 10) This study finds that completed projects by this PE are likely to benefit from a post-construction assessment of such indicators on one of the projects funded by the ADB to measure whether the PE has achieved the purpose for constructing the projects. It is recommended that all projects should have such indicators prior to commencement.

#### 4.5 Electricity Supply Commission of Malawi (ESCOM)

This study reviewed the construction of a total of 28 No. staff houses at Tedzani and Nkhula Falls respectively. These contracts were awarded to DEC Construction and PBM Construction.

**Table 4.4.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Construction of Staff Houses at Tedzani Power Station (ESC476/NCB/W/F Y14-15 Lot 2)	Blantyre	The proposed contract duration was 150 days. The scope of works were as follows: 2. Professional 3 bed new staff houses 3 nr. 3. Supervisory 3 bed junior staff houses 5 nr. 4. Artisan 2 bed junior staff houses 2 nr. 5. Artisan 3 bed mapolisi staff houses 4 nr.	To improve and increase staff accommodation and welfare.	K 435,942,984.2	In progress
Construction of Staff Houses at Nkhula Power Station		The scope of works at Nkhula were as follows:	To improve and increase staff accommodation	Mk 367,022,240.8	In progress



Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
(ESC476/NCB/W/F YI14-15 Lot 1)		<ol style="list-style-type: none"> <li>1. Construction of Professional 3 bed new staff house 1 nr.</li> <li>2. Construction of Professional 3 bed renovated senior staff house 3 nr.</li> <li>3. Construction of Supervisory 3 bed junior staff house 2 nr.</li> <li>4. Construction of Supervisory 3 bed junior staff house 1 nr.</li> <li>5. Construction of 2 artisan bed junior staff house 4 nr.</li> <li>6. Construction of</li> </ol>	ion and welfare.		

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
		artisan 3 bed mapolisi staff house 2 nr. 7. Construction of semi-detached staff house 1 nr			

**ii.**

The supervision of the project was done internally and was supervised by the department of Quantity Surveying at ESCOM.

**iii. Tender Process – Contractor**

The bidding was conducted through National Competitive (NCB), and was open to all interested eligible bidders registered with the National Construction Industry Council (NCIC) of Malawi in the Mk 500 Million category or above. The activity was advertised locally in The Daily Times Newspaper on 12<sup>th</sup>, 13<sup>th</sup> and the 19<sup>th</sup> of January 2015.

The bids were opened on the 12<sup>th</sup> of February, 2015. The bidding documents were collected at a fee of Mk10, 000.00

A total of 23 firms collected the bidding documents, but only 12 of these managed to submit. The results were read out in the presence of all the bidders' representatives, and were as follows:

1. DHB Building Contractors: Mk499,387,102.50
2. Fargo Ltd: Mk 468,496,946.51
3. PBM: Mk439,715,385.10
4. Mwala Building Contractors: Mk419,492,623.83
5. Paramount Holding: Mk485,215,605.16
6. Dec Construction: Mk440,500,355.30
7. J & J Construction: Mk 512,000,000.00
8. Tikhalewawo Building Contractors: Mk486,935,933.00
9. Trinkon Construction Ltd Mk474,699,783.76

- 10. PMC Ltd Mk457,455,993.53
- 11. B.M. Contractors Ltd Mk485,325,551.67

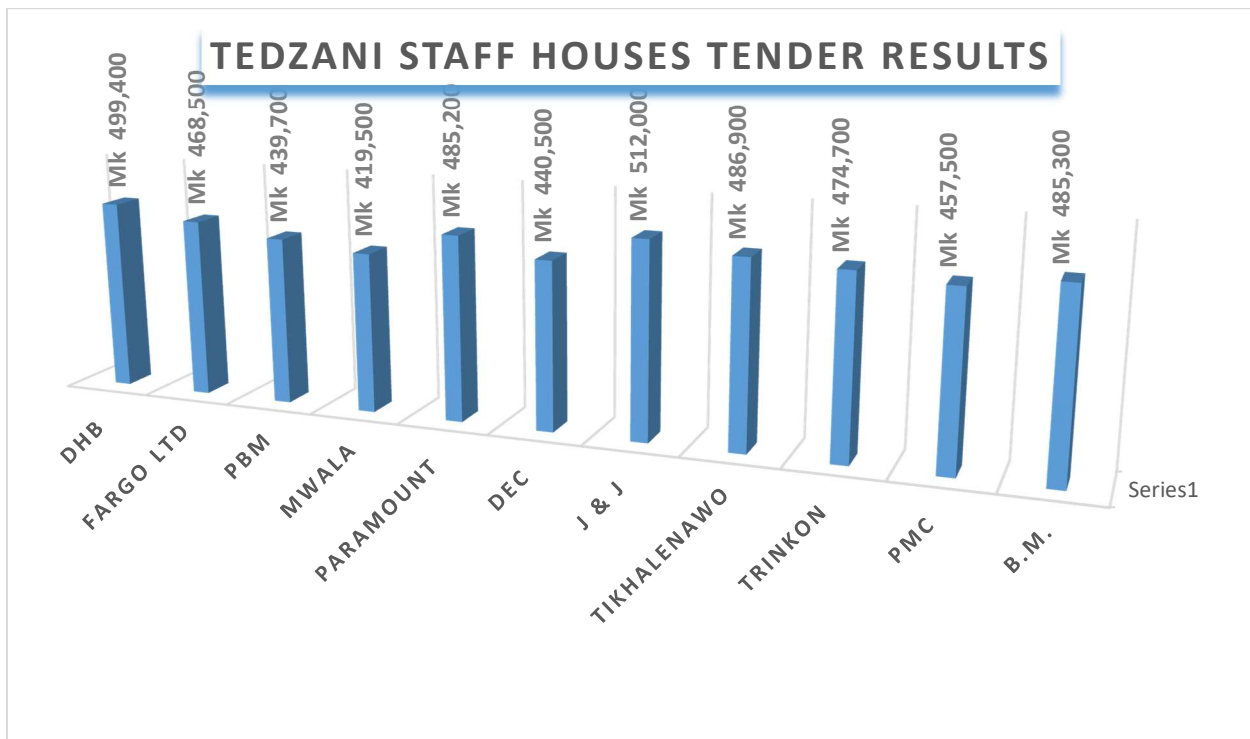
During the preliminary evaluation stage all except Mwala Building Contractors failed as a result of providing a registered NCIC certificate in the MK 100 million category as opposed to the required Mk 500 million.

In the detailed (technical) evaluation; the following did not comply and were therefore deemed to be none responsive and were rejected:

- 1. Mkaka Construction Company - inadequate average annual volume of works.
- 2. Trinkon Construction Ltd – inadequate average annual volume of works.
- 3. PMC – inadequate average annual volume of works and inadequate experience as a contractor.
- 4. BM Construction Ltd – inadequate average annual volume of works and inadequate liquid assets.

The remaining bidders passed the detailed (technical) evaluation stage and were therefore recommended for the financial evaluation. The evaluation team evaluated those bidders who passed the detailed evaluation, checking the arithmetical errors on each of the bidder’s prices. Errors were found and corrections were made.

The evaluators recommended that the bid be awarded to PBM Construction who was the lowest evaluated bid; at a contract sum of Mk 435,942,984.23.



Graph 4.4.5.1 – Tender results ('000)

**iv. Contract Award – Contractor**

PBM Construction of P.O. Box 31495, Lilongwe were awarded the contract at Mk435,942,984.23.

**v. Scope of Works**

The proposed contract duration was 150 days and the scope of works were as follows:

1. Professional 3 bed new staff houses 3 nr.
2. Supervisory 3 bed junior staff houses 5 nr.
3. Artisan 2 bed junior staff houses 2 nr.
4. Artisan 3 bed mapolisi staff houses 4 nr.

**vi. Contract Execution – Contractor**

**Variation to the Contract Price:**

The following variation orders were issued to the contractor:

Shift brick wall and add window to the bathroom to all professional houses.

Submit costs of stone pitching to have concrete plinth.

Revised type and location of septic tank.

Height of tiling to be at window level.

Contractor to submit quote for cupboards, and shelving to storerooms, and bedrooms for approval from the project QS.

These additional works were controlled to be within the contract contingency sum.

**Variation to Contract Duration:**

In a letter dated 12<sup>th</sup> Sept 2015 under the heading “Submission of claim No 1 and Works Program (Request for Extension of Time) ref ESC-TEDZANI/PBM/02; the contractor requested for the first extension of time from the scheduled end of 8<sup>th</sup> January 2016 to the 29<sup>th</sup> of March 2016 as a result of an instruction that Mapolisi houses should be delayed for the client to create accommodation of the people currently using the houses.

The contractor also submitted a revised program on the 16<sup>th</sup> of October 2015 and a request for extension of time. Below are the reasons the contractor furnished for the request on the EOT:

An instruction was issued not to commence with the works of demolishing the existing Mapolisi houses and delay so as allow space for reallocation of the families staying there. The contractor requested for an extra 90 days.

1. An instruction was issued to reposition the supervisor houses and as a result the contractor claimed to have lost 7 days in the program.
2. The contractor encountered rocks during the excavations as a result this slowed progress, and the contractor claimed to have lost 7 days because of these unforeseen circumstances.
3. Foundations were built on a steep gradient which led to increase in the height of foundations for professional houses thereby extending the backfill and layered compaction processes.

In a letter submitted on the 16<sup>th</sup> October 2015, the contractor claimed to have lost 24 days in the 1<sup>st</sup> phase of the project and 90 days in the 2<sup>nd</sup> phase of the project. The contractor therefore requested for 114 days as extension of time.

Currently, the contract is in its final phases and another extension of time was granted because of the delay of reallocating families in the existing mapolisi houses which were awaiting demolishing and other works. However proper documentation and correspondence explaining reasons behind this delay could not be traced.

**✚ One of the findings of this study is that no proper feasibility study was done when preparing the contract documents. A simple site visit would have provided the design engineer or quantity surveyor adequate information for the terrain necessitating the inclusion of cut and fill and rock excavation in the bid documents. These items should have not come as variations; given the existing site conditions.**

**vii. Project Evaluation Report**

There is no project evaluation report as project is still on-going.

**viii. Quality of Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit. The quality of the works is of excellent quality. During the visit it transpired that work had stopped as the contractor required payment that was being processed to be paid. No further information on this was available although it is the finding of this study that the contractor had no excuse to stop work pending a payment to be made as there are appropriate remedies in the contract.



**Picture 4.5.1.1 – Senior Professional House Type**





**Picture 4.5.1.2 – Senior Staff house, Semi-detached**

**ix. Findings and Recommendations**

The following are the findings of this study:

- Review of documents shows that some were misfiled or went missing from the files. This includes certificates for payment to the contractor.
- Correspondence between the parties in this project was sometimes through verbal communication without documentation.
- One of the findings of this study is that no proper feasibility study was done when preparing the contract documents. A simple site visit would have provided the design engineer or quantity surveyor adequate information for the terrain necessitating the inclusion of cut and fill and rock excavation in the bid documents. These items should have not come as variations; given the existing site conditions.



#### **4.5.2 Construction of Staff Houses at Nkula Power Station (ESC476/NCB/W/FY14-15 Lot 1)**

##### **i. Funding**

This project was funded by Electricity Supply Commission of Malawi (ESCOM).

##### **ii. Tender Process – Consultant**

The supervision of the project was done internally and was supervised by the department of Quantity Surveying at ESCOM.

##### **iii. Tender Process – Contractor**

The bidding was conducted through National Competitive (NCB), and was open to all interested eligible bidders registered with the National Construction Industry Council (NCIC) of Malawi in the Mk 500 Million category or above. The activity was advertised locally in The Daily Times Newspaper on 12<sup>th</sup>, 13<sup>th</sup> and the 19<sup>th</sup> of January 2015.

The bids were opened on the 12<sup>th</sup> of February, 2015. The bidding documents were collected at a fee of Mk10, 000.00. A total of 23 firms collected the bidding documents, but only 12 of these managed to submit. The results were read out in the presence of all the bidders' representatives, and were as follows:

1. DHB Building Contractors: Mk415,142,598.75
2. Mkaka Construction: Mk553,936,154.42
3. Fargo Ltd: Mk 410,586,439.78
4. PBM: Mk 379,075,209.17
5. Mwala Building Contractors: Mk 369,505,007.96
6. Paramount Holding: Mk467,497,306.57
- 7. Dec Construction: Mk367,606,424.98**
8. J & J Construction: Mk 443,000,000.00
9. Tikhalelawo Building Contractors: Mk425,197,987.02
10. Trinkon Construction Ltd Mk401,111,070.11
11. PMC Ltd Mk424,717,493.03
12. B.M. Contractors Ltd Mk418,774,990.99

During the preliminary evaluation stage all bidders apart from Mwala Building Contractors passed. Mwala failed as a result of being registered under the Mk 100 million category as opposed to the required Mk 500 million category stated.

In the detailed (technical) evaluation stage the following contractors failed:

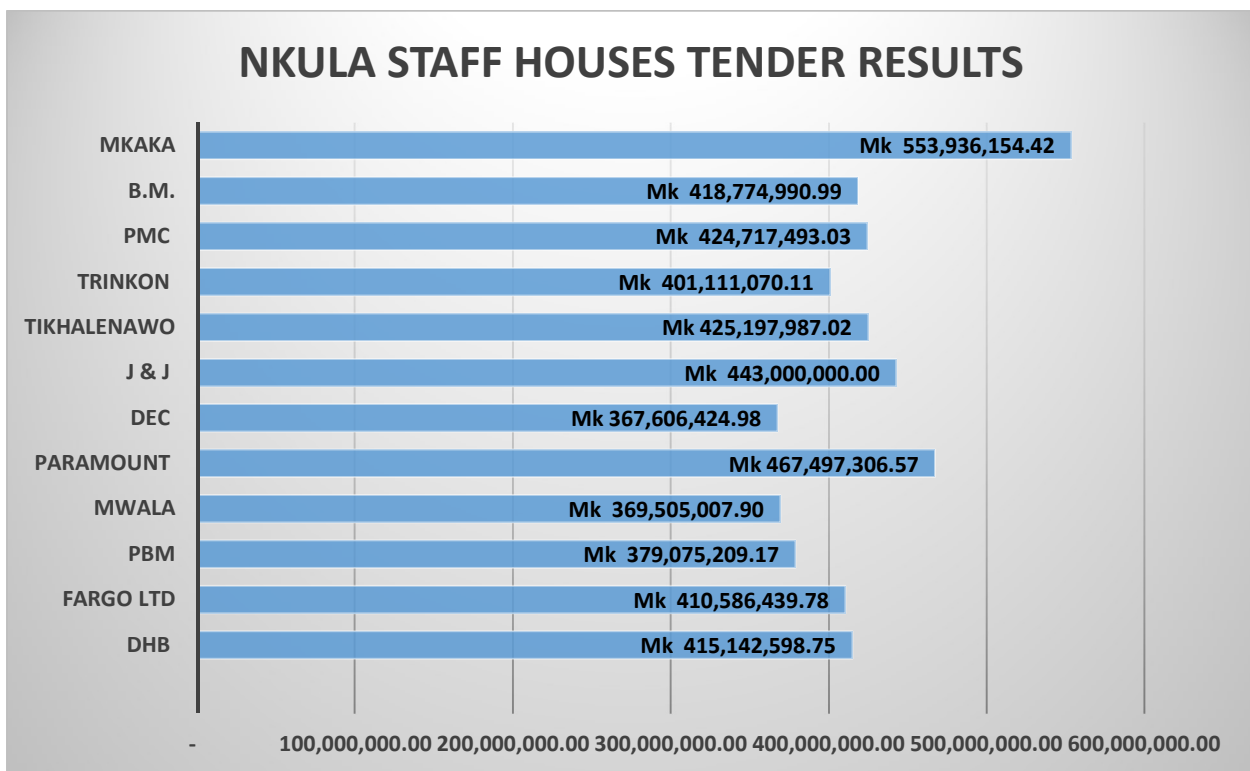
1. Mkaka Construction Company – inadequate average annual volume of the construction works.
2. Trinkon Construction Ltd – inadequate average annual volume of works.

3. PMC – inadequate average annual volume of works, and inadequate experience as a contractors.
4. BM Construction Ltd – inadequate average annual volume of construction works, and inadequate liquid assets/ credit facility.

In the financial stage, after corrections were made to the arithmetical errors the corrected Dec Construction was the Lowest Evaluated Bid and was therefore recommended for award of the contract at Mk 367,022,240.83.

After evaluation of the other lot “Construction of Staff Houses at Kapichira Power Station”, Dec Construction was also recommended for the award of the contract at Mk 194,982,323.53.

As a result of being awarded 2 lots it was therefore decided that the contracts be treated as 1 at a contract sum of MK 562,004,564.36



**Graph 4.5.2.1 – Tender Results for Houses at Nkula**

**iv. Contract Award – Contractor**

DEC Construction of P.O. Box 3034, Blantyre were awarded the contract at a contract price of Mk367, 022,240.83.

**v. Scope of Works**

The scope of works at Nkula were as follows:

1. Construction of Professional 3 bed new staff house 1 nr.
2. Construction of Professional 3 bed renovated senior staff house 3 nr.
3. Construction of Supervisory 3 bed junior staff house 2 nr.
4. Construction of Supervisory 3 bed junior staff house 1 nr.
5. Construction of 2 artisan bed junior staff house 4 nr.
6. Construction of artisan 3 bed mapolisi staff house 2 nr.
7. Construction of semi- detached staff house 1 nr

**vi. Contract Execution – Contractor**

Variation to Contract Price

All variations were within the allocated budget and contingency sum.

Variation to Contract Duration

In a letter dated 4<sup>th</sup> December 2015, DEC Construction wrote a letter requesting for an Extension of Time. This letter was referenced to the early warning letter indicating that the contractor would at some point request for an extension of time. The contractor requested for 11 weeks extension commencing from 17<sup>th</sup> November 2015 to 13<sup>th</sup> February 2016.

The reasons for the request of the extension of time are as follows:

- Cut and fill component was introduced to the works.
- The contractor encountered some rock excavation works which were not included in the bills of quantities.
- Tree cutting was introduced to the works.

As of the time of producing this report, this project was in its final completion stages, however documentation justifying this time extension was not on correspondence files.

**✚ One of the findings of this study is that no proper feasibility study was done when preparing the contract documents. A simple site visit would have provided the design engineer or quantity surveyor adequate information for the terrain necessitating the inclusion of cut and fill and rock excavation in the bid documents. These items should have not come as variations; given the existing site conditions.**

**vii. Project Evaluation Report**

There is no project evaluation report as project is still on-going.

**viii. Quality of Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit. The quality of the works is of excellent quality.



**Picture 4.5.2.1 – Professional 3 Bed Staff House**



**Picture 4.5.2.2 – Professional Renovated 3 Bed Staff House**





**Picture 4.5.2.3 – Artisan 3 Bed Mapolisi Type House under Renovations**

**ix. Findings and Recommendations**

The following are the findings of this study:

- Review of documents shows that some were misfiled or went missing from the files. This includes certificates for payment to the contractor.
- Correspondence between the parties in this project was sometimes through verbal communication without documentation.
- One of the findings of this study is that no proper feasibility study was done when preparing the contract documents. A simple site visit would have provided the design engineer or quantity surveyor adequate information for the terrain necessitating the inclusion of cut and fill and rock excavation in the bid documents. These items should have not come as variations; given the existing site conditions.

#### 4.6 Blantyre Water Board (BWB)

This study reviewed two contracts for the extending of water supply, sanitation, hygiene and solid waste management services to low income areas of Blantyre city (Construction of 40 Water Kiosks and Associated Pipeline Works in the Low Income Areas of Blantyre City), Tender No.: EWSSHS/BWB/W/2015/1. These works were divided into two lots namely; lot 1 (Bangwe, Namiyango, and Mudi), and lot 2 (Lunzu, Mitsidi, and Soche). Both contracts were awarded to one contractor hence the contract was treated as one and payments for both lots were combined.

**Table 4.5.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Construction of 40 Water Kiosks and Associated Pipeline Works in the Low income Areas of Blantyre City (Lot 1: Bangwe, Namiyango, and Mudi).	Blantyre	<p>The proposed contract duration was 5 months, commencing from the contract signing date of 26<sup>th</sup> October 2015, with a site handover date of 22<sup>nd</sup> October 2015.</p> <p>The scope of works was as follows:</p> <ol style="list-style-type: none"> <li>1. Construction of 40 water kiosks structures; 20 for each lot.</li> <li>2. Procurement and installation of pipes and fittings.</li> <li>3. Excavation, pipe laying and backfilling</li> </ol>	To improve and increase water availability in Low income Areas of Blantyre City, and strengthen capacity of Blantyre Water Board.	97,093,378.75	



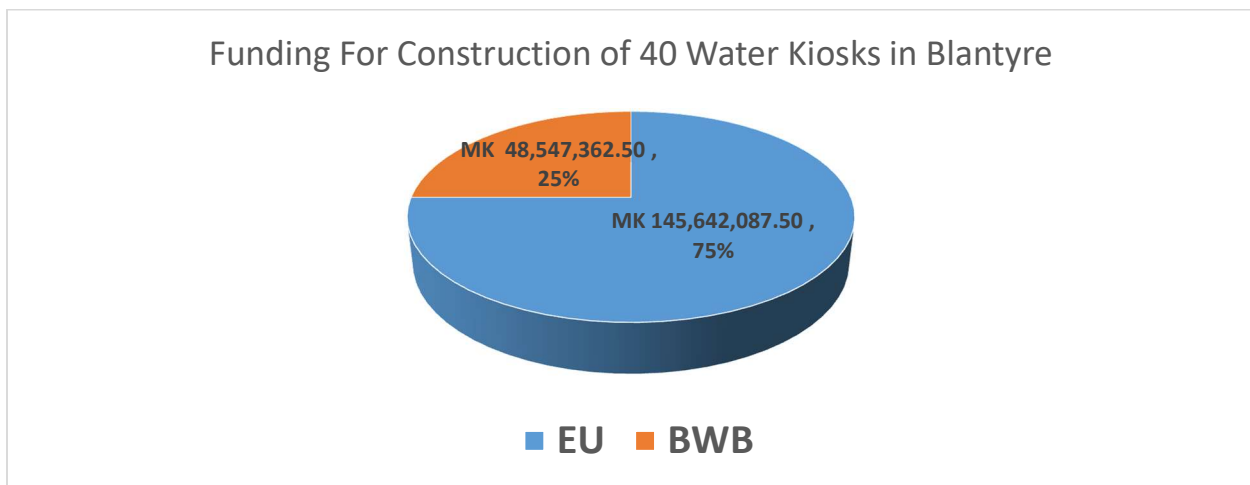
Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
		works. 4. Construction of valve chambers and pipe protection structures.			
Construction of 40 Water Kiosks and Associated Pipeline Works in the Low income Areas of Blantyre City (Lot 2: Lunzu, Mitsidi, and Soche).	Blantyre	<p>The proposed contract duration was 5 months, commencing from the contract signing date of 26<sup>th</sup> October 2015, with a site handover date of 22<sup>nd</sup> October 2015.</p> <p>The scope of works was as follows:</p> <ol style="list-style-type: none"> <li>1. Construction of 40 water kiosks structures; 20 for each lot.</li> <li>2. Procurement and installation of pipes and fittings.</li> <li>3. Excavation, pipe laying and backfilling works.</li> <li>4. Construction of valve chambers</li> </ol>	To improve and increase water availability in Low income Areas of Blantyre City, and strengthen capacity of Blantyre Water Board.	143,190,582.50	

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
		and pipe protection structures.			

#### 4.6.3 Construction of 40 Water Kiosks and Associated Pipeline Works in Low Income Areas of Blantyre City (Lot 1 and Lot 2)

##### i. Funding

This project was funded through a Grant from European Union and Blantyre Water Board. The grant from European Union contributed 75% and the remaining 25 % of the funding was from Blantyre Water Board.



**Graph 4.6.3.1 – Funding Structure for the 40 Water Kiosks Project**

##### ii. Tender Process – Consultant

The supervision of the project was done internally and was supervised by Engineering Department of Blantyre Water board.

##### iii. Tender Process – Contractor

The bids were opened on 22<sup>nd</sup> May 2015 at 14:00 hours at Blantyre Water Board Head Office in the presence of all the interested bidders' representatives. A total of 12 bids documents were received and read out as follows:

1. Project Building Contractors:
  - Lot 1: Mk 90,078,580.00
  - Lot 2: Mk 104,650,920.00
  - Total: Mk 194,729,500.00
2. Glasasi Building and Civil Engineering Contractors:

- Lot 1: Mk 71,067,941.50
- Lot 2: Mk 73,761,483.00
- Total: Mk 144,829,424.50
- 3. CAS Contractors:
  - Lot 1: Mk 128,857,155.00
  - Lot 2: Mk 179,933,830.00
  - Total: Mk 308,790,985.00
- 4. Primo Construction:
  - Lot 1: Mk 97,093,378.75
  - Lot 2: Mk 143,190,582.50
  - Total: Mk 240,283,961.25
- 5. WC Construction Ltd:
  - Lot 1: Mk 87,193,609.50
  - Lot 2: Did not submit
  - Total: Mk 87,193,609.50
- 6. World Changers Building & Civil Contractors;
  - Lot 1: Mk 56,288,080.72
  - Lot 2: Mk 69,645,079.82
  - Total: Mk 125,933,160.54
- 7. GIMTEC:
  - Lot 1: Mk 86,941,624.66
  - Lot 2: Mk 108,171,875.86
  - Total: Mk 195,113,500.52
- 8. Thundu Building Contractors
  - Lot 1: Mk 85,561,667.50
  - Lot 2: Mk 83,554,227.50
  - Total: Mk 169,115,895.00
- 9. Billy Construction:
  - Lot 1: Mk 65,824,562.50
  - Lot 2: Mk 85,339,545.00
  - Total: Mk 151,164,107.50
- 10. Nenani Civil & Building Contractors
  - Lot 1: Mk 65,783,967.50
  - Lot 2: Mk 81,729,065.50
  - Total: Mk 147,513,033.00
- 11. Ebhayi Civil Contractors
  - Lot1 : Mk 59,660,482.00
  - Lot2: Mk 64,508,113.80
  - Total: Mk 124,168,595.80
- 12. DEC Construction
  - Lot 1: Mk 69,022,024.80
  - Lot 2: Mk 82,709,680.95
  - Total: Mk 151,731,705.75

During the preliminary stage of the tender evaluation; all the bidders apart from Galasi Building Contractors, WC Construction Ltd, GIMTEC, and Ebhayi Contractors were recommended for the Technical/Detailed Evaluation. In the 2<sup>nd</sup> phase of the evaluation; all bidders apart from Nenani Civil & Building Contractors passed and were recommended for further evaluation. In Technical Evaluation stage, all the bidder apart from Primo Construction was recommended for further evaluation.

The results and recommendations were as follows:

- Primo Construction were recommended for both Lot 1 and Lot 2 of the works even though the Advertisement in The Daily Times on 24<sup>th</sup> April, 2015 stated in point no.3 that ***“the works have been broken into Lot 1 and 2, and bidders are allowed to bid for both. However, no successful bidder shall be allocated both lots for execution”***.
- However it was also observed that the total amount for Lot 1 and Lot 2 were higher than the budget allocation of 317,044 Euros which was equivalent to Mk 155,351,560.00 at an exchange rate of 1 Euro to MK490.00. Even after a 25% addition as a contribution to the project from the Board, the winning bid still exceeded the new total of Mk 194,189,450.00 by an amount of Mk 46,094,511.00.

**✚ This study finds that the PE erred in awarding the two projects to one contractor and combining the two into one project. This is a case of mis-procurement which should have been taken up by the unsuccessful contractors and also the ODPP. One of the conditions for evaluation of bids was that no successful bidder shall be allocated both lots for execution.**

#### **iv. Contract Award – Contractor**

Primo Construction, P.O. Box 2779, Blantyre were recommended for both Lot 1 and Lot 2 of the works even though the Advertisement in The Daily Times on 24<sup>th</sup> April, 2015 stated in point no.3 that “the works have been broken into Lot 1 and 2, and bidders are allowed to bid for both. However, no successful bidder shall be allocated both lots for execution”.

#### **v. Scope of Works**

The scope of works was as follows:

- i. Construction of 40 water kiosks structures; 20 for each lot.
- ii. Procurement and installation of pipes and fittings.
- iii. Excavation, pipe laying and backfilling works.

iv. Construction of valve chambers and pipe protection structures.

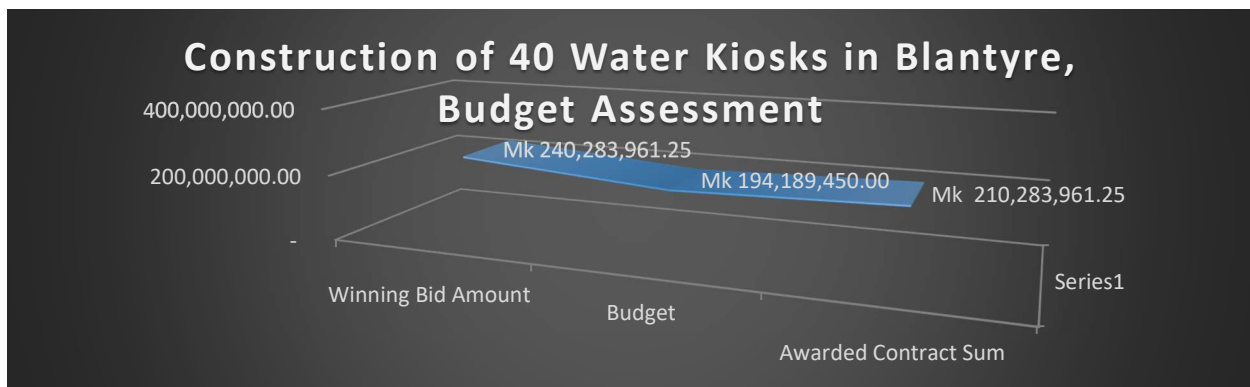
The works were to be carried out for a period of 5 months. Commencing on 22nd October 2015 and finishing on 22<sup>nd</sup> March 2016.

**vi. Contract Execution – Contractor Variation to Contract Price**

The total winning bid amount for Lot 1 and Lot 2 of Mk 240,283,961.25 was higher than the budget allocation of Euro 317,044.00 which was equivalent to Mk 155,351,560.00 at an exchange rate of 1 Euro to MK490.00. Even after a 25% addition as a contribution from Blantyre Water Board the new total budget was Mk 194,189,450.00 but the bid of Mk 240 million still exceeded this by Mk 46,094,511.00.

During a Contract Negotiation meeting between Primo Construction and Blantyre Water Board on 14<sup>th</sup> October 2015; it was proposed that the contingency sum be reduced from 15% to 5% to cover for the deficit as the EU had advised earlier that the contract should be within the budget. It was also proposed that some quantities be reduced in the bills of quantities to reduce the deficit. Revised Bills of Quantities were thus used in the contract.

In a letter dated 1<sup>st</sup> October 2015 ref. no. ODPP/03/70, BWB was given a NO OBJECTION order from ODPP on engaging Primo Construction in the construction of 40 Kiosks for both Lot 1 and Lot 2. **The Total Contract Sum Mk 210,283,961.25.** However, ODPP stated that they had observed that the tender requirements that formed the evaluation criteria were set unnecessarily too high for such a seemingly simple assignment; for example, the demands for relevant experience were too strict. ODPP further stated that had the bar not been set too high, an equally capable lowest evaluated bidder should have emerged at a much lower price. ODPP urged BWB that next time they should ensure the demands are commensurate with the complexity of the assignment.



- ✚ This study concurs with the ODPP’s observation that the tender requirements that formed the evaluation criteria were set unnecessarily too high for such a seemingly simple assignment.**
  
- ✚ It is the finding of this study that the evaluation procedure should have taken into account the budget for the works and made the budget as one of the criteria for evaluating the best bid to undertake the works.**

### **Escalation of Contract Price**

In a letter dated 2<sup>nd</sup> February 2016 (Ref BWB 0606/2), BWB wrote to the contractor in response to their application of price escalations on certain materials. The client responded that according to the Special conditions of contract there would be no price adjustments. However, the client requested the contractor to indicate how much this had affected each of the materials indicated in the contractor’s letter. The client further advised the contractor to refer to Clause 47 of the General Conditions of Contract when coming up with their price adjustment proposal.

The contractor on 21<sup>st</sup> April, 2016 responded to the client’s letter dated 15<sup>th</sup> April 2016 on the subject matter Adjustment of Unit Rates Due to Escalation of Material Prices. In the letter the contractor agreed to the rates proposed by the client, the contractor further stated and proposed a rate of Mk4300.00 for the item of 75mm UPVC pipe which did not appear in the BOQ. Further information in regards to the price escalation could not be traced in the files but however so a desk officer claimed that regardless of the project escalations the project was managed within the contract sum.


- ✚ It is a finding of this study that the PE erred, notwithstanding the fact that the extraordinary payments made were within the contract sum, by changing the terms of the contract and making payments which were not contractually legitimate.**

### **Variation to Contract Duration**

This project was supposed to be undertaken within a period of 5 Months, commencing from 22<sup>nd</sup> October 2015 to 22<sup>nd</sup> March 2016. Regardless of the above the project has taken more than 5 months to complete ending early this year. Further details such as

letters of extension of time could not be traced in the files. However, some correspondence indicates that delays were as a result of the following:

1. Land disputes where by land owners such as Bangwe Police would not grant access to the site.
2. Delay in advance payment.
3. Delay in acquiring tax clearance from MRA.
4. Scattered location of the sites.

 **This study finds that upon the contractor accepting to combine the two contracts into one, the reason for scattered location of the sites is not valid and extension of time should not have been applied for this reason.**

**vii. Project Evaluation Report**

There is no project evaluation report as project is still on-going.

**viii. Quality of Works**

The Assurance Consultant planning a visit to site prior to submission of the final report

**ix. Findings and Recommendations**

This report has the following findings and recommendations:

- that as a result of poor filing of correspondence and documentation, a lot of issues concerning the execution of the project do not have proper back up files for example reasons behind the price adjustments and duration of the works.
- This study finds that the PE erred in awarding the two projects to one contractor and combining the two into one project. One of the bid evaluation criteria was that one of the conditions for evaluation of bids was that no successful bidder shall be allocated both lots for execution. This is a case of mis-procurement which should have been taken up by the unsuccessful contractors and also the ODPP.
- This study concurs with the ODPP's observation that the tender requirements that formed the evaluation criteria were set unnecessarily too high for such a seemingly simple assignment.

- It is the finding of this study that the evaluation procedure should have taken into account the budget for the works and made the budget as one of the criteria for evaluating the best bid to undertake the works.
- It is a finding of this study that the PE erred, notwithstanding the fact that the extraordinary payments made were within the contract sum, by changing the terms of the contract and making payments which were not contractually legitimate.
- This study finds that upon the contractor accepting to combine the two contracts into one, the reason for scattered location of the sites is not valid and extension of time should not have been applied for this reason.

Recommendations to the above are as follows:

- Department handling construction projects should find a proper and transparent filing system.
- Consultancy services should be outsourced.



## 4.7 Ministry of Justice

### 4.7.1 Partition Works of Office Block for Commercial Court in Lilongwe

IDS were not collected for the above project for this study. Letter of introduction went to Capital Hill at Ministry of Justice where the study was directed to High Court in Area 3. From Area 3 the study was directed to the Registrar of High Court at Area 18 Roundabout Glass house. It is here that the study was re-directed to check with the Department of Buildings at Capital Hill in the Ministry of Transport and Public Works. By this time the data collection period had elapsed.

**✚ This study finds that for the future, it is necessary for the secretariat to invite selected PEs for the study to a one-day meeting. Invited should be procurement specialists or members of the IPC. The intention shall be to increase their awareness in the importance of the CoST studies. Further, these meetings shall be used to introduce the study consultant to the PE liaison persons. Only if this is implemented shall the delays experienced during data collection period be mitigated.**

#### i. Findings and Recommendations

- No Liaison person for this PE was identified from the beginning and made data collection very difficult. It is recommended that the liaison person be identified prior to engaging the assurance consultant.

## 4.8 Ministry of Agriculture, Irrigation and Water Development

No IDS were collected from this Ministry for various reasons as outlined below:

**Table 4.8.1 – Description of Projects**

Name of Project	Remarks
Design and supervision for the rehabilitation and expansion of Gravity fed systems and construction supervision of boreholes in Mangochi and Ntcheu districts	Not evaluated, works are imminently going to tender and there is confidential tender

Name of Project	Remarks
	information. The study was also time barred as data collection period expired.
Design and supervision for the rehabilitation and expansion of Gravity fed systems and construction supervision of boreholes in Phalombe district	Not evaluated, works are imminently going to tender and there is confidential tender information. The study was also time barred as data collection period expired.
Design and supervision for the rehabilitation and expansion of Gravity fed systems and construction supervision of boreholes in Rumphi and Nkhotakota districts	Not evaluated, works are imminently going to tender and there is confidential tender information. The study was also time barred as data collection period expired.
Construction of Sanitation facilities in schools, markets and health centres in Rumphi District- Lot 1	Conflict of interest declared by study consultant; this project was supervised in Assurance consultant's office
Construction of Sanitation facilities in schools, markets and health centres in Rumphi District- Lot 2	Conflict of interest declared by study consultant; this project was supervised in Assurance consultant's office

#### 4.9 Millenium Challenge Account

No IDS were collected from this PE as despite visiting the CEO's office, the study was told several times that the CEO's office would revert but there was no response until data collection period ended

**Table 4.9.1 – Description of Projects**

Name of Project	Remarks
Nkula A Hydro Power Plant rehabilitation and Upgrade	The PE was not responsive to the study despite engaging the CEO's Office.
Construction of 173 km 400 kv Phombeya-Nkoma Overhead Line	The PE was not responsive to the study despite engaging the CEO's Office.
Construction of various Overhead Line (80 km 132 kV Chintheche to Luwinga; 50km 132 kV Luwinga to New Bwengu; 32 km 132kV Nkhoma to Bunda turn off; 30km 66kV Lilongwe Ring; 1.6km 66kV Bwengu Sub station to New Bwengu substation; Loop in/out of the existing single circuit 66kV overhead line at Lilongwe A at Bunda T-off sub-station; Loop in/out of the existing double circuit 132kV overhead line at Phombeya sub-station; Loop in/out of the existing single circuit 132kV overhead line at Phombeya sub-station; Loop in/out of the existing double circuit 132kV overhead line at Nkhoma sub-station; Loop in/out (Lilongwe Ring 66kV overhead line) at Kauma sub-station; New 132kV overhead line Chintheche-Luwinga-New Bwengu; the 132kV Nkhoma- Bunda T-off overhead line; New 66kV Lilongwe Ring.	The PE was not responsive to the study despite engaging the CEO's Office.
Construction of the 400/132 kV substations-Phombeya and Nkhoma (PA/MCA-MW/IDB/WKS/021/2015)	The PE was not responsive to the study despite engaging the CEO's Office.
Rehabilitation, and extention of 132/66/33 kV Chintheche sub-station; rehabilitation and upgrading of 132/33 kV Luwinga sub-station; rehabilitation and upgrading of 132 kV/66/11 kV Bunda T-off sub-station; Construction of the New Bwengu 132/66/33 kV new Bwengu sub-station	The PE was not responsive to the study despite engaging the CEO's Office.
Design, supply, installation and Commissioning of Scada/EMS and Telecommunication Systems	The PE was not responsive to the study despite engaging the CEO's Office.
Develop an independent Power Producer (IPP) framework for GoM	The PE was not responsive to the study despite engaging the CEO's Office.

**✚ This study finds Millennium Challenge Account as a PE was the least responsive to the study. Therefore for the future, it is necessary for the CoST secretariat to invite**

**selected PEs participating in the study to a one-day meeting. Invited should be procurement specialists or members of the IPC. The intention shall be to increase their awareness in the importance of the CoST studies. Further, these meetings shall be used to introduce the study consultant to the PE liaison persons. Only if this is implemented shall the delays experienced during data collection period be mitigated.**

#### 4.10 Northern Region Water Board

IDS were collected from this PE outside the period planned for data collection. Data collection for this PE was impacted by delays experienced with Millennium Challenge as it was hoped that projects in the Northern Region for both Northern Region Water Board and Millennium Challenge were to be reviewed during the same visit. Upon discovering that there was no response from the latter, the visit was made to collect data from NRW; hence the delay. Data was collected outside.

**Table 4.10.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Design review and construction supervision for upgrading and extension of Mzimba Water Supply System	Mzimba	Design and supervision works	This project is part of the Integrated Urban Water and Sanitation Project. To improve the capacity of the existing Mzimba Water Supply System which currently does not meet demand.	US\$1,115,075.99	Project is on-going, design phase completed and paid. No certification from consultant on file at time of visit
	Mzimba	Supply, Installation and construction of the following: <ul style="list-style-type: none"> <li>• 2 No Inoculation Units</li> <li>• 4 No. sedimentation tanks</li> <li>• 1 No. Raw water pumping station</li> <li>• Water tanks, pipelines, chemical dosing house and ancillary works</li> </ul>	As above	US\$14,749,792.84	Project is on-going and IPC No. 1 shows dated 30 June 2017 shows certification of \$2,949,958.57 as Advance and works valued at \$899,535.25

#### **4.10.1 Upgrading and Extension of Mzimba Water Supply System**

IDS were collected for the above project for this study and procurement procedures and analysis of the data collected is presented below: -

##### **i. Funding**

The project was funded by the Government of Malawi with Financial support from the African Development Bank (ADF) and OPEC Fund for International Projects (OFID). Budget for the works was US\$18 Million.

##### **iv. Tender Process - Consultant**

Twenty-Six Consultants responded to the call for submission of Expression of Interest. Out of these, 6 consultants were shortlisted to submit bids. When the bids were evaluated, four consultants were shortlisted for financial opening of their bids as follows:

- Gauff JBG Ingenieure & Tropfenwasser
- Inhalakanipho Consultants & Water Waste & Environment Consultants
- CEC Sajdi & partners + IDEV Engineering Associates
- RJ Burnside International + WPES + Ruo Consulting Engineers

The consultancy works were awarded to Gauff at a price of US\$1,115,075.99

##### **v. Tender Process - Contractor**

Twenty-six contractors applied for shortlisting to submit tenders. After evaluation seven contractors were selected for shortlisting:

- Sinohydro Tianjin Eng. Co Ltd of China
- Plem Construction – HE Jackson JV, Malawi
- Raubex (PTY) Ltd, RSA
- SAwa Group Ltd, Malawi
- CMC di Ravenna, Italy
- Sogea-Satom, France
- Jos Hansen & Soehne JR Int Bau GmbH JV, Germany

Bid documents were prepared in accordance with ADB Standard Bidding Documents. Bidding documents were issued to bidders on 15 November 2016. On 14 December 2016 a mandatory pre-bid meeting was held. Contractors submitted their bids by 10 February 2017 and six bids were received by closing time namely:

- Raubex (PTY) Ltd, RSA
- SAwa Group Ltd, Malawi
- Jos Hansen & Soehne JR Int Bau GmbH JV, Germany
- Sogea-Satom, France
- Plem Construction – HE Jackson JV, Malawi

- Stecol Corporation (Had changed name subsequent to prequalification previously called Sinohydro Tianjin Eng. Co Ltd of China)

Preliminary examination showed that all bidders were eligible to submit bids and therefore they all passed the first stage. Second stage involved verification of duly authorized persons to sign the bids, verification of bid security, and verification of completeness of the bids. All bidders passed this stage.

Next the procedure required an update on bidder financial qualification after prequalification. Bidders were required to demonstrate their access or availability of liquid assets and credit facilities of not less than \$4million. All six bidders passed this requirement.

All six bidders submitted commercially substantive bids and were therefore recommended to proceed to the next stage which is technical responsiveness.

Table 4.10.1.1 below summarizes responsiveness for commercial and technical capacity

Bidder ID	Bidder	Commercial Responsiveness	Technical Responsiveness			Acceptance for Detailed Examination
			Electrical/Mechanical	Pipes, Tanks & Civil	Steel	
1	Raubex	√	No	No	No	No
2	Sawa Group	√	√	√	√	√
3	JV Jos Hansen & Soehner/JR Int	√	NO	No		No
4	Sogea-Satom	√	NO	No		No
5	Plem Constr – HE Jackson JV	√	NO	√		No
6	Stecor Corp.	√	NO	√		No

Combined technical and commercial evaluation showed that only Sawa Group was recommended to proceed for detailed examination of bid.

Bill No. 4 for Sawa Group shows that there was an error on the collection page. The total on the page showed US\$748,013.95 when in fact it should have been US\$4,708,013.95 which contributed to the increase in the bid price as read out at submission from US\$10,139,253.30 to US\$14,749,792.84.

The above corrected bid was compared to the engineers estimate: -

Table 4.10.1.2 - Comparison of Sawa Group Bid to Engineer's Estimate

Bidder	Corrected Bid	% Diff to Eng Est	% Diff Average
Sawa Group	14,749,792.84	-1.0%	0.0%
Engineers Estimate	14,902,282.08	0.0%	1.0%
Average of Bids	14,749,792.84	-1.0%	0.0%

From the above, it was established that Sawa Group's bid was slightly lower than the engineer's estimate. The difference was deemed to be insignificant and also rates were found to be within a reasonable variance of 1% when compared to the engineer's estimate.

The IPC therefore found Sawa Group to be the lowest evaluated bidder and was recommended for contract negotiations at a price of US\$14,749,792.84.

**✚ A previous Assurance Study conducted last year at Lilongwe Water Board for Extension and Upgrading of Chikungu Water Supply supervised by the same consultant M/s Gauff JBG Ingenieure had the following finding:**

- **The Bid Evaluation Report shows that Aquabor International (Now Sawa Group) who were later awarded the contract submitted a bid that had a huge error. The read out price was MK 652,103,326.11 but upon making corrections to the bid, the actual evaluated bid price was MK 950,309,156.24. Since this was the lowest evaluated bid, the contract was awarded to Aquabor International. This prompted the ODPP, following this event, to direct that a bid security on publicly funded projects should be a declared amount as opposed to a percentage of the proposed contract price. It is the view of the Assurance Consultant that the ODPP were right in directing that all future bid securities should be a declared amount as the purpose of the security is intended to act as security to ensure the contractor will enter into a contract if the bid is accepted. If the lowest responsive and responsible bidder refuses to enter into a contract that has been awarded to it by the public entity, the bid bond will be forfeited. Since the rules require correction of arithmetic errors and confirmation by the bidder of his acceptance of the new bid price; this material deviation is within procurement rules and the IPC acted within its guidelines.**

- ✚ **This study finds that for the future, the provision for correction of errors in bids where, if the correction is made,**



**puts other competing bidders at a disadvantage is an issue that the NCIC, ODPP and other agencies should examine and compare with other jurisdictions to come up with an equitable solution. In this particular case for Mzimba Water Supply Project, other bidders had already been disqualified when the corrections were made and therefore did not affect the outcome.**

**xi. Contract Award – Contractor**

The contract was awarded to Sawa Group at US\$14,749,792.84.

**ix. Scope of Works**

The scope of the works included the Supply, Installation and construction of the following:

- 2 No Inoculation Units
- 4 No. sedimentation tanks
- 1 No. Raw water pumping station
- Water tanks, pipelines, chemical dosing house and ancillary works

**x. Contract Execution - Contractor**

Significant changes to the Contract:

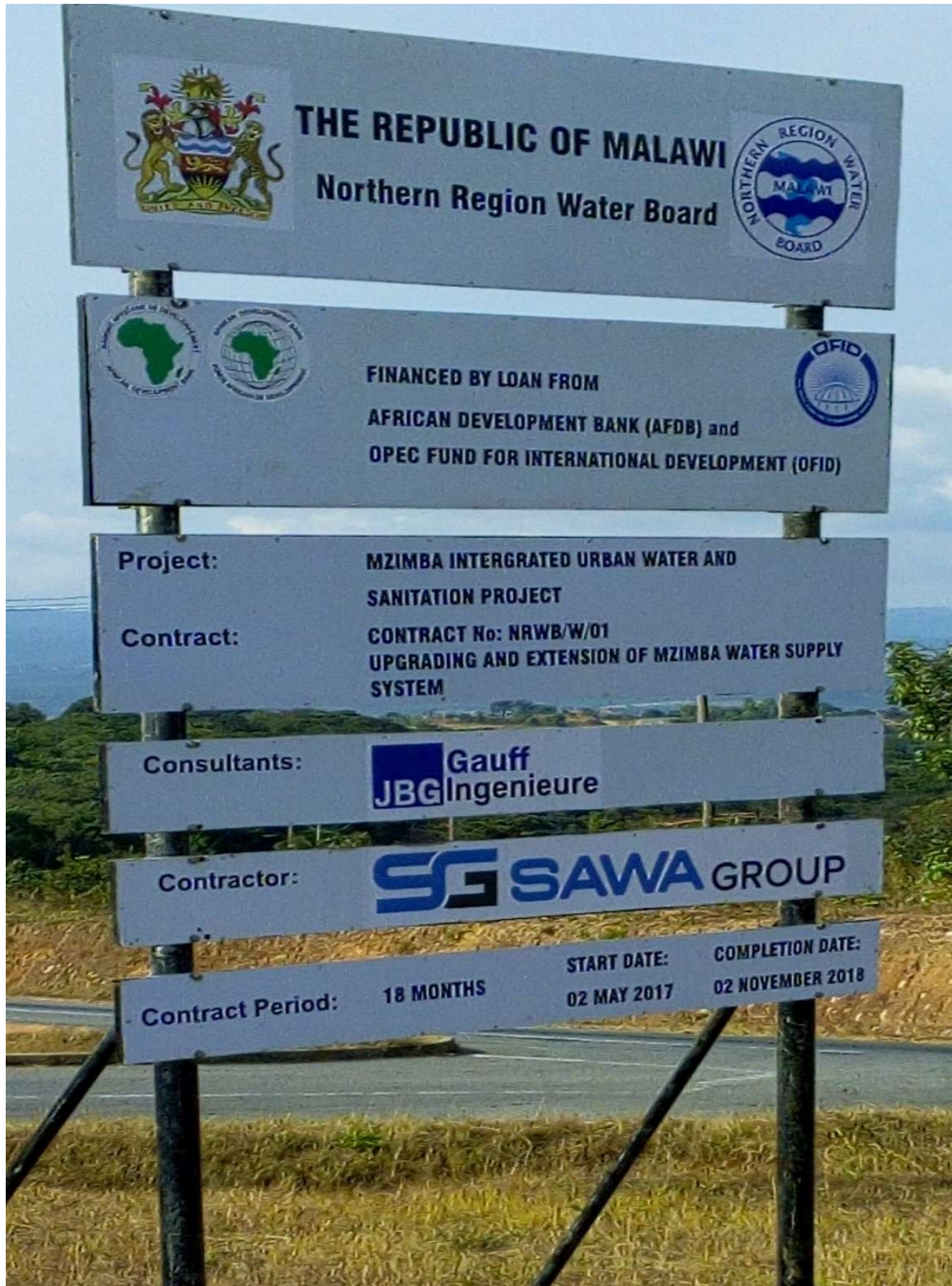
The construction works commenced on 2<sup>nd</sup> May 2017 and are planned for completion on 2<sup>nd</sup> November 2018. Only one significant change so far has been proposed being an instruction issued on 5<sup>th</sup> June 2017 to change the specification of pipe from UPVC to ductile iron covering about 17 kilometres of different diameters. This change was necessitated by durability of the ductile pipe compared to UPVC. The consultant however recommended that the contingency sum should not be tapped for this change unless the client had other additional funds which could be used.

**xi. Project Evaluation Report**

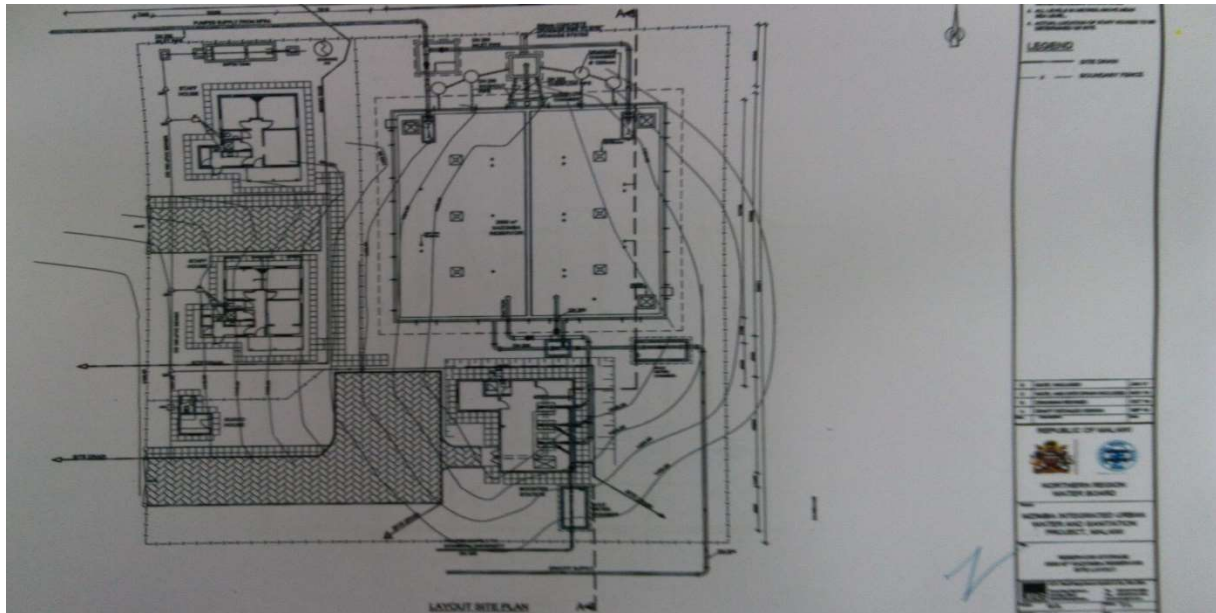
There was no project evaluation report on file as project has just commenced.

**xii. Quality of the Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit.



**Picture 4.10.1 - Project Sign Board – Public Disclosure of the project**



Picture 4.10.2 – Schematic of Tank (Right) and Housing (Left) at Kazomba Hill Reservoir



Picture 4.10.3 – Housing foundations at Kazomba Hill



Picture 4.10.4 – Water Tank Foundations at Kazomba Hill

#### 4.11 Lilongwe City Council

This study reviewed three contracts under this PE namely:

- NCIC to ZBS via Ngwenya Trading Centre Road
- Biwi to Area 23 Via Chipasula Road
- Chilinde Parish to Kawale 1 Road

**Table 4.11.1 – Description of Projects**

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
A. Consultancy Contract					
Consultancy Services for the Design and Supervision of Upgrading of Selected Urban Roads in Lilongwe City	Lilongwe	Design of 12 Roads and Supervision of same	To improve accessibility in and around Lilongwe City	K38,080,711.63	To be determined. Currently Consultant has suspended activities on site
B. Works Contracts					
1. Chilinde Parish to Napham, Kawale Road (1.8kms)	Lilongwe	Upgrading and rehabilitation of selected roads to bituminous standard in Lilongwe City	To improve accessibility in and around Lilongwe City	K339,618,186.76	Information not on file
2. NCIC to ZBS via Ngwenya Trading Centre Road (2.69 Kms)	Lilongwe	Upgrading and rehabilitation of selected roads to bituminous standard in Lilongwe City	To improve accessibility in and around Lilongwe City	K641,470,187.76	Contract is on-going but coming to the end
3. Biwi to Area 23 Via Chipasula Road (3.2 kms)	Lilongwe	To improve accessibility in and around Lilongwe City	To improve accessibility in and around Lilongwe City	K706,813,205.01	Contract is on-going but coming to the end

IDS were collected for the above project for this study and procurement procedures and analysis of the data collected is presented below: -

##### i. Funding

The project was funded by the Government of Malawi. The Engineer's Estimate for the project was MK5, 380,326,040.098 for rehabilitation of 12 roads within Lilongwe City.



**ii. Tender Process - Consultant**

Procurement information was not available on file.

**iii. Tender Process - Contractor**

Procurement information was not available on file.

**iv. Contract Award – Consultant**

M/s Henderson & Partners were awarded the contract for a period of 4 months for the design and supervision of 12 roads in Lilongwe city at a contract price of K38, 080,711.63.

**v. Scope of Works**

Design and supervision of 12 roads within Lilongwe City. However, because Government is disbursing funds in tranches, the City Council was compelled to implement the project in phases. Three roads were implemented in Phase 1, five roads in Phase 2, and 4 roads shall be implemented in Phase 3. During the 2015/16 Financial Year, the City Council received founding for the project of K1.8 Billion. Phase 1 Works were therefore selected to fit within the above budget provision.

**vi. Contract Execution - Consultant**


Significant changes to the Contract:

Due to the phased implementation of the project, the supervision component of the contract was not adequate to cover the works. The contract sum of K38, 080,711.63 had K22, 848,426.88 for the design component and K15,232,284.75 for supervision.

The contract was however drafted as a Lump Sum Contract whist technically it should have had two components namely:

- Lump Sum for the Design component with payments pegged to deliverables and;
- Reimbursable Cost component for the supervision component paid on actual inputs.

The way the contract was framed provided for 20% to be paid upon submission of an inception report; 45% upon receipt of the draft and 35% upon receipt of the final report. The final 40% was allocated to supervision services to be paid monthly according to work done.

 **It is a finding of this study that the Council required assistance in drafting the consultancy contract and in its implementation. The cost reimbursable element should**

**have been based on actual planned activities and not as 40% of the contract sum. It is recommended that for the future, the Roads Authority should be involved in an advisory role in the procurement, award and implementation of road projects until such time as the City Council has in-house capacity to draft and implement road projects.**

Because the Government phased disbursement of funds, it meant that the consultant had to be maintained on site longer. The supervision component (K15, 232,284.75) was arbitrarily made payable in 3 installments of approximately K5, 077,428.25 per month.

The consultant's mandate expired in June 2016. He was however retained by the Council without regularizing his status with ODPP up to January 2017. Due to downward adjustment in agreed inputs for supervision, the project had K5, 077,428.22. The consultant was required to remain on site beyond June 2016 and a new phase for 5 roads had commenced. However, his input between September 2016 and January 2017 required an additional K24, 783,375 for which the City Council was retrospectively requesting authorization for additional funding from ODPP. The latter withheld approval of this funding citing that the K38, 080,711.63 according to the contract was to cover for design and supervision of 12 projects. Further, the ODPP stated that the contract having expired on 30 June 2016, they were concerned that they had kept engaging the consultant for over 7 months without authority from the ODPP. The above was stated in their letter dated 9<sup>th</sup> February 2017 and further stated that **"...this office does not give authority retrospectively just to rubber stamp the decision PEs have already taken..."** The ODPP however gave the Council the leeway to provide an analysis showing the duration for which the funds were required, the related costs, and agreed work plans.

The consultant in the meantime withdrew his services effective from 8 March 2017 as his contract had not been regularized and cited the fact that they had not been paid for services rendered since August 2016.

The correspondence centered on the fact that the contract was not regularized at expiry at the end of June 2016. Secondly, based on the fact that actual supervision costs covering a period of 6 months cost the project K15,232, 284.65 or K2, 538,714 as direct extrapolation of this sum would yield KK17,770,999; based on this the ODPP sought justification for K24,783,375 to cover a period of 7 months. The ODPP further stated **that "As if the foregoing is not enough, the scope of the assignment was reduced from 12 to three roads..."** This letter was copied to the Auditor General to investigate how resources meant for 12 roads were **"blown"** on three roads. The ODPP subsequently accepted the council's request for extending the contract period but did not grant the additional cost thereof.

There was protracted correspondence between the Council and the ODPP culminating in the council requesting an opinion from the Attorney General (AG) on 16 June 2017.

The AG in his opinion document gave background to the project stating that the project had two phases being Design (Phase 1) and supervision (Phase 2). During execution of the contract, it was discovered that the cost was above the authorized budget. The consultant presented to the council to the effect that the phased approach of undertaking the assignment resulted in them incurring more costs than originally envisaged. Hence the extended period of performance necessitated commensurate costs to be requested.

The AG analyzed the contract provisions and the question posed was whether the contract was a lump sum or cost reimbursable contract as payments were split 60% for design and 40% for supervision.

In his assessment of the intent of the contract, the AG determined that this was a split contract with the Design Phase being a Fixed Contract whilst the Supervision element was Time Based and as such, there was no entitlement to the Consultant to be paid additional costs on the Fixed Design element. However, it was his opinion that the supervision phase, taking into account how it was run, recommended for the parties to jointly determine the impact on the cost of supervision of the extension of the contract period and the modification of the manner in which the road works shall be carried out.

From interviews with the engineering department, the Council have engaged temporarily through the Roads Authority an independent consultant working on routine maintenance road contracts for the RA in Lilongwe to assist in supervision whilst the issue of the contract for M/s Henderson & Partners is resolved by the City Council.

Further, this study received information through the same interviews that the issue of additional payment to M/s Henderson and Partners has been resolved. However, none of this information is on written record as at the time of data collection.

✚ **One of the findings of this report is that the AG was correct in his interpretation of the contract. Suffice to reiterate that the Council has a pressing need to engage the Roads Authority in all aspects of administering these road projects until such time as the Council has the relevant skill in-house.**

✚ **This study recommends that the NCIC undertakes Training Needs Assessment of all city councils and should it be demonstrated that there are skills gaps in the Engineering**

**Departments, the necessary training could be tailored for these institutions.**

**v. Contract Execution - Contractor**

Plem Construction Ltd were awarded a contract to upgrade and rehabilitate a selection of roads to bituminous standard in Lilongwe city. Due to funding limitations, the works were to be undertaken in phases. Phase I of the contract was for the Upgrading of Chilinde Parish – Napham, Kawale Road at a contract sum of K339, 615,186.76

Commencement of the works was on 8 May 2016 with completion expected on 6 August 2016; a period of 3 months.

These works were successfully completed and received a Certificate of Practical Completion on 15 November 2016. The information on file did not indicate whether the delays to the completion were regularized. Final Account for this works was not on file and therefore the study cannot establish the final value of works done on this contract.

While these works were in progress, Addenda to the contract were issued for Phase 2 works. These were: -

- NCIC to ZBS via Ngwenya Trading Centre Road (2.69 Kms)  
K641,470,187.76
- Biwi to Area 23 Via Chipasula Road (3.2 kms) K706,813,205.01

During negotiations, it was agreed that both lots above would start on 29<sup>th</sup> September 2016. During the meeting, the client raised concerns whether the contractor would be able to simultaneously manage two projects. The contractor assured the meeting that they had the capacity to handle the works.

This study had access to material test results such as gravel and compaction. These were verified by the engineer on the project to be satisfactory.

The Advance Payment was not paid on time by the Council. The contractor therefore gave early warning that in accordance with the contract, delayed advance payment becomes a Compensation Event under Clause 44.1 of the contract. Remedies under this Clause 44 for a Compensation Event include adjustment of the contract price and/or extending the intended completion period. In response, the consultants replied to the request for an Extension of Time due to the delay in payment of the advance stating that they did not concur with the contractor as one of the conditions for qualification for award of the contract was “**...demonstration of adequate liquidity and credit.**”

The works extended into the rainy season and at some point it became inevitable to suspend the works until the end of the rainy season. The contractor carried out remedial works at own cost after the rains.

The picture below (Picture 4.11.1) some of the damage to the works that happened during the rainy season.



It is reported that there was a public outcry to the quality of the works when the contractor was trying to undertake earthworks during the rainy season.

An interview with engineering staff of the council revealed that the Road Fund Administration undertook an audit of the works and recommended that additional drainage structures including lined drains should be incorporated in the works. This is the reason that the contractor is still on site to complete these additional works.

During the course of the works, management of funds was transferred to the Road Fund Administration (RFA) and interviews with the Council staff shows that since RFA started management of the funds, payment delays are no longer an issue.



Picture 4.11.1 – Extent of damage due to rain

A serious accident happened on the project when a vehicle hit a stationary water bowser which was parked within the road works. Interviews indicate that the driver of the vehicle (mechanic took a customer's vehicle from the garage without permission) was intoxicated at night and was the primary cause of the accident.

The study cannot, at this stage, infer conclusively that inadequate signs may have contributed to the accident; suffice to say that inadequate signage is a common problem on construction sites in Malawi.



Picture 4.11.2 – Accident on Site. Could lack of adequate signage have contributed?

- ✚ **One of the findings of the study is that PEs should desist from requesting for approval of Addenda and Extensions of time after the fact.**
- ✚ **The study finds that unjustified delays caused the project time to overrun and caused damage that was perceived by the public as incompetence on the part of the contractor. The contractor should have completed the works on time**

**rather than giving excuses for not completing the works on time.**

**✚ Although not conclusive that lack of adequate signage caused an accident, this study recommends that the NCIC should explore reinforcement of safety violations as a means to improve public safety and for it to collect fines for violators.**

#### **vi. Project Evaluation Report**

There was no project evaluation report on file as the project is on-going

#### **v. Quality of the Works**

The Assurance Consultant visited the site and the following is a gallery of pictures taken during the visit. It was noted during the site visit that the new roads are carrying more traffic. For instance, traffic from Ngwenya to main city areas is no longer connecting through Chdzanja Road at Biwi. Traffic is now using the NCIC Junction. This increased traffic compared to the specification of the new roads under this project may lead to faster deterioration than originally envisaged. The road improvements have the following specification:

- 150mm Compacted Gravel subbase
- 200mm Compacted unstabilized gravel base
- Bituminous slurry seal with 19mm chip seal including tack coat with 10mm thick slurry seal

The above specification is normally for low volume sealed roads mainly in rural areas. The city roads which have been built using the above specification are carrying ever increasing traffic and this does not bode well for the longevity of these roads.

**✚ This study finds that Lilongwe City Council should in future not consider the budget as the primary driver for designs. It will be better to construct fewer kilometers of roads that are robust to meet the ever increasing vehicular traffic and at the same time meet the people's expectations.**





**Photo 4.11.1 – Shows Morning Traffic Toward Chidzanja Road from CCDC Area**



**Photo 4.11.2 – Shows uneven road surfacing**



Picture 4.11.3 – NCIC to ZBS Road showing traffic

**✚ The study finds the quality of the roads generally to be of poor standard. This mainly has to do with the workmanship and the standard of design adopted.**

**vii. Findings and Recommendations**

- It is recommended that for the future, the Roads Authority should be involved in an advisory role in the procurement, award and implementation of road projects until such time as the City Council has in-house capacity to draft and implement road projects based on the experiences the council faced.
- One of the findings of this report is that the AG was correct in his interpretation of the contract. Suffice to reiterate that the Council has a pressing need to engage the Roads Authority in all aspects of administering these road projects until such time as the Council has the relevant skill in-house.
- This study recommends that the NCIC undertakes Training Needs Assessment of all city councils and should it be demonstrated that there are skills gaps in the Engineering Departments, the necessary training could be tailored for these institutions.
- One of the findings of the study is that PEs should desist from requesting for approval of Addenda and Extensions of time after the fact.
- The study finds that unjustified delays caused the project time to overrun and caused damage that was perceived by the public as incompetence on the part of the contractor. The contractor should have completed the works on time rather than giving excuses for not completing the works on time.

- Although not conclusive that lack of adequate signage caused an accident, this study recommends that the NCIC should explore reinforcement of safety violations as a means to improve public safety and for it to collect fines for violators.
- This study finds that Lilongwe City Council should in future not consider the budget as the primary driver for designs. It will be better to construct fewer kilometers of roads that are robust to meet the ever increasing vehicular traffic and at the same time meet the people's expectations.
- The study finds the quality of the roads generally to be of poor standard. This mainly has to do with the workmanship and the standard of design adopted.

## **4.11 Findings and Recommendations for the Study**

The data shows and inferences can be drawn that: -

### **4.11.1 Findings Common to all Procuring Entities**

- i. All PEs have a centralized data management system storing paper files. These systems almost to a PE are not properly managed. None of the PEs visited had embraced electronic storage systems. This study recommends that Government should fast track E-Government implementation as the current systems have gaps in the filing making it very difficult to audit the projects.
- ii. The study found that a locally funded projects are prone to delays in payment of contractors and consultants and the period of performance is most likely to be exceeded.

### **4.11.2 Findings Particular to Individual Procuring Entities**

#### **4.11.2.1 Ministry of Sports and Youth Development and Welfare**

Under this study, the Ministry of Sports and Youth Development and Welfare implemented two projects for the Landscaping works to Bingu National Stadium in Lilongwe. The findings for this PE are as follows: -

- i. Delayed payments led to the suspension of works by the contractors and Government is planning to recommence the works using funding which has been requested in the 2017/18 Financial year.
- ii. Filing of documents shows that some documents were missing from the files including some Certificates for payment which were paid but were not on file.

#### **4.11.2.2 Ministry of Health**

- i. Donor funded projects are stricter than locally funded projects in adherence to specific guide lines and procurement procedures set forth subject to which if not followed may lead to projects taking long to commence because procurement of consultants and contractors has not met the requirements of the donor. This as a result led to re advertisement for expression of interests and the procuring process beginning again from scratch on the procurement of works for Phalombe District Hospital.



- ii. Filing of documents is a problem with this PE as some documents were misfiled or were missing from the files. This includes the tender evaluation report on selection of the consultants and some certificates for payment to the consultant.
- iii. This study recommends stricter enforcement of safety regulations on work sites. Generally, violations are not punished as there is no mechanism unless there is an injury on site when the Labour Department gets involved with compensation issues. The NCIC, as a governing body could look into this aspect of enforcement and tightening the existing regulations and as a means for income generation.

#### **4.11.2.3 National Oil Company of Malawi**

- i. filing of documents is a problem with this PE as some documents were misfiled or were missing from the files. This includes payment certificates to the contractor.

#### **4.11.2.4 Roads Authority**

- i. This study found that the specific conditions of contract on one of the projects by this PE was ambiguous and this led to a delayed decision in the procurement of vehicles. This study recommends that in future the PE should review specifications of vehicles in the special conditions for clarity
- ii. . This study finds that payments made to the contractor on one of the projects for this PE were irregular as an admeasurement contract should not have a final account for re-measured works exactly the same as the original contract. This also applies to the bridge variation which shows that the quoted price was paid as a lump sum on the same contract.
- iii. This study finds the client erred by not involving the consultant on such an important decision as deferment of termination of a contractor despite there being evidence of non-performance.
- iv. This study finds that on one of the projects under this study, the RA did not know the terms of the funding from the beginning and were surprised 10 months into the contract that the loan only covered the works contract and not the consultancy.
- v. This study finds that the relationship between the client and consultant and between consultant and contractor on one of the projects was strained at best and things were left too long to deteriorate before action was taken. This led to the client and consultant suing each other and it is this study's finding that matters should not have deteriorated to such a situation where legal intervention

was consulted resulting in the parties resolving the issue by amicable settlement with a court order.

- vi. This study finds that the letter of notice for termination of the contract for the consultant on one of the projects did not follow the procedure laid out in the contract. It is a requirement of the contract under clause 16.1 for the RA to have given a 30-day notice to the consultant to remedy a failure in the performance of his obligations. The RA erred by submitting a notice of termination prior to the implementation of the notice for rectifying the failure as provided for in Clause 16.1.
- vii. One of the findings of this study is that there are a lot of gaps in the correspondence filed. There are very few Minutes of Meetings put on file. Some letters are not on file and letters from the same consultants on a different project are filed in the main files for another project. On such contracts where a foreign consultant and contractor are involved, it is important for full records to be kept so that information is available even if the foreign firms have returned to their respective countries.
- viii. One of the findings of this study is that the scope for Ekwendeni – Ezondweni was not given for this study. However, from the contract documents, it is seen that this was defined as time went. The original scope for the contract was for 25 kms design and 5 kms supervision of the Ekwendeni – Ezondweni Road. The supervision component was later changed to 25kms. This study finds that because work was added on as the project progressed, there was no defined scope before commencement. The consultant was designing the road as it was being built. The increase in scope from 5kms to 25kms may have been supported by RA application and ODPP approval and reasons thereof validating the increase; however, this information is not on file and therefore this study cannot comment on the procurement process
  - a. This study also finds that the RA should have advised Government to formally procure the varied works under a new and separate bidding procedure for both the consultant and contractor. In this instance, the single sourcing application made by RA did not meet the criteria set in the Public Procurement Act: -
  - b. Clause 30(10) A-D of the Procurement Act allows only the following instances where Single Sourcing is permitted:
    - 1. Public procurement by means of the single-source procurement method is permitted only in the following circumstances, namely -
    - 2. when the estimated value of the procurement does not exceed the amount set in the Regulation;
    - 3. when only one supplier has the technical capability or capacity to fulfill the procurement requirement, or only one supplier has the exclusive right to realize manufacture of the goods, carry out the works, or perform the services to be procured;

4. when there is an emergency need for the goods, works and services, involving an imminent threat to the physical safety of the population or of damage to property, and engaging in tendering proceedings or other procurement methods would therefore be impractical; or
  5. when the procuring entity, having procured goods, works and services from a supplier, determines that additional goods, construction or services must be procured from the same source for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology, construction or services, taking into account the effectiveness of entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question
- c. None of the above 4 criteria were met by the RA in applying for single sourcing. This study finds that PEs should enforce the clauses of single sourcing vigorously and the onus should be on Government to procure services using established guidelines.
  - d. This study finds that procurement guidelines were not followed. The RA should have sought approval from ODPP notwithstanding that it was a Government directive.

#### **4.11.2.5 Electricity Supply Commission of Malawi**

- i. Review of documents shows that some were misfiled or went missing from the files. This includes certificates for payment to the contractor.
- ii. Correspondence between the parties in this project was sometimes through verbal communication without documentation.
- iii. One of the findings of this study is that no proper feasibility study was done when preparing the contract documents. A simple site visit would have provided the design engineer or quantity surveyor adequate information for the terrain necessitating the inclusion of cut and fill and rock excavation in the bid documents. These items should have not come as variations; given the existing site conditions.

#### **4.11.2.6 Blantyre Water Board**

This report has the following findings and recommendations:

- i. that as a result of poor filing of correspondence and documentation, a lot of issues concerning the execution of the project do not have proper back up files for example reasons behind the price adjustments and duration of the works.

- ii. This study finds that the PE erred in awarding the two projects to one contractor and combining the two into one project. One of the bid evaluation criteria was that one of the conditions for evaluation of bids was that no successful bidder shall be allocated both lots for execution. This is a case of mis-procurement which should have been taken up by the unsuccessful contractors and also the ODPP.
- iii. This study concurs with the ODPP's observation that the tender requirements that formed the evaluation criteria were set unnecessarily too high for such a seemingly simple assignment.
- iv. It is the finding of this study that the evaluation procedure should have taken into account the budget for the works and made the budget as one of the criteria for evaluating the best bid to undertake the works.
- v. It is a finding of this study that the PE erred, notwithstanding the fact that the extraordinary payments made were within the contract sum, by changing the terms of the contract and making payments which were not contractually legitimate.
- vi. This study finds that upon the contractor accepting to combine the two contracts into one, the reason for scattered location of the sites is not valid and extension of time should not have been applied for this reason.

Recommendations to the above are as follows:

- i. Department handling construction projects should find a proper and transparent filing system.
- ii. Consultancy services should be outsourced.

#### **4.11.2.7 Ministry of Justice**

- i. No Liaison person for this PE was identified from the beginning and made data collection very difficult. It is recommended that the liaison person be identified prior to engaging the assurance consultant.

#### **4.11.2.8 Ministry of Agriculture, Irrigation and Water Development**

- i. Projects originally selected for review under this study were declared by study consultant to be of conflict of interest; the project were supervised in Assurance consultant's office.
- ii. The alternative projects selected for review were not evaluated, works are imminently going to tender and there was confidential tender information which could not be provided to the Assurance study. The study was also time barred as data collection period had expired.

#### **4.11.2.9 Millennium Challenge Account**

This study finds Millennium Challenge Account as a PE was the least responsive to the study. Therefore, for the future, it is necessary for the CoST secretariat to invite selected PEs participating in the study to a one-day meeting. Invited should be procurement specialists or members of the IPC. The intention shall be to increase their awareness in the importance of the CoST studies. Further, these meetings shall be used to introduce the study consultant to the PE liaison persons. Only if this is implemented shall the delays experienced during data collection period be mitigated.

#### **4.11.2.10 Northern Region Water Board**

- This study finds that for the future, the provision for correction of errors in bids where, if the correction is made, puts other competing bidders at a disadvantage is an issue that the NCIC, ODPP and other agencies should examine and compare with other jurisdictions to come up with an equitable solution. In this particular case for Mzimba Water Supply Project, other bidders had already been disqualified when the corrections were made and therefore did not affect the outcome.

#### **4.11.2.11 Lilongwe City Council**

- It is a finding of this study that the Council required assistance in drafting the consultancy contract and in its implementation. The cost reimbursable element should have been based on actual planned activities and not as 40% of the contract sum. It is recommended that for the future, the Roads Authority should be involved in an advisory role in the procurement, award and implementation of road projects until such time as the City Council has in-house capacity to draft and implement road projects.
- One of the findings of this report is that the AG was correct in his interpretation of the contract. Suffice to reiterate that the Council has a pressing need to engage the Roads Authority in all aspects of administering these road projects until such time as the Council has the relevant skill in-house.

- This study recommends that the NCIC undertakes Training Needs Assessment of all city councils and should it be demonstrated that there are skills gaps in the Engineering Departments, the necessary training could be tailored for these institutions.
- One of the findings of the study is that PEs should desist from requesting for approval of Addenda and Extensions of time after the fact.
- The study finds that unjustified delays caused the project time to overrun and caused damage that was perceived by the public as incompetence on the part of the contractor. The contractor should have completed the works on time rather than giving excuses for not completing the works on time.
- Although not conclusive that lack of adequate signage caused an accident, this study recommends that the NCIC should explore reinforcement of safety violations as a means to improve public safety and for it to collect fines for violators.
- This study finds that Lilongwe City Council should in future not consider the budget as the primary driver for designs. It will be better to construct fewer kilometers of roads that are robust to meet the ever increasing vehicular traffic and at the same time meet the people's expectations.
- The study finds the quality of the roads generally to be of poor standard. This mainly has to do with the workmanship and the standard of design adopted.