CoST MALAWI

ASSURANCE REPORT

JANUARY 2018

LIST OF ACRONYMS

CoST	Construction Sector Transparency Initiative
DOB	Director of Buildings
EIMU	Education Infrastructure Management Unit
GCU	Government Contracting Unit
IDS	Infrastructure Data Standards
IPC	Internal Procurement Committee
IPC	Interim Payment Certificate
LUANAR	Lilongwe University of Agriculture and Natural Resources
MMSG	Malawi Multi Stakeholder Group
MRA	Malawi Revenue Authority
NCB	National Competitive Bidding
MPI	Material Project Information
NCIC	National Construction Industry Council
ODPP	Office of the Director of Public Procurement
PEs	Procuring Entities
PPA	Public Procurement Act
UNIMA	University of Malawi
VAT	Value Added Tax

Contents

Executive Summary

This study finds that the client was motivated by the desire to get the biggest chunk of the funds from the common University Expansion Basket. To meet this need, the consultants packaged the requirements into one contract although the needs were changing constantly. This led to the decision to seek a No Objection from the ODPP for award of the contract to Delta at 2008 rates in 2012. The consultants knew before the works contract was signed that the scope of the works was to be drastically changed. During this intervening period, the consultant should have presented all the options to the client for them to make an informed decision and seek the approval of the ODPP. The consultants provided an insight into the decision making that took place and advised the Assurance Consultant that such advice was indeed provided to the client although it was not recorded. Such important advise, in the findings of this report should have been minuted from the meetings held with the client for the sake of posterity.

The period between submission of bids and award (from 21 November 2008 to 20 April 2011) is 2 years and 5 months. The original estimate for this project was in August 2007 almost 3 years before award. This should have necessitated the procedure to have been re-Tendered; notwithstanding the fact that the project was on a fast track.

This study concurs with the ODPP according to a letter dated 20 May 2013 in which they withheld approval of the revised budget citing Regulation 155 recommending a new contract to be entered into force as the increase for the increased scope was too high. Reasons given by LUANAR against the advice of ODPP to re-tender the works were guided by political expedience citing inter alia:

a. The project was good for the nation

b. The University was under pressure to show progress as to walk the Government talk

c. Stoppage of the project would be a huge embarrassment to all

The foregoing reasons have no technical underpinning. In the face of political expedience, consultants should be able to give sober advice to clients based purely on technical considerations. It is not clear from the minutes of the meeting whether the Consultants gave technical advice for or against re-tendering the works.

The consultant's fees and method of payment are being reviewed by the DOB, this study recommends that the final review should take into account the proper method of calculating VAT and NCIC Levy. If these taxes were withheld and remitted by the client, a reconciliation is required so that the correct taxation is paid. Similarly, if the consultants were responsible for remittance of these taxes, reconciliation for each member of the consultant consortium is recommended and appropriate submissions lodged with MRA.

This study assumes that the Provision for Reimbursables and Disbursements for the Consultants of K25,000,000 shall be adjusted with actual invoiced amounts. A further assumption made by this study is that the actual adjusted amount shall be within the K25 Million Sum provided by the Consultants themselves. It is recommended that the DOB should make this adjustment as part of the review currently being undertaken.

The DOB is currently actively engaged in the project. This study finds that the DOB should have taken an active role from day one including EIMU. This study recommends for the future that Government Project Implementation Agencies be engaged from the outset on large projects with the entry threshold to be established from time to time.

This study concurs with the findings made by the GCU in an audit report for the project: -

- the scope was revised and the Consultants' fees were based on a percentage of the works Contract at 14% of the revised BOQ K4,821,798,110.41. These new terms were not negotiated and agreed with the client
- The consultant's payments were being claimed through the contractor's payment certificates. The GCU report doubted the quality of advice the Consultant was providing to the client given this fusion of Consultant and Contractor.
- The Consultants instructed payments for the Clerk of Works to be paid through the contractor also raising fears of compromising the level of professional supervision offered by the consultants with this arrangement
- Contract value was revised from K1.1 Billion to K4.8 Billion. The report underscores appropriate advice should have been given by the consultants to guide the client.
- The project suffered from delayed and intermittent payments as Government struggled to raise funds for the revised contract sum of K4.8 Billion plus consultants' fees estimated at K550 million.

The Assurance Study found that the DOB has taken action on all the recommendations and as such, the Fees for the Consultants shall be negotiated and shall be Time Based and not based on percentage of Works Value. Further, the Consultants' and Clerk of Works' payments are no longer being made through the contractor's certification. Finally, the value of the contract is being reviewed for the Final Account. Because the mandate of the Consultant's consortium expired in 2017, it is understood that the calculation of the quantities outstanding and hence the value of the remaining works shall not be ascertained by the consultants. This study recommends that the consortium should be engaged for a fixed fee short term assignment to provide these estimates to the DOB. This work is important for Government to make informed decisions and make plans for completion of the project.

This study recommends that the review being undertaken by the DOB should be expedited as time lost means a bigger burden to Government in terms of additional escalation of cost. The study further recommends the following:

a. That the review of the Final Account be concluded between the DOB, Consultants, Client and Contractor concentrating on measured works, VAT and NCIC Levy calculations, review of payment certificates and value of materials remaining on site.

b. Calculation of the Consultant's payments be reviewed by the DOB and certify payments due to the consortium led by MOD Architects.

c. Contractual issues pertaining to Contractor's claims for interest payment, extension of time with cost; and any other financial claims be concluded with the participation of the above parties plus the GCU and MOEST. This shall ensure that there are no further claims. In addition, this report recommends that funds be availed to pay the contractor and the Consultants in full for the work completed.

d. For the value of works to be remaining to be completed, it is recommended that the Government obtains commercial source of funding the outstanding work and should enter into fixed contracts with a defined completion date for completion of the works. These Addenda should be made on the proviso that no Extension of Time or Additional Payments shall be entertained. The contractor and consultants who were engaged on this project are best suited to complete the works. This shall entail for the client to obtain a No-Objection from the ODPP for Single-Sourcing of the various parties to be engaged for completion of the works..

This study recommends that future projects by Government should have a defined scope to avoid escalation of costs. If change in scope is unavoidable, clear guidelines for obtaining authorization should be followed and should be strictly in keeping with the provisions of the Procurement Act.

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.

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

Initial contacts were made with the CoST Secretariat for the institution and project to be reviewed under the Individual Assurance Consultancy. The MSG selected Luanar as the PE and the project selected to be reviewed is **Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works.**

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 the publicly funded infrastructure development project to be reviewed. The letter was dated 24 November 2017.

The consultant sent the letter to the participating PE attaching the name of the project to be reviewed and requesting access to information.

2.3 Obtain a list of Liaison Persons from the CoST Secretariat

The Assurance Consultant next contacted the Registrar for Luanar and set up an initial breafing meeting which was attended by the Estates Officer, the Registrar, and the Assurance Consultant.

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

The outcome of the briefing meeting was an introduction to Quant Consult, a member of the consultant's team resident in Lilongwe.

Upon contacting Quant Consult, they sought permission from DOB to release the information to the Assurance Consultant. This was accepted on the condition that the DOB should take charge of the files and the consultant to review the same from the DOB offices. This arrangement was agreed to. However, the Assurance Consultant requested that during the Christmas break he be given access to the files in order to reduce the data collection period. Hence data collection was completed during this period and follow-ups made during the first and second weeks of January 2018 for missing information and obtaining clarifications.

2.5 Duration for the Study

The study commenced on 24 November 2017. The Assurance Consultant requested for files from the MOD Architects Consortium through their Lilongwe representative Quant Consult and this information was made available to the Director of Buildings Office on 27 November 2017.

The DOB made the files available to the Assurance Study on 22 December 2017. The files were returned to the DOB on 9th January 2018 after the Assurance Study completed the desk review of the Contract documents. In all 13 files were submitted and reviewed. The desk review took 19 Calendar days but the number of days worked was 12.

On 16 January 2018, the Assurance Consultant planned to meet the client but the client was not available and due to time constraints, no other meeting was scheduled. The client was however advised to make comments on the draft report submitted to them on 16 January 2018 by email. As at the time the report was submitted to CoST Secretariat, there comments had not been received. The DOB was also copied the draft report and requested to comment. The only comments received were from the MOD Architects Consortium represented by Quant Consult and these have been incorporated in the final report.

The meeting with Quant Consult took 2 days; on 12th and 19th January 2018.

Hence, time taken for the study is as follows:

Initial meeting with Client	1	Day
Desk Study of documents from DOB	12	Days
Meeting with Client at Bunda (No meeting, but visited site instead)	1	Day
Meeting with Quant Consult	2	Days
Report writing	4	Days
Total Number of Days spent on the study	**20**	**Days**

2.6 Conduct Site Visits

A site visit was conducted during the second week of January 2018 to verify the status of the construction. In parallel, a meeting was also planned with the PE to get a better understanding of the project. However, the PE's representative was not available on the agreed date.

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;the Procurement Act No. 8 of 2003; Access to Information Act of 2017; and Conditions of the Works Contract.

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 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 performances 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

(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.

3.3 Access to Information Act of 2017

This Act provides for the safeguarding of Government institutional information including those institutions and individuals contracted by Government to undertake work for it.

Section 51 of the Act provides that if any person wilfully conceals, destroys, mutilates, falsifies or otherwise alters a document or record containing information which has been requested with intent to prevent disclosure of the information commits a crime punishable by imprisonment and a fine.

4.0 Data Analysis and Verification

This study reviewed one project at Lilongwe University of Agriculture and Natural Resources (LUANAR).

4.1 Design and Supervision of the Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works – Consultancy Contract

The study concentrated on the review of the Design and Supervision Contract component. The material data are described in Table 4.1 below.

Table 4.1 – Description of Design and Supervision Contract

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Design and Supervision of the Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works	Lilongwe	Project scope originally was for the construction of Gateway Administration Complex and Self Catering Hall of Residence. After submission of bids, the client did not have funds to commence the works. The project therefore suffered delays prior to commencement from October 2008 to 20 April 2011 when Delta Constructions was awarded the Contract as per their bid submitted in 2008. The scope was revised after award to take on board changed priorities by omission of the Self-Catering Dormitory and addition of Teaching Facilities. Originally the programme was addressing the gap between enrollment and available space for teaching and accommodation. Due to a Government Directive, the programme changed because Government wanted all constituent colleges of the University to be stand-alone entities. Hence a common fund was established where each stand-alone entity was tapping required funding for its individual need.	The original purpose of the project was to improve higher learning education standards and to narrow the gap between number of places available for higher education and the number of students who qualify to be enrolled within the higher education system. It was therefore proposed that the project shall be for the Construction of Gateway Complex and Self Catering Hostel Block. The new infrastructure would ease the problems of space on campus as more than 70% of the students are accommodated in privately owned accommodation with poor sanitation and no electricity making them unsuitable for University education.	Original value was for Design and Supervision was **K47,906,776.88.** This was however revised to take into account change in scope and duration taken from 2008 to 2017 when the contract was suspended. Hence projected final cost for Design and Supervision is **K643,729,650.93.** This study made recalculations of the projected final cost to be K638,807,261.77 ,	Project has been suspended due to delayed payments by Government of Malawi caused by massive escalation of cost and time

i. Funding

Malawi Government funded the project. The original cost Estimate for the Design and Supervision was K30,311,368.65 based on Tender Analysis document faxed on 29 October 2007

ii. Tender Process - Consultant

The Tender Process used for procurement of the consultant was National Competitive Bidding process.

iii. Contract Award - Contractor

Three Consulting Consortia competed for award of the project. However, there is a document faxed on 29 October 2007 (referenced above) which states that ***"Since the Architect brief started before the contract by inclusion in the Technical proposal the Pre-contract period can be reduced combining activities. Six months can adequately cover this period"*** This shows that MOD Architects consortium had already started carrying out works before the tender process for procurement of the Consultant. This begs the questions:

- Given that the consultant had started work before formalization of the procurement process, if his bid was unsuccessful, how was he to be paid without a contract?
- Was the procurement process used to rubber-stamp the acquisition of the Consultant who had already been given the brief?
- Is there another explanation for this?

The above referenced faxed document states that three firms expressed interest to bid and submitted their bids. However, only MOD Architects' Technical Proposal was responsive and therefore its Financial Proposal was the only one opened and evaluated. Based on the evaluation of the price offered against the client's budget, the bid by MOD Architects was responsive and was recommended for award. The contract was awarded at K49,826,206.50 comprising:

- Phase I - Design work: K29,957,459.50
- Phase II Supervision component: K19,868,747.00

v. Scope of Works

Project scope originally was for the construction of Gateway Administration Complex and Self Catering Hall of Residence.

After submission of bids, the client did not have funds to commence the works. The project therefore suffered delays prior to commencement from October 2008 to 20 April 2011 when Delta Constructions was awarded the Contract as per their bid submitted in 2008.

Originally, Delta Constructions' bid together with Marb Grant & Masasi JV were eliminated at tender evaluation stage. The ODPP however wrote to the IPC stating that they did not agree with the disqualification of Delta on the basis of experience in similar works, turn over and qualified personnel. On this basis, Delta were reinstated for re-evaluation.

With passage of time over one year, bidders were requested to stand by their bids. SR Nicholas who were originally the lowest evaluated tenderer pulled out and were not reconsidered for evaluation. Consideration was therefore between Delta and City Building Contractors. It is interesting to note that City Building Contractors wrote to the QS on 15 November 2010 via letter 1582/10 stating that they would not participate further in the procedure. This was followed by a letter dated 17th November with even reference stating that they would now participate in the procedure.

There is no information on file for this change of heart.

The original purpose of the project was to improve higher learning education standards and to narrow the gap between number of places available for higher education and the number of students who qualify to be enrolled within the higher education system. It was therefore proposed that the project shall be for the Construction of Gateway Complex and Self Catering Hostel Block. The new infrastructure would ease the problems of space on campus as more than 70% of the students were accommodated in privately owned accommodation with poor sanitation and no electricity making these living conditions unsuitable for University education.

Priorities changed whilst the client was finalizing procurement of contractor but it was decided that the original scope should be the basis for the contract and to revise the scope following the signing of the contract to reflect new requirements which were to omit the self-catering hostel. This was substituted with a teaching complex which includes lecture theatres, laboratories and teaching staff offices.

Government further directed that Bunda College of Agriculture be de-linked from the University of Malawi to become Lilongwe University of Agriculture and Natural Resources (LUANAR) necessitating a further change in scope of works. The Gateway Building was increased from 3 to 4 storeys to accommodate the new requirements for increased University Management office space.

In responding to Government directive to de-link Bunda College from University of Malawi (UNIMA), management of Bunda College of Agriculture were in haste to secure a larger chunk of funding than other colleges. Minutes of meeting held on 3 November 2010 state that funds were almost secured to develop the University and time was of essence since the funds are in one basket for all the constituent colleges of the University. Hence, the revised scope was to ***"…tap the funding from the common University Expansion Funds/Basket. The Universities that would move faster would get a lions-share than those that may "sleep.""***

The above meeting minutes give an insight into the decision making process by the college that may have contributed to escalated time and cost for the construction of the project.

A meeting held on 23 May 2013 at LUANAR addressed the objection of the ODPP to revise the rates for the construction programme. The ODPP advised that the new Teaching Facility works introduced should have been procured under a separate contract. The original contract had changes in scope which were acceptable i.e. omission of Self-Catering Hostel and Upgrading of the Gateway Administration Complex. The ODPP therefore had advised the University to revoke the contract and re-tender the works.

The University gave three reasons why the project should proceed and requested the ODPP to reconsider their stance:

- The project was good for the nation

- The University was under pressure to show progress as to walk the Government talk
- Stoppage of the project would be a huge embarrassment to all

From the above, it can be seen that the client was motivated by the desire to get the biggest chunk of the funds from the common University Expansion Basket. To meet this need, the consultants packaged the requirements into one contract although the needs were changing constantly. This led to the decision to seek a No Objection from the ODPP for award of the contract to Delta at 2008 rates in 2012; knowing full well that the scope would be revised further after the NO Objection was obtained. This was articulated in the minutes of the meeting held on 19 May 2011 in which it was agreed to award the contract to Delta Constructions with the original scope as tendered with the offered price. Once the contract is in place, *"…the consultants would issue an instruction to remove the hostel block and bring in a Teaching Block, at the same time add an extra floor to the Administration Block."*

This study therefore finds:

- **The period between submission of bids and award (from 21 November 2008 to 20 April 2011) is 2 years and 5 months. The original estimate for this project was in August 2007 almost 3 years before award. This should have necessitated the procedure to have been re-Tendered; notwithstanding the fact that the project was on a fast track.**
- **The consultants knew before the works contract was signed that the scope of the works was to be drastically changed. During this intervening period, the consultant should have presented all the options to the client for them to make an informed decision:**
  - **If variation is greater than 15% seek approval from ODPP**
  - **If the variation is over 25% seek the approval of ODPP to get guidance whether to re-tender.**
  - **No record of these recommendations having been made to the client has been seen. In interviews with the Consultants, however, the consultants state that appropriate advice was given to the client which if followed would have been in keeping with the Procurement Act.**
- **This study concurs with the ODPP according to a letter dated 20 May 2013 in which they withheld approval of the revised budget citing Regulation 155 recommending a new contract to be entered into force as the increase was too high. Reasons given by LUANAR against the advice of ODPP to re-tender the works were guided by political expedience citing inter alia:**
  - **The project was good for the nation**
  - **The University was under pressure to show progress as to walk the Government talk**
  - **Stoppage of the project would be a huge embarrassment to all**

  The foregoing reasons have no technical underpinning. In the face of political expedience, consultants should be able to give sober advice to clients based purely on technical considerations. It is not clear from the minutes of the meeting whether the Consultants gave technical advice for or against re-tendering the works.

vi. Contract Execution - Consultant

Significant changes to the Contract:

The original contract signed between the client and MOD Architects was for K49,826,206.50. During the course of the works, the original scope for design work was increased to cater for Design Revisions to the

Administration Block. An additional K6,398,250 was therefore paid during Phase 1 – Design Services giving a total of K31,710,811.28; which was paid in full.

The original value for Supervision of the works was K19,868,747.

The Design and Supervision Contract has therefore increased from K49,826,206.50 to K638,807,261.77 (Proposed) as follows:

Table 3 – Recalculation of Consultant's Payment Schedule by Assurance Report

Design Services			K31,710,811.28
Supervision – Fees			
Value of New Scope	K4,673,127,120.70	@ 7%	K327,118,898.45
Time Based Element	K4,673,127,120.70	@ 3.5%	K163,559,449.22
Sub-Total			K522,389,158.95
VAT		@16.5%	K86,194,211.23
NCIC Levy		@1%	K5,223,891.59
Reimbursables/Disbursements		Provisional	25,000,000.00
Total Payments Due to Consultants			**K638,807,261.77**

The submission by the consultants dated 30 June 2016 submitting the above calculations has a total value of K643,729,650.93 because the VAT and NCIC Levy are calculated on the gross sum obtained after adding fees and reimbursables as calculated below in Table 4: -

Table 4 - Calculation by Consultants - Payment Schedule

Design Services			K31,710,811.28
Supervision – Fees			
Value of New Scope	K4,673,127,120.70	@ 7%	K327,118,898.45
Time Based Element	K4,673,127,120.70	@ 3.5%	K163,559,449.22
Disbursements/Reimbursables			K25,000,000.00
Sub-Total			K522,389,158.95
VAT		@16.5%	K90,866,600.39
NCIC Levy		@1%	K5,473,891.59
Total Payments Due to Consultants			**K643,729,650.93**

This Study calculates VAT and NCIC Levy on Fees only (excluding Disbursements and Reimbursables – the assumption being VAT is already paid on these items as and when purchased from the vendor) in accordance with the industry standard procedure. NCIC Levy is also applied to fees only. The difference in calculation methods yields a saving of K4,922,389.16.

VAT Calculated in the submission of 30 June 2016 should be adjusted to the current rate of 16.5% as the rate used is 16.6%.

Since these figures are being reviewed by the DOB, this study recommends that the final review should take into account the proper method of calculating VAT and NCIC Levy. If these taxes were withheld and remitted by the client, a reconciliation is required so that the correct taxation is paid. Similarly, if the consultants were responsible for remittance of these taxes, reconciliation for each member of the consultant consortium is recommended and appropriate submissions lodged with MRA.

This study assumes that the Provision for Reimbursables and Disbursements of K25,000,000 shall be adjusted with actual invoiced amounts. A further assumption made by this study is that the actual adjusted amount shall be within the K25 Million Sum provided by the Consultants themselves.

vii. Project Evaluation Report

Due to suspension of the project based on funding problems, the Final Report has not been produced. The project however was audited twice. The GCU started its audit in April 2013 in principal to review the arrears owed to the contractor. Arrears before the audit were calculated at K1,043,761,548.62 plus Consultants Payments outstanding were K30,991,057.02 giving a total of K1,074,752,605.64.

Following the audit by the GCU, authorized payment of K716,959,853.02 to the contractor and recommended withholding of arrears for the Consultant until the revised terms of the consultancy contract were fully justified, negotiated, and agreed. The report also recommended a full audit of all certificates and make adjustments in subsequent certificates any variances found. The report also recommended the DOB to be on the project management team. Separation of payments to contractor and consultants was also recommended. An Extension of the Contract was recommended taking into account funds to be made available by Government. Other findings of the report:

- Initial Contract for design and supervision was K47,906,776.88 comprised of:
    - Phase I - Design work undertaken by the Consultant for the project was paid in full at K30,883,789.51
    - Phase II Supervision contract was K17,022,987.37.

  However, during the course of the contract, the scope was revised and the Consultants' fees were based on a percentage of the works Contract at 14% of the revised BOQ K4,821,798,110.41. These new terms were not negotiated and agreed with the client
- The consultant's payments were being claimed through the contractor's payment certificates. The GCU report doubted the quality of advice the Consultant was providing to the client given this fusion of Consultant and Contractor.
- The Consultants instructed payments for the Clerk of Works to be paid through the contractor also raising fears of compromising the level of professional supervision offered by the consultants with this arrangement

The recommendations made by the GCU have been taken on board and the consultants is no longer paid through the contractor.

Further, calculation of fees has been revised in tandem with the above recommendations subject to the approval of the DOB.

The DOB is now actively engaged in the project. This study finds that the DOB should have taken an active role from day one including EIMU. This study recommends for the future that Government Project Implementation Agencies be engaged from the outset on a project like this one.

The project was further audited by the DOB and University Registrar's Office. Minutes of Meeting record that a 26-page Financial Audit Report prepared by University Registrar's Office and Office of DOB on the Construction of Gateway Administration Block and Teaching Complex at Bunda Campus was presented.

The Audit by DOB indicated above was not on file for this study.

viii. Quality of the Works

The Assurance Consultant visited the site to appreciate the works. Visually, the unfinished Gateway and Teaching blocks are aesthetically pleasing. The consultant reviewed Quality Control data and found that the Consultants have strict Quality Control procedures and therefore the quality of the built infrastructure is very good.

4.2 Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works - Works Contract

The study also reviewed the Works Contract component. The material data are described in Table 4.2 below.

Table 4.2 – Description of Works Contract

Name of Project	District	Description of Scope of Works	Purpose of the Project	Contract Value (MK)	Contract Final Value (MK)
Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works	Lilongwe	Project scope originally was for the construction of Gateway Administration Complex and Self Catering Hall of Residence. After submission of bids, the client did not have funds to commence the works. The project therefore suffered delays prior to commencement from October 2008 to 20 April 2011 when Delta Constructions was awarded the Contract as per their bid submitted in 2008. The scope was revised after award to take on board changed priorities by omission of the Self-Catering Dormitory and addition of Teaching Facilities. Originally the programme was addressing the gap between enrollment and available space for teaching and accommodation. Due to a Government Directive, the programme changed because Government wanted all constituent colleges of the University to be stand-alone entities. Hence a common fund was established where each stand-alone entity was tapping required funding for its individual need.	The original purpose of the project was to improve higher learning education standards and to narrow the gap between number of places available for higher education and the number of students who qualify to be enrolled within the higher education system. It was therefore proposed that the project shall be for the Construction of Gateway Complex and Self Catering Hostel Block. The new infrastructure would ease the problems of space on campus as more than 70% of the students are accommodated in privately owned accommodation with poor sanitation and no electricity making them unsuitable for University education.	Original Estimate was K385,000,000 dated August 2007. However, this was changed to K1.114 Billion just prior to tender opening. The increase was attributable to revised requirements by the client for office space from 1194m2 to 1800m2 to bring glory and articulate the image the college was looking for as a Gateway Complex. The client also required a Rotunda Feature with a fish pond which increased the cost of the earthworks. Further the time between the original estimate and the revised was about 1 year within which cost of materials had increased. The revised cost was justified by the fact that submitted bids were within the revised estimate in November 2008. The project is currently suspended and a Final Account is being prepared. The revised Contract Sum is K4,821,798,110.41. However, the final cost is likely to exceed K5 Billion.	Project has been suspended due to delayed payments by Government of Malawi caused by massive escalation of cost and time

i. Funding

Malawi Government funded the project.

ii. Tender Process - Contractor

The tender process was National Competitive Bidding. Invitation to tender was issued on 10 October 2008 and Tenders were opened on 21 November 2008. However, there was no award done due to uncertainties with funding and Bid bonds were returned in October 2009.

The process was re-started in 2010. In the meeting held on 19 August 2010 attended by representatives from Bunda College, MOD Architects and Quant Consult, it was agreed that the recommended bidder, SR Nicholas be contacted to see if they were still interested in the job. In the event that the bidder accepted to stand by his bid price and duration for the assignment, the College would seek a No Objection from the ODPP so that the works contract is finalized with the bidder.

The meeting agreed that the Gateway Complex be increased by another full floor and similarly the Hostel Block was to have an added floor. It was agreed that the added scope of works together consideration for increased rates due to time taken before award were to be added to the original contract

The meeting also agreed to engage the consultants led by MOD Architects to fast track the project. The reason for single sourcing was agreed that the open bid procedure would take a long time to procure consultancy services and would not be in tandem with the period to achieve results.

It was reported in the meeting held on 3rd November 2010 that SR Nicholas declined to proceed with the procedure. A decision was made to re-evaluate Delta Constructions as it stood in 2010 and it was noted that the areas for which their bid was (previously) rejected had changed and the firm had improved. It was therefore deemed proper to evaluate the contractor based on the current situation than the past.

It should be noted that the ODPP had given an opinion on 4th March 2009 finding that the reasons for disqualifying Delta were not correct while the evaluation report claimed Delta had not done works of similar nature, annual turnover did not exceed K200 million, and the contractor did not have experienced personnel. ODPP therefore recommended that bids by Delta Constructions, SR Nicholas, and City Building Contractors be re-evaluated.

Delta Constructions emerged as the lowest evaluated bidder after the evaluation and on 27 April 2011, the ODPP gave approval for the College to engage Delta Constructions and MOD Architects as contractors and supervising consultants respectively.

The meeting of 19 May 2011 agreed to award the contract to Delta Constructions with the original scope as tendered with the offered price. Once the contract is in place, ***"…the consultants would issue an instruction to remove the hostel block and bring in a Teaching Block, at the same time add an extra floor to the Administration Block."***

In the meeting held 23 May 2013, which was attended by the ODPP representatives, it was agreed that the project should proceed. The College tendered the following reasons why:

- The project was good for the nation

- The University was under pressure to show progress as to walk the Government talk.
- Stoppage of the project would be a huge embarrassment to all

This study finds that:

- The period between submission of bids and award (from 21 November 2008 to 20 April 2011) is 2 years and 5 months. The original estimate for this project was in August 2007 almost 3 years before award. This should have necessitated the procedure to have been re-Tendered; notwithstanding the fact that the project was on a fast track.
- The consultants knew before the works contract was signed that the scope of the works was to be drastically changed. During this intervening period, the consultant should have presented all the options to the client for them to make an informed decision:
  - If variation is greater than 15% seek approval from ODPP
  - If the variation is over 25% seek the approval of ODPP to get guidance whether to re-tender.

This study finds no record of these recommendations having been made to the client

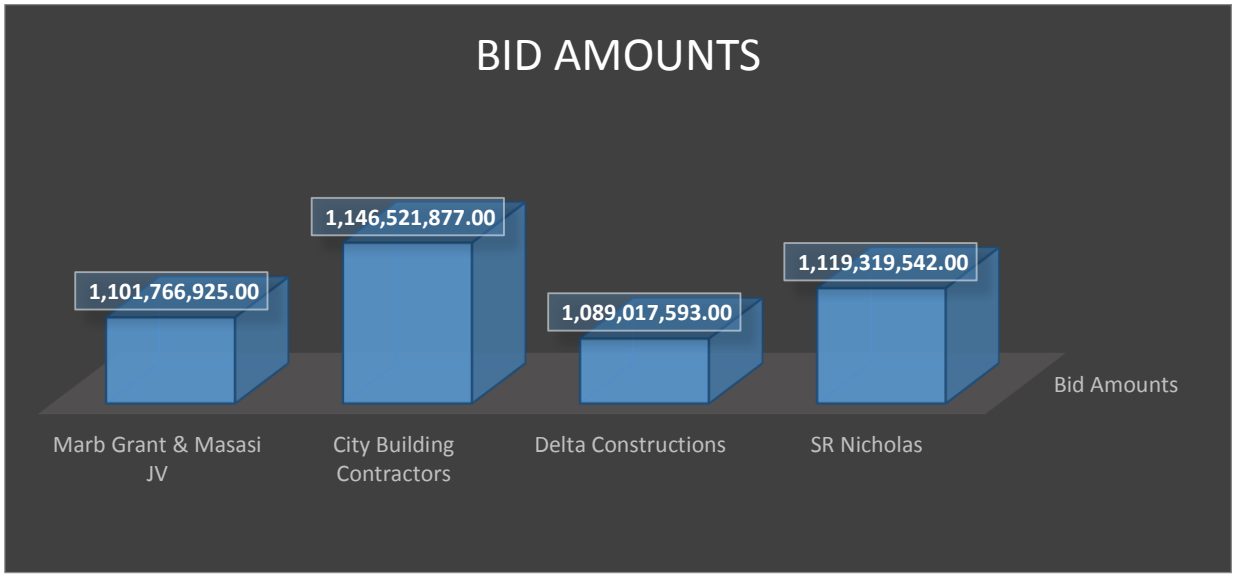
- This study concurs with the ODPP through ODPP letter dated 20 May 2013 in which they withheld approval of the revised budget citing Regulation 155 recommending a new contract to be entered into force as the increase was too high.
- This study finds that the college made decisions based on political expedience. These decisions were ratified by the technocrats who were supposed to guide the institution. It was the duty of the consultants to give the College technical options which are in keeping with the Procurement Act so that it is on record. In other words, the consultants should have applied to the ODPP for permission to increase the scope in the first instance rather than requesting the ODPP to approve procurement of the works using tender sum and rates and thereafter requesting to change the scope and rates.
- The college also made decisions to get as much funding from the common University Expansion Funds/Basket as possible in response to Government directive to de-link Bunda College from University of Malawi (UNIMA), management of Bunda College of Agriculture. The record does not show the extent to which these decisions affected procurement of the works.

iii. Contract Award - Contractor

Four firms submitted bids:

- Marb Grant & Masasi JV K1,101,766,925.11
- City Building Contractors K1,146,521,876.75
- Delta Constructions K1,089,017,593.26
- SR Nicholas K1,119,319,541.75

The contract was awarded to Delta Constructions at a price of K1,089,017,593.26



ix. Scope of Works

The Original Estimate was K385,000,000 dated August 2007. However, this was changed to K1.114 Billion just prior to tender opening. The increase was attributable to revised requirements by the client for office space from 1194m2 to 1800m2 to bring glory and articulate the image the college was looking for as a Gateway Complex. The client also required a Rotunda Feature with a fish pond which increased the cost of the earthworks. Further the time between the original estimate and the revised was about 1 year within which cost of materials had increased. The revised cost was justified by the fact that submitted bids were within the revised estimate in November 2008. On 21 May 2014, the Client and Contractor entered into Addendum No. 1 confirming the new scope of works at K4,821,798,110.41.

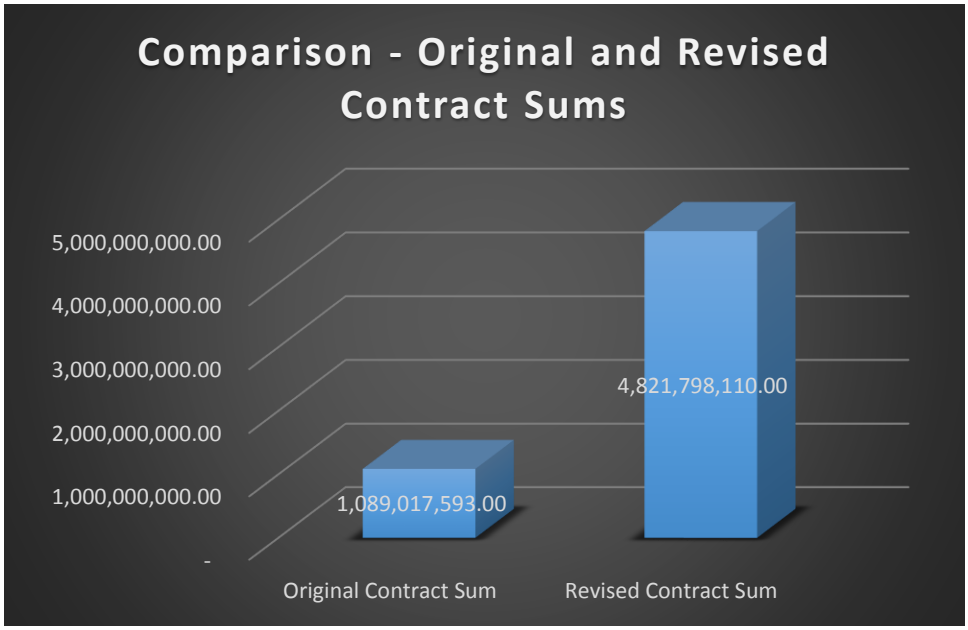
x. Contract Execution - Contractor

Significant changes to the Contract:

- At inception in 2007, the client was briefed that the project would cost K385 Million. Due to delays in awarding the contract and changes to the scope of the Works, the price escalated to K1,089,017,593.75. Original scope was for the construction of Gateway Administration Complex and Self Catering Hall of Residence.
- The scope was further revised by omission of the hostel and addition of Gateway Administration Block and Teaching Facilities. Due to administrative constitutional changes, Bunda College of Agriculture ceased to be the client through a Government directive for the de-linking of the constituent Colleges of the University of Malawi to separate entities of

independent universities. This directive had a huge impact on the scope of the Works and consequently the cost of the project.

- The client did not have adequate funding to run the project and consequently, the costs escalated from K1,089,017,593.75 to K4,821,798,110.41 an increase of 442%. This increase was a function of increased scope, late payments, suspension of works.
- Original duration for the contract was 108 weeks. The contract however experienced many delays, suspensions and re-starts. The project is currently under suspension by both the contractor and the consulting team. A Final Account and projection for the remaining works has been ordered and currently the DOB are reviewing the submitted documents.



xi. Project Evaluation Report

Due to suspension of the project based on funding problems, the Final Report has not been produced. The project however was audited twice. The GCU started its audit in April 2013 in principal to review the arrears owed to the contractor. Arrears before the audit were calculated at K1,043,761,548.62. Following the audit the GCU authorized payment of K716,959,853.02 to the contractor and recommended withholding of arrears for the Consultant until the revised terms of the consultancy contract were fully justified, negotiated, and agreed. The report also recommended a full audit of all certificates and make adjustments in subsequent certificates any variances found. The report also recommended the DOB to be on the project management team. Separation of payments to contractor and consultants was also recommended. An Extension of the Contract was recommended taking into account funds to be made available by Government. Other findings of the report:

- Contract value was revised from K1.1 Billion to K4.8 Billion. The report underscores appropriate advice should have been given by the consultants to guide the client.
- The project suffered from delayed and intermittent payments as Government struggled to raise funds for the revised contract sum of K4.8 Billion plus consultants' fees estimated at K550 million.

The DOB is now actively engaged in the project. This study finds that the DOB should have taken an active role from day one including EIMU. This study recommends for the future that Government Project Implementation Agencies be engaged from the outset on a project like this one.

The project was further audited by the DOB and University Registrar's Office. Minutes of Meeting record that a 26-page Financial Audit Report prepared by University Registrar's Office and Office of DOB on the Construction of Gateway Administration Block and Teaching Complex at Bunda Campus was presented.

The Audit by DOB indicated above was not on file for this study.

xii. Quality of the Works

The Assurance Consultant visited the site to appreciate the works. Visually, the unfinished Gateway and Teaching blocks are aesthetically pleasing. The consultant reviewed Quality Control data and found that the Contractor had Quality Control protocols in place which were reinforced by the consultants. Therefore the quality of the built infrastructure, based on the above observations, is very good.

4.3 - PICTURE GALLERY

New Teaching Block as at 16 January 2018

Picture 4.3.1 – New Teaching Block (Incomplete) as at January 16th 2018

Picture 4.3.2 – Elevated Walkway

Picture 4.3.3 - Courtyard

Gateway Administration Block as at 16 January 2018

Picture 4.3.4 - Gateway Administration Block Imposing View

Picture 4.3.5 – Close-up View of Gateway Administration Block

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Project Sign Board as at 16 January 2018

Picture 4.3.6 – Project Sign Board – Part of Project Disclosure to the Public

4.4 - Findings and Recommendations

4.4 Findings and Recommendations

This study finds that:

1. The client was motivated by the desire to get the biggest chunk of the funds from the common University Expansion Basket. To meet this need, the consultants packaged the requirements into one contract although the needs were changing constantly. This led to the decision to seek a No Objection from the ODPP for award of the contract to Delta at 2008 rates in 2012. The consultants knew before the works contract was signed that the scope of the works was to be drastically changed. During this intervening period, the consultant should have presented all the options to the client for them to make an informed decision:
    a. If variation is greater than 15% seek approval from ODPP
    b. If the variation is over 25% seek the approval of ODPP to get guidance whether to re-tender.
    c. This study found no record of these recommendations having been made to the client in the documentation availed. Interviews with the consultants indicate that proper advice was given although not recorded in the minutes of the meetings held. This study therefore finds that such important decisions should have been for the record.
2. The period between submission of bids and award (from 21 November 2008 to 20 April 2011) is 2 years and 5 months. The original estimate for this project was in August 2007 almost 3 years before award. This should have necessitated the procedure to have been re-Tendered; notwithstanding the fact that the project was on a fast track.
3. This study concurs with the ODPP according to a letter dated 20 May 2013 in which they withheld approval of the revised budget citing Regulation 155 recommending a new contract to be entered into force as the increase was too high. Reasons given by LUANAR against the advice of ODPP to re-tender the works were guided by political expedience citing inter alia:
    a. The project was good for the nation
    b. The University was under pressure to show progress as to walk the Government talk
    c. Stoppage of the project would be a huge embarrassment to all

    The foregoing reasons have no technical underpinning. In the face of political expedience, consultants should be able to give sober advice to clients based purely on technical considerations. It is not clear from the minutes of the meeting whether the Consultants gave technical advice for or against re-tendering the works.
4. The consultant's fees and method of payment are being reviewed by the DOB, this study recommends that the final review should take into account the proper method of calculating VAT and NCIC Levy. If these taxes were withheld and remitted by the client, a reconciliation is required so that the correct taxation is paid. Similarly, if the consultants were responsible for remittance of these taxes, reconciliation for each member of the consultant consortium is recommended and appropriate submissions lodged with MRA.
5. This study assumes that the Provision for Reimbursables and Disbursements for the Consultants of K25,000,000 shall be adjusted with actual invoiced amounts. A further assumption made by this study is that the actual adjusted amount shall be within the K25 Million Sum provided by the Consultants themselves. It is recommended that the DOB should make this adjustment as part of the review currently being undertaken.
6. The DOB is currently actively engaged in the project. This study finds that the DOB should have taken an active role from day one including EIMU. This study recommends for the future that Government Project

Implementation Agencies be engaged from the outset on large projects with the entry threshold to be established from time to time.

7. This study concurs with the findings made by the GCU in an audit report for the project: -
    - Initial Contract for design and supervision was K47,906,776.88 comprised of:
        - Phase I - Design work undertaken by the Consultant for the project was paid in full at K30,883,789.51
        - Phase II Supervision contract was K17,022,987.37.

      However, during the course of the contract, the scope was revised and the Consultants' fees were based on a percentage of the works Contract at 14% of the revised BOQ K4,821,798,110.41. These new terms were not negotiated and agreed with the client
    - The consultant's payments were being claimed through the contractor's payment certificates. The GCU report doubted the quality of advice the Consultant was providing to the client given this fusion of Consultant and Contractor.
    - The Consultants instructed payments for the Clerk of Works to be paid through the contractor also raising fears of compromising the level of professional supervision offered by the consultants with this arrangement
    - Contract value was revised from K1.1 Billion to K4.8 Billion. The report underscores appropriate advice should have been given by the consultants to guide the client.
    - The project suffered from delayed and intermittent payments as Government struggled to raise funds for the revised contract sum of K4.8 Billion plus consultants' fees estimated at K550 million.

   The Assurance Study found that the DOB has taken action on all the recommendations and as such, the Fees for the Consultants shall be negotiated and shall be Time Based and not based on percentage of Works Value. Further, the Consultants' and Clerk of Works' payments are no longer being made through the contractor's certification. Finally, the value of the contract is being reviewed for the Final Account. Because the mandate of the Consultant's consortium expired in 2017, it is understood that the calculation of the quantities outstanding and hence the value of the remaining works shall not be ascertained by the consultants. This study recommends that the consortium should be engaged for a fixed fee short term assignment to provide these estimates to the DOB. This work is important for Government to make informed decisions and make plans for completion of the project.

This study recommends that the review being undertaken by the DOB should be expedited as time lost means a bigger burden to Government in terms of additional escalation of cost. The study further recommends the following:

a. That the review of the Final Account be concluded between the DOB, Consultants, Client and Contractor concentrating on measured works, VAT and NCIC Levy calculations, review of payment certificates and value of materials remaining on site.
b. Calculation of the Consultant's payments be reviewed by the DOB and certify payments due to the consortium led by MOD Architects.

Contractual issues pertaining to Contractor's claims for interest payment, extension of time with cost; and any other financial claims be concluded with the participation of the above parties plus the GCU and MOEST. This shall ensure that there are no further claims. In addition, this report recommends that funds be availed to pay the contractor and the Consultants in full for the work completed. For the value of works to be completed, it is recommended that the Government obtains commercial source of funding the outstanding work and fixed contracts with a defined completion date be signed by the

Contractor to complete the works and the Consultants for supervision. These Addenda should be made on the proviso that no Extension of Time or Additional Payments shall be entertained. The contractor and consultants who were engaged on this project are best suited to complete the works. This shall entail for the client to obtain a No-Objection from the ODPP for Single-Sourcing of the various parties to be engaged for completion of the works.

8. This study recommends that future projects by Government should have a defined scope to avoid escalation of costs. If change in scope is unavoidable, clear guidelines for obtaining authorization should be followed and should be strictly in keeping with the provisions of the Procurement Act.

4.5 - Annexes for Infrastructure Data Standards

Table No. 1 – Infrastructure Data Standards

Proposed Construction of Gateway Complex and Self Catering Hostel Block **December 2017**

Project Phase	Project Data		Contract Phase	Contract Data	
1. Project Identification	Project Owner:	**Original Owner:** Bunda College of Agriculture **New Owner:** **Lilongwe University of Agriculture and Natural Resources** Luanar was established through an Act of Parliament No. 22 of 2011 with the vision to be a World Class University with the mission of advancing knowledge and graduate relevant graduates with entrepreneurship skills for agricultural growth, food security, wealth creation and sustainable natural resources management through teaching, training, research, outreach, consultancy and sound management. In order to achieve this vision, the Government of Malawi directed that Luanar be created by transforming Bunda College of Agriculture and the Natural Resources College (NRC) into a stand-alone university.	**Procurement**	Procuring Entity	Originally, the client was **Council of University of Malawi**. However, due to administrative constitutional changes, Bunda College of Agriculture ceased to be the client through a Government directive for the de-linking of the constituent Colleges of the University of Malawi to separate entities of independent universities. Bunda College of Agriculture and the Natural Resources College were therefore established as the Lilongwe University of Agriculture and Natural Resources (LUANAR). The contracts with the client were therefore transferred to this new entity and officially the PE is now **The Council of the Lilongwe University of Agriculture and Natural Resources.**
	Sector: subsector:	Education Science & Technology Higher Education		Procuring Entity Contact Details	The Vice Chancellor, LUANAR Bunda Campus PO Box 219 Lilongwe
	Project Name:	Original: **Proposed Construction of Gateway Complex and Self Catering Hostel Block** Revised: **Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works**		Procurement Process	Invitation to tender was issued on 10 October 2008 and Tenders were opened on 21 November 2008. However, there was no award done due to uncertainties with funding and Bid bonds returned in October 2009. Process was re-started in 2010. Minutes of the meeting held on 19 August 2010 attended by representatives from Bunda College, MOD Architects and Quant Consult, it was agreed that

Project Phase	Project Data		Contract Phase	Contract Data	
					the recommended bidder, SR Nicholas be contacted to see if they were still interested in the job. In the event that the bidder accepted to stand by his bid price and duration for the assignment, the College would seek a No Objection from the ODPP so that the works contract is finalized with the bidder. The meeting agreed that the Gateway Complex be increased by another full floor and similarly the Hostel Block was to have an added floor. It was agreed that the added scope of works together with increased rates due to time taken before award were to be added to the original contract The meeting also agreed to engage the consultants led by MOD Architects to fast track the project and therefore the open bid procedure would take a long time to procure consultancy services and would not be in tandem with the period to achieve results. It was reported in the meeting held on 3rd November 2010 that SR Nicholas declined to proceed with the procedure. A decision was made to re-evaluate Delta Constructions as it stood in 2010 ***and it was noted that the areas for which their bid was (previously) rejected had changed and the firm had improved. It was therefore deemed proper to evaluate the contractor based on the current situation than the past.*** It should be noted that the ODPP had given an opinion on 4th March 2009 finding that the reasons for disqualifying Delta were not correct while the evaluation report claimed Delta had not done works of similar nature, annual turnover did

Project Phase	Project Data		Contract Phase	Contract Data	
					not exceed K200 million, and the contractor did not have experienced personnel. ODPP therefore recommended that bids by Delta Constructions, SR Nicholas, and City Building Contractors be re-evaluated. Delta Constructions emerged as the lowest evaluated bidder after the evaluation and on 27 April 2011, the ODPP gave approval for the College to engage Delta Constructions and MOD Architects as contractors and supervising consultants respectively. The meeting of 19 May 2011 agreed to award the contract to Delta Constructions with the original scope as tendered with the offered price. Once the contract is in place, ***"…the consultants would issue an instruction to remove the hostel block and bring in a Teaching Block, at the same time add an extra floor to the Administration Block."*** **This study finds that:** ♦ **The period between submission of bids and award (from 21 November 2008 to 20 April 2011) is 2 years and 5 months. The original estimate for this project was in August 2007 almost 3 years before award. This should have necessitated the procedure to have been re-Tendered; notwithstanding the fact that the project was on a fast track.** ♦ **The consultants knew before the works contract was signed that the scope of the works was to be drastically changed. During this intervening period, the consultant should have presented all the options to the client for them to make an informed decision:**

Project Phase	Project Data		Contract Phase	Contract Data	
					• **If variation is greater than 15% seek approval from ODPP** • **If the variation is over 25% seek the approval of ODPP to get guidance whether to re-tender.** **This study finds no record of these recommendations having been made to the client** ♦ **This study concurs with the ODPP through ODPP letter dated 20 May 2013 in which they withheld approval of the revised budget citing Regulation 155 recommending a new contract to be entered into force as the increase was too high.** In the meeting held 23 May 2013, which was attended by the ODPP representatives, it was agreed that the project should proceed. The College tendered the following reasons why: •The project was good for the nation •The University was under pressure to show progress as to walk the Government talk. •Stoppage of the project would be a huge embarrassment to all ♦ **This study finds that the college made decisions based on political expedience. These decisions were ratified by the technocrats who were supposed to guide the institution. It was the duty of the consultants to give the College technical options which are in keeping with the Procurement Act so that it is on record. In other words, the consultants should have applied to the ODPP for permission to increase the scope in the first instance rather than requesting the ODPP to approve**

Project Phase	Project Data		Contract Phase	Contract Data	
					procurement of the works using tender sum and rates and thereafter requesting to change the scope and rates. ♦ **The college also made decisions to get as much funding from the common University Expansion Funds/Basket as possible in response to Government directive to de-link Bunda College from University of Malawi (UNIMA), management of Bunda College of Agriculture. The record does not show the extent to which these decisions affected procurement of the works.**
	Project Location:	Bunda College of Agriculture campus, Lilongwe		Contract Type	
	Purpose:	The original purpose of the project was to improve higher learning education standards and to narrow the gap between number of places available for higher education and the number of students who qualify to be enrolled within the higher education system. It was therefore proposed that the project shall be for the Construction of Gateway Complex and Self Catering Hostel Block. The new infrastructure would ease the problems of space on campus as more than 70% of the students are accommodated in privately owned accommodation with poor sanitation and no electricity making them unsuitable for University education. Priorities changed whilst the client was finalizing procurement of contractor but it was decided that the original scope should be the basis for the contract and to revise the scope following the signing of the contract to reflect new		Contract Status	Contract is currently suspended from 20 August 2017 arising from delayed payments to the contractor by the client as the principal reason. On 20 March 2013, the Contractor M/s Delta Constructions gave notice to the client under Clause 58.2(d) – Breach of Contract for making late payments and reserved his right to stop the work if the situation was not remedied. Further, on 27 March 2013, the Contractor advised the client that they were unable to make payments to N and N Clerk of Works due to financial constraints arising from unsettled certified dues on the project by the Client. Notwithstanding the above, the contractor did not suspend the works and continued to work albeit with financial hardships. On 13 August 2013, the Contractor submitted his Claim for Extension of Time for 20 weeks citing:

Project Phase	Project Data		Contract Phase	Contract Data	
		requirements which were to omit the self-catering hostel. This was substituted with a teaching complex which includes lecture theatres, laboratories and teaching staff offices. Government further directed that Bunda College of Agriculture be de-linked from the University of Malawi to become Lilongwe University of Agriculture and Natural Resources (LUANAR) necessitating a further change in scope of works. The Gateway Building was increased from 3 to 4 storeys to accommodate the new requirements for increased University Management office space. In responding to Government directive to de-link Bunda College from University of Malawi (UNIMA), management of Bunda College of Agriculture were in haste to secure a larger chunk of funding than other colleges. Minutes of meeting held on 3 November 2010 state that funds were almost secured to develop the University and time was of essence since the funds are in one basket for all the constituent colleges of the University. Hence, the revised scope was to ***"…tap the funding from the common University Expansion Funds/Basket. The Universities that would move faster would get a lions-share than those that may "sleep.""*** The above meeting minutes give an insight into the decision making process by the college that may have contributed to escalated time and cost for the construction of the project. A meeting held on 23 May 2013 at LUANAR addressed the objection of the ODPP to revise			♦ Delays in formalizing the revised scope of works. From the commencement date of 16 May 2012 to 11 February 2013, the Contractor was paid for the works using Bill Rates for the original tender which were very low and therefore caused cash flow problems. Time required was 14 weeks for this delay. ♦ Delayed Payments: Due to the client delaying payments to the contractor, the total time for Extension of the contract requested by the contractor was 10 weeks ♦ The contractor was claiming 13 weeks for disruption of the works due to Malawi Telcoms LTD (MTL) diverting their services late. ♦ Construction of Platform for Gateway Complex delayed substructure works due to late submission of drawings and unforeseen underground conditions. The contractor was claiming 10 weeks for this delay. ♦ Civil commotion by students attracted a delay of 1 week ♦ Additional works: • Teaching Block • Laboratory • Lifts • ESCOM Power Yard • Retaining wall For the above additional works, contractor was claiming 5 weeks. ♦ Delay in supply of information

Project Phase	Project Data		Contract Phase	Contract Data	
		the rates for the construction programme. Rather, the new Teaching Facility works introduced should have been procured under a separate contract; this according to the ODPP. The original contract had changes in scope which were acceptable i.e. omission of Self-Catering Hostel and Upgrading of the Gateway Administration Complex. The ODPP therefore had advised the University to revoke the contract and re-tender the works. The University gave three reasons why the project should proceed and requested the ODPP to reconsider their stance: ♦ The project was good for the nation ♦ The University was under pressure to show progress as to walk the Government talk ♦ Stoppage of the project would be a huge embarrassment to all			♦ Delayed submission to contractor of drawings for Platform to Gateway Complex attracted a delay of 13 weeks In total, the contractor was requesting 20 weeks for the above delays as Extension to the Period of Performance. The consultants responded to this claim stating that some of the delays were valid and other were not. **As the Final Account is being evaluated by the DOB it is presumed that all claims shall be adjudicated and included in the Final Account.** The contractor gave notice of suspension of the works on 20 January 2014 to be effective from3 February 2014 if payment arrears were not cleared. On 20 February 2014, the contractor again gave notice of his intention to withdraw from the contract citing breach of Contract by the client. The notice was to be effective from 6 March 2014. Effectively and according to Site Meeting Minutes for Site Meeting No. 21 held on 28 May 2014, the works were suspended from 30 March 2014 to 5th May 2014 – a period of 5 weeks. Following the notice to suspend the works, on 21 May 2014, the Client and Contractor entered into Addendum No. 1 confirming the new scope of works at K4,821,798,110.41. The Addendum also gave an entitlement to the Contractor if he suffered delay and or incurs costs as a result of suspending the works or reducing the rate of works: • Extension of Time for any such delay if completion is delayed; and

Project Phase	Project Data		Contract Phase	Contract Data	
					• Payment of any such cost plus profit which shall be included in the contract price On 17 November 2014, the client writes to the consultant confirming that Government shall make payment of outstanding arrears for infrastructure development at LUANAR through Government Arrears Bill and that an amount of K850 Million had been budgeted to service the current works on the contract. A meeting was held on 20 January 2015. The DOB was introduced as the overall Project Managers. Further the meeting was informed that Government had agreed to solve the arrears with zero coupon bond arrangement and that the K850 Million was to be used towards construction of new works or new certificates. The meeting further discussed whether the contractor could be persuaded to resume work under the conditions proposed by the Government regarding issuing the zero coupon against the arrears. The meeting heard that commercial banks were charging interest in the range of 38% for chashing the bonds. Hence the contractor was encouraged to cash the bond on the proviso that the financial loss would be compensated through the contract in subsequent certification. After protracted discussions, the meeting agreed that the contractor was to cash the bond and the client was to make payment of Invoices 13 and 14 amounting to K213 Million. The contractor requested an Advance Payment of K350 Million

Project Phase	Project Data		Contract Phase	Contract Data	
					for which the meeting agreed to pay with the condition that a bond for K350 million less K213 million be issued by the contractor to cover the advance. The contractor informed the meeting that he could not raise the bond. It was therefore agreed that a list of materials which needed to be procured to complete the works be prepared. The cost of these materials could then be incorporated in the new certificates upon production of an indemnity certificate. The meeting also agreed to regularize key element of the contract such as time and contract sum. On 13 April 2015, Quant Consult submit documents to GCU to assist in auditing the arrears before Government commits to making a payment. On May 4th 2015, the contractor writes an email confirming that they re-commenced the works after the client paid Certificates 13 and 14 but were unable to commit to submitting a programme for the works until the arrears were paid. Arrears before the audit were calculated at K1,043,761,548.62 plus Consultants Payments outstanding were K30,991,057.02 giving a total of K1,074,752,605.64. Following the audit by the GCU, authorized payment of K716,959,853.02 to the contractor and recommended withholding of arrears for the Consultant until the revised terms of the consultancy contract were fully justified,

Project Phase	Project Data		Contract Phase	Contract Data	
					negotiated, and agreed. The report also recommended a full audit of all certificates and make adjustments in subsequent certificates any variances found. The report also recommended the DOB to be on the project management team. Separation of payments to contractor and consultants was also recommended. An Extension of the Contract was recommended taking into account funds to be made available by Government. Other findings of the report: ♦ Initial Contract for design and supervision was K47,906,776.88 comprised of: • Phase I - Design work undertaken by the Consultant for the project was paid in full at K30,883,789.51 • Phase II Supervision contract was K17,022,987.37. ♦ However, during the course of the contract, the scope was revised and the Consultants' fees were based on a percentage of the works Contract at 14% of the revised BOQ K4,821,798,110.41. These new terms were not negotiated and agreed with the client ♦ The consultant's payments were being claimed through the contractor's payment certificates. The GCU report doubted the quality of advice the Consultant was providing to the client given this fusion of Consultant and Contractor. ♦ The Consultants instructed payments for the Clerk of Works to be paid through the contractor also raising fears of compromising the level of professional supervision offered by the consultants with this arrangement ♦ Contract value was revised from K1.1 Billion to K4.8 Billion. The report underscores

Project Phase	Project Data		Contract Phase	Contract Data	
					appropriate advice should have been given by the consultants to guide the client. ♦ The project suffered from delayed and intermittent payments as Government struggled to raise funds for the revised contract sum of K4.8 Billion plus consultants' fees estimated at K550 million. On 4 November 2015, Consultants write to the client advising that they adhered to the recommendations of the audit by calculating fees based on Lump Sum and Time Baed method. The Addendum was submitted to the DOB on 31 August 2015 but there has been no response from the DOB. The Consultant therefore gave notice of their intention to stop work as from 4 November 2015 until the matter of payments is resolved. On 19 January 2016, the Consultants write to the client stating that a submission was made on 18 November 2015 to DOB for the Addendum to the consulting services and no feedback was received. The consultant also gave notice of the intention to charge interest on the arrears at 2% above Commercial Bank Lending Rate in accordance with Clause 6.5 of the contract. On 25 January 2016 Delta writes to the Consultant confirming payment by Government of K716,959,853 and stated their intention to discount the same with commercial banks after "shopping around" for equitable rates. On 18 February 2016, Delta submit a revised programme for the works with a caveat for it to

Project Phase	Project Data		Contract Phase	Contract Data	
					be functional, other conditions such as funding and prompt honoring of certificates being equal. On 29 February 2016 Delta write to the Consultant stating the difficulty of proceeding with the works when the Consultants were not working on the project. Given these circumstances, the contractor gave notice that they were unable to fully resume works at the teaching block as envisaged by the agreements made. On 8 April 2016 Contractor gives notice of demobilizing from site due to: • Extension of time not regularized • Revised Programme • Project running without supervision • Status of MRA exemption • Underpayment of certificate 18R • Lack of interim payments due to lack of consultants on site • Underpayment of VAT The DOB responds through an email on 11 April 2016 stating that the issue of the Consultant had been finalized and ODPP was to issue a No Objection to for the Consultancy contract. Consultant writes to Delta confirming agreement made for contractor and consultants to remobilize on 27 June 2016 On 10 June 2016 Contractor writes to the Consultant of their being ready to re-mobilize with conditions to be fulfilled and settled: • Loss and expense compensation for the extended period based on works executed

Project Phase	Project Data		Contract Phase	Contract Data	
					• Certification of financial claims • Clear outline of the proposed schedule of works to be undertaken • Extension of time • Contract Addendum including availability of funding. Quant Consult write to the Architects referencing a meeting held on 27 September 2016 where it was agreed that a Final Account should be prepared for works up to 30 September 2016 to close out the contract and to start a new phase going forward. The consultants write to the contractor on 7 April 2017 giving notice of non-compliance to carry out the works diligently which may lead to the client invoking Clause 58.4 of the contract for termination. Contractor responds on 12 April 2017 to the above letter indicating that the primary reason for all the delays is the client's fundamental breach of contract for not making timely payments. On 10 May 2017, the contractor gives notice of intention to suspend the works within 21 days On 7 June 2017 the consultant writes to the DOB giving an opinion on the contractor's letter of notice to suspend the works: • Contractor has a right to suspend the works without forfeiting his right to claim for an extension of time with costs for consequential delays in accordance with provisions of Addendum No. 1 • Certificate No. 22 was due for payment on 9th June 2017 after which if payment

Project Phase	Project Data		Contract Phase	Contract Data	
					was not made to the contractor the client would have been in breach of contract. **This study finds that the client lost a lot of money by the contractor advancing the works slowly. Given that the all parties knew that the client did not have adequate funding to run the project, perhaps a decision should have been made to halt the project until such time there was assured funding.** On 12 June 2017 contractor confirms receipt of part payment for Certificate No. 21. Contractor further states that the payment shall enable him to work at a reduced rate until all other financial matters are resolved. The contractor write on 17 July 2017 of his intention to suspend the works with effect from 31 July 2017. On 15 August 2017 the consultants submit a Final Account to DOB for works carried up to 30 September 2016 and based on Valuation 18 On 16 August 2017 contractor write to the consultant proposing the final account to be based on 20 August 2017 as the cut-off point when the contractor suspended the works. On 25 September 2017, contractor submits his final account for review
	Project Description	Original: **Proposed Construction of Gateway Complex and Self Catering Hostel Block** Revised:		Number of firms Tendering	4 Firms Tendered

Project Phase	Project Data		Contract Phase	Contract Data	
		Construction of Gateway Administration Complex and Teaching Facilities Block & Associated External Works			
				Cost Estimate	Original Estimate was K385,000,000 dated August 2007. However, this was changed to K1.114 Billion just prior to tender opening. The increase was attributable to revised requirements by the client for office space from 1194m2 to 1800m2 to bring glory and articulate the image the college was looking for as a Gateway Complex. The client also required a Rotunda Feature with a fish pond which increased the cost of the earthworks. Further the time between the original estimate and the revised was about 1 year within which cost of materials had increased. The revised cost was justified by the fact that submitted bids were within the revised estimate in November 2008.
				Contract Administration Entity	MOD Chartered Architects
				Contract Title	Originally the Contract Title was **"Proposed Construction of Gateway Complex and Self Catering Hostel Block."** Later with revised requirements, the project title was changed to: **Construction of Gateway Administration and Teaching Facilities Block at Bunda Campus – LUANAR**.
				Contract Firm(s)	Four firms submitted bids: • Marb Grant & Masasi JV K1,101,766,925.11 • City Building Contractors K1,146,521,876.75 • Delta Constructions K1,089,017,593.26 • SR Nicholas K1,119,319,541.75

Project Phase	Project Data		Contract Phase	Contract Data	
				Contract Price	K1,089,017,593.26
				Contract Scope of Works	Original scope was for the construction of Gateway Administration Complex and Self Catering Hall of Residence. This was later changed to Construction of Gateway Administration and Teaching Facilities Block at Bunda Campus – LUANAR.
				Contract Start Date and Duration	Invitation to Tender: 10 October 2008 Tender opening: 21 November 2008 Contract Award: 20 April 2011 Acceptance: 31 May 2011 Signing of Contract: 30 March 2012 Commencement: 16 May 2012 Duration: 108 Weeks Completion: 12 June 2014
2. Project Preparation	Project Scope	Project scope originally was for the construction of Gateway Administration Complex and Self Catering Hall of Residence. After submission of bids, the client did not have funds to commence the works. The project therefore suffered delays prior to commencement from October 2008 to 20 April 2011 when Delta Constructions was awarded the Contract as per their bid submitted in 2008. Originally, Delta Constructions' bid together with Marb Grant & Masasi JV were eliminated at tender evaluation stage. The ODPP however wrote to the IPC stating that they did not agree with the disqualification of Delta on the basis of experience in similar works, turn over and qualified personnel. On this basis, Delta were reinstated for re-evaluation.		Contract Conditions	

Project Phase	Project Data		Contract Phase	Contract Data	
	Program Scope	With passage of time over one year, bidders were requested to stand by their bids. SR Nicholas who were originally the lowest evaluated tenderer pulled out and were not reconsidered for evaluation. Consideration was therefore between Delta and City Building Contractors. It is interesting to note that City Building Contractors wrote to the QS on 15 November 2010 via letter 1582/10 stating that they would not participate further in the procedure. This was followed by a letter dated 17th November with even reference stating that they would now participate in the procedure. **There is no information on file for this change of heart.** This was later changed to Construction of Gateway Administration and Teaching Facilities Block at Bunda Campus – LUANA			
	Environmental Impact	An internal meeting held on 26 June 2008 for the consultant consortium raised the issue of Environmental Impact Assessment acknowledging that this is a requirement. The meeting resolved to review if an EIA is required at an isolated site such as Bunda College which is generally considered as an agricultural setting and to confirm the requirements of the Act. **This study found no confirmation of whether an EIA was required.** However, Environmental Guidelines for Buidings xxxxxxxxxxxxxxx			
	Land and Settlement Impact	The project is within the Bunda College Campus and therefore no land resettlement issues arose			

Project Phase	Project Data		Contract Phase	Contract Data	
	Contact Details	The Vice Chancellor, LUANAR Bunda Campus PO Box 219 Lilongwe			
	Funding Sources	Malawi Government			
	Project Budget	**A. Initial Budget August 2007:** Design and Build for the project: K385,000,000 **B. Revised Budget (November 2008):** K1,114,000,000 Revision was due to: ♦ 1 Year had passed between the original and revised estimate ♦ Revised requirements by the client for office space from 1194m2 to 1800m2 to bring glory and articulate the image the college was looking for as a Gateway Complex ♦ New Rotunda Feature with a fish pond which increased the cost of the earthworks **C. Revised Budget (30 April 2010):** K1,600,000,000 ♦ Budget includes one extra floor for Gateway Complex ♦ Budget includes one extra floor for Hostel **D. Revised Contract Sum after re-pricing the project (14 November 2012)** K4,821,798,110.41 ♦ Budget includes omission of hostel Block which was substituted with a Teaching Block.			

Project Phase	Project Data		Contract Phase	Contract Data	
		♦ Includes Gateway Complex which has increased in floor area from 1,538m2 to 2,564m2 with 4 floors. **E. Revised Budget (7 April 2014)** K5,690,529,335.04 **F. Final Account and Projected Costs for Completion** 1. Final Account 2. Projected Completion Cost 3. Total Projected Cost of Project **The above figures were not submitted for this study.**			
	Project Budget Approval Date	Information not availed			
3. Project Completion	Project Status	Project is suspended and a final account is being prepared in tandem with new estimates for completion of the outstanding works		**Variation to Contract Price**	Contract Sum: K1,089,017,593.26 Revised Contract Sum: K4,821,798,110.41 The Final Account (To 30 September 2017 as at Suspension of the project) plus projected costs for completion of unfinished work to complete the project are likely to exceed the Revised Contract Sum of K4,821,798,110.41
	Projected Completion Cost	Projected completion cost is currently being evaluated by Department of Buildings. A Draft Final Account was issued by Quant Consult on 15 August 2017 covering work up to 30 September 2017.		**Escalation of Contract Price**	Contract Sum: K1,089,017,593.26 Revised Contract Sum: K4,821,798,110.41 Revised contract sum includes (up to Interim Certificate No. 22 up to 30 April 2017: • interest charges on overdue payments **K187,381,054.36**

Project Phase	Project Data		Contract Phase	Contract Data	
		A copy of the submitted Final Account was not on file. The projected cost to completion was also not on file. Contractor submitted his Final Account on **25 September 2017** covering works up to **20 August 2017** and it includes: ♦ Value of Works ♦ Variations ♦ Fluctuations ♦ Materials on Site ♦ Interest on Overdue Payments ♦ Underpayment of VAT ♦ Underpayment of Discounted Certificates ♦ Underpayment for Lift Installation The Contractor's Final Account **(NOT OFFICIALLY AGREED)** is K4,788,140,308.32 but includes Advance for Working Capital of K162,570,269.57. Deducting the Advance, net value for Delta's Claim is K4,625,570,038.75			• Interest on overdue payment & Balance on Cash Discount **K208,231,714.49** Total value of these interest payments is **K395,612,768** on value of works of **K2,943,386,222.58** representing **13%**. This percentage is based on an interim certificate and therefore the percentage is likely to change.
	Projected completion Date	To be established		**Variation to Contract Duration**	Original duration for the contract was 108 weeks. The contract experienced many delays, suspensions, and re-starts. Hence the last official Completion Date was 30 October 2017. Currently, the project is under suspension by both the contractor and the consulting team. A Final Account and projection to complete the project have been ordered and currently the DOB are reviewing the submitted documents from contractor and consultants.

Project Phase	Project Data		Contract Phase	Contract Data	
	Projected Scope at Completion	The project at completion shall comprise Gateway Administration and Teaching Facilities Block		**Variation to Contract Scope**	The following major Variations issued on the Contract are: ♦ Omit Self-Catering Hostel ♦ Add Teaching Block ♦ Add Extra Floor to Administration Block
	Reasons for Project Changes	The original vision to narrow the gap between number of students qualifying for space at the university and enrollment was changed as the Government directed that LUANAR be created by transforming Bunda College of Agriculture and the Natural Resources College (NRC) into a stand-alone university.		**Reasons for Price Changes**	The Price for the Project changed for the following reasons: • Procurement of contractor took over 1 year within which prices changed and scope was revised • The original intent for the project was revised to take on board new directive from Government for each constituent college within the University to be made stand-alone entities. This meant that the scope was revised again • The client did not have adequate funding to run the project as costs escalated due to the foregoing reasons
	Reference to Audit and Evaluation Reports	♦ 17 June 2015 - Government Contracts Unit in corroboration with Auditor General undertook a Review of Arrears for the Design and Construction of the Project ♦ 17 July 2017 – Minutes of Meeting record that a 26-page Financial Audit Report prepared by University Registrar's Office and Office of DOB on the Construction of Gateway Administration Block and Teaching Complex at Bunda Campus was presented. **The Audit document submitted by DOB indicated above; was not on file for this study.**		**Reasons for Scope and Duration Changes**	The scope and duration for the Project changed for the following reasons: • Procurement of contractor took over 1 year within which prices changed and scope was revised. The University had new priorities and requested that the Teaching Block be prioritized over the Hostel Accommodation. • The original intent for the project was revised to take on board new directive from Government for each constituent college within the University to be made stand-alone entities. This necessitated that the scope be revised again. • The client did not have adequate funding to run the project as costs escalated due to the foregoing reasons.

Project Phase		Project Data		Contract Phase	Contract Data
4. Project Identification	Project Owner:	**Original Owner:** Bunda College of Agriculture **New Owner: Lilongwe University of Agriculture and Natural Resources** Luanar was established through an Act of Parliament No. 22 of 2011 with the vision to be a World Class University with the mission of advancing knowledge and graduate relevant graduates with entrepreneurship skills for agricultural growth, food security, wealth creation and sustainable natural resources management through teaching, training, research, outreach, consultancy and sound management. In order to achieve this vision, the Government of Malawi directed that Luanar be created by transforming Bunda College of Agriculture and the Natural Resources College (NRC) into a stand-alone university.	**Procurement**	Procuring Entity	Originally, the client was **Council of University of Malawi**. However, due to administrative constitutional changes, Bunda College of Agriculture ceased to be the client through a Government directive for the de-linking of the constituent Colleges of the University of Malawi to separate entities of independent universities. Bunda College of Agriculture and the Natural Resources College were therefore established as the Lilongwe University of Agriculture and Natural Resources (LUANAR). The contracts with the client were therefore transferred to this new entity and officially the PE is now **The Council of the Lilongwe University of Agriculture and Natural Resources.**

Project Phase		Project Data		Contract Phase	Contract Data
	Sector: subsector:	Education Science & Technology Higher Education		Procuring Entity Contact Details	The Vice Chancellor, LUANAR Bunda Campus PO Box 219 Lilongwe
	Project Name:	Infrastructure Design and Supervision Services for Bunda College of Agriculture		Procurement Process	Local Competitive Bidding. There were 3 consultants. However only MOD Chartered Architects were the only consultant whose bid was responsive as ***"…the other three contestants had some technical problems to respond to the request for Proposals…"*** A 4 page report further states that the reasons for only one consultant being responsive were elaborated in the Technical Proposal Report. **The Technical Proposal Report was not on file.** The 4 Page Report alludes to the fact that MOD Architects had commenced works prior to the award of the contract **The circumstances under which bid were invited when the consultant had already started pre-contract works are not clearly stated on the project file**
	Project Location:	Bunda College of Agriculture campus, Lilongwe		Contract Type	
	Purpose:	The original purpose of the project was to improve higher learning education standards and to narrow the		Contract Status	Contract is currently suspended from 20 August 2017 arising from delayed agreement of the Addendum for the Consultant by the client as the principal reason. It is likely to be terminated to allow assessment of the remaining works.

Project Phase		Project Data		Contract Phase	Contract Data
		gap between number of places available for higher education and the number of students who qualify to be enrolled within the higher education system. It was therefore proposed that the project shall be for the Construction of Gateway Complex and Self Catering Hostel Block. The new infrastructure would ease the problems of space on campus as more than 70% of the students are accommodated in privately owned accommodation with poor sanitation and no electricity making them unsuitable for University education. Priorities changed whilst the client was finalizing procurement of contractor but it was decided that the original scope should be the basis for the contract and to revise the scope following the signing of the contract to reflect new requirements which were to omit the self-catering hostel. This was substituted with a teaching complex which includes lecture theatres,			

Project Phase		Project Data		Contract Phase	Contract Data
		laboratories and teaching staff offices. Government further directed that Bunda College of Agriculture be de-linked from the University of Malawi to become Lilongwe University of Agriculture and Natural Resources (LUANAR) necessitating a further change in scope of works. The Gateway Building was increased from 3 to 4 storeys to accommodate the new requirements for increased University Management office space. In responding to Government directive to de-link Bunda College from University of Malawi (UNIMA), management of Bunda College of Agriculture were in haste to secure a larger chunk of funding than other colleges. Minutes of meeting held on 3 November 2010 state that funds were almost secured to develop the University and time was of essence since the funds are in one basket for all the constituent colleges of the			

Project Phase		Project Data		Contract Phase	Contract Data
		University. Hence, the revised scope was to ***"…tap the funding from the common University Expansion Funds/Basket. The Universities that would move faster would get a lions-share than those that may "sleep.""*** The above meeting minutes give an insight into the decision making process by the college that may have contributed to escalated time and cost for the construction of the project. A meeting held on 23 May 2013 at LUANAR addressed the objection of the ODPP to revise the rates for the construction programme. Rather, the new Teaching Facility works introduced should have been procured under a separate contract; this according to the ODPP. The original contract had changes in scope which were acceptable i.e. omission of Self-Catering Hostel and Upgrading of the Gateway Administration Complex. The ODPP therefore had advised the University to revoke the			

Project Phase		Project Data		Contract Phase	Contract Data
		contract and re-tender the works. The University gave three reasons why the project should proceed and requested the ODPP to reconsider their stance: ♦ The project was good for the nation ♦ The University was under pressure to show progress as to walk the Government talk ♦ Stoppage of the project would be a huge embarrassment to all			
	Project Description	Infrastructure Design and Supervision Services for Bunda College of Agriculture		Number of firms Tendering	3 Firm
				Cost Estimate	**K30,311,368.65**
				Contract Administration Entity	Consortium led by MOD Chartered Architects
				Contract Title	Infrastructure Design and Supervision Services for Bunda College of Agriculture
				Contract Firm(s)	MOD Architects
				Contract Price	K47,906,776.88 comprising:

Project Phase		Project Data		Contract Phase	Contract Data
					Design: K30,883,789.51 Supervision: K17,022,987.37
				Contract Scope of Works	The Consultant was engaged for infrastructure design and supervision services for a 60 bed Hostel and Administration Block at Bunda College of Agriculture
				Contract Start Date and Duration	
5. Project Preparation	Project Scope Program Scope	Project scope originally was for the construction of Gateway Administration Complex and Self Catering Hall of Residence. After submission of bids, the client did not have funds to commence the works. The project therefore suffered delays prior to commencement from October 2008 to 20 April 2011 when Delta Constructions was awarded the Contract as per their bid submitted in 2008. The scope was revised after award to take on board changed priorities by omission of the Self-Catering Dormitory and addition of Teaching Facilities.		Contract Conditions	

Project Phase		Project Data		Contract Phase	Contract Data
		Originally the programme was addressing the gap between enrollment and available space for teaching and accommodation. Due to a Government Directive, the programme changed because Government wanted all constituent colleges of the University to be stand-alone entities. Hence a common fund was established where each stand-alone entity was tapping required funding for its individual need.			
	Environmental Impact	Not Required			
	Land and Settlement Impact	Not Required			
	Contact Details	The Vice Chancellor, LUANAR Bunda Campus PO Box 219 Lilongwe			
	Funding Sources	Malawi Government			
	Project Budget	**A. Initial Budget August 2007:** Design and Build for the project: K385,000,000 **B. Revised Budget (November 2008):** K1,114,000,000			

Project Phase		Project Data		Contract Phase	Contract Data
		Revision was due to: ♦ 1 Year had passed between the original and revised estimate ♦ Revised requirements by the client for office space from 1194m2 to 1800m2 to bring glory and articulate the image the college was looking for as a Gateway Complex ♦ New Rotunda Feature with a fish pond which increased the cost of the earthworks **C. Revised Budget (30 April 2010):** K1,600,000,000 ♦ Budget includes one extra floor for Gateway Complex ♦ Budget includes one extra floor for Hostel **D. Revised Contract Sum after re-pricing the project (14 November 2012)** K4,821,798,110.41 ♦ Budget includes omission of hostel Block which was			

Project Phase		Project Data		Contract Phase	Contract Data	
		substituted with a Teaching Block. ♦ Includes Gateway Complex which has increased in floor area from 1,538m2 to 2,564m2 with 4 floors. **E. Revised Budget (7 April 2014)** K5,690,529,335.04 **F. Final Account and Projected Costs for Completion** 1. Final Account 2. Projected Completion Cost 3. Total Projected Cost of Project **The above figures were not submitted for this study.**				
	Project Budget Approval Date	Information not availed				
6. Project Completion		Project Status	Suspended and Final Account being reviewed for possible termination		**Variation to**	The original contract signed between the client and MOD Architects was for K49,826,206.50. During the course of the works, the original scope for design

Project Phase	Project Data		Contract Phase	Contract Data	
		and determine costs for Phase II for completion		**Contract Price**	work was increased to cater for Design Revisions to the Administration Block. An additional K6,398,250 was therefore paid during Phase 1 – Design Services giving a total of K31,710,811.28 The original value for Supervision of the works was K19,868,747. The Design and Supervision Contract has therefore increased from K49,826,206.50 to K638,807,261.77 (Proposed) as follows: Design Services K31,710,811.28 Supervision – Fees Value of New Scope K4,673,127,120.70 @ 7% K327,118,898.45 Time Based Element @ 3.5% K163,559,449.22 Sub-Total K522,389,158.95 VAT 16.5% K86,194,211.23 NCIC Levy 1% K5,223,891.59 **Total K638,807,261.77** The submission by the consultants dated 30 June 2016 submitting the above calculations has a total value of K643,729,650.93 because the VAT and NCIC Levy are calculated on the gross sum obtained after adding fees and reimbursables. **This Study calculates VAT and NCIC Levy on Fees only (excluding disbursements and Reimbursables – the assumption being VAT is already paid on these items as and when purchased from the vendor) in accordance with the industry standard procedure.**

Project Phase	Project Data		Contract Phase	Contract Data	
					The difference in calculation yields a saving of K4,922,389.16. **VAT Calculated in the submission of 30 June 2016 should be adjusted to the current rate of 16.5%.** **Since these figures are being reviewed by the DOB, this study recommends that the final review should take into account the proper method of calculating VAT and NCIC Levy.**
	Projected Completion Cost	To be established		**Escalation of Contract Price**	The contract price has therefore escalated from K49,826,206.50 to K638,807,261.77 an increase of 1,182%
	Projected completion Date	To be established		**Variation to Contract Duration**	Original duration for the works contract was 108 weeks. The contract experienced many delays, suspensions, and re-starts. Hence the last official Suspension of the Contract Date was 30 October 2017. Currently, the project is under suspension by both the contractor and the consulting team. A Final Account and projection to complete the project have been ordered and currently the DOB are reviewing the submitted documents from contractor and consultants.
	Projected Scope at Completion	The project at completion shall comprise Gateway Administration and Teaching Facilities Block		**Variation to Contract Scope**	The following major Variations issued on the Contract are: ♦ Omit Self-Catering Hostel ♦ Add Teaching Block Add Extra Floor to Administration Block
	Reasons for Project Changes	The original vision to narrow the gap between number of students qualifying for space at the		**Reasons for Price Changes**	The Price for the Project changed for the following reasons: • Procurement of contractor took over 1 year within which prices changed and scope was revised

Project Phase	Project Data		Contract Phase	Contract Data	
		university and enrollment was changed as the Government directed that LUANAR be created by transforming Bunda College of Agriculture and the Natural Resources College (NRC) into a stand-alone university.			• The original intent for the project was revised to take on board new directive from Government for each constituent college within the University to be made stand-alone entities. This meant that the scope was revised again The client did not have adequate funding to run the project as costs escalated due to the foregoing reasons
	Reference to Audit and Evaluation Reports	♦ 17 June 2015 - Government Contracts Unit in corroboration with Auditor General undertook a Review of Arrears for the Design and Construction of the Project ♦ 17 July 2017 – Minutes of Meeting record that a 26-page Financial Audit Report prepared by University Registrar's Office and Office of DOB on the Construction of Gateway Administration Block and Teaching Complex at Bunda Campus was presented. **The Audit by DOB indicated above was not on file for this study.**		**Reasons for Scope and Duration Changes**	The scope and duration for the Project changed for the following reasons: • Procurement of contractor took over 1 year within which prices changed and scope was revised. The University had new priorities and requested that the Teaching Block be prioritized over the Hostel Accommodation. • The original intent for the project was revised to take on board new directive from Government for each constituent college within the University to be made stand-alone entities. This necessitated that the scope be revised again. • The client did not have adequate funding to run the project as costs escalated due to the foregoing reasons.