Chapter 3.

Contracting out Core Government Functions and Services in Southern Sudan

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Abstract

This chapter explores a number of examples of contracting out in Southern Sudan. The lessons elaborated in this report stem from a number of sectors, including public procurement and health. Several important recommendations are drawn, which can support other post-conflict and fragile states to strengthen the delivery of government services to their citizens.

Executive summary

In 2005, the Government of Sudan (GoS) and Sudan People’s Liberation Movement (SPLM) signed a comprehensive peace agreement, ending 22 years of civil war. The challenge of establishing the Government of Southern Sudan (GoSS), and developing its capacity to manage its substantial oil revenues, was enormous. A joint assessment mission report by the World Bank, UN, GoS and SPLM noted that the entire public service had to be built up virtually from scratch. It recommended that core fiduciary services such as audit, accounting and procurement should be contracted out to international firms for at least the first two years of government until capacity was built. It also expected government to contract out basic health services delivery to NGOs.

This paper describes GoSS’s experience in contracting out, which has been variable. A government accounting agent (GAA) was appointed through a bilateral sole-source contract. The Ministry of Finance did not have the capacity to define what services it required the GAA to provide, while the GAA appointed a team of private-sector accountants who had little or no understanding of the budget execution responsibilities of a public treasury. The GAA’s approach to the task undermined the ministry’s budget execution function, and failed to build ministry capacity for government accounting.

A project accounting agent (PAA) was jointly overseen by the Ministry of Finance and the World Bank, ensuring better definition of services and performance monitoring. It was decided to contract an interim PAA on a sole-source basis. This was fortuitous, since it ensured project accounting coverage
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over the two years it took to procure the permanent PAA on a competitive basis using World Bank procedures. However, no capacity was built to enable the ministry to take on the project accounting function itself.

Appointing the procurement agent (PA) was beset with difficulties from the outset. Even though the need for the procurement agent was seen to be urgent, it took over a year to contract the PA on a competitive basis using World Bank procedures. This led to a temporary gap in service delivery, from which it can be argued that GoSS procurement has never fully recovered. In addition, there was a significant mismatch between the envisaged size of the team and the scope of the task. The task was to cover all aspects of procurement for a newly-forming government with no procurement capacity whatsoever, and over USD 1 billion in revenues every year. The procurement agent's ability to provide on-the-job training was limited by a lack of counterparts, as well by its small team.

The external audit agent (EAA) contract was well designed, with a strong capacity building component. However, the EAA's delivery was hindered by the absence of counterpart personnel for almost the entire first year of its assignment, following the suspension of the GoSS Auditor General.

The Basic Package of Health Services (BPHS) was designed to deliver immediate essential services to a significant proportion of the population in the ten states of Southern Sudan. Over three years later, the BPHS has only just started work, and only in four states. The delay has been caused by the lead times involved in procurement using World Bank procedures, the weak capacity in the Ministry of Health to follow them, over-ambitious initial programme design, and costs which exceeded available funds.

A number of lessons can be learned from the GoSS experience:

i) The type of contracting (sole-source or competitive) does not necessarily determine the performance of the contract. Sole-source contracts, when well defined, may provide interim cover for urgent service delivery needs.

ii) The government has supported the process of contracting out key services, but has had limited capacity to design and manage contracts without external support. Even with World Bank administered contracts, the government had limited capacity to ensure that the contract design and performance meet its own needs.

iii) Lengthy World Bank procurement procedures, and limited government capacity to follow them, have led to significant delays. These delays prevent service delivery and also reduce incentives for government to build its own capacity and structures in the interim, because it expects that a contractor will soon be delivering the service.

iv) Capacity development has generally been inadequately addressed. Capacity development was not put at the centre of the contracting-out design, and none of the contracts had a clearly identified exit strategy. Only limited GoSS capacity has been built.

v) Inappropriate programme design can undermine the effectiveness of contracting out.

vi) Contracting out is not cheap. The combined cost of the fiduciary agents contracted by GoSS was over USD 20m in the space of just four years.

The case study provides the following recommendations:

- Consider interim sole-source contracting to meet urgent service delivery needs, but only if the terms of the contract are properly designed.
- Offer government independent technical support for designing and managing contracts. This should include defining contract services that best meet the needs of government, and performance monitoring.
Remember that using World Bank procedures for competitive procurement will take more than a year. Ensure adequate support for low-capacity governments to manage World Bank procedures. Include capacity building in contracting out packages, and map a clear exit strategy from the outset. The exit strategy should include steps to raise the capacity of government officials to assume responsibility, and should feed into the capacity building design. Consider alternative options, such as temporarily contracting in capacity from the emigrant diaspora, before deciding to contract out essential services. Key issues to compare include the relative cost, lead times and capacity-building potential of alternative options.

**Introduction**

On January 9 2005 the Government of Sudan (GoS) and Sudan People's Liberation Movement (SPLM) signed a comprehensive peace agreement (CPA), bringing to an end 22 years of civil war in Southern Sudan. Under the terms of the CPA, a six-year interim period up to 2011 was agreed, at the end of which the people of Southern Sudan would have the right to self-determination through a referendum to determine their future status.

The CPA established a Government of National Unity (GoNU) for the duration of the interim period, responsible for the functioning and administration of the state, and the formulation and implementation of national policies. It also established the Government of Southern Sudan (GoSS), to which it devolved authority to manage and administer almost all issues relevant to the south, in conjunction with the ten states of Southern Sudan. Under the terms of the wealth-sharing chapter of the CPA, the south was granted a 50% share of revenues from oil production in the south, as well as a 50% share in all national non-oil revenues collected in the south. Even at the time of the CPA, the oil revenues expected to flow to GoSS were significant, estimated at up to USD1 billion a year (JAM, 2005).

The challenge of establishing the Government of Southern Sudan and developing its capacity to manage its substantial oil revenues was acknowledged to be enormous. During the war, there had been almost no formal government in the south. The GoS had control of several “garrison” towns and some other areas, whilst much of the south was under the control of the SPLM. The SPLM had a skeletal civilian administration, mainly devoted to the war effort. Services were limited; where they existed, they were provided by non-governmental organisations (NGOs), the church and other non-governmental agencies, together with the communities.

During 2004/05, the UN, the World Bank, the Government of Sudan and the SPLM fielded a joint assessment mission (JAM) to identify Sudan's post-conflict development needs. The JAM noted that Southern Sudan was starting from a situation of extreme poverty and underdevelopment, with weak skills and virtually non-existent normal government institutions. In order to be able to manage, deliver and account for the range of critical programmes needed to accelerate development in Southern Sudan, the entire public service, including personnel and systems, would have to be built up virtually from scratch.

Against this background, the JAM recommended that core fiduciary services, such as audit, accounting and procurement, be contracted out to international firms for at least the first two years of the interim period, with their role being phased out as capacity in GoSS increased (JAM, 2005). It also recognised that NGOs, the private sector and UN agencies would be the main vehicles of health service delivery, bound by formal contractual relationships with the Southern Sudan health authorities.
The CPA also established two Multi-Donor Trust Funds (MDTFs), one for national development, and one for the south, to be administered by the World Bank. Their objective was to ensure co-ordinated, flexible and swift donor responses for financing JAM priority expenditures, in the context of a unified budget and coherent public expenditure process (JAM, 2005). Significant government co-financing to these MDTFs was envisaged, and in the south it was anticipated that the MDTF would play a leading role in contracting third parties to deliver government services, in line with the priorities identified in the JAM.

As envisaged in the JAM, since 2006 the Government of Southern Sudan has contracted out a number of key fiduciary functions to non-state actors, including government accounting, MDTF project accounting, procurement and external audit. In most cases, these arrangements still continue. The majority of them, with the exception of government accounting, have been undertaken through MDTF projects, and are therefore co-financed by government and donor partners through a pooled funding mechanism (Table 3.1).

### Table 3.1. Summary of fiduciary contracts

<table>
<thead>
<tr>
<th>Function</th>
<th>Contracting Process</th>
<th>Scope of Activity</th>
<th>Funding Source</th>
<th>Time Period</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Accounting Agent (GAA)</td>
<td>Sole source</td>
<td>Preparation of government accounts</td>
<td>GoSS</td>
<td>2006 - 2008</td>
<td>USD 3.8M (est)</td>
</tr>
<tr>
<td>Interim Project Accounting Agent (iPAA)</td>
<td>Sole source</td>
<td>Preparation of MDTF project accounts</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2006 - 2007</td>
<td>USD 2.3M</td>
</tr>
<tr>
<td>Project Accounting Agent (PAA)</td>
<td>Competitive</td>
<td>Preparation of MDTF project accounts</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2008</td>
<td>USD 0.9M</td>
</tr>
<tr>
<td>Project Financial Management Unit (PFMU)</td>
<td>Competitive</td>
<td>Preparation of MDTF project accounts</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2009 - 2010</td>
<td>USD 1.5M (est)</td>
</tr>
<tr>
<td>Procurement Agent (PA)</td>
<td>Competitive</td>
<td>Government &amp; MDTF procurement</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2007 - 2009</td>
<td>USD 4.0M</td>
</tr>
<tr>
<td>External Audit Agent (EAA)</td>
<td>Competitive</td>
<td>Audit of MDTF, GoSS &amp; states’ accounts</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2008 - 2011</td>
<td>USD 8.0M</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>USD 20.5M</strong></td>
<td></td>
</tr>
</tbody>
</table>

Service delivery in Southern Sudan continues to be dominated by non-state actors, predominantly NGOs, and particularly in the health sector. The most recent donor mapping exercise conducted by the GoSS Ministry of Finance & Economic Planning (MoFEP) revealed that there are currently 97 donor-funded projects in the health sector, and 70 in the education sector (Ministry of Finance & Economic Planning, 2009a). These projects, with the exception of three MDTF projects, are implemented directly by third parties (UN agencies and NGOs) in parallel with government interventions and therefore do not involve formal contractual relationships between government and non-state actors for service delivery.

In the education sector, the majority of teachers in Southern Sudan are paid through the government payroll, with GoSS providing funding for 33 000 primary and secondary teachers at GoSS and state level (Ministry of Finance & Economic Planning, 2009b). Core education service delivery therefore remains the responsibility of the government. The GoSS co-funded MDTF project for education, which
Table 3.2. Basic package of health services (BHPS) contracts

<table>
<thead>
<tr>
<th>Function</th>
<th>Contracting Process</th>
<th>Scope of Activity</th>
<th>Funding Source</th>
<th>Time Period</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery of basic health package</td>
<td>Competitive</td>
<td>Upper Nile State</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2008 – 2009 (1 yr)</td>
<td>USD 3.4M</td>
</tr>
<tr>
<td>Delivery of basic health package</td>
<td>Competitive</td>
<td>Jonglei State</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2008 – 2009 (1 yr)</td>
<td>USD 4.2M</td>
</tr>
<tr>
<td>Delivery of basic health package</td>
<td>Competitive</td>
<td>Central Equatoria State</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2009</td>
<td>USD 5.5M</td>
</tr>
<tr>
<td>Delivery of basic health package</td>
<td>Competitive</td>
<td>Eastern Equatoria State</td>
<td>MDTF (GoSS &amp; donor co-financing)</td>
<td>2009</td>
<td>USD 4.1M</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>USD 17.2M</strong></td>
</tr>
</tbody>
</table>

Analysis of individual contracting out experiences

**Appointing a government accounting agent**

In 2005, the JAM envisaged that a financial management agent would be recruited competitively through the Capacity Building Trust Fund (CBTF) to support and/or manage the GoSS treasury function and implementation of the Integrated Financial Management System (IFMS) for the first two years of the interim period (JAM, 2005).

In late 2005 discussions were held between the newly-formed Ministry of Finance & Economic Planning (MoFEP) and the World Bank, as administrator to the MDTF, about providing accounting services for the GoSS. The key issue was whether the MDTF-contracted accounting agent should
deliver accounting services for all GoSS expenditure, or whether it should only provide services for co-financed MDTF projects.

To protect its autonomy, MoFEP decided that GoSS accounting and MDTF project accounting should be handled separately, leaving the MDTF to contract a Project Accounting Agent (PAA) to cover MDTF projects only.

The roles of the Financial Management Agent as envisaged in the JAM were therefore effectively split into three separate roles:

- i) A Fund Management Agent (FMA) to support the operations of the CBTF.
- ii) A Government Accounting Agent to prepare the GoSS annual financial statements.
- iii) A Project Accounting Agent, to manage the full range of accounting services relating to spending, accounting and reporting on MDTF projects.

In early 2006, MoFEP engaged a Government Accounting Agent (GAA) on a sole-source basis, paid for entirely through the GoSS budget. The firm chosen was the same firm that was already acting as the CBTF’s Fund Management Agent.

The GAA contract listed three main outputs:

- i) Transaction recording and cash book and bank reconciliation, to be completed by the end of the third week following the end of each month.
- ii) Monthly draft financial statements, at the end of each following month.
- iii) Draft annual accounts, five months after the end of the financial year.

The contract also specified that the GAA would record and process all payments in the Integrated Financial Management System. It did not contain any formal capacity-building element, although it expected MoFEP to assign four government accountants to work with the GAA. They would be given tasks suitable to their experience, along with on-the-job coaching.

The cost of the contract was uncapped, as the GAA was entitled to expand its team as necessary and to charge MoFEP for unlimited reimbursements. The contract had strict confidentiality definitions, and only required the GAA to discuss the draft accounts directly with the Minister of Finance & Economic Planning.

The GAA contract, both in its conception and its execution, was not advantageous to MoFEP in many respects:

- **It did not provide MoFEP with a reconciled daily cash position.** As the GAA was only to provide updated cash records and bank reconciliations within three weeks of the end of the month, MoFEP frequently issued payments for which it had no financial coverage, since it had no idea of its daily (reconciled) cash position. Cheques bounced.

- **It limited MoFEP’s timely access to budget execution data.** The GAA took sole responsibility for processing all payments in the IFMS, but only undertook to provide MoFEP with draft financial statements one month after the end of the month. As a result,
MoFEP never had an up-to-date picture of how much each government agency had spent against its approved budget. New payments were therefore approved “blind”, with MoFEP having little idea whether the payments it was authorising exceeded the approved budget, either at a line-item or agency level. Budget execution suffered, particularly towards the end of the financial year. In some instances, due to delays in the GAA producing monthly draft accounts, MoFEP only discovered that a spending agency had overspent its approved budget allocation several months after the event. Spending agencies did not receive monthly budget execution reports until after the reconciled accounts were produced, as all data were treated as confidential by the GAA.

The IFMS was severely under-used. The GAA used staff were not fully familiar with the IFMS system which had been installed, nor with the IFMS’s role in helping government track expenditure and manage budget execution. As a result, the GAA only used the IFMS as an accounts recording system, not as a financial management tool. All expenditure data were maintained manually outside of the IFMS, and payments were only entered into the system once they had been reconciled against the bank statements.

Capacity was not built, leaving MoFEP continually dependent on the GAA’s services for preparing the annual accounts. Although MoFEP initially assigned accountants to work with the GAA, they soon drifted back to routine MoFEP duties.

Effectively, the GAA contract was woefully misaligned. It gave a data-processing monopoly to GAA, without requiring it to provide the Ministry of Finance with the timely information it needed to undertake its core budget management functions. At the heart of the problem was the fact that the GAA had been selected sole-source, and had written its own contract. The Ministry of Finance did not have the capacity to define the services it required from the GAA, while the GAA used a team of private-sector accountants who had little or no understanding of the budget execution responsibilities of a public treasury. This was far from the standard of fiduciary management envisaged in the JAM, and left MoFEP severely vulnerable to accusations of incompetence, as it failed to produce timely budget execution reports or to manage its payments according to its cash position. Nonetheless, the GAA received an automatic contract roll-over for 2007.

In 2007, as MoFEP appointed officials to senior positions and enhanced advisory capacity was provided from other sources, greater steps were taken to hold the GAA to account. By late 2007, the GAA had agreed to provide Excel-based budget execution reports within a week of the end of the month, although it made clear that this was a “favour” which it was providing outside the terms of its (self-written) contract. At the same time, MoFEP started training its treasury staff in managing the IFMS. The Treasury Adviser also started helping MoFEP to produce a daily cash position.

By 2008, the GAA functions had been scaled-back considerably. All payment data were entered into the IFMS directly by GoSS Treasury officials as soon as they was received, enabling production of real time information on budget execution. Budget execution reports were sent monthly to spending agencies. MoFEP established a daily cash management system, and Treasury staff participated in the preparation of a daily cash position. The GAA role was limited to revenue reporting and the production of quarterly and annual accounts.

The GAA requested a further sole-source contract for 2009, and said that it would build a strong capacity-building component into the contract. However, MoFEP decided to discontinue its services. The ministry is in the process of recruiting three international accounts specialists through the World Bank Low Income Countries Under Stress (LICUS) programme, to assist with the preparation of its accounts for a two-year period. At the same time, using the same funding, 40 graduates will be
recruited and trained up to a professional accounting standard through a sandwich programme that will involve them spending 50% of their time in the classroom, and 50% in MoFEP. It is envisaged that under the guidance of the international accounts specialists, these graduates will gradually assume responsibility for the preparation of government accounts.

**Appointing a Project Accounting Agent**

In late 2005, the Oversight Committee (OC) of the MDTF-South approved its first project – the Rapid Impact Emergency Project (RIEP). The project provided for the immediate sole-source hiring of an interim Project Accounting Agent (iPAA) to direct, manage and co-ordinate the total financial management activities of MDTF-funded expenditures, irrespective of whether they were financed by GoSS or the MDTF donors. The iPAA was required to take responsibility for the release of funds. No capacity-building component was included in the terms of reference. It was envisaged that the iPAA would be in place for a period of 6-12 months, until the long-term project accounting agent (PAA) was hired through a competitive process. The same firm that operated as the CBTF fund management agent and as the GAA was awarded the iPAA contract on a sole-source basis in February 2006.

In March 2006, the competitive process for engaging a permanent two-year PAA was launched in line with World Bank procedures, which govern the operations of all MDTF-funded projects. However, instead of taking 6-12 months as initially envisaged, the process dragged on for two years. While the length of time taken to complete the procurement process was in part due to challenges encountered by MoFEP during contract negotiation, it was also in part due to the number of steps (estimated at 62) required to complete a World Bank procurement process under the MDTF. No fewer than three separate “no objection letters” are required from the World Bank at different stages of the process, and since the World Bank office in Juba did not have any accredited procurement staff at that time, these letters frequently had to be obtained from Washington.

In the end, the PAA contract was awarded for one year in December 2007, with a similar terms of reference to that of the iPAA. As with the iPAA contract, the PAA contract did not require the PAA to build MoFEP’s capacity for project accounting. The same firm that had undertaken the iPAA contract was awarded the PAA contract.

Meanwhile, the World Bank developed a proposal to set up a Project Financial Management Unit (PFMU) to replace the PAA at the end of its one-year term. While the PFMU would have the same terms of reference as the PAA, it would be staffed with individually-hired consultants, instead of being contracted to a firm. The rationale was that it would be cheaper, and that the iPAA/PAA had shown no evidence of any attempt to build capacity for project accounting in MoFEP (although in fact their terms of reference did not require them to do so).

This proposal was accepted by the Oversight Committee (OC) of the MDTF, and in January 2009 the PAA was replaced by PFMU, staffed by two international accountants and several locally-recruited assistant project accountants. The ToRs of the head of the PFMU require him/her to provide the required training to MoFEP staff to enable them to perform their functions effectively. However, no formal plan is currently in place to second MoFEP staff to the PFMU, although this may be possible once the 40 graduate accountants have been recruited to MoFEP under the LICUS programme (see above).

In general, the contracting out of project accounting for GoSS and donor funded MDTF-expenditures has not been beset with the same difficulties as the GAA contract, even though the same firm delivered the services between 2006 and 2008. The iPAA/PAA contracts were jointly overseen by MoFEP and the World Bank, in its role as administrator to the MDTF, ensuring better definition of services.
and performance monitoring than if left to MoFEP alone. In addition, the functions involved far smaller transaction volumes than for the GAA contract, and did not require an understanding of public sector treasury management. The decision to contract an interim PAA on a sole-source basis proved to be fortuitous, since it ensured that there was project accounting coverage during the two years it took to procure the substantive PAA on a competitive basis.

The main concern over the contracting out of MoFEP’s project accounting for co-financed MDTF projects is the exit strategy. Even if MoFEP makes a concerted effort to second staff to the PFMU, and even if PFMU personnel make a concerted effort to provide them with appropriate on-the-job training, it is unlikely that MoFEP will be able to assume project-accounting functions for MDTF projects to the fiduciary standard required by the World Bank for the rest of the interim period.

Appointing a Procurement Agent

The same MDTF project which provided for the recruitment of the iPAA also provided for the recruitment of a Procurement Agent (PA) to carry out GoSS and the MDTF’s day-to-day procurement for two years. However, although the project said that GoSS’s need for a procurement agent was urgent, it did not provide for immediate sole-source provision of a firm as it had with the iPAA. Instead, the procurement agent was to be contracted through a competitive process.

The competitive process was launched in December 2005 and it took over a year to complete in line with World Bank procedures. The procurement agent started work in February 2007, with a wide-ranging terms of reference, including:

- Providing support to the Procurement Unit in MoFEP to ensure that it functions effectively.
- On-the-job training to the Procurement Unit and procurement staff in other GoSS agencies.
- Procurement planning.
- Contract cash-flow projections.
- Procurement processing for all MDTF and GoSS procurements, with the exception of defence hardware.
- Supervising contract performance.
- Assisting government with procurement-related queries.

It was envisaged that all procurements would be centralised following the GoSS’s procurement policy, but that within three to four years, GoSS agencies would have the capacity to carry out all procurement on a mainly decentralised basis, without external assistance. However, the terms of reference did not provide for capacity building beyond on-the-job training. They stated that a procurement capacity-building strategy would be developed separately, through World Bank assistance to the MoFEP Procurement Unit.

It quickly became evident that the Procurement Agent faced a number of significant challenges in executing its terms of reference. Procurement had been ongoing for almost a year without a Procurement Agent. In the case of MDTF procurements, spending agencies had attempted to follow World Bank procedures, but since their knowledge of them was limited, their progress was slow and standards were low. As a result, there was a large backlog of work. In the case of GoSS procurements, individual spending agencies had embarked on their own haphazard procurement processes, with little or no reference to the GoSS procurement regulations. It was not uncommon for contracts to exceed the budget available for expenditure (Procurement Agent’s Inception Report, 2007).
The Procurement Agent had a team of three procurement specialists, in line with the contract. However, it immediately commented that this number of personnel was inadequate to deal with the volume of work. It also highlighted the need for Transitional Procurement Units to be established in spending agencies, for the capacity of the MoFEP Procurement Unit to be strengthened, and for MoFEP to make a concerted effort to regain centralised control of GoSS’s procurement functions.

By the end of 2007 there was little sign of improvement. The MoFEP Director General of Procurement informed the MDTF Oversight Committee of:

- A lack of trained procurement staff in GoSS, including in the MoFEP Procurement Unit.
- Significant deficiencies in the GoSS procurement regulations, which were hindering the efficiency of procurement in GoSS and the ability of the MoFEP Procurement Unit to carry out its function.

In January 2008, an addition to the Procurement Agent’s contract enabled it to double its staff and introduce performance monitoring criteria. At the same time, an independent review of the Procurement Agent’s performance in MDTF procurement stated that the PA had only partially met the conditions of its contract (Price Waterhouse Coopers, 2008a). According to the review, it had too few staff to provide on-the-job training, for which there were too few counterparts anyway, and it had mainly provided support and advice on MDTF procurements, rather than hands-on implementation. Procurement plans were incomplete, the PA had not produced cashflow projections, and was not supervising contracts. In addition, MoFEP suspected that the consultants employed by the PA were not familiar enough with World Bank procedures.

An Independent Procurement Audit Report written for the World Bank raised similar concerns (Price Waterhouse Coopers, 2008d), as did an issues paper presented to the Oversight Committee in February 2009. By this point, the Procurement Agent’s contract was due to come to an end, but there was no exit strategy in place. MoFEP requested an extension to the PA’s contract to avoid a gap in service delivery. The Oversight Committee agreed to this, subject to appropriate transition arrangements being in place before the extension expired.

The PA’s contract appears to have been beset with problems from the outset. Even though the need for a PA was deemed urgent, the PA was expected to be contracted on a competitive basis and there was no interim sole-source cover, unlike for the Project Accounting Agent. Competitive procurement using World Bank procedures is unable to deliver swift results, however urgent the need; GoSS was therefore effectively left without procurement capacity for its critical first year of operation. The one-year gap meant a slow and unsure start for procurements under the MDTF, swiftly creating a perception that the MDTF was failing to deliver on its JAM objective of providing a co-ordinated, flexible and swift donor response to Southern Sudan’s needs. In addition, for the GoSS, the gap meant that spending agencies started undertaking decentralised procurement by default. MoFEP then proved unable to re-assert centralised control once the Procurement Agent came on board. For GoSS procurements, therefore, the PA was swimming against the tide from the start.

The capacity-building component of the Procurement Agent’s terms of reference restricted it to on-the-job training, on the understanding that a separate procurement capacity-building strategy would be prepared and implemented with the support of the World Bank. This never materialised, or if it did, it was never implemented. As a result, the capacity of MoFEP’s Procurement Unit did not increase, and procurement awareness and capacity in spending agencies remained limited. The PA’s ability to provide on-the-job training was thus limited by the lack of counterparts, as well by the size of its own team.
The inadequate size and capacity of the PA’s team has been a recurring theme throughout the contract, even though the number of personnel was eventually doubled from three to six. It seems probable that there was a significant mismatch from the outset between the envisaged size of the team and the sheer scale of the task involved in conducting all aspects of all procurements, both MDTF and GoSS, for a newly-forming government with no procurement capacity whatsoever, and over USD 1 billion in revenues every year. The Procurement Agent is on record as saying that it has only been able to devote 30% of its time to MDTF procurements, given the demands of the GoSS work (Price Waterhouse Coopers, 2008a).

The World Bank is currently preparing a proposal to MoFEP for managing GoSS and MDTF procurement after the end of the Procurement Agent’s current extension. It proposes hiring a new PA for one year through a competitive process, as well as placing additional technical assistance in the MoFEP Procurement Unit. It has not developed a strategy for phasing-out from these arrangements.

It is unlikely that a new PA and additional central technical assistance will be able to address the current challenges in GoSS procurement, or that GoSS will have the capacity to manage procurements appropriately on its own after a year. The original vision – of centralised procurement followed by orderly decentralisation – has not materialised. In effect, decentralised procurement is continuing across GoSS, despite inadequate capacity and standards, particularly for GoSS procurements. It is critical that a comprehensive capacity-building plan is put in place and implemented, however late, to enable procurement units across GoSS to be properly established, staffed and trained, including in MoFEP. It is also critical that a commitment control system is designed and implemented, to ensure that procurements fit budgetary availability. This is currently not the case, weakening GoSS’s fiscal management.

As a first step, MoFEP has requested support from the African Development Bank to draft a procurement law, and intends to use funds under the World Bank LICUS programme to establish a commitment control and contract information system and to train 10 graduate recruits in procurement to help the MoFEP Procurement Unit.

**Appointing an External Audit Agent**

The competitive process for recruiting an External Audit Agent (EAA) was launched in March 2006, at the same time as the Project Accounting Agent process. As with the PAA, it took almost two years to complete, with a contract being signed in December 2007. The EAA began work in Juba in January 2008, with an extensive terms of reference, including:

- Support for drafting the audit law and audit regulations.
- Responsibility for conducting MDTF, GoSS and states’ audits, with the participation of staff from the Southern Sudan Audit Chamber.
- Providing on-the-job training for staff of the Southern Sudan Audit Chamber during audits of accounts.
- Undertaking a training needs assessment and developing a human resource development strategy for the Southern Sudan Audit Chamber.
- Supporting the Audit Chamber to recruit and induct staff, monitoring their capacity building, and helping them use other sources of capacity building.

The terms of reference did not require the EAA to conduct formal training; it was envisaged that this would be delivered through a separate consultancy. However, in requiring it to support staff recruitment and induction, and monitoring capacity building, it would be much more involved in capacity building any of the other GoSS agents.
The EAA contract is expected to run for three years, from 2008-2010, after which it is envisaged that the Southern Sudan Audit Chamber will be able to perform most audits of grants and loans to government to appropriate international standards.

By its own account, the External Audit Agent’s assignment started well. The EAA and the Audit Chamber agreed a joint approach to auditing the GoSS financial statements, focusing on five themes. Joint teams were nominated and established for each theme. However, in February 2008, one month after the EAA’s assignment began, the Auditor General and Southern Sudan Audit Chamber’s senior management team was suspended by Presidential Order, while the remainder of the Audit Chamber’s personnel were confined to office, pending the appointment of a new Auditor General. This situation continued for the rest of 2008, leaving the EAA to work – without the involvement of counterpart staff – on standalone audits of MDTF projects for 2006-2008, and to progress the audit of the 2005 GoSS accounts to draft opinion stage. The EAA was therefore unable to deliver the capacity building components of its terms of reference.

At the end of 2008, a new Deputy Auditor General was appointed and assigned temporary functions as Acting Auditor General. Since then, the EAA has once again started to take forward the capacity-building components of its contract, and to work with the Audit Chamber on the 2005 GoSS accounts. It now intends to develop a plan with the Audit Chamber to jointly tackle the backlog of GoSS audits for 2006-2008.

It is too early to assess the effectiveness of the EAA. Its main challenge to date has been the lack of counterpart personnel for almost the first whole year of its assignment. However, the enhanced capacity-building elements of the contract design, including training needs assessments and support to the recruitment and induction of Audit Chamber personnel, make the contract appear more comprehensive than for the other agents. Nonetheless, it has once again been assumed that formal audit training will be delivered through a separate initiative, but no such initiative is yet in place.

The EAA has appointed a far larger team (24 people) to meet its contractual obligations than any of the other agents. This is reflected in the increased cost of the EAA (more than double that of the other agents), which required an amendment to the relevant MDTF grant agreement. However, it seems likely that this structuring of the team is more appropriate to the scale of the task than in the case of the Procurement Agent.

The length of time taken to recruit the EAA – almost two years – is also of note. The World Bank procedures under which MDTF procurements are conducted are not designed for rapid delivery, and procurement is often slowed further by lack of GoSS capacity to manage MDTF procurements. In the case of the EAA, the delay was less critical than for the Procurement Agent, although there has been a backlog in audits.

**Basic package of health services (BPHS)**

In early 2006, the MDTF Oversight Committee approved USD 60 million to the Umbrella Health Project (UHP), of which USD 40m was to be contributed by GoSS, and USD 20m by the MDTF donors. The UHP was based on the recommendations of the JAM, and aimed to support the Ministry of Health (MoH) in pursuing a two-track strategy: balancing the development of core capacities of the health system (Track 1), with the immediate delivery of essential services to a significant proportion of the population (Track 2). One of the key vehicles for the delivery of Track 2 was the proposed basic package of health services (BPHS), whereby a lead NGO would be contracted to deliver basic health care to up to 50% of the population in each of the ten states of Southern Sudan, whilst also developing core
institutional capacity for public health administration at state level. The amount allocated to the BHPS under the Umbrella Health Programme was USD 24.8m, i.e. USD 2.48 million per state.

The procurement process for delivering the BHPS in the ten states was launched in April 2006. Expressions of interest (EoIs) were sought from NGOs wanting to act as a state lead agent, responsible for:

- Implementing the basic health service package and health services development plan agreed on jointly with the state Ministry of Health.
- Overall management of health care delivery within its geographic area.

The work would also include health staff training, rehabilitating selected health infrastructure, and drug procurement and distribution. It was to last for three years. In the event, GoSS only received adequate EoIs for four states. It therefore moved to the request for proposal (RFP) stage with these states in November 2006, while reissuing the EoI for the remaining six states in 2007.

Once the proposals were received for the first four states, it became clear there was a significant problem. The proposals were significantly higher than the funds available for each state, often by a multiple of ten or more. The GoSS Ministry of Health therefore embarked on an extended contract negotiation process with the four NGOs, which wasn't concluded until 2008.

Eventually, the Ministry of Health agreed the scale of service delivery and contract modality with the four providers (Table 3.3). It was agreed that contracts would be signed for just the first year of each package, with the subsequent two years expected to be catered for once a second phase of the UHP became available.

<table>
<thead>
<tr>
<th>State</th>
<th>1 Year Cost</th>
<th>Implied 3 Year Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper Nile State</td>
<td>USD 3.4M</td>
<td>USD 10.2M</td>
</tr>
<tr>
<td>Jonglei State</td>
<td>USD 4.2M</td>
<td>USD 12.6M</td>
</tr>
<tr>
<td>Central Equatoria State</td>
<td>USD 5.5M</td>
<td>USD 16.5M</td>
</tr>
<tr>
<td>Eastern Equatoria State</td>
<td>USD 4.1M</td>
<td>USD 12.3M</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>USD 17.2M</strong></td>
<td><strong>USD 51.6M</strong></td>
</tr>
</tbody>
</table>

BPHS delivery began in Upper Nile and Jonglei in the second half of 2008, and in 2009 in Central and Eastern Equatoria. Meanwhile, the Ministry of Health issued RFPs for the remaining six states in late 2008, once again with the expectation that funding would be provided under the second phase of the UHP.

It is clear that the approach of contracting out the BPHS has encountered significant problems. Firstly, at an average cost of over USD 4m per state per year, it is unlikely to be sustainable. This implies USD 40m for all ten states each year, and USD 120m each over the intended three years. It is not clear that such a large amount of funding will be available. It appears that the contracted-out BPHS concept, as envisaged in the JAM and the UHP, is too ambitious given funding realities.

Secondly, contracting out the BPHS has failed to meet the UHP objective of immediate delivery of essential services. More than three years after the approval of the UHP, only four states have started to receive BPHS services through the UHP. This delay is a result of a combination of factors, including:
The lead times involved in MDTF procurement using World Bank procedures, exacerbated by limited procurement capacity in the MoH, the need to process World Bank “no objections” through Washington, and obstacles such as the requirement for NGOs to provide bank guarantees for 20% advance payments before mobilising.

Ambitious initial programme design, which subsequently required protracted contract negotiations to scale the BPHS back to the limits of affordability.

Escalating costs which exceed available funds.

It is not possible to assess the performance of the first four BPHS providers, since they have only recently started work. However, given the lack of government capacity, a case can still be made for contracting out health care delivery in Southern Sudan. But the procurement procedures used should be quicker, and programme design should match funding availability. Otherwise less expensive, though possibly less wide-ranging, in-house alternatives may need to be considered.

Lessons learned and recommendations

Following the comprehensive peace agreement, Southern Sudan was faced with extreme poverty and underdevelopment and a public service, including personnel and systems, which had to be built up virtually from scratch. In this context, the Joint Assessment Mission’s recommendation that core government financial services such as audit, accounting and procurement initially be contracted out to international firms, was appropriate.

GoSS’s experience in contracting out these functions has been varied. In some instances, the service has (so far) been delivered to the required standard, but the government does not yet have the capacity to take over the function itself (e.g. project accounting, external audit). In other instances the service appears to have fallen short of requirements (e.g. government accounting, procurement), despite being contracted out to internationally-renowned firms.

A number of lessons can be learned from the GoSS experience. Firstly, the type of contracting (sole-source or competitive) does not necessarily determine the performance of the contract. In one instance (project accounting), an interim sole-source contract provided essential temporary coverage to a satisfactory standard. In another (the procurement agent), interim sole-sourcing would actually have been desirable; instead, a time-consuming competitive process created a temporary service delivery gap from which it can be argued that GoSS has never fully recovered. In a third (government accounting), sole-sourcing undermined service delivery because the selected contractor was allowed to define the terms of its own contract, yet lacked both the incentive and the capacity to understand the requirements of the function.

Secondly, government has supported the process of contracting out key services, but has had limited capacity to design and manage contracts without external support. This has arguably been most evident in the case of the government accounting contract. The Ministry of Finance entered into the contract bilaterally, on a sole-source basis, within the first six months of its establishment. But the ministry did not have the capacity to define the services it required from the contractor. As a result the contract was poorly designed and performance was weak, even though the same contractor was performing adequately on another sole-source contract for project accounting. Once the ministry received enhanced technical assistance it was able to require better performance from the contractor and to develop an exit strategy. Even with the Multi-Donor Trust Fund contracts, government had limited capacity to ensure that the contract design and performance met its needs.
Thirdly, lengthy World Bank procurement procedures and limited government capacity to follow them have led to significant delays in mobilising contract agents. All the competitively-procured contracts have followed World Bank procurement procedures because they have been financed through the MDTF. Each of these processes has taken between one and three years to complete. However, at first the government had no idea that World Bank procedures were so lengthy, or that they required such a substantial government engagement. Instead it expected MDTF delivery to be flexible and swift, as promised in the JAM. The impact of these delays has been most critical in the health sector, where the procurement of lead agents to deliver a basic package of health services has taken almost three years. This makes a nonsense of the objective of immediate delivery of essential services. In the case of the Procurement Agent, the absence of interim sole-source cover during the competitive process led to a critical service delivery gap. Such procurement delays not only result in lost service delivery, they also diminish incentives for government to build its own capacity and structures in the interim, because it expects a contractor to be mobilised shortly to deliver the function.

Fourth, inappropriate programme design can undermine the effectiveness of contracting-out. The Procurement Agent’s team composition was wholly inadequate to achieve the terms of reference. In the health sector, over-ambitious programme design relative to the available financing significantly complicated the contracting process. For government accounting, the appropriateness of the programme design was undermined by the contractor defining its own terms of engagement.

Fifth, capacity development has generally been inadequately addressed. The JAM assumed that GoSS would have the capacity to take responsibility for fiduciary functions within three to four years of its establishment. This now looks woefully optimistic, as capacity development was not put at the centre of the contracting-out design, and none of the contracts had a clearly identified exit strategy. One contract (project accounting) required no capacity development at all, while two only required on-the-job training (government accounting and procurement), in spite of the fact that counterparts were known to be limited, and lacking capacity. The external audit contract was the best designed, requiring the EAA, amongst its other functions, to support the Auditor General to recruit and induct staff, train them on the job, and monitor their capacity building. At a minimum, these functions should be included in a contracting out package, and if a decision is taken to deliver formal training through a separate intervention, this intervention must then be implemented simultaneously. The execution of the procurement function, for example, was in part weakened because the World Bank was supposed to implement a separate procurement capacity development strategy which never materialised.

Finally, contracting out is not cheap. The combined cost of the fiduciary agents contracted by GoSS was over USD 20m over just four years. There is little evidence that alternative approaches were considered, such as the temporary recruitment of experienced professionals from Sudanese émigrés living overseas (the diaspora). Yet, if properly designed, a diaspora programme might prove a cheaper and more sustainable alternative to recruiting international firms to carry out fiduciary and service delivery functions.

These lessons give rise to the following recommendations:

- Sole-source contracting should be considered on an interim basis to meet urgent service delivery gaps, but only if the terms of the contract are properly designed.
- Government should be offered independent technical support for designing and managing contracts. This should include defining contract services that best meet the needs of government, and performance monitoring.
If World Bank procedures are to be used to procure contract services on a competitive basis, it should be realised that they can take more than a year. These procedures should only be used when the service delivery is not urgent, or when appropriate sole-source cover can be provided in the interim. In addition, support is needed to help government to manage World Bank procedures. A government that is contracting out services because it lacks internal capacity will also lack the capacity to manage World Bank procedures for contracting out.

Capacity building should be included in contracting out packages, and an exit strategy clearly mapped from the outset. At a minimum, the capacity building should include assisting government to recruit and induct counterparts, and providing on-the-job training. When formal training is planned through a separate intervention, it must be implemented simultaneously. The exit strategy should detail the steps needed to raise the capacity of government officials to assume responsibility for the function, and should feed into the capacity-building design.

Alternative options, such as contracting in temporary capacity from the diaspora, should be considered before deciding to contract out essential services. Key issues to consider include the relative cost, lead times and capacity-building potential of the alternative options.

Bibliography

Comprehensive Peace Agreement between the Government of Sudan and the Sudan People’s Liberation Movement, January 2005


Endnotes

52 Eventually agreed at a ratio of 2:1 in the south, with GoSS contributing USD 2 to every USD 1 provided by the donors to finance MDTF-south programmes.

53 For health, HIV/AIDS and education.

54 The Capacity Building Trust Fund (CBTF) was established in 2005 under the management of UNICEF to provide capacity-building and operational funding to the SPLM as it evolved into the GoSS.

55 In actual fact, preparation of the draft financial statements usually lagged well behind this timetable.

56 Called a “letter of engagement”.

57 Through its United States Agency for International Development (USAID) Treasury support.

58 USAID-funded.

59 The Oversight Committee is chaired by the Minister of Finance & Economic Planning. Other members include the World Bank, MDTF donors, and the UN.

60 Project funds from both sources were pooled in a single project account.
Initially, GoSS failed to reach agreement with the first-ranked firm for the PAA, after which it was given go-ahead by the World Bank to negotiate with the second-ranked firm. Since the second-ranked firm was the existing iPAA, it was expected that negotiations would be concluded quickly. However, the second-ranked firm raised a number of issues, including its preference for a one-year contract.

Source: GoSS Procurement Agent – MDTF Procurement Flow Chart.

The first senior postholder was appointed to the Bank’s Juba office in late 2006.

MDTF procurements were to be conducted in line with World Bank procedures, while GoSS procurements were to be conducted in line with the GoSS Interim Public Procurement & Disposal Regulations, 2006.

In some cases with the assistance of individual procurement advisers, funded either through MDTF projects or other donor sources.


Source: procurement agent’s terms of reference.

The World Bank estimates the procurement process for the new agent will take five months.

Commitment control was nonetheless recently described as a “minor issue” by the World Bank procurement lead for Southern Sudan.

Briefing by the External Audit Agent to the MDTF Oversight Committee, October 2008.

The MDTF Core Fiduciary Systems Project.